



City of Broken Arrow

Minutes City Council

City Hall
220 S 1st Street
Broken Arrow OK
74012

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

Tuesday, August 21, 2018

Time 6:30 p.m.

Council Chambers

1. Call to Order

Vice Mayor Scott Eudey called the meeting to order at approximately 6:30 p.m.

2. Invocation

No Invocation was done.

3. Roll Call

Present: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey
Absent: 1 - Craig Thurmond

4. Pledge of Allegiance to the Flag

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

5. Consideration of Consent Agenda

Vice Mayor Eudey stated he understood Items P and Q needed to be removed from the Consent Agenda. He asked if there were any other Items which needed removal. There were none.

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

Move to approve the Consent Agenda excluding Items P and Q

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

- A. 18 967 Approval of the Broken Arrow City Council Minutes for August 07, 2018**
- B. 18 919 Ratification of a Representation and Fee Agreement with McAfee & Taft, P.C., Attorneys at Law, for providing representation to the City in a Class Action lawsuit against the manufacturers and distributors of opioid prescription drugs such as OxyContin, Actiq and Fentora**
- C. 18 810 Approval of and authorization to execute a Professional Services Agreement between the City of Broken Arrow and Latham, Stall, Wagner, Steele, & Lehman, Attorneys at Law for providing counsel and legal advice regarding workers compensation**
- D. 18 979 Approval of and authorization to execute a Youth Counseling Agreement between the City of Broken Arrow and Youth Services of Tulsa County, Inc.**
- E. 18 990 Approval of and authorization to execute Contract for Public Improvement for 2018 Community Development Block Grant Program**
- F. 18 968 Award the most advantageous bid to Rush Truck Center for the purchase of one (1) articulating aerial device and truck chassis with utility body**
- G. 18 981 Approval of and authorization of purchase a Three Quarter (3/4) Ton Crew Cab Pickup (2019 Ford F 250) for the Information Technology Department from Bill Knight Ford, Pursuant to the Oklahoma Statewide Contract**
- H. 18 950 Approval of and authorization to purchase one (1) mid size utility vehicle from Bill Knight Ford pursuant to the Oklahoma Statewide Vehicle Contract, for the Communications/City Manager's office**
- I. 18 992 Approval of and authorization to purchase one (1) ½ ton crew cab truck from John Vance Motors, pursuant to the Oklahoma Statewide Vehicle Contract, for the Streets and Stormwater Department**
- J. 18 958 Approval of and authorization to purchase two (2) stainless steel sand spreaders from Southwest Trailer, pursuant to the Oklahoma Statewide Vehicle Contract, for the Streets and Stormwater Department**
- K. 18 959 Approval of and authorization to purchase two (2) snow plows and hitches from Southwest Trailer, pursuant to the Oklahoma Statewide Vehicle Contract, for the Streets and Stormwater Department**

- L. 18 989 Approval of and authorization to execute a Change Order CO4 for Construction Contract Bid No. 16.162A; Portland Cement Concrete Street Repair
- M. 18 978 Notification of City Manager's, Assistant City Manager's and Department Director's execution of Professional Consultant Agreements with a value of less than \$25,000
- N. 18 962 Acceptance of a Deed of Dedication from Dunhill Properties Rental, LLC by Abdul Salam Alhlou, on property located one quarter mile east of Elm Place, north of Kenosha Street, Tulsa County, State of Oklahoma (Section 02, T18N, R14E)
- O. 18 963 Acceptance of a Utility Easement from Dunhill Properties Rental, LLC by Abdul Salam Alhlou, on property located one quarter mile east of Elm Place, north of Kenosha Street, Tulsa County, State of Oklahoma (Section 02, T18N, R14E)
- P. 18 964 Acceptance of a Deed of Dedication from Johnnie D. Parks and Randal F. Parks, on property located one half mile north of New Orleans Street, east of 1st Place, Tulsa County, State of Oklahoma (Section 23, T18N, R14E)
- Q. 18 965 Acceptance of a Utility Easement from Johnnie D. Parks and Randal F. Parks, on property located one half mile north of New Orleans Street, east of 1st Place, Tulsa County, State of Oklahoma (Section 23, T18N, R14E)
- R. 18 970 Approval of and authorization to execute Resolution No. 1126, a Resolution authorizing acceptance of a General Warranty Deed for Parcel 15, which consists of 0.0756 acres of permanent Right of Way for Washington Street Improvements, Garnett to Olive, in the Northeast Quarter of Section 20, Township 18 North, Range 14 East, Tulsa County, State of Oklahoma, from Aaron D. Meek, authorizing payment in the amount of \$3,295.00 for the Washington Street Improvements: Garnett to Olive, Parcel 15 (Project No. ST1616)
- S. 18 971 Approval of and authorization to execute Resolution No. 1127, a Resolution authorizing acceptance of a Temporary Construction Easement for Parcel 15A, which consists of 0.0273 acres of permanent Right of Way for Washington Street Improvements, Garnett to Olive, in the Northeast Quarter of Section 20, Township 18 North, Range 14 East, Tulsa County, State of Oklahoma, from Aaron D. Meek, authorizing payment in the amount of \$298.00 for the Washington Street Improvements: Garnett to Olive, Parcel 15A (Project No. ST1616)
- T. 18 972 Approval of and authorization to execute Resolution No. 1128, a Resolution authorizing acceptance of a General Warranty Deed for Parcel 16, which consists of 0.0756 acres of permanent Right of Way for Washington Street Improvements, Garnett to Olive, in the Northeast Quarter of Section 20, Township 18 North, Range 14 East, Tulsa County, State of Oklahoma, from Aaron D. Meek, authorizing payment in the amount of \$3,295.00 for the Washington Street Improvements: Garnett to Olive, Parcel 16 (Project No. ST1616)
- U. 18 973 Approval of and authorization to execute Resolution No. 1129, a Resolution authorizing acceptance of a Temporary Construction Easement for Parcel 16A, which consists of 0.0378 acres of permanent Right of Way for Washington Street Improvements, Garnett to Olive, in the Northeast Quarter of Section 20, Township 18 North, Range 14 East, Tulsa County, State of Oklahoma, from Aaron D. Meek, authorizing payment in the amount of \$412.00 for the Washington Street Improvements: Garnett to Olive, Parcel 16A (Project No. ST1616)
- V. 18 49 Approval of the Broken Arrow City Council List for August 21, 2018

Council Member Johnnie Parks left the room at approximately 6:31 p.m.

6. Consideration of Items Removed from Consent Agenda

Vice Mayor Eudey asked if there was a motion for Item P and Item Q.

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

Move to approve Item P and Item Q

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Mike Lester, Scott Eudey
Recused: 1 - Johnnie Parks

Council Member Parks returned to the room at approximately 6:32 p.m.

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

There were no Public Hearings, Appeals, Presentations, Recognitions or Awards.

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)

Vice Mayor Eudey stated Jason Scarpa from the Broken Arrow Chamber of Commerce requested to address City Council.

Citizen Jason Scarpa, representing the Chamber of Commerce, stated his address was 207 South Main Street. He read a letter addressed to Mayor Thurmond and the City Council which indicated the Chamber of Commerce unanimously and enthusiastically supported and endorsed the City of Broken Arrow 2018 General Obligation Bond Package. He stated information in support of the Broken Arrow 2018 GO Bond Package would be sent to the Chamber of Commerce Members.

Council Member Parks stated the Council appreciated the Chamber's support.

9. General Council Business

A. 18 980 Consideration, discussion, and possible award of the lowest responsible bid to Cherokee Pride Construction, and approve and authorize execution of a construction contract for Albany Street (61st Street South) Southside Drainage Improvements (Project No. ST1411A)

Assistant City Manager of Operations, Kenny Schwab, stated Item A was a 2014 Bond Project with \$2.1 million dollars in the Bond to construct drainage improvements along Albany, 61st Street South, from 9th to 23rd (approximately 1200 feet of construction along the south side, across from Walmart). He stated the whole project had been split into separate construction phases and this item was for a single construction phase. He stated the low bid was from Cherokee Pride in the amount of \$272,201 dollars. He reported this project had been redesigned by the Engineering Department and as a result the cost of the project was reduced from \$500,000 dollars to less than \$300,000 dollars. He stated construction would begin around the end of the school year.

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

Move to award the lowest responsible bid to Cherokee Pride Construction, and approve and authorize execution of a Construction Contract for Albany Street (61st Street South) Southside Drainage Improvements (Project No. ST1411A)

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

10. Preview Ordinances

A. 18 994 Consideration, discussion and possible preview of an Ordinance of the City of Broken Arrow amending the City of Broken code of ordinances chapter 7, adding Article XV Medical Marijuana, Business Regulations and Licensing, Establishing Regulations for Retail Medical Marijuana Establishments, Commercial Marijuana growing facilities, Wholesale Marijuana Facilities, Marijuana Storage Facilities; and repealing all ordinances to the contrary and declaring an emergency

Acting City Attorney, Trevor Dennis, stated he had been checking the Oklahoma Medical Marijuana Authority's website and the OMMA was scheduled to accept applications beginning August, 25th, 2018, after which the OMMA had two weeks to approve or deny the applications. He explained this meant marijuana related business could begin early in September; therefore, he would be presenting Ordinances and Preview Ordinances in this regard. He reported Item A was a Preview Ordinance which provided licensing regulations for Medical Marijuana Dispensaries, Processors and Growers. He reported the Legal Department ensured the language of this Preview Ordinance was similar to that found in State Question 788, as well as the Oklahoma Department of Health Regulations. He explained this would work in the city's favor if an Ordinance was challenged in the future.

Acting City Attorney Dennis stated Section 7-364 of the Ordinance revolved around the Medical Marijuana Dispensary requirements. He stated on August 30th, the Planning Commission would make a recommendation to City Council regarding where the dispensaries could be located. He explained the Ordinance anticipated the Planning Commission's decision and incorporated the Planning Commission's and Development Services' zoning decisions. He stated a City Permit would be required for any Medical Marijuana Dispensary, and he briefly reviewed the City Permit application requirements, including proof of State Licensing, proposed business location, business names, contact information, etc. and fees. He stated fees would cover the city regulatory costs only; the fee was not a tax. He explained it was thought dispensaries could not be located within 1000 feet of any public or private school entrance, but otherwise would have the same zoning requirements as alcoholic beverage retailers.

Acting City Attorney Dennis stated Section 7-365 referred to the Commercial Grower Requirements and tracked the same regulatory process as the Dispensaries including State Licensing and City Permits. He reported in Section 7-366 Marijuana Processors would also be required to follow the same application steps, including State Licensing, City Permits, and fees. He stated he understood, in reviewing State Question 788, Broken Arrow was not required to allow Commercial Growers or Marijuana Processors inside Broken Arrow City Limits. He stated the Planning Commission and the City Council needed to have further discussion regarding whether the city was inclined to allow, or not to allow, Commercial Growers and/or Marijuana Processors within Broken Arrow City Limits.

Acting City Attorney Dennis stated Section 7-367 governed Medical Marijuana Growing Facilities for Personal Use. He reported Section 7-367 matched the language of State Question 788 and attempted to address problems which could arise from home growers. He stated the Ordinance indicated a qualified licensed medical marijuana patient or caregiver could grow up to six plants on residential property owned by the license holder, or on rental property with written permission from the land owner, and marijuana plants could not be accessible to or visible to the general public.

Acting City Attorney Dennis reported this area of the law was rapidly growing and changes should be expected in the future. He asked if there were questions.

Council Member Lester asked if the city had the authority to regulate the amount of marijuana which went into and out of the various facilities. Acting City Attorney Dennis responded in the negative regarding marijuana Commercial Growers; the law did not allow a limit. He stated the Department of Health provided for inspections of the product for safety in terms of food, health, consumption, etc., but did not regulate THC content. Council Member Lester asked if the City of Broken Arrow had the authority to regulate the amount of product which went into and out of dispensaries. Acting City Attorney Dennis responded he needed to contact the Attorney General to be certain; however, he understood it would be up to the Department of Health to regulate product volume. He explained the city could enforce building codes, but at this point the City could not enforce volume restrictions. Council Member Wimpee asked if the City could limit the number of dispensaries allowed within the city. Acting City Attorney Dennis responded there were no provisions which capped the number of Dispensaries allowed within State Law; however, the city could attempt to do this. He stated at this point he was unsure if an attempt to limit the number of Dispensaries allowed within City Limits would survive a challenge. Vice Mayor Eudey asked if he was correct in understanding the city was only required to allow Dispensaries within City Limits, not Processors or Commercial Growers. Acting City Attorney Dennis responded in the affirmative.

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

Move to preview the Ordinance and set it for adoption

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

11. Ordinances

A. 18 966 Consideration, discussion, and possible adoption of Ordinance No. 3535 Corrected, amending Chapter 10, Fire Prevention and Protection, Article I, In General, Section 10 3, Manufacture, Sale, Use, Etc., of firework, created, of the Broken Arrow Code of Ordinances; specifically referencing the Manual of Fees, repealing all ordinances to the contrary; and declaring an emergency

Acting City Attorney Dennis reported this Ordinance was previously passed by City Council at the prior City Council Meeting. He explained there was an error corrected in the title, and he asked that City Council re-adopt Ordinance No. 3535 Corrected with approval of the emergency clause.

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

Move to adopt Ordinance No. 3535 Corrected

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

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

Move for the emergency clause

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

B. 18 961 Consideration, discussion, and possible adoption of Ordinance No. 3536, an Ordinance closing an alleyway on property located one third mile south of Kenosha Street, one half mile east of Elm Place, Tulsa County, State of Oklahoma, (Section 11, T18N, R14E); repealing all ordinances to the contrary; and declaring an emergency (Milestone)

Acting City Attorney Dennis reported the property owner had submitted this application to close 0.2 acres of an alley by Kenosha and Elm. He explained the existing alley blocked the construction of a new mixed use structure; the utility easement was proposed to the east which would allow the closure of the 0.2 acres. He stated Staff had reviewed the documents and recommended approval of Ordinance No. 3536 with approval of the emergency clause.

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

Move to adopt Ordinance No. 3536

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

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

Move for the emergency clause

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

- C. 18 974 Consideration, discussion, and possible adoption of Ordinance No. 3537, an Ordinance repealing Chapter 4 of the Broken Arrow Code, Article V, Low Point Beverages, Section 4 85, Definitions; Section 4 86 Transporting low point beer in open containers; possession in public places; Section 4 87. Retail dealer's license; Section 4 88, Sale on Sunday and during certain hours; Section 4 89, Gambling, disorderly conduct, etc., on sales premises; Section 4 90, General regulations with respect to minors; Section 4 91, Sale or delivery to minors; Section 4 92, Minors not to misrepresent age for purpose of buying; Section 4 93, Possession by minors; Section 4 94, Sale or delivery to intoxicated, insane or mentally deficient persons; Section 4 95 Permitting intoxicated persons on sales premises; Section 4 96, Suspension or revocation of license; repealing all ordinances to the contract; and declaring an effective date of October 1, 2018**
Acting City Attorney Dennis reported State Question 792 changed the alcohol laws and removed the designation of low point beer as a category that was controlled. He stated Ordinance No. 3537 updated and repealed the low point beer Ordinances in the City. He stated Staff recommended adoption of Ordinance No. 3537, effective date October 1, 2018.

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

Move to adopt Ordinance No. 3537, and declare it effective October 1, 2018

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

- D. 18 975 Consideration, discussion, and possible adoption of Ordinance No. 3538, an Ordinance amending Chapter 4, Alcoholic Beverages, Article I, General Provisions, Section 4 1, Definitions; Section 4 13, Transporting alcoholic beverages in opened containers; possession in public places; Section 4 22, Employment of minors selling or handling; and Section 4 25, Operation of retailers prohibited during certain hours and on certain days; Section 4 33, Occupation tax Levied; amount; of the Broken Arrow Code; repealing all ordinances to the contrary; and declaring an effective date of October 1, 2018**
Acting City Attorney Dennis stated Ordinance No. 3538 was a companion ordinance to Ordinance No. 3537. He explained Ordinance No. 3538 revised and updated the remaining alcohol laws. He stated Staff recommended adoption of Ordinance No. 3538, effective date October 1, 2018.

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

Move to adopt Ordinance No. 3538, and declare it effective October 1, 2018

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

- E. 18 976 Consideration, discussion, and possible adoption of Ordinance No. 3539, an Ordinance amending Chapter 16 Offenses Miscellaneous, Article I, In General, Section 28, Possession of Marijuana and Controlled Dangerous Substances; Section 28.1, Prohibiting Possession, Delivery or Manufacture of Drug Paraphernalia; Exception; Penalty; of the Broken Arrow Code; repealing all ordinances to the contrary; and declaring an emergency**
Acting City Attorney Dennis reported Ordinance No. 3539 clarified and updated criminal law to be in compliance with State Question 788. He explained it specifically removed medical marijuana from being a crime in accordance with the State Question language, recognized that under State Law an individual with a medical marijuana license could possess certain amounts of marijuana, and changed marijuana possession, 1.5 ounces or less, to a Class A misdemeanor fineable offence, if claimed to be used for medical purposes. He stated Staff recommended approval of Ordinance No. 3539 with approval of the emergency clause.

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

Move to adopt Ordinance No. 3539

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

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

Move for the emergency clause

The motion carried by the following vote:

Aye: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

12. Remarks and Inquiries by Governing Body Members

Vice Mayor Eudey stated Mayor Craig Thurmond and City Manager Michael Spurgeon were visiting the White House and representing the City of Broken Arrow very well. He thanked the

Chamber of Commerce for their support of the General Obligation Bond 2018 Package and he encouraged the Citizens of Broken Arrow to vote on August 28th, 2018.

Vice Mayor Eudey asked if there was an update with regard to the city’s water concerns. Acting City Manager responded in the affirmative; Mr. Kenny Schwab had an update.

Mr. Kenny Schwab, Assistant City Manager over Operations, reported there was great interest in Broken Arrow’s water supply system currently due to taste and odor issues, termed geosmin. He explained geosmin referred to the earthy, dirty taste and musty odor, and was caused by algae in the source water. He briefly explained the scientific process which caused the algae in the source water which in turn caused the geosmin. He stated as of two weeks ago the geosmin problem at the plant was greatly reduced; however, it would take longer to travel through the 700 miles of pipeline, the 23 million gallons of storage underground in the pipe network and the 11 million gallons of above ground storage. He explained the water was being moved out more slowly due to an unusually cool and wet August; water was not being used for irrigation as much as usual. He stated staff was flushing the water out of the neighborhoods which were particularly affected by the geosmin. He explained the geosmin was improving, but would take a few weeks to completely resolve. He reported this was not a Broken Arrow issue alone; many areas were suffering from geosmin, including up into Kansas. He stated this had happened in Broken Arrow before, and the last episode of equal magnitude was in August/September of 2013. He stated discussions regarding preventing geosmin in the future included utilizing secondary water sources, such as tapping into Tulsa’s water supplies or utilizing Grand River, as well as source water protection.

Council Member Wimpee asked if the water was safe for human consumption. Mr. Schwab responded in the affirmative. He explained Broken Arrow Water was required by law under the Safe Drinking Water Act to test the water supply routinely. He explained staff sampled 30 different locations, 100 times per month, testing for bacteria in the water, and all tests had come back negative which indicated the water was safe.

Council Member Parks asked if the city had access to two different water sources if one water source could be shut down and the other utilized until the geosmin, or any other problem, abated. Mr. Schwab responded in the affirmative.

Vice Mayor Eudey stated the key point of this presentation was the water was safe to drink and the geosmin would pass. Mr. Schwab concurred.

Council Member Wimpee stated the Veterans Memorial Dedication, which had been moved from last week to this week, would be held August 22nd, 2018 at 7:00 p.m. at Veterans Park.

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

There were no Remarks or updates by the City Manager, including Recognition of Recent Accomplishments by Employees and Elected Officials.

14. Executive Session

There was no Executive Session.

15. Adjournment

The meeting adjourned at approximately 7:12 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: 4 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey

Attest:

Vice Mayor

Deputy City Clerk