



# City of Broken Arrow

## Request for Action

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**File #: 16-1157, Version: 1**

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**Broken Arrow City Council  
Meeting of: 09-20-2016**

**To: Mayor and City Council**  
**From: Office of the City Attorney**  
**Title:**

**Presentation, consideration, and discussion on the City of Broken Arrow's Municipal Court, and possible action, including direction to explore transition from a Municipal Court Not of Record to a Municipal Court of Record**

### **Background:**

#### **House Bill 3164:**

On April 27, 2016, Oklahoma's House and Senate passed House Bill 3146, set for enactment on November 1, 2016. The bill requires that all charges of Driving Under the Influence (DUI's) be prosecuted in a court of record. Under the bill, municipal courts must transfer DUI charges to the proper District Court in which a person could be prosecuted for felony drunken driving. The bill also creates a database that serves to inform officers and prosecutors about a person's drunken driving arrest record. All municipal courts in Oklahoma except Tulsa and Oklahoma City are not courts of record and therefore, DUI convictions in those jurisdictions cannot be used to enhance a subsequent DUI as a felony offense. In contrast, opponents argue the bill will decrease municipal funds and overload already saturated DUI caseloads in Oklahoma District Courts.

While the new bill does not address Actual Physical Control cases (APC charges), it will likely be included as APC and DUI charges are closely associated. In 2015, the City of Broken Arrow prosecuted 18 persons under the age of 21 for DUI and received \$11,700.00 in fines from those cases. The City also charged 200 persons aged 21 over with DUI and received \$130,000.00 in fines. Broken Arrow also charged 27 persons with APC and received \$17,550.00 in fines. These totals do not include the underlying offenses that the defendants were charged with. For example, normally there is a traffic offense that accompanies DUI or APC charges and/or they are coupled with a no insurance citation or drug related charges. Based on the City's fines for DUI's and APC's charges 2015, the City will inevitably lose hundreds of thousands of dollars in the year after the bill is enacted. There will be other costs associated with implementation of this law, including increased transfer of prisoners to Tulsa and Wagoner Counties.

The Bill does provide that in any case in which a defendant is charged with driving under the influence of alcohol or intoxicating substance within a municipality with a municipal court, twenty-five percent (25%) of the costs charged in the case will be paid to the municipality. Last year, the State of Oklahoma had a significant deficit. Staff is concerned whether the revenue provided by the law will actually be paid to the City of Broken Arrow.

In the past, Staff has not advocated for transition from a Court Not of Record to a Court of Record. However, the impending effective date of the DUI legislation and the potential for significant revenue loss, coupled with the increased costs of transportation to and from Tulsa and Wagoner counties, make it prudent to consider a modification. The following information is presented for the City Council's consideration as this change is contemplated:

**Breakdown of Revenues and Citations:**

The City receives revenues from court fines, court costs, and administrative fees imposed by the Broken Arrow Municipal Court. The following is a breakdown of fines, costs and fees imposed and number of citations over previous years:

<u>Fiscal Year</u>	<u>Revenues:</u>	<u>No. of Citations</u>
2011 - 2012	\$1,789,745.27	15,080
2012 - 2013	\$1,849,336.53	15,041
2013 - 2014	\$1,879,418.04	15,508
2014 - 2015	\$2,124,312.11	16,675
2015 - 2016	\$1,959,620.02	16,683

**Court Clerk Budget:**

The Court Clerk's budget is combined with the City Clerk's budget, therefore, it is difficult to separate its expenses out specifically. However, through research of last year's expenditures for the Court Clerk's Office, it is estimated that expenditures for the Court Clerk's Office were approximately \$1,500.00 for supplies, travel and certification expenses combined.

The Court Clerk's Office is approved for and staffed by a full-time Deputy Court Clerk and three full-time Administrative Court Clerks, as well as a part-time Presiding Judge and a part-time Alternate Judge. The Clerks are afforded all the benefits that the other full-time City employees are given. The part-time Presiding Judge has FICA and Medicare but no other benefits and the part-time Alternate Judge is afforded no benefits. The approximate cost for wages and benefits for these positions is approximately \$317,611.11.

**Court of Record vs. Court Not of Record Fines and Fees:**

In order to become a Court of Record, the City Council must "determine by resolution that the efficient disposition of cases involving the violation of municipal ordinances necessitates creating a court of record." *See* 11 O.S. §28-101. Such resolution must be filed in the office of the County Clerk of Tulsa and Wagoner County.

The following is a breakdown of maximum fines in Courts Not of Record and Courts of Record. *See* 11 O.S. 28-102.

Offense	Court Not of Record	Court of Record
Traffic Citations	\$200.00	\$1,250.00
Juvenile and Misdemeanor Charges	\$750.00	\$1,200.00
Wastewater and Stormwater Violations	\$750.00	\$1,000.00
Alcohol and Drug Related Offenses	\$750.00	\$1,200.00

In a Court of Record, an additional administrative fee of \$100.00 may be imposed as costs in a deferred sentence case. *See* 11 O.S. §28-123. Additionally, the City Council would have the power to specify a schedule of costs, including witness fees, to be taxed. State Statute requires “costs of the prosecution to be taxed against a defendant when the penalty assessed against said defendant is a deferred sentence in the same manner as costs are taxed against an individual for a violation of any other ordinance of the City.” *See* 11 O.S. §28-125. A Court Not of Record can only charge \$49.00 administrative fees and no charges for the cost of prosecution are permitted.

### **Court Reporter:**

A Court Reporter would be required if the City becomes a Court of Record. Title 11 § 28-108(A), states that:

“The presiding judge of the municipal criminal court of record may recommend to the governing body of the city the appointment of a suitable and proper person as court reporter, whose duty it shall be to correctly take and record all of the testimony and proceedings had upon the trial or cases when required by either party. The city governing body shall fix the compensation to be allowed the court reporter. Such reporter may also perform such other clerical duties as the city governing body and judge and clerk of the court may require and shall have power to certify all transcripts and records of evidence and proceedings taken by him.”

The Statute also requires the Court Reporter to be sworn in open court that they will faithfully perform the duties of the Office before performing their office duties. Therefore, the City would need to employ a Court Reporter if our Municipal Court became a Court of Record. However, the Court may impose a fee to the defendant for these costs.

### **Public Defender:**

The Judges will be required to hold hearings as they deem necessary to determine if an individual is indigent and entitled to a Public Defender. If Broken Arrow were to become a Court of Record, it would need to retain the services of either a Public Defender or make arrangements for indigent representation. 11 O.S. § 28-110 allows the City Council to create the Office of Public Defender. The Statute provides that the Public Defender “shall be charged upon order of any judge of the municipal criminal court of record with the protection of the rights of any defendant charged with violation of any ordinance in the court. The city governing body may provide for necessary office supplies and equipment and arrange for sufficient office space in public buildings.”

Only an attorney or attorneys authorized to practice law in Oklahoma can be appointed as a Public Defender. *See* 11 O.S. §28-111. The appointments shall be made by the judges of the Municipal Criminal Court of Record and serve at the pleasure of the judges. The salary of the Municipal Public Defender shall be set by the City Council. The Council and/or the Presiding Judge may make suitable arrangements with a legal aid society to represent indigents instead of appointing a Municipal Public Defender.

**Holidays:**

State Statute requires Courts of Record to be closed on those holidays observed by the District Courts of the State. However, the Court Clerk's Office may remain open for business. *See* 11 O.S. §28-122. The holidays recognized by the City are different than those recognized by the District Courts. That is an issue that would need to be addressed.

**Appeals:**

Currently, appeals from the City's Municipal Court are heard in the District Court. Appeals made from a Court of Record are heard in the Court of Criminal Appeals. *See* 11 O.S. §28-128.

**Comparison of Oklahoma City and City of Tulsa Courts of Records:**

<b>COURT OF RECORD</b>	<b>TULSA, OK</b>	<b>OKLAHOMA CITY, OK</b>
<b>TOTAL BUDGET</b>	\$949,641.00	\$9,263,262.00
<b>TOTAL CASES PER YEAR</b>	170,000	191,801
<b>NO. OF CLERKS</b>	18	11
<b>NO. OF COURT REPORTERS</b>	3	1 plus contract help for jury sessions
<b>PUBLIC DEFENDERS</b>	1 full-time 2 part-time	Contracts with Legal Aid of Oklahoma
<b>PROBATION OFFICERS</b>	2	6
<b>ENFORCEMENT DIVISION</b>	No enforcement division	5 people serve warrants (not done by police department)

**Considerations for a change include the following:**

- Every case that is heard in a Court of Record will require a Minute Clerk to take and enter Minutes of each case.
- More dockets may need to be added as the City would handle more cases locally.
- The addition of more dockets would require adding more dockets to the current Judge's contract or hiring another part time judge.
- The City would need to employ a Court Reporter to take and record all of the testimony and proceedings at trials or cases when required by either party.
- The City would have to compensate Public Defenders when a defendant qualifies for such representation.
- The Prosecutor would be handling more dockets and thus taken away from other assignments.
- Higher citation fines could be imposed.
- Additional administrative fees could be imposed.
- More citations could be handled in the Municipal Court instead of sending them to Tulsa/Wagoner County, and thus, more revenue will be generated for the City.
- Cases that are normally sent to Tulsa/Wagoner County can be kept local and thus officers will have to

spend less time transporting defendants to County Jails.

- Currently there is approximately \$3.2 million owed to the City in outstanding fines. This amount does not include what is owed by defendants who are currently on payment plans. It is already difficult to collect the fines that are currently imposed so it would be even more difficult to collect higher fines.
- If the City became a Court of Record and thus be able to impose higher fines it may be difficult to collect those fine amounts. Since becoming a Court of Record would require more overhead the revenues that would actually be collected may not cover the increased expenses.

### **Conclusion:**

In the past for some of the reasons set for above, Staff has not advocated transition from a Court not of Record to a Court of Record. However, the impending effective date of the DUI legislation and the potential for significant revenue loss, coupled with the increased costs of transportation to and from Tulsa and Wagoner counties, make it prudent to consider a modification.

**Cost:**                      **To Be Determined**

**Prepared By:**        **Beth Anne Wilkening, City Attorney**

**Reviewed By:**       **Assistant City Manager**

**Approved By:**       **Michael L. Spurgeon, City Manager**

**Attachments:**       **None**

### **Recommendation:**

To direct the City Manager to explore transition from a Municipal Court Not of Record to a Municipal Court of Record.