



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 Johnnie Parks
Council Member Debra Wimpee
Council Member Christi Gillespie

Tuesday, January 21, 2020

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

Pastor Andrew Conley performed the invocation.

3. Roll Call

Present: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey
Absent: 2 - Johnnie Parks, Craig Thurmond

4. Pledge of Allegiance to the Flag

Council Member Debra Wimpee led the Pledge of Allegiance to the Flag.

5. Consideration of Consent Agenda

Vice Mayor Eudey noted Item L was to be removed from the Consent Agenda. He asked if there were any other items to be removed from the Consent Agenda. Council Member Christi Gillespie indicated Item P was also to be removed.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move to approve the Consent Agenda less Items L and P

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

- A. 20-2** Approval of the City Council Meeting Minutes of January 7, 2020
- B. 20-103** Acceptance of Planning Commission meeting minutes of December 19, 2019
- C. 20-130** Approval of and authorization to execute Amendment No. 1 to Agreement for Professional Consulting Services with Cowan Group Engineering, LLC., for revising the layout to Package "B" detention facility in order to reduce construction costs on the Stone Ridge Towne Center Drainage Improvements Packages B, C, & D, (SW1910) project
- D. 20-120** Approval of and authorization to execute an amendment of Contract for Phase One of Elm and New Orleans Study with Catalyst Commercial Incorporated
- E. 20-144** Approval of and authorization to execute a General Release and Separation Agreement with Information Technology Director Stephen Steward
- F. 20-129** Approval of and authorization to execute a Professional Consulting Services Agreement with Kimley-Horn and Associates, Inc., for providing design services for Lions Avenue Drainage Improvements near 904 South Lions Avenue in the Central Park Estates 3rd Subdivision (Project no. SW2008)
- G. 20-143** Approval of and authorization to execute a professional services agreement between the City of Broken Arrow and Youth Services of Tulsa, Inc. for referrals of first time juvenile offenders to the Youth Services of Tulsa, Inc. Misdemeanant Alternative Program (MAP)
- H. 20-137** Approval of and authorization to execute Copay Max Addendum with Navitus Health Solutions, LLC to manage costs related to specialty drugs paid for by the employee health plan
- I. 20-125** 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
- J. 20-74** Approval of and authorization to execute Change Order #1 with H & G Paving Contractors, Inc. for Construction Contract ST1616; Washington Street Improvements from Garnett Road to Olive Avenue
- K. 20-139** Approval of and authorization to execute Change Order No. CO-1 with Cherokee Pride Construction, Inc., for Construction Contract ST1902; Wedgewood 2nd Addition Street Repairs
- L. 20-146** Award of the lowest responsible bid to Magnum Construction, Inc. and approve and authorize execution of a construction contract for the Vandever Park Playground Improvements (196025)
- M. 20-123** Award of the most advantageous bid to Southern Uniform & Equipment for the

- purchase of Police ballistic vests, and approval of and authorization to execute the purchase contract
- N. 20-155 Approval of and authorization to execute Resolution No. 1292, a Resolution authorizing acceptance of a General Warranty Deed for future public parking of the Creative Arts Center are Lots 1, 2, 3, 4, and 5. All in Block 55, Original Town of Broken Arrow, Tulsa County, State of Oklahoma; generally located at the northwest corner of Ash Avenue and Dallas Street in the Southwest Quarter of Section 11, Township 18 North, Range 14 East, Tulsa County, State of Oklahoma, from AVB Bank for Creative Arts Center. (Project No. 161715)
- O. 19-1538 Approval of BAZ-2041, The Pines II, 45.84 acres, A-1 to RS-3, southwest corner of Omaha Street (51st Street) and 37th Street (209th E. Avenue)
- P. 20-104 Approval of PUD-299 (Planned Unit Development), Tidal Wave, 1.23 acres, R-2 (Single-Family Residential) to CH (Commercial Heavy), south of the southeast corner of Houston Street (81st Street) and Elm Place (161st East Avenue)
- Q. 20-133 Ratification of the Claims List Check Register dated January 17, 2020

6. Consideration of Items Removed from Consent Agenda

Manager Special Projects Charlie Bright reported Item L consisted of demolition of the existing playground/park features, site grading and drainage, concrete paving, construction of new playground equipment, construction of new site amenities and furnishings, sodding, and tree installation. He stated the park would include a 2 through 5-year-old play area, a 5 through 12-year-old play area, swing area, shade structures, site furnishings, concrete sidewalks, and landscaping. He reported this was the second bid for this project; the first bid came in over budget and the bids were rejected. He stated with this bid Magnum Construction was the low bidder with a Base Bid of \$158,977 dollars; the engineer's estimate was \$156,145 dollars. He indicated there were Add Alternates for this project, but due to the bid being right at budget Staff did not recommend award for Add Alternates.

Council Member Gillespie noted demolition was included in the Add Alternates. She asked about the demolition. Mr. Bright responded demolition would be completed by City workforce; the Parks Department would demo the existing playground equipment and any necessary trees; Magnum Construction would begin construction following demolition.

Council Member Gillespie stated it was important for the park area to be attractive. She discussed ideas regarding landscaping and possible tree donations in honor of loved ones. Vice Mayor Eudey stated he believed there was a program through Keep Broken Arrow Beautiful which enabled residents to purchase trees in honor of loved ones. Mr. Bright concurred; however, he was unfamiliar with the process. Discussion ensued regarding residents and businesses being unaware of this program.

Council Member Gillespie asked if the park sign would be completed in-house. Mr. Bright responded in the affirmative; the sign and three trees would be planted by the Parks Department in the future utilizing Parks Department funds. He explained there were no funds available through the GO Bond to cover the sign and trees immediately.

Vice Mayor Eudey explained Staff was not asking for the Add Alternate items to be denied and permanently ignored, but to approve the project as presented and the Add Alternate items would be completed in the future as funds became available. Mr. Bright concurred.

Mr. Kenny Schwab noted the request order indicated funding was from a 2011 GO Bond, but the project funds were actually from a 2014 GO Bond.

Discussion ensued regarding making the public more aware of the tree donation opportunity.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.

Move to award the lowest responsible bid to Magnum Construction, Inc. and approve and authorize execution of a construction contract for the Vandever Park Playground Improvements (196025)

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

Community Development Director Larry Curtis reported Item P, Planned Unit Development (PUD)-299, involved a 1.23-acre parcel located south of the southeast corner of Houston Street (81st Street) and Elm Place (161st East Avenue). He reported BAZ-2033, a request to change the zoning on the property from R-2 to CH was approved by the City Council on August 20, 2019, subject to the property being platted and a PUD being approved on the property. He stated City Council specifically wished the PUD to address a concern associated with access onto Elm. He indicated the developer moved forward with the PUD request which was presented to the Planning Commission which recommended approval.

Council Member Gillespie asked about the fencing between the commercial and residential areas. Vice Mayor Eudey asked if this was the proposed carwash. Mr. Curtis responded in

the affirmative; this was the carwash. He indicated screening privacy fencing would be provided along the north and east boundary of the property; the west would not be required to meet the fencing requirement (215 feet of fencing). He explained the 215 feet along the west boundary was too narrow to allow for any residential development; therefore, no fencing was necessary. Discussion ensued regarding Ordinance requirements, PUD’s allowing Ordinance requirements to be suspended after careful consideration, and the narrowness of the lot along the west. Mr. Curtis explained Staff researched the area and noted the Comprehensive Plan indicated this area would be used for transitional Level 3 which included Office Neighborhood, Commercial Mixed Use and Multifamily. He noted any Level 3 development in this area would require an opaque fence to be constructed. He discussed the old elementary school building, zoning, and Specific Use Permits.

Council Member Gillespie stated she understood the area’s past, but she was focused on the future of Broken Arrow. She stated she did not feel this PUD fulfilled any of the five characteristics of a beneficial PUD. She explained she did not feel a carwash was a good fit for the area. Mr. Curtis explained the limitation of access through the PUD alleviated City Council’s initial concern regarding access onto the site from Elm and as such met the #5 requirement – Public Safety.

Vice Mayor Eudey stated City Council in July 2019 indicated the carwash would be an acceptable use for the site provided appropriate requirements were met. He stated he believed if this was denied at this point, it would open the City up to a legal challenge. Council Member Gillespie stated the Comprehensive Plan change was approved in July; the intended business for the site was not approved. Vice Mayor Eudey explained the plans provided with the Comprehensive Plan change application indicated a carwash was intended for the site. Mr. Curtis stated the Comprehensive Plan change request was approved in July 2019 and the applicant came forward with a zoning change request in August 2019 which was approved with the platting and PUD caveat.

MOTION: A motion was made by Debra Wimpee, seconded by Scott Eudey.
Move to approve PUD-299 (Planned Unit Development), Tidal Wave, 1.23 acres, R-2 (Single-Family Residential) to CH (Commercial Heavy), south of the southeast corner of Houston Street (81st Street) and Elm Place (161st East Avenue)

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Scott Eudey
Nay: 1 - Christi Gillespie

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

A. 19-1501 Presentation of Financial Statements for the 2nd quarter of Fiscal Year 2020 for the General Fund, Police Sales Tax Fund, Fire Sales Tax Fund, Sales Tax Capital Improvements Fund and the Broken Arrow Municipal Authority

Finance Director Cindy Arnold reported this presentation was for the first six months of Fiscal Year 2020 and included an overview of the results, as well as the Income Statement for the six-month period ending December 31, 2019.

She reported revenues for the General Fund for the first six months were \$31,957,000 dollars and expenditures were \$30,690,000 dollars. She stated revenues over projection were a little over \$700,000 dollars, sales tax was projected at 2%, but were trending at 1.8%; therefore, sales tax was down for the first six months. She stated the use tax was \$673,000 dollars over projection; other revenues were steady. She displayed and discussed a chart which illustrated the top revenues which included sales tax, use tax, tobacco tax, etc., and totaled \$23.5 million dollars. She discussed tax trends in Broken Arrow and Tulsa. She displayed and discussed a chart which illustrated the top ten categories for sales tax collection including retail, food services, wholesale, utilities, etc. She reported expenditures for the general fund were approximately \$700,000 dollars below budget due to employee vacancies, timing of maintenance services, etc. She stated the net income for the general fund was \$1.2 million dollars.

Ms. Arnold discussed the Police Sales Tax Fund. She reported revenues were \$13 million dollars and expenditures were over \$12 million dollars with a net income of \$860,000 dollars. She reported capital expenditures were only \$58,000 dollars which was low; however, the police cars were paid for in January; there were encumbrances in January of \$214,000 dollars. She explained revenue included transfers-in from the 911 fund and the general fund.

Ms. Arnold reported Fire Sales Tax Fund revenues were about \$10.7 million dollars and expenditures were about \$10.7 million dollars and capital expenditures were \$116,000 dollar with a net income of \$30,000 dollars. She noted revenues included transfers-in from the general fund.

She reported Sales Tax Capital Improvement Fund revenues were \$3.7 million dollars and expenditures were \$4.4 million dollars; however, many roll-over projects were completed. She explained the statement was assessed on an annual basis as capital projects were at

various stages throughout the year.

Ms. Arnold reported Broken Arrow Municipal Authority revenues were \$25.9 million dollars and expenditures were \$24.5 million dollars; revenues were approximately \$1 million dollars over projection and current expenditures were under by \$2.7 million dollars. She stated Debt Service contributed to a large part of expenditures being under budget due to a straight-line budget and debt service being paid in September and April. She stated charges for service were over budget by 51.44%, \$697,000 dollars over projection with water sales contributing \$580,000 dollars of this amount.

Vice Mayor Eudey stated the bad news was sales tax was slightly lower than predicted, but this was being offset by online purchases. Ms. Arnold concurred.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move to acknowledge the Financial Report for period ending December 31, 2019

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

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 indicated no Citizens had signed up to speak before the City Council.

9. General Council Business

A. 20-145 Approval of bids received and extension of the time, by 15 days for good cause, to award or reject the bids for the Hillside Drive Retaining Wall Replacement (Project No. ST2034)

Assistant City Manager over Operations Kenny Schwab reported this Item was a request for an extension of time to evaluate the bids for the Hillside Drive Retaining Wall Replacement project. He stated bid documents were prepared and advertised on December 11, 2019 and December 18, 2019 and bids were opened on January 3, 2020. He indicated caveats were placed on the bid process: Staff wished to prequalify the contractors, there was an incentive in the bid, and the contractor was given permission to work around the clock. He explained this was bid as a lump sum project; normally projects were bid by unit price. He reported only two bids were received from the ODOT prequalification list. He indicated he believed only two bids were received due to the time frame the project was advertised (over the holidays) as often contractors shut down over the holidays. He reported both bids came in significantly over the City's construction budget; the apparent low bidder, Sherwood Construction Co., Inc.'s base bid alone was around \$2 million dollars and the high bidder was closer to \$2.7 million dollars.

Mr. Schwab reported State Statute indicated a governing body must award or reject the bid within 30 days of opening unless formal action was taken to extend the process by 15 days; this extension was permissible only if local funds were being utilized. He noted local funds were being used for this project. He explained the additional 15 days would allow Staff to continue discussion with the contractors regarding the bids submitted and determine where the costs were specifically (concrete, rebar, demolition, etc.). He stated the extension would allow Staff to negotiate the bid price down or return the next City Council Meeting to reject the bids. He requested the language of the motion to indicate approval for an extension of time.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.

Move to approve the extension of the time, by 15 days for good cause, to award or reject the bids for the Hillside Drive Retaining Wall Replacement (Project No. ST2034)

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

B. 20-148 Consideration, discussion, and possible approval to reject all bids for the Main Place Playhouse Replace HVAC Units (Project No. 206020) and Public Safety Complex (PSC) Police Department IT Room & 911 Telephone Room Backup HVAC System (Project No. 193022) and find that the best interests of the Broken Arrow City Council will be served by the rejection

Mr. Charlie Bright reported this Item was for the Main Place Playhouse located at 1800 S. Main Street and the Public Safety Complex (PSC) located at 1101 N. 6th Street. He reported both projects were funded with operating budget; the firm EDA + FKI Engineers PC was selected to provide the design to replace six HVAC units at Main Place Playhouse and provide backup HVAC units at the PSC. He stated these bids were received last week and the bids were considerably higher than the amount budgeted. He stated Staff asked to reject the bids received. He explained Staff intended to adjust the design and rebid the project.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move to reject all bids for the Main Place Playhouse Replace HVAC Units (Project No. 206020) and Public Safety Complex (PSC) Police Department IT Room & 911

Telephone Room Backup HVAC System (Project No. 193022) and find that the best interests of the Broken Arrow City Council will be served by the rejection

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

- C. 20-161** **Consideration, discussion and possible approval of and authorization to execute Resolution No. 1293, a resolution rescinding Resolution No. 1267, a Resolution of Necessity to Condemn Property generally located in the Southwest Quarter of Section 11, Township 18 North, Range 14 East of the Indian Meridian, Tulsa County, Oklahoma, for the Commercial Street Detention Facility, (Project No. SW2007), and directing Staff to investigate an alternative location for a downtown stormwater detention facility**

Vice Mayor Eudey indicated this Item needed to be tabled until after the Executive Session.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move to table Item C

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

- D. 20-108** **Consideration, discussion and possible approval of BACP-165 (Comprehensive Plan Change), Level 6 and Greenway/Floodplain to an increased amount of Level 6 and a decreased amount of Greenway/Floodplain, Metro Foot & Ankle, 0.58 acres, IL (Industrial Light), one-half mile south of Kenosha Street (71st Street), west of Elm Place**
Mr. Larry Curtis reported BACP-165 was a request to change the Comprehensive Plan designation from Level 6 and Greenway/Floodplain to an increased amount of Level 6 and a decreased amount of Greenway/Floodplain on 0.58 acres located one-half mile south of Kenosha Street, west of Elm Place, at 701 W. Elgin Street. He explained the property, which was vacant, was platted as Lot 1 of Block 10, Graham Franklin Industrial Park IV recorded in Tulsa County on March 29, 1977; the site was zoned IL (Industrial Light) and previously included a car wash.

He stated currently 14 percent of the site was within the 100-year floodplain, 57 percent was within the 500-year floodplain, with 29 percent of the site outside of floodplain. He noted this prohibited the use of the site and made it difficult for development. He stated a number of potential projects have come before City Council for this site but due to the nature of the flood plain there were many limiting factors. He reported Action LU1.2 of the Land Use and Development chapter (Chapter 4) of the Comprehensive Plan stated infill development should be encouraged as it was ultimately more efficient for delivering city services and building infrastructure; commercial use was appropriate in this location, and infill development would revitalize this property along Elm Place.

He reported BACP-165 was reviewed by the Planning Commission on December 19, 2019 and no one spoke during the Public Hearing portion of the change in Comprehensive Plan request. He indicated the Planning Commission recommended approval by a vote of 5 to 0 for BACP-165 per Staff recommendation.

Council Member Gillespie asked if this property was located next to the Met. Mr. Curtis displayed the case map. He reported this site was previously a carwash. He explained the reason for this Comprehensive Plan change. He noted the building on this site would remain outside the 100-year flood plain; however, parts of the parking area would be located within the flood plain. He reported the office building showed two spaces, office medical and office, at this site; development area was limited due to easement requirements. He noted this was a unique opportunity for infill and Staff requested approval.

Vice Mayor Eudey stated this property had been vacant for almost a decade and previously it was a carwash. He approved of the development.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move to approve BACP-165

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

- E. 20-124** **Consideration, discussion, and possible approval of PUD-297 (Planned Unit Development) and BAZ-2044 (Rezoning), 811 W. New Orleans Street, 2.21 acres, CG to PUD-297/CG/IL, located west of the southwest corner of New Orleans Street (101st Street) and Elm Place (161st E. Avenue)**
Mr. Curtis reported Planned Unit Development (PUD)-297 involved a 2.21-acre parcel located west of the southwest corner of New Orleans Street (101st Street) and Elm Place (161st E. Avenue). He stated in conjunction with PUD-297, the applicant submitted BAZ-2044, a request to change the underlying zoning from CG (Commercial General) to CG (Commercial General) and IL (Industrial Light). He stated the property was platted as Lot 1, Block 1, Luby's. He reported the owner of the property wished to lease space to a tenant who

Vice Mayor Eudey stated his concern was regarding whether an amendment to the Comprehensive Plan was appropriate and warranted. He indicated he might have opinions about its ultimate use; however, his opinion did not matter in this setting.

The applicant Shawn DeWitt stated his address was 811 W. New Orleans Street. He stated the tenant was aware of the proposed business. He indicated the current tenant was the brother-in-law of the owner. He reported he had invited the previously concerned individual out to the property and alleviated his concerns.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.

The motion carried by the following vote:

F. 20-141 Consideration, discussion and possible approval of PUD-17C (Planned Unit Development Major Amendment), Vandever Acres Center, 4.94 acres, CG/PUD-17 (Commercial General), located west of the northwest corner of New Orleans Street (101st Street) and Elm Place (161st E. Avenue)

Council Member Wimpee stated she had concerns regarding this property not having been surveyed to determine distance from school locations. Mr. Curtis stated a contingency factor of the PUD was it could not be approved unless the 1,000-foot setback from a school facility was met. He indicated the PUD included a caveat which stated the PUD would not be approved unless the requirements of the Oklahoma Medical Marijuana Authority (OMMA) and the City of Broken Arrow were met; therefore, this PUD would not be codified through ordinance until all requirements were met.

1/21/2020

OMMA and City of Broken Arrow Ordinances prior to approval. Mr. Curtis concurred. He explained the survey process which was conducted by the City at a cost to the applicant which would verify separation distance between the business and the schools. He indicated if the separation distance requirements were not met the ordinance would not come before City Council for approval.

Vice Mayor Eudey stated while he shared Council Member Wimpee's concern regarding distance from schools (this was extremely important), and while in this case it felt as if the process was backward and the survey should be conducted prior to possible approval of the PUD amendment, to change the process followed by Broken Arrow in all other cases (PUD approval followed by obtaining of permits) was not appropriate. He noted in the future the process could be discussed; however, at this point due process should be followed according to current standards.

Mr. Curtis agreed the process could be discussed in the future. He noted Staff would be going through the process of zoning code update with the assistance of a consultant.

Council Member Gillespie asked if this dispensary could open for business prior to completion of this process in its entirety if this PUD was approved. Mr. Curtis responded in the negative. Council Member Gillespie referred to the dispensaries which were currently operating within 1,000 feet of a school. Mr. Curtis reported Staff was actively working with the Code Enforcement Office and the Attorney's Office to resolve these issues. He explained due to the manner in which State Law was changed, Broken Arrow did not have much time to prepare and develop local codes. He noted these dispensaries were in noncompliance and would be stopped moving forward. He indicated OMMA was no longer issuing licenses without local municipality approval.

Council Member Gillespie stated she was uncomfortable voting for a PUD which may or may not ultimately be approved, not knowing whether the business legally could be opened in this location.

Council Member Wimpee stated the PUD did not meet any PUD provisions. Council Member Gillespie agreed.

Vice Mayor Eudey explained every PUD was approved based upon speculation of a plan. He noted many PUDs approved by City Council were never put into ordinance or were modified and returned to City Council of reconsideration. City Attorney Dennis agreed. He explained PUDs were approved, following by zoning, followed by permitting; this was the application process. He stated the business would not be opened until the process was completed and all permits acquired.

Mr. Curtis explained often a PUD came before City Council with associated CG zoning; in CG zoning alcohol sales were permitted, however, in approving the PUD and the CG zoning, the City was not allowing alcohol sales by right; the business was still required to meet all requirements of the ABLE Commission and the City of Broken Arrow. He noted the ABLE Commission had a separation requirement of 300 feet from schools and churches. He stated approval of this PUD was similar to approval of a PUD with CG zoning.

Mr. Curtis explained in regard to meeting PUD provisions, this was an amendment to a PUD; therefore, the provisions were not required to be met. He explained there were five provisions associated with new PUDs; a new PUD was required to meet one of these provisions.

The applicant Natalie Cornett, representing the property owner, stated her address was 2727 E. 21st Street, Tulsa. She noted Mr. Curtis fully explained the changes in the PUD language. She asked if there were any questions.

Council Member Wimpee stated she had no questions, but she was having difficulties with approval of this PUD.

Ms. Cornett indicated this PUD amendment was for an established commercial shopping center. She stated the PUD was simply adding another permitted use for this commercial shopping center which was a fairly routine amendment. She likened it to adding a restaurant use to a commercial center. She stated the dispensary would be subject to compliance with Broken Arrow municipal ordinance. Council Member Wimpee noted the current tenant was established illegally, and a new tenant would be entering the premises. She asked if this was correct. Ms. Cornett responded in the negative; however, the current tenant would be held to Broken Arrow code.

Vice Mayor Eudey stated the behavior of the tenant gave the City Council pause, along with the fact the landlord allowed the behavior to continue. He stated he understood landlords had limited power; however, this behavior concerned City Council. He asked what assurances

City Council had that this would not be a repeated problem. Ms. Cornett stated in this case, the tenant had assured the landlord it was in full compliance; the landlord was operating under the tenant’s assurances. She stated the landlord was dealing with the code enforcement violations currently. She stated she felt the added language and the protections provided in the separate ordinance for dispensaries should provide adequate assurances moving forward.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move to deny PUD-17C

The motion carried by the following vote:

Aye: 2 - Christi Gillespie, Debra Wimpee
Nay: 1- Scott Eudey

G. 20-142 Consideration, discussion and possible approval of PUD-126C (Planned Unit Development Major Amendment), Broken Arrow Plaza, 9.64 acres, CG/PUD-126 (Commercial General), located west of Elm Place (161st E. Ave), north of Tucson Street (121st Street)

Mr. Larry Curtis reported Planned Unit Development (PUD)-126C involved a 9.64-acre parcel located west of Elm Place (161st E. Avenue), north of Tucson Street (121st Street). He reported with PUD-126C, the applicant was requesting approval of a major amendment to PUD-126 to include Medical Marijuana Dispensary as a permitted use in addition to other principal and accessory uses permitted as a matter of right in the CG (Commercial General) zoning district. He explained when PUD-126 was approved, medical marijuana dispensary was not a permitted use; therefore, an amendment to the PUD was necessary to include the dispensary use as a permitted use. He stated City Council decided to table this Item during the previous meeting to ensure consistency in language. He indicated he worked with the applicant’s attorney adding language as previously requested.

Council Member Wimpee noted this PUD amendment request had no issues with any separation requirements. Mr. Curtis agreed.

Council Member Gillespie stated she had issues with this PUD and the PUD provisions. She stated she did not believe allowing this use in this area would be an improvement to the area.

The applicant, Lou Reynolds, stated his address was 2727 E. 21st Street. He asked respectfully, as there were only three Councilors present, if there was a concern, to table this Item until the next meeting when hopefully all City Council Members were present. He stated he had worked very carefully with Staff regarding this PUD request. He noted the dispensary met the 1,000-foot separation requirement and was entitled to obtain a permit to operate in CG zoned areas. He stated the proposed tenant and the PUD amendment complied with all Broken Arrow rules and regulations. He noted the proposed tenant had a permit application currently on file with the City. He asked for this item to be continued if Council Member Gillespie was troubled.

Council Member Gillespie stated upon reading the provisions for PUD approval, she did not feel approval of this PUD met even one provision; the added use would not be an improvement to the PUD. She stated she did not feel change for the sake of change was acceptable. She stated she disagreed the proposed tenant was entitled to open a business in this location. Mr. Reynolds stated he meant the tenant would be entitled if this area had straight CG zoning without a PUD. He stated this was not a speculative business; the lease was signed, and the business permit was filed. He stated he believed this would be an improvement to the PUD as it would allow this use and the additional controls were written in which tied the business to Broken Arrow regulations. He noted Broken Arrow had zoning regulations and licensing regulations and through licensing regulations Broken Arrow had the right to make adjustments to uses of property which were licensed. He indicated licensing processes could be changed to address difficulties without impacting zoning rights. He noted this proposed use met with licensing requirements.

Vice Mayor Eudey asked if the applicant wished for this Item to be tabled until the next meeting. Mr. Reynolds responded in the affirmative. Vice Mayor Eudey made a motion to table this Item until the full City Council was present for discussion. There was no second; the motion died for lack of a second.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.

Move to deny PUD-126C

The motion carried by the following vote:

Aye: 2 - Christi Gillespie, Debra Wimpee
Nay: 1 - Scott Eudey

10. Preview Ordinances

There were no Preview Ordinances.

11. Ordinances

- A. **19-1535** Consideration, discussion, and possible adoption of Ordinance No. 3611, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ-1366, granting a CH zoning classification be placed upon the tract, generally located at 515 - 525 W. Madison, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency

Mr. Larry Curtis asked for Items A through G to be approved through one motion. He explained these Items were Ordinances regarding projects which met the requirements of platting and had been recorded at the courthouse and met all requirements for codification. He noted as there were only three Council Members present the emergency clauses could not be approved. He asked for adoption of the Ordinances.

Vice Mayor Eudey asked if Item A through Item G were similar enough to be approved in one motion. City Attorney Dennis responded in the affirmative; this had been done in the past and was acceptable.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.

Move to approve Items A through G

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

- B. **19-1536** Consideration, discussion, and possible adoption of Ordinance No. 3612, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ-1789 and BAZ-1842, generally located near the northeast corner of Jasper Street (131st Street) and Aspen Avenue (145th E. Avenue), granting RS-3, RD, and FD zoning classifications upon the tract along with PUD-260, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency
- C. **19-1539** Consideration, discussion, and possible adoption of Ordinance No. 3613, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ-1930, generally located on the southwest corner of 23rd Street (County Line Road) and Tucson Street (121st Street), granting a RS-3 zoning classification be placed upon the tract along with PUD-234, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency
- D. **19-1541** Consideration, discussion, and possible adoption of Ordinance No. 3614, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ-1965, generally located north of Kenosha Street, one-quarter mile east of Elm Place, granting an ON, CN, and IL zoning classifications be placed upon the tract along with PUD-253A, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency
- E. **20-87** Consideration, discussion, and possible adoption of Ordinance No. 3615, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ-1969, generally located on the southeast corner of 23rd Street (County Line Road) and Rockford Street (31st Street), granting a RS-3 zoning classification be placed upon the tract along with PUD-256, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency
- F. **20-94** Consideration, discussion, and possible adoption of Ordinance No. 3616, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ-1975, generally located one-half mile west of Evans Road (225th E. Avenue), south of Kenosha Street (71st Street), granting a IL zoning classification be placed upon the tract along with PUD-259, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency
- G. **20-95** Consideration, discussion, and possible adoption of Ordinance No. 3617, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ-1976, generally located west of the southwest corner of 37th Street (209th E. Avenue) and Omaha Street (51st Street), granting a RS-3 zoning classification be placed upon the tract, repealing all ordinances or parts of ordinances in conflict herewith, and declaring an emergency
- H. **20-111** Consideration, discussion, and possible adoption of Ordinance No. 3619, an ordinance amending the Broken Arrow Code of Ordinances, Appendix A - Zoning Ordinance, Chapter 7, Review and Decision-Making Entities, Section 7.4, Board of Adjustment, specifically clarifying the nomination process for Board Members; repealing all ordinances to the contrary; and declaring an emergency
- City Attorney Trevor Dennis reported Ordinance No. 3619 was previewed in May 2019. He stated the neglect to set this for final adoption was a mistake. He noted this Ordinance corrected the appointments to the Board of Adjustments per Council's direction. He noted an emergency clause could only be approved by a super-majority of City Council; however, if adopted the Ordinance would go into effect thirty days from adoption.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move to adopt Ordinance No. 3619

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

12. Remarks and Inquiries by Governing Body Members

Council Member Gillespie stated her votes this evening may give the impression she was against medical marijuana; however, she was not opposed to medical marijuana. She explained she felt strongly when a PUD was in place it was important changes were not being made simply for the sake of change. She noted both denied PUDs were located in her ward; she held extensive discussions with the residents in her ward and understood her ward's needs. She stated it would have been easier for her to vote yes for the PUD amendments. She noted the Ordinances which were just approved indicated positive improvements to the City of Broken Arrow and she was excited to see these projects move forward.

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

City Manager Michael Spurgeon announced a new Director of Engineering and Construction for the City of Broken Arrow had been selected. He introduced Mr. Ethan Edwards as the new Director of Engineering and Construction. He briefly discussed Mr. Edwards' qualifications and experience.

Vice Mayor Eudey indicated there was an Executive Session; therefore, he would entertain a motion for a brief recess to enter into BAMA and BAEDA.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move for a brief recess to enter into BAMA and BAEDA

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

Vice Mayor Eudey reconvened the City Council Meeting and noted there were three items in the Executive Session: with Item 1 he had a conflict; therefore, Item 1 could not be discussed. He called for a motion to table Item 1 until the next City Council Meeting.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.

Move to table Executive Session Item 1 until the next City Council Meeting

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

Vice Mayor Eudey indicated he would entertain a motion to clear the room to enter into Executive Session.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move for a brief recess to clear the room for the Executive Session

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

14. Executive Session

Executive Session for the purpose of confidential communications between the City Council, the City Manager, the City Attorney and any other pertinent staff members discussing, conferring on matters and possible action in open session pertaining to:

1. A claim and potential litigation regarding a water tower with the words First Baptist Church of Broken Arrow, under 25 O.S. § 307(B)(4);

2. The City's potential claim and litigation or action related to the Commercial Street Detention Project No. SW2007, involving the City of Broken Arrow v. Dennis Sherwood, a District Court action authorized by Resolution 1267, regarding certain real property generally located in the Southwest Quarter of Section 11, Township 18 North, Range 14 East of the Indian Meridian, pursuant to 25 O.S. Section 307(B) (4);

3. The City's potential claim and litigation or action related to Stronghand, LLC's potential breach of the Tiger Hill Soldier Pile Retaining Wall, Contract No. 171703, Bid No. 19.121, under 25 O.S. § 307(B)(4);

In the opinion of the City Attorney, the Council is advised that the Executive Session is necessary to process the litigation and disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest. After the conclusion of the confidential portion of executive session, the Council will reconvene in open meeting, and the final decision, if any, will be put to a vote.

MOTION: A motion was made by Debra Wimpee, seconded by Christi Gillespie.

Move to find the Executive Session necessary

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

Item 1 tabled until the next City Council Meeting (motion made prior to start of Executive Session). No motion was provided for Item 2 or Item 3.

15. Adjournment

The meeting adjourned at approximately 8:31 p.m.

MOTION: A motion was made by Christi Gillespie, seconded by Debra Wimpee.

Move to adjourn

The motion carried by the following vote:

Aye: 3 - Christi Gillespie, Debra Wimpee, Scott Eudey

Mayor

City Clerk