



## City of Broken Arrow

City Hall  
220 S 1st Street  
Broken Arrow OK  
74012

### AMENDED

#### Minutes

#### City Council

*Mayor Craig Thurmond*

*Vice-Mayor Scott Eudey*

*Councilor Mike Lester*

*Councilor Johnnie Parks*

*Councilor Debra Wimpee*

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**Tuesday, July 18, 2017**

**Time 6:30 p.m.**

**Council Chambers**

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**1. Call to Order**

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

**2. Invocation**

Rich Manganaro delivered the invocation.

**3. Roll Call**

**Present:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

**Absent** 2 - Craig Thurmond, Johnnie Parks

**4. Pledge of Allegiance to the Flag**

Mike Lester led the Pledge of Allegiance to the Flag.

**5. Consideration of Consent Agenda**

Vice Mayor Scott Eudey stated he understood item K would be tabled until August 15, 2017.

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

**Move to approve Consent Agenda excluding item K**

The motion carried by the following vote:

**Aye:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

- A. 17-1685** Approval of City Council Meeting Minutes of July 3, 2017
- B. 17-2418** Approval of and authorization to execute Budget Amendment Number 4 for Fiscal Year 2017
- C. 17-2401** Approval of and authorization to execute Resolution No. 1032, a Resolution of the City of Broken Arrow declaring improvements to properties located at 221 North 9th Street, 310 North 9th Street, 312 North 9th Street, 825 East Dallas Street, 845 East Elgin Street, and 1001 Wesley Drive surplus and authorizing moving or demolition of the improvements to clear the properties for relocation of utilities and construction of the 9th Street, Elgin to El Paso Widening Project (Project No. ST1210)
- D. 17-2430** Approval of and authorization to execute Resolution No. 1035, a Resolution of the City Council of the City of Broken Arrow, Oklahoma, establishing that the National Incident Management System (NIMS) is the standard for incident management in the City of Broken Arrow, Oklahoma
- E. 17-2406** Approval of and authorization to execute a Promotional License on City Property allowing the Broken Arrow Economic Development Corporation to host music events in The Rose District
- F. 17-2397** Approval of and authorization to execute Amendment No. 4 to Agreement for Professional Consultant Services with Garver, LLC for engineering of 9th Street Widening, El Paso to Elgin (Project No. ST1210)
- G. 17-2412** Approval of and authorization to execute First Amendment to Amended and Restated Site Use/Lease Agreement with New Cingular Wireless, PCS, LLC
- H. 17-2403** Approval of and authorization to execute a Gas Facilities Relocation Agreement with Oklahoma Natural Gas Company for 37th Street from Omaha Street to Albany Street (Project No. ST1507)
- I. 17-2427** Approval of and authorization to execute an Agreement for Professional Consultant Services with Olsson Associates, Inc., for Design of a Tiger Hill Soldier Pile Retaining Wall
- J. 17-2416** Approval of and authorization to execute a Professional Transportation Services Contract with the Metropolitan Tulsa Transit Authority (Tulsa Transit) to provide public transportation services for Fiscal Year 2017-18
- K. 17-2317** Approval of and authorization to execute a Use Agreement with the Broken Arrow Genealogical Society for fiscal year 2017-2018

- L. 17-2405      **Approval of and authorization to purchase Police duty and practice ammunition from Precision Delta Corporation pursuant to the Oklahoma Statewide Contract**
- M. 17-2414      **Approval to waive formal competitive bidding and approve the purchase of two (2) LifePak 15 cardiac monitors from Physio-Control, Inc. as bid pursuant to the Oklahoma Statewide ContractSW300 and authorization to surplus two (2) LifePak 12 monitors and authorize trade-in as a credit for the Fire Department**
- N. 17-2417      **Approval of and authorization to execute Change Order C01 for Downtown Main Street Streetscapes Phase IV**
- O. 17-2413      **Approval of and authorization to execute Change Order C02 for Construction Contract ST1615; Fairfax Concrete Repair, Mill and Overlay**
- P. 17-2411      **Acceptance of the Department of Environmental Quality Sanitary Sewer permit, SX0000721, for Kenosha Villas, located a quarter mile north of Kenosha Street and a quarter mile west of Aspen Avenue, Tulsa County, State of Oklahoma, (Section 4, T18N, R14E)**
- Q. 17-2410      **Approval of PT16-110, Conditional Final Plat, Tucson Village, 36.66 acres, A-1 to RS-3, CN, & FD/PUD-234, south and west of the southwest corner of 23rd Street and Tucson Street**
- R. 17-2407      **Approval of PUD (Planned Unit Development) 264 and abrogation of BAZ 1943 (rezoning), Top Dog Training Boarding Daycare, 4.14 acres, A-1 to PUD 264/A-1, northeast corner of Tucson Street and 9th Street**
- S. 17-2424      **Approval to dedicate and authorization to execute a Utility Easement regarding an area owned by Signature Properties along the west side of Block 2, Lot 1 and Reserve D of Bristol Ponds, located one-quarter mile north of Washington Street, one-quarter mile west of Elm Place (Section 15, T18N, R14E)**
- T. 16-1571      **Approval of the Broken Arrow City Council Claims List for July 18, 2017**

**6. Consideration of Items Removed from Consent Agenda**

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

**Move to table item K until August 15, 2017**

The motion carried by the following vote:

**Aye:        3 -      Debra Wimpee, Mike Lester, Scott Eudey**

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

- A. 17-2423      **Consideration, discussion, and possible approval to grant waivers for properties owned by Jonathan and Lara Weber, James and Mary Garland, and Katie M. and Elizabeth Roberts located within the Steeplechase Farms and Glen Eagles subdivisions regarding the Assessment District for stormwater initiated in 2007**

City Attorney Beth Anne Childs stated she had been asked to provide some background information. She noted that a fact sheet had been provided, but she would briefly review. She stated in 2007 Broken Arrow suffered a significant rain event which caused severe flooding in the Steeplechase Farms and Glen Eagles subdivisions. She explained portions of the subdivisions had been built prior to annexation into the City of Broken Arrow and as a result had been built to Wagoner County specifications. She stated there were a number of issues when the properties were constructed, including a retention pond in Glen Eagles which was particularly problematic and was overgrown. She stated the homeowner's association was responsible for maintenance, but it was not properly maintained. She stated the City stepped in and took care of the problematic pond, and employed engineers to determine what remediation could be done. She explained it would have been hideously extensive to dig up the stormwater system because the majority of it was located under the streets. She stated a number of meetings were held with the property owners, and a hydrologist in Oklahoma City was enlisted to help assess the situation and ultimately it had been determined the street itself would be utilized to convey stormwater in an effort to contain costs. She stated an assessment district was organized due to insufficient funding in order to fully remediate costs; initially the assessment roll listed 277 properties and the City Council at the time decided the material cost would be borne by the property owners through an assessment district, and the City would pay the cost of labor. She explained the upgrades to the system had primarily addressed the problem. She said the original cost assessment was \$123,056.89, and as of July 2017 there were 76 properties that had not satisfied assessments, 55 remained with original owners and 21 properties had been transferred or sold. She expressed assessments for the transfer properties totaled \$9,399.73 and the total remaining assessments, excluding interest, was \$32,795.40. Therefore, she felt the City had been successful in collecting the bulk of the assessments. She explained assessment districts worked in multiphase projects with notice provided a number of times throughout the process; however, assessment districts were not utilized frequently with very little case law as most cities tend to handle major capital expenditures such as this through General Obligation Bonds or sales tax capital improvements.

She explained assessment districts allowed landowners to pay over a period of 10 years. She expressed there were some missteps on the City's part in terms of providing notice to the County and notification to the homeowners, but this year Staff was particularly vigilant in attempting to assess this particular assessment district. She stated notice had been provided last year, but had been provided to the incorrect County. She explained Staff readdressed the situation this fiscal

year and provided a comprehensive memo to the City Clerk and to the City Manager in an effort to establish a process to deal with the assessment district. She stated it had been decided to provide notification to the property owners with outstanding assessment balances. She said Ms. Jeri Hall in the Finance Department did an excellent job of assembling information which included the citizens most concerned about the assessments, particularly transferred property owners who had contacted the City of Broken Arrow and had been advised by the City that there were no assessments or liens prior to closing. She stated the City Manager felt it would be important to review these special cases. Ms. Childs expressed waivers could be issued by the City Manager for the assessments, but as the improvements constituted a benefit to all lots in the assessed area it was felt due process should be instituted. She stated residents would be given the opportunity to address the Council and express any objections to the assessments, and there were 8 residents who fell into the category of property transfer in which the City erroneously informed the closing company that there were no liens on the properties in question. She stated the total assessment for the above individuals was \$2,430.54. She said there was also one HUD home through Oklahoma City who did not make a formal request to the City, but probably would have been advised there were no liens, there was one routine acquisition, and there was one hardship waiver request. She stated the assessments were roughly between \$300 and \$475, and ideally residents would have had the entirety of the 10 years plus interest to pay. She explained notice should have been provided to homeowners on a yearly basis and notice should have been provided to the County between July 1 and July 10, and it would have been assessed on the property taxes on an annual basis; however, mistakes were made as this was a learning process for Broken Arrow.

Ms. Childs stated she was hopeful this would provide a template for future similar situations. She stated the referenced individuals were provided notification that the City Manager had denied the waiver request, and of that number the City Clerk received 3 requests for consideration: Jonathan and Lara Weber requested a waiver of \$353.39, James and Mary Garland \$426.37, Katie and Elizabeth Roberts \$406.17. She said this was clearly at the Council's discretion by the statute and also by the City's own process.

City Manager Michael Spurgeon stated while he denied the citizens' request for a waiver, he recognized the citizens had a point. He believed the Council should hear what the citizens had to say and why the waivers should be granted. He stated the denial had been based on the fact that the action was taken by Council in 2007 by way of Ordinance and he felt his position as City Manager did not grant him authority to waive an action taken by City Council. He explained City Council could choose to grant the citizens' waivers as no proper notice of the lien had been provided. He expressed his second concern was there were citizens who had paid 100% of the assessment for the improvement and he wanted the Council to be aware that if a waiver was granted it was possible residents who had already paid might approach the Council in the future asking for relief.

Councilor Mike Lester asked if he was correct in the following: the residents were in the process of home purchase and inquiry was given to the City to determine if there were outstanding assessments, which under normal circumstances with proper notification any outstanding assessments would have been subtracted from the Seller's net sale, and the citizens in question would not have been responsible for the assessment due. Ms. Childs responded yes. Councilor Lester asked if there were other citizens who had paid under similar circumstances. Ms. Childs replied yes, there were. Councilor Lester stated he would have a problem granting the current waiver requests without refunding the citizens who had paid under the similar circumstances, as he felt the City erred.

Councilor Debra Wimpee stated according to information provided there was one citizen who paid \$50 to the City and was told there were no liens or assessments; she asked if there were situations similar to this. Ms. Childs stated she did not know; she had not checked with Finance prior to the City Council Meeting and waited to see how many citizens had requested appeal to the City Council. She stated she did not know if payment had been made since the letters from the City had been sent; however, she could obtain information regarding how many residents had paid after property transfer. She mentioned Ms. Hall has done an excellent job keeping track of the situation.

Councilor Lester asked if this was akin to a lien on the properties. Ms. Childs stated the Ordinance provided it was a lien. Councilor Lester asked if there was anything filed with the County Clerk's office to provide notice. Ms. Childs stated it should have been recorded early on in the process, but there was a failure on the City's part. Councilor Lester stated he recalled going through the process in 2007 and when the addition was brought into the City it was brought in under existing conditions and shortly thereafter it started flooding and became the City's problem. He stated the City worked with the neighborhood to help repair the poor conditions, but the reality was the neighborhood had agreed to become a part of the City under the existing conditions and then expected the City to fix the existing problems just two years later. He explained the City had agreed to help the neighborhood with the understanding that the citizens would contribute; however, he felt the City erred in not effectively notifying the citizens who purchased homes after the agreement had been made. Vice Mayor Eudey stated as a title examiner the first step was to determine if there were any liens in the abstract and if there were no liens listed in the abstract the next step was to call and ask if there were any liens, and it sounded as if proper protocol had been followed on the part of the title examiners.

Vice Mayor Eudey introduced the citizens who had requested to speak regarding this matter, James Garland and Lara Weber.

James Garland stated his name and his address as 3905 South 201 Ave in the amended Glen Eagles addition. He stated he received a certified letter in April 2017 from the City of Broken Arrow which stated he owed the City money from an assessment due June 1, 2017 before accrual of interest. He said he was completely shocked and bewildered as his family had moved into the home on 04/01/2011 and had not received anything from the City regarding an assessment until 6 years later. He explained upon receipt of the letter he contacted the closing company and forwarded the certified letter; the closing company indicated it had sent a request for any special assessment upon closing of the home and enclosed the letter it had received from the City showing the property owed \$0.00. He stated he contacted the Finance Department and explained the situation and the Finance Department forwarded his concern to the City Manager. He stated he received a letter from the City Manager stating the money was owed which spurred multiple emails to which he attached the letter from the City of Broken Arrow showing no assessments were due. Mr. Garland stated Mr. Spurgeon thanked him for his letter, but continued the judgment was made; therefore, Mr. Garland desired to present his case before Council in request of a waiver of relief. Mr. Garland felt he should not need a waiver of relief as he had gone through the proper channels when purchasing the property, and had done everything the City, County, and mortgage company had asked and paid the costs to close on the house. He stated he had done everything correctly when purchasing the property and had no knowledge of the prior assessment as he had not been present for any meetings or notifications of the assessment by the City, nor had he been aware of any assessment while purchasing the house. He stated the assessment should have come up at closing or should have been paid by the previous owner. He asked how the City could allow him to be in residence for 6 years and then send out a demand letter for a special assessment which occurred 8 or 9 years ago. He asked why the developer had not been required to pay the damages or fix the problem. He asked why the pay table was not disclosed during the closing process. He stated it was his understanding that the closing company protected purchasers from such incidents, and asked how the closing company can be held accountable when the City stated there were zero dollars owed on the property. He stated the City Manager said his family was benefitting from the work done; however, the work had been done prior to his purchase of the home and currently the retention areas were overgrown and an eyesore upon entering the neighborhood. He stated his house had been built in 2003, and for all he knew the retention area could have been built then. He reiterated that none of this had come up in closing. He felt the City had made the mistake and if the closing company had come to him upon purchase and explained there was an installment of assets owed on the property and listed the amount owed it would have weighed on his decision to purchase the home. He stated if he had been informed upon purchase of the home of the assessment he would have accepted responsibility for the money owed; however, this did not happen and upon closing the City clearly stated there was no lien and no assessment. He stated he had also received a letter in the mail today from Wagoner County asking for a special assessment tax of \$113.37 for the stormwater assessment lien, and now would be required to call Wagoner County to straighten this out as well.

Ms. Childs stated Broken Arrow attempted to get the developer to take responsibility, unfortunately, the developer was bankrupt and the design engineer bore no responsibility as the developer did not build in compliance with the design engineer's plan. She stated it was her understanding there was blatant disregard of the engineer's planning with regard to stormwater.

Laura Weber stated her name and address as 20120 East 37<sup>th</sup> Street South. She explained she was appealing this assessment because she and her husband were not the property owners on the assessment roll, and Ordinance 3150 levied "assessments in accordance with the roll." She stated she received a letter from City Manager Michael Spurgeon which expressed the assessment was owed as a number of the neighbors had paid the assessment even though the land had been acquired following assessment finalization. She stated the City of Broken Arrow expected the new and current landowners to pay the assessment; however, she felt the correct course of action was for the City of Broken Arrow to follow the ordinance passed by the Council, and according to Resolution 684, it did matter who owned the property when the assessment roll was finalized. She explained the 7<sup>th</sup> "Whereas" statement read "several residences called the City Legal and Engineering Departments stating that they have sold their property since the proposed improvements were approved and may request that the new record owners be assessed," and the 10<sup>th</sup> "Whereas" statement read "the City Engineer checked the County land records and corrected the assessment roll by assessing all current land owners."

She stated Section 4 of the Ordinance, Declaration of Liens, "The special assessments are declared to be a lien against the lots and tracts of land as assessed from the date of publication of this ordinance." She understood a lien was a notice attached to a property which stated an owner owed money to a creditor and before an owner could sell property and give clear title to a buyer the lien must be paid off. She stated a lien was typically a public record filed with the County Records Office. She explained she examined the Wagoner County land records for her property and did not find a lien. She stated according to the assessment roll, the prior owner of her property, lot 38, block 2 in amended Glen Eagle addition was listed as Federal National Mortgage Association. She stated according to the Ordinance, Federal National Mortgage Association owed the assessment; Federal National Mortgage Association sold the property to Matthew and Alicia Snyder on 03/25/2011, five weeks after 02/15/2011, the date of the ordinance. She continued if a lien had

Vice Mayor Eudey stated he felt the City Manager's reasoning for denying the waiver was sound, but he felt it could also be viewed in a different light. He said with the exception of those who were not given notice but still subsequently paid it, everyone else lived there and had notice of this which was a distinguishable event. Ms. Childs stated the counter to that was there had been a number of people who had paid despite the fact that the property changed hands; she did not know the exact number. Councilor Lester stated he felt the City had clearly erred and in regard to the evening's proceedings he would make a motion to approve the assessment abatement for Katie and Elizabeth Roberts, Jonathan and Lara Weber, and James and Mary Garland, based on the fact that the City erred by not providing proper notice to the title company that liens were outstanding. He stated any citizens who paid under the same circumstances could come forward and show notice; however, for the above 3 families the waiver should be approved.

**Move to approve the assessment abatement for Katie and Elizabeth Roberts, Jonathan and Lara Weber, and James and Mary Garland**

**Aye:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

**B. 17-2392**

Ms. Childs stated in November of 1962 the Broken Arrow Industrial Trust (BAIT) was formulated and Broken Arrow City Council accepted sole and exclusive beneficial interest in the Trust on the same day. She thanked Karen Pax for her aid in collecting information in this regard. She explained, according to the indenture, the Trust was formed for the purpose of permitting the City of Broken Arrow to own, acquire, construct, reconstruct, extend, equip, improve, maintain, sell, lease, contract concerning or otherwise deal in, or dispose of, any lands, buildings or facilities in every way and in any nature that could be used for acquiring or developing industry within or near the City of Broken Arrow in accordance with the local Industrial Development Act. The Trust indenture provided for three trustees: one trustee was the person who occupied the office of City Manager, and the other two were appointed by the Board of Directors of the Broken Arrow Chamber of Commerce. She explained the two resident trustees as of the date of the Trust indenture were Charles Fisher and Joe Foster, one of whom had passed away and the other she could not locate. She stated Legal contacted the Chamber of Commerce and requested the Chamber to identify two individuals to serve on the Broken Arrow Industrial Trust; the Chamber chose Wes Smithwick and Ted Cundiff. She intimated the Trust, as of today, did not function as a body corporate, and had not in many years. She stated the City received rent on a piece of property owned by the Trust, but no staff member could recall there ever being a BAIT meeting. She thanked Tim Thummel in Engineering and Construction for aiding in the process of determining what property was owned by the Trust. She stated there was one piece of property which was owned by the Trust and was rented to PACCAR who paid rent on an annual basis to the Industrial Trust; this property was located not along 9<sup>th</sup> Street, but was comprised of the building behind it. She said the City Manager requested the City Council serve as Trustees for BAIT, which she felt was a good idea. She mentioned other cities handled trusts in this manner and it was an efficient mode of managing trusts. She explained there would need to be an amendment to the Trust Indenture for the City Council Members to become Trustees, and this would also give the Council the opportunity to modernize the Trust's language as disposal of property was not a function specifically identified in the indenture. She stated a public meeting had been scheduled for Tuesday 07/25/2017 at 5:00 p.m., and thanked the City Clerk for posting the announcement. She explained she would provide similar background information during the Public Meeting along with a drafted amendment to the Trust Indenture, as well as a resolution. She stated at the next Council Meeting the City Council would be asked to approve the amendment, ratify acceptance of the Trust purposes, and assuming the City Council moved forward with these changes, a BAIT Meeting would be added to the City Council's Meetings, albeit infrequently. She asked if there were any questions. There were none.

No citizens had requested to speak.

A. 17-2425

**Presentation, discussion, update, and review of a proposed development for the Embers Grill formerly identified as the Red Creek Dance Hall and Restaurant and the surrounding property located between the Creek Turnpike and Tucson Street, West of Olive Street in the City limits of Broken Arrow, Oklahoma, and consideration and discussion of a proposed**

**Resolution objecting to gaming at this location and authorizing the City Manager to take all actions reasonably necessary to stop illegal gaming**

Ms. Childs stated she had provided an extensive update to the Council at the July 3<sup>rd</sup> Meeting regarding this issue including all developments up to July 3<sup>rd</sup>. Therefore, she felt, rather than review this in total, she would provide an update consistent with what had occurred since July 3<sup>rd</sup>. She stated the City Manager and the Mayor were scheduled to meet with the Principal Chief and the Attorney General of the Muscogee Nation; however, the morning of July 14<sup>th</sup> she was advised the Principal Chief of the Creek Nation had a conflict and the meeting necessitated rescheduling. She explained she followed up with the Attorney for the Creek Nation Gaming Commission several times to try to reschedule this, and was advised this morning Creek Nation Gaming Commission would like her to work with the Attorney General of Creek Nation to reschedule. She stated she had called the Attorney General of Creek Nation twice today, and had not heard back from him, but in fairness it has only been 1 day and she anticipated scheduling a meeting to pursue the issue. She indicated on July 14<sup>th</sup> she sent a letter to the City Council which was sent to Mr. Eric Nelson, the attorney for Mr. Bruner, and Mr. Nelson responded he was primarily involved in terms of setting up LLCs and he had attended some of the preliminary meetings with staff members, but indicated he was not involved in any potential gaming issues; however, he provided the letter to his client Mr. Bruner. Ms. Childs reported she received a phone call yesterday from a gentleman by the name of Dennis Whittlesey who was an attorney in Washington, DC. Ms. Childs stated Mr. Whittlesey had represented Ms. Giles, Ms. Capps, and Tiger Hobia who was the Chief of the Kialegee Tribe and also the developers of the last “go round.” She stated Mr. Whittlesey indicated he represented the developers in this current case and that he had received a copy of the letter forwarded to Mr. Nelson. Ms. Childs stated Mr. Whittlesey retained a historian and it was their position that the Kialegee Tribal Town and the Muscogee Creek Nation had concurrent jurisdiction over this particular tract. She indicated she spoke with the Sovereignty Council’s Tom Gruber quite a few times over the past few days and Mr. Gruber immediately contacted the State of Oklahoma’s Attorney General to advise the Attorney General of what was transpiring, that the party in question did appear to intend to move forward with gaming, and he confirmed that there had been an application filed on behalf of the Kialegee Tribe with the National Indian Gaming Commission.

Ms. Childs stated today, in addition to her calling the Attorney General for the Muscogee Creek Nation, she received a phone call from the Mayor who advised that Mr. Lucian Tiger, III, who was the speaker for the Muscogee Creek Nation Tribal Council had requested to attend the City Council Meeting and had requested the ability to move things around on the Agenda so this issue could be addressed earlier in the meeting. She mentioned Mr. Tiger had come to a meeting in October monitoring the situation. Ms. Childs stated she invited Mr. Tiger and several representatives of the Creek Nation to come early to meet with herself and the City Manager to have a dialogue. She stated he intimated he was agreeable to this, but then a short time later she received a follow-up phone call from Mr. Tiger who said the Attorney General requested Mr. Tiger and the representatives not meet with Broken Arrow Staff or attend the Meeting; however, Mr. Tiger relayed that the Attorney General was expecting a call from Ms. Childs to set up a meeting. She stated she appreciated Mr. Tiger’s call and the willingness of the Tribal Officials to continue to visit with this because from a legal perspective Creek Nation has jurisdiction over this particular parcel and the City of Broken Arrow has no jurisdiction. She stated she would like to work cooperatively in a supportive fashion because clearly Broken Arrow had no jurisdiction.

She said she drafted a resolution which was attached for the Council’s review and as she advanced through the process she felt there were opportunities for the Council to assist in refining this for full consideration at the next City Council Meeting. She explained the Council could object to gaming, although the Council did not have jurisdiction to regulate gaming, and a request for injunctive relief could not be filed unless the gaming was illegal. She stated the gaming would be illegal if it had not received approval from Creek Nation or from the National Indian Gaming Commission which would enable the City of Broken Arrow to move forward with a request for injunctive relief. She explained the resolution draft outlined formally requesting the State Attorney General initiate an investigation and take formal action as required, formally asking the Muscogee Creek Nation to address any illegal gaming, formally directing Mr. Bugg, the City Sovereignty Council, to draft a letter to the National Indian Gaming Commission objecting to issuance of a permit for gaming on this site, and then authorizing the City Manager to take all other actions he deemed necessary, including draft of a letter to the proposed developers. She explained injunctive relief was described by the Courts as an “extraordinary remedy” and in order for the Council to move forward with taking that action it was important to be able to demonstrate that illegal gaming was being practiced. She stated ideally the City would have the ability to conduct a preemptive strike of illegal gaming, but to meet the standard as set by the Court evidence of actual illegal gaming was required. She welcomed comments and questions.

Councilor Lester stated he felt the City had no authority even to go onto the property as it stood today. Ms. Childs affirmed he was correct. Councilor Lester asked if the building were to catch fire would the City send, or have authority to send, the Fire Department to put out the fire. Ms. Childs replied it was a difficult situation because if the Fire Department did not respond it could potentially put the Citizens of Broken Arrow at risk; therefore, while technically Broken Arrow did not have authority, if it were a practical matter such as a medical emergency or fire, etc., the Broken Arrow Fire Department should respond. She stated she needed to talk with the Fire Chief regarding this as it potentially could put the Broken Arrow Fire Fighters at risk as they had no opportunity to do an inspection to ensure compliance with various safety codes. She stated this was something

the City Manager needed to work on from a Staff perspective. Councilor Lester felt the same concern applied to the Police Force. He indicated significant dialogue needed to be held regarding what it would cost the City to have personnel on hold for possible assistance to that property.

Ms. Childs agreed and commented the police would require cross-deputization to have authority on that property.

Mr. Spurgeon stated he was aware of these issues and had indicated the need for these conversations regardless of what was built on the property, and had expressed this need to the owner of the property in a meeting earlier in the year. Councilor Lester stated as the property was outside taxed jurisdiction it would behoove the City of Broken Arrow to be certain there was adequate compensation for its efforts to serve in this regard. Mr. Spurgeon reiterated he had discussed this with the owner of the property and made it clear to the owner that Broken Arrow's services, including Public Safety, would be needed in this area for everything that was being proposed (restaurants, residential areas, etc.) and a meeting needed to be held to work out the details.

Vice Mayor Eudey introduced citizen Jon Lanning. Mr. Lanning stated he lived at 317 West Raleigh Place in Broken Arrow. He appreciated the City's work on this resolution and he liked seeing the work behind the words. He expressed the City Council had the voters' support and he witnessed via social media the voters were unhappy with the prospect of gaming so near Broken Arrow. He stated he was not pleased the Mayor and Councilor Parks were absent, and as he had passed them in the hall on his way to the Meeting he felt this was a poor reflection on Mayor Thurmond's and Councilor Parks' values and was disappointed. He thanked the City Council and Staff for all efforts in addressing his and the voters' concerns and hoped the Council would push forth on this resolution.

Councilor Lester stated Mayor Thurmond was attending a conference and Councilor Parks was in Washington, DC, but both would be in attendance at the following meeting to discuss the issue. Mr. Lanning stated he thought he had seen them both, but must have been mistaken. Councilor Lester confirmed they were both out of town and were not on the premises. Mr. Lanning stated this was an important matter and the citizens would like to see the leadership involved and taking a hand. Vice Mayor Eudey explained this was one reason the item was being discussed at the current meeting and voted on at the next meeting on August 1, 2017; this would give Mayor Thurmond and Councilor Parks the opportunity to participate and vote. The Council felt it was important this matter be addressed by a full Council.

Mr. Spurgeon stated he and Ms. Childs discussed this issue daily and he approved of what Ms. Childs put together in an email discussing the five points. He recommended the draft be finalized and ready for the City Council's Meeting on August 1. He commented he knew Mayor Thurmond and Councilor Parks were in agreement as this had been discussed previously. A citizen asked if he could speak. Councilor Lester explained as he had not previously signed up to speak he would have an opportunity at the next City Council Meeting as long as he filled out a request form, which were located just outside the Meeting Hall doors, prior to entrance. Vice Mayor Eudey encouraged him to do so and thanked him for his question.

#### **B. 17-2357**

#### **Update on status of Fleet Ambulances, Costs, Means of Financing, and consideration, discussion, and possible award of the most advantageous bid to Professional Ambulance #1 for the purchase of three (3) ambulances**

Fire Chief Jeremy Moore thanked the Council and the Vice Mayor for allowing him the opportunity to brief the Council on the current item, as well as the current status of the ambulances and EMS services to the citizens. He stated there were currently 6 frontline ambulances at 7 fire stations which served the citizens daily. He explained the useful life of a frontline ambulance chassis (which was the truck that the box was mounted on) was about 5 years or about 100,000 miles; therefore, in order to maintain a reliable fleet the City needed to purchase 2 new ambulances every 3 years. He stated currently there were 12 ambulances in the fleet and it took all 12 ambulances to keep 6 on the frontline 24 hours a day 365 days a year. He stated the ambulances were getting older and required maintenance more frequently. He applauded Lee Zirk and the gentlemen at the City Garage who kept the fire trucks and ambulances in service. He stated last year a joint committee was formed between the Fire Department Administration and the Union Representatives and new specifications for ambulances were designed, sent out to bid, and the lowest and most advantageous bid which came back was from AEV which was the same ambulance company who built ambulances for EMSA and had a longstanding history of well-built ambulances in the area. He stated the bidding vendors were also asked to provide lease purchase financing options so the City could consider doing a lease purchase option of ambulances as a different method of business than done in the past. He explained the ambulances would come with the Powerload Cot Systems previously discussed, along with the cots and other necessary equipment. He said \$225,000 was budgeted from Public Safety sales tax to purchase a new ambulance this year, but as the City had not purchased a new ambulance in the past 2 years, he worked with Legal, Finance and the City Manager's Office to review the lease purchase options, and this was viewed a viable option for the purchase of 3 ambulances at this time. He stated there were unencumbered funds available in the budget to do this, but the payment would not be required for 180 days, until the ambulances were custom built and delivered; therefore, over the next few months the lease purchase options would be reviewed to determine if this was the correct solution for the City, and if so, he would return to the Council and propose the lease purchase option for the proposed 3 new ambulances. He expressed the importance of the purchase of these 3 new ambulances, which included the addition of 1 frontline ambulance to the current fleet, as there were 150 occasions of unavailable ambulances

last year in Broken Arrow, meaning all ambulances had already been dispatched. He stated with the support of Mr. Spurgeon and many months of planning, with the support of the Council and the voters who passed the Vision Extension, and the Safer Grants, the Fire Department would be presenting the seventh ambulance to the City. He stated ambulance 7, which was called Squad 7, would be set up at Station 7 on Elm Place and Edgewater, and that ambulance 7 would have sufficient personnel to be kept in service. He intimated Broken Arrow should have sufficient vehicles until the arrival of the 3 new ambulances. He expressed he was excited about the additional service for the citizens which enhanced coverage area and reduced response times in a center area of the City which had needed more coverage for some time. He explained there was a fire engine in Station 7 which had been providing ALS for over a year, but now ambulance 7 would be providing this service. He recommended award of the most advantageous bid to Professional Ambulance #1 (AEV) for the purchase of 3 ambulances.

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

**Move to award the most advantageous bid to Professional Ambulance #1 for the purchase of 3 ambulances**

The motion carried by the following vote:

**Aye:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

**C. 17-2420 Approval of and authorization to execute an Engagement Letter with Crawford & Associates, P.C. to prepare the Fiscal Year 2017 Annual Financial Statements**

Acting Financial Director, Tom Cook, stated the Finance Department requested a proposal from Crawford and Associates to prepare the FY 2017 Annual Financial Reports. He stated if Crawford and Associates were engaged in this process, once the Financial Reports were completed Arledge and Associates would perform audits on the Financial Statements. He explained Broken Arrow's Financial Statements had become increasingly complex; over the last 10 years GASB had issued an excess of 40 statements which each required adjustment within the Financial Statements, and some built upon each other as time passed. Therefore, the Finance Department decided to seek the expertise of Crawford and Associates for assistance in this process. He stated the City of Edmund, the City of Sand Springs, Bartlesville, El Reno, and Tulsa County all utilize Crawford and Associates to prepare annual financial reports. He asked the Council to approve and authorize the execution of the engagement letter with Crawford and Associates. He stated Marcy Twyman, Managing Chairholder from Crawford and Associates, was in attendance and would be happy to answer questions.

Councilor Lester asked if this was something that would be done year after year. Mr. Cook responded it was something which had been in discussion year after year because Broken Arrow's Statements had become more complex. He stated two separate actuarial reports were required, with a fourth and fifth actuarial report required for the Oklahoma Police Pension and the Fire Pension, and over time it had become extremely complicated. He stated Crawford and Associates were experts in this field. Vice Mayor Eudey asked if this would also increase transparency. Mr. Cook replied yes as it implemented a second set of eyes moving through the process. He explained the cost of consulting with Crawford and Associates would be approximately \$60,000 this year; however, costs would lower in time as there were more man hours involved with initial Statement writing.

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

**Move for the approval of and authorization to execute an Engagement Letter with Crawford & Associates, P.C. to prepare the Fiscal Year 2017 Annual Financial Statements**

The motion carried by the following vote:

**Aye:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

**D. 17-2422 Consideration, discussion, and possible approval of Resolution No. 1033, a Resolution authorizing the City Attorney to agree to Entry of Judgment in the case of the City of Broken Arrow, Oklahoma v Amy E. Hefley, et al, Tulsa County District Court Case number CJ-2017-1378 and directing the City Attorney to prepare and file the necessary documents to effectuate settlement including a Journal Entry for the Court's approval**

Ms. Childs stated this was a condemnation action filed by Broken Arrow for 9<sup>th</sup> Street. She explained the Commissioners proposed \$40,000, and Staff recommended the Council allow resolution; once the money was paid into Court then the City could take possession of the right of way and start making improvements. She stated if this went to trial and the Court beat the Commissioners' award by more than 10% the City would be obligated to pay all costs and attorneys' fees. She stated the City did not receive the same benefit; if the City prevailed it would have the opportunity to attempt to recover costs; however, it would take a considerable amount of time and expense. She said this would constitute a judgment and would be spread on the tax rolls. She indicated she placed this item for the executive session should the Council desire to discuss it there; otherwise, she requested the Council approve the resolution and authorize its execution.

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

**Move to approve Resolution No. 1033 and authorize its execution**

The motion carried by the following vote:

**Aye:** 3 - Debra Wimpee, Mike Lester, Scott Eudey



**E. 17-2421      Consideration, discussion, and possible approval of Resolution No. 1034, a Resolution authorizing the City Attorney to enter into a Final Entry of Judgment without admitting liability in the Matter of Tiger Plaza on Kenosha, LLC v. City of Broken Arrow, Oklahoma et al, Wagoner County District Court Case Number CV-2017-66 authorizing foreclosure and vacation of a utility easement generally located North and East of the Northeast Corner of Kenosha Street and 23rd Street**

Ms. Childs stated this was a foreclosure of an easement which Council previously closed pursuant to an Ordinance. She explained Legal had reviewed this with the utility companies and the City had no further use of the easement, and foreclosure action was being brought for the purpose of title closure. She recommended approval of Resolution No. 1034 and authorizing its execution.

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

**Move to approve Resolution No. 1034 and authorize its execution**

The motion carried by the following vote:

**Aye:      3 -      Debra Wimpee, Mike Lester, Scott Eudey**

**F. 17-2299      Consideration, discussion, and possible approval of the appointment of Pablo Aguirre to the City of Broken Arrow Board of Adjustment for a three-year term to expire May 1, 2020**

Larry Curtis, Planning Development Manager, stated the Board of Adjustment had a potential vacancy which needed to be filled, and in compliance with the Council's newly formulated appointment policy Pablo Aguirre was being presented as a possible candidate. Mr. Curtis stated Mr. Aguirre wished to be a part of the Board of Adjustment, had a Bachelors Degree from Oklahoma State University in Business Administration, had a strong work history as well as community volunteer background, and would be replacing Archer Honea whose term expired on 05/01/2017, for a 4 year term. He asked if there were any questions. Councilor Wimpee asked if Mr. Honea had been notified. Mr. Curtis said he believed so. Vice Mayor Eudey stated Mayor Thurmond contacted Mr. Honea as Mr. Aguirre was Mayor Thurmond's nomination.

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

**Move to approve the appointment of Pablo Aguirre to the Board of Adjustment**

The motion carried by the following vote:

**Aye:      3 -      Debra Wimpee, Mike Lester, Scott Eudey**

**10. Preview Ordinances**

**A. 17-2409      Consideration, discussion, and possible preview of an ordinance amending the Broken Arrow Code, Chapter 8, Cemeteries, Article II, Park Grove Cemetery; Division 1. Generally; Sec. 8-33 Benches, urns, etc. prohibited to provide for the installation of memory benches, the sale of memory benches and designating types and areas where benches are allowed; repealing all ordinances to the contrary**

Ms. Childs stated this particular ordinance allowed the provision of memorial benches which she felt would be a lovely addition to the City's cemeteries. She explained it set forth all criteria which she would be happy to review; otherwise, the Council could preview it and set it for adoption at the next Meeting. Councilor Lester asked what the fee would be if a resident desired to place a bench in the cemetery which had not been purchased from the cemetery. Mr. Lee Zirk responded only the setting fee of \$416.00 would apply. Councilor Lester asked if there were designated bench areas. Mr. Zirk responded yes and directed the Council's attention to a map which indicated suitable bench placement sites. He stated the Cemetery Sexton would make every effort to allow memorial bench placements as close to desired gravesites as possible without hindering entrances, exits, drainage sites, etc. Mr. Spurgeon thanked Mike Lester for bringing this forward for consideration, and thanked Lee Zirk for organizing this quickly. He felt this would be a welcome addition to the cemetery.

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

**Move to preview the ordinance and set it up for adoption**

The motion carried by the following vote:

**Aye:      3 -      Debra Wimpee, Mike Lester, Scott Eudey**

**11. Ordinances**

**A. 17-2346      Consideration, discussion, and possible adoption of Ordinance No. 3488, closing a utility easement on property located in the Northeast Quarter (NE/4) of Section Twenty Two (22), Township Eighteen (18), North Range Fourteen (14) East, Arrow Park Addition Amended, a subdivision in the City of Broken Arrow, Tulsa County, State of Oklahoma, generally located south and west of the southwest corner of Washington Street and Elm Place; repealing all ordinances to the contrary; and declaring an emergency (Bob Harper)**

Ms. Childs stated she would speak on all three of the Section 11 Ordinances, and would respectfully request the Council adopt the three ordinances and pass the emergency clauses separately. She explained the first ordinance, Ordinance No. 3488, was the closure of the utility easement; it had been approved by all the utility companies, and the City had no further use for it. She stated Ordinance No. 3489 and Ordinance No. 3490 were revisions to provisions of Broken Arrow code regarding drugs and petit larceny, increasing the amounts, and also bringing the code into compliance with state statute. She stated Legal would produce a training bulletin following adoption.

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

**Move to adopt Ordinance No. 3488**

The motion carried by the following vote:

**Aye:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

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:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

- B. 17-2428**      **Consideration, discussion, and possible adoption of Ordinance No. 3489, amending Chapter 16, Offenses-MISCELLANEOUS, Article 1, In General, Section 16-28, Possession of marijuana and controlled dangerous substances; adding Schedule I and II drugs to the definition of controlled dangerous substances, of the Broken Arrow Code; repealing all ordinances to the contrary; and declaring an emergency**

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

**Move to adopt Ordinance No. 3489**

The motion carried by the following vote:

**Aye:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

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

**Move to approve the emergency clause**

The motion carried by the following vote:

**Aye:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

- C. 17-2429**      **Consideration, discussion, and possible adoption of Ordinance No. 3490, amending Chapter 16, Offenses-MISCELLANEOUS, Article III, Offenses Against Property, Section 16-56, Petit Larceny, amending the definition of Petit Larceny to be the taking of personal property of a value not to exceed \$1,000, amending the maximum punishment to be imprisonment of not more than 30 days, of the Broken Arrow Code; repealing all ordinances to the contrary; and declaring an emergency**

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

**Move to adopt Ordinance No. 3490**

The motion carried by the following vote:

**Aye:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

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:** 3 - Debra Wimpee, Mike Lester, Scott Eudey

**12. Remarks and Inquiries by Governing Body Members**

Vice Mayor Eudey expressed his sympathies for the loss of a dear friend of the City, Tom Caldwell. He stated he had the privilege of attending the services and Mr. Caldwell's impact on the City had been felt greatly and he would be sorely missed. He asked for thoughts for Tom Caldwell's family and for appreciation for his service to the Community of Broken Arrow.

Councilor Lester thanked Steve Arant and his crew for providing Broken Arrow with such great roads. He stated he was driving down New Orleans thinking what a great road it was and how blessed residents in this City were to have such great roads as a result of the efforts of Steve Arant and his crew.

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

Mr. Spurgeon offered his condolences to Tom Caldwell and his family. He expressed when an individual spent 25 years of his life working for an organization it was an exemplary accomplishment, and when an individual held a position of importance such as Finance Director Treasurer for an organization which had a total operating budget of hundreds of millions of dollars it was a tremendous amount of responsibility. He acknowledged the outstanding job that Tom Caldwell performed. He stated Tom Caldwell was passionate about his work and very passionate about his family and this was evident during his memorial service. He stated Mr. Caldwell's impact on the finances of Broken Arrow was appreciable, Broken Arrow was financially in good condition and most of the credit for this went to the Finance Department led by Mr. Caldwell. He was impressed with Mr. Caldwell's level of commitment to his position with Broken Arrow, and felt Mr. Caldwell always had the City's best interests at heart. He expressed Mr. Caldwell would truly be missed. He stated Tom Cook was currently serving as the interim Finance Director Treasurer for the City.

Mr. Spurgeon thanked Chief Moore and Chief Steward for their leadership in putting on a 7<sup>th</sup> ambulance. He stated the Council had the vision to go before the voters two years ago to request an extension of the Vision 2025 sales tax to be used for three purposes, Public Safety with Police, Public Safety with Fire, and Street Maintenance. He explained through the efforts of

