

**BROKEN ARROW CITY COUNCIL  
MINUTES  
COUNCIL CHAMBERS  
220 SOUTH FIRST STREET  
BROKEN ARROW, OKLAHOMA 74012  
July 7, 2009**

**6:30 PM**

**1. Call to Order**

**Section Minutes:** Mayor Lester called the meeting to order at approximately 6:30 p.m.

**2. Invocation**

**Section Minutes:** Pastor Mike Hutsell of Grace Freewill Baptist Church was present to deliver the Invocation.

**3. Roll Call**

<b>Present:</b>	Craig Thurmond, Philip Tucker, Richard Carter, Wade McCaleb and Mike Lester
<b>Absent:</b>	None

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

**Section Minutes:** Vice Mayor Tucker led the Pledge of Allegiance to the Flag.

**5. Consideration of Consent Agenda**

<b>Motion:</b>	<b>Move to approve the Consent Agenda as presented</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Philip Tucker, Richard Carter, Craig Thurmond, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

- A. Approval of meeting minutes of June 15, 2009
- B. Acceptance of the minutes of the Planning Commission meeting held June 11, 2009.
- C. Approval of an Architect-Engineer contract with Crafton, Tull, Sparks & Associates, Inc., for an engineering study of reconstruction of Old Town streets
- D. Approval of Budget Amendment #14 (FINAL) For Fiscal Year 2008-2009
- E. Approval of an Interlocal Agreement between the Union School District and the City of Broken Arrow
- F. Approval of Memorandum of Understanding between the City of Broken Arrow and the City of Tulsa for administration by the City of Tulsa of grant funds awarded to the Broken Arrow Police Department in the amount of \$26,060.00
- G. Approval of payroll calendar for Fiscal Year 2009-2010
- H. Approval of purchase for OpenSky/P25 Communications System Upgrade and Authorization to Execute Budget Amendment Number 1 for Fiscal Year 2009-2010
- I. Approval of a Resolution Amending the Qualified Retirement Plan of the City of Broken Arrow
- J. Approval of a Resolution Amending and Restating the City of Broken Arrow's Deferred Compensation Plan
- K. Approval of a Resolution Amending the ICMA Retirement Corporation Blue Line 457 Deferred Compensation Plan and Trust

- L. Approval of a Resolution to request programming of Federal Fiscal Year 2013 Tulsa Urbanized Area Surface Transportation Funds for 23rd Street Improvements between Kenosha and Houston Streets
- M. Approval of a Resolution authorizing the City Attorney to confess judgment without admitting liability in the District Court of Tulsa County, Nicholas Overstreet v. City of Broken Arrow, Case Number CJ-2008-05994, and directing the City Attorney to prepare and file the necessary documents to effectuate settlement including a Journal Entry incorporating this Resolution for the Court's approval pursuant to 51 O.S. § 158
- N. Approval of a Resolution authorizing the City Attorney to confess judgment without admitting liability in the District Court of Tulsa County, Michael Overstreet v. City of Broken Arrow, Case Number CS-2008-07043, and directing the City Attorney to prepare and file the necessary documents to effectuate settlement including a Journal Entry incorporating this Resolution for the Court's approval pursuant to 51 O.S. § 158
- O. Approval of a Resolution authorizing the City Attorney to agree to entry of judgment in the case of The City of Broken Arrow, Oklahoma v. Kyle E. Hunt and Rebecca Hunt, et al., Tulsa County District Court Case Number CJ-2008-7326 and directing the City Attorney to effectuate settlement, including a Journal Entry for the Court's approval, pursuant to 51 O.S. § 158.
- P. Approval of request for water and sewer service to temporary sales trailer located at Eagle Ridge Village
- Q. Approval of BAZ 1829, 0.19 acres, 1 lot, A-RS-3 to RS-3, one-fourth mile east of 23rd Street (193rd East Avenue/County Line Road), and one-fourth mile north of Omaha Street (51st street).
- R. Approval of BAZ 1831, 2.18 acres, 1 lot, AR-1 to RS-1, one-half mile east of Elm Place (161st East avenue) and one-half mile north of Jasper Street (131st Street) at 16750 East 127th East Avenue
- S. Acceptance of a General Warranty Deed from William K Warren Medical (S28T18Nr14E) (Project: Aspen Ave Widen Florence to New Orleans)
- T. Acceptance of a General Warranty Deed from The William K. Warren Medical research Center, Inc (S28T18NR14E)(Project: Aspen Ave Widen Florence to New Orleans)
- U. Acceptance of a Drainage Easement, Detention Easement and a Temporary access Easement from Coach Port, LLC (S20 T18N R15E) (Project: Coach Port DN08-169)
- V. Acceptance of Public Improvements Aspen Point
- W. Approval of the Claims List

## 6. Consideration of Items Removed from Consent Agenda

**Section Minutes:** There were no items removed from the Consent Agenda.

## 7. Public Hearings, Appeals, Presentations, Recognitions, Awards and Oaths

- A. Appeal from denial by the Planning Commission of plat waiver in connection with BACP 76 and BAZ 1755, 29.9 acres, one-quarter mile south of Omaha Street (51st Street), east of 23rd Street (County Line Road/193rd East Avenue).

**Item Minutes:** City Planner, Mr. Brent Murphy, presented the background and details contained in the fact sheet. Mr. Lou Reynolds, attorney for the applicant spoke regarding contractual terms and zoning authority of the City. In response to Mr. Reynolds, Mayor Lester and Councilor Thurmond agreed that the City should honor its past commitments and pointed out that the agreements relating to this project were made by past City administrations a number of years ago. Councilor Carter pointed out that the developer will bring a number of good jobs to Broken Arrow and he said he agreed the agreement should be honored, and Councilor McCaleb agreed. Mayor Lester added that the land would remain industrial.

- B. Award: Presentation and approval of the "Employee of the Quarter" award recognizing Jeremy Roberts for the term April through June 2009

**Item Minutes:** Acting City Manager, Dave Wooden, presented this item saying that the Employee Activity Committee voted to nominate Jeremy Roberts in the Fire Department for Employee of the Quarter, April through June 2009. Mr. Wooden said Mr. Robert's is recognized for going above and beyond the scope of his job. He added that Jeremy has a working dog, Cipher, and together they successfully completed a FEMA certification in which Cipher was the only dog in Oklahoma to receive this honor. Mr. Wooden said that Jeremy and Cipher work together to educate children about safety, and in addition, Jeremy Roberts is also a member of the Oklahoma Task Force that assists with natural disasters across the country. Mr. Wooden stated that Mr. Roberts is a prime example of the high quality of individuals that serve on the Broken Arrow Fire Department. Mr. Wooden asked that Council approve this recognition which is recommended by staff. Mr. Roberts and Cipher came forward to receive the "Employee of the Quarter award" award.

- C. Presentation: Financial Status Briefing as of May 31, 2009

**Item Minutes:** Finance Director, Mr. Tom Caldwell, presented this item in accordance with the fact sheet and attachments provided in the agenda packet. Mr. Caldwell briefly reviewed the figures provided.

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

**Section Minutes:** Mr. John Anderson, 2801 N. Gum Court, Broken Arrow, OK 74017, addressed Council. He said he is asking the City to re-examine the issue of noise abatement relating to the helipad location at the new St. John's Hospital. He said the hospital put in a wooden fence but a wooden fence is will not reduce noise, and in addition, the helipad is only 60 feet from their homes. Mayor Lester said that St. John's went through the design and permitting process, and the plans were approved sometime ago so cannot go back now and require changes. Mayor Lester said the hospital representatives said major trauma flights will go to the main hospital so use of the helipad will not be as heavy as at the main hospital. Mayor Lester added that amount of use and times of use remain speculation.

Mr. Anderson asked if the Mayor meant that until there was a noise problem, there was nothing to fix. Mayor Lester said the question of noise was based on speculation at this time due to the unknowns. Mr. Anderson asked if there is a doubt that a helicopter landing at three in the morning makes a lot of noise. Mayor Lester said that helicopter landings at three in the morning are speculation at this time.

## 9. General Council Business

- A. Consideration of retaining a management consulting firm to assist the City Council in the recruitment of a City Manager.

**Item Minutes:** Mr. Wooden presented this item consistent with the Fact sheet provided in the agenda packet. He summarized some of the information provided stating in the past when the City Council was proceeding with hiring a new City Manager, the Human Resources Department assisted with the traditional functions associated with the selection process. He added that in recent years, the City had struggled to find a Director of Engineering and Construction who met the City's needs and who could manage the challenges of the position. He explained that in 2007, the city manager retained the services of a management consultant to assist in the screening and selection process for filling that position. Mr. Wooden said he believes the consultant's services were an effective tool in finding the present director.

Councilor McCaleb asked where the funds would come from. Mr. Wooden said the funds would come from the General Government operational fund. Councilor Thurmond asked how much this would cost. Mr. Wooden said the cost will be 8 to 12 thousand dollars and that staff will prepare a request for qualifications, review the proposals received and bring a recommendation back to Council. Councilor Carter said that based on his past Human Resources experience, he believes that using a consulting or head hunter firm will benefit the City by narrowing down applicants to those well qualified thereby speeding up the process.

<b>Motion:</b>	<b>Move to approve retaining a management consulting firm to assist the City Council in the recruitment of a City Manager</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Philip Tucker, Richard Carter, Craig Thurmond, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

- B. Consideration of appointment of Randy Cherry to fill one vacancy on the Board of Adjustment created by the expired term of Rene' L. Ray.

**Item Minutes:** Mr. Wooden said that Mr. Cherry was nominated to serve on the Board of Adjustment at the last Council meeting.

<b>Motion:</b>	<b>Move to approve appointment of Randy Cherry to fill one vacancy on the Board of Adjustment created by the expired term of Rene' L. Ray</b>
<b>Motion by:</b>	Wade McCaleb
<b>Second by:</b>	Philip Tucker
<b>Ayes:</b>	Wade McCaleb, Philip Tucker, Craig Thurmond, Richard Carter, Mike Lester
<b>Nays:</b>	None

- C. Consideration of appointment of Acting City Manager to represent the City of Broken Arrow on the Broken Arrow Chamber of Commerce Board of Directors

**Item Minutes:** Mr. Wooden said that traditionally the City Manager serves on this Board and this item recommends appointment of Mr. Wooden, Acting City Manager, to serve on the Chamber of Commerce Board of Directors.

<b>Motion:</b>	<b>Move to approve appointment of Acting City Manager to represent the City of Broken Arrow on the Broken Arrow Chamber of Commerce Board of Directors</b>
<b>Motion by:</b>	Craig Thurmond
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Craig Thurmond, Richard Carter, Philip Tucker, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

- D. Consideration of appointment of Lee Zirk to represent the City of Broken Arrow as Trustee on the Metropolitan Environmental Trust Board of Trustees

**Item Minutes:** Mr. Wooden said he has assumed additional duties as Acting City Manager and recommends that Lee Zirk, Director of General Services, be appointed to represent the City on the M.E.T. Board of Trustees. Mr. Wooden added that Mr. Zirk has become known as the City's "green czar", and he was headed to representing the City on the M.E.T. Board in the future anyway.

<b>Motion:</b>	<b>Move to approve appointment of Lee Zirk to represent the City of Broken Arrow as Trustee on the Metropolitan Environmental Trust Board of Trustees</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Philip Tucker, Richard Carter, Craig Thurmond, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

- E. Consideration of appointment of Ken Schwab to represent the City of Broken Arrow on the Regional Metropolitan Utility Authority

**Item Minutes:** Mr. Wooden said he has assumed additional duties as Acting City Manager and recommends that Ken Schwab, Director of Engineering and Construction, be appointed to represent the City on the Regional Metropolitan Utility Authority.

<b>Motion:</b>	<b>Move to approve appointment of Ken Schwab to represent the City of Broken Arrow on the Regional Metropolitan Utility Authority</b>
<b>Motion by:</b>	Richard Carter
<b>Second by:</b>	Craig Thurmond
<b>Ayes:</b>	Richard Carter, Craig Thurmond, Philip Tucker, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

**10. City Manager’s Report**

A. Citizen's Survey

Mr. Wooden presented the information provided in the Agenda packet.

B. Receive Report reviewing 911 Services

Mr. Wooden presented the information provided in the Agenda packet.

**11. Preview Ordinances**

**Section Minutes:** Items 11A and 11B were taken together. City Attorney, Ms. Beth Anne Wilkening, explained that item 11A closes an easement and this closure will allow construction of a large storage building. Ms. Wilkening said that that 11B is a revised ordinance to meet requirements of National Flood Insurance and to bring the ordinance into compliance with state statutes.

<b>Motion:</b>	<b>Move to forward preview ordinances to the next meeting for final consideration</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Craig Thurmond, Philip Tucker, Richard Carter, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

- A. An ordinance vacating a utility easement located on an unplatted property in section 8, township 17 North, Range 14 East of the Indian Base Meridian as dedicated by separate instrument Book 3987 Page 511
- B. An ordinance amending the Broken Arrow Code, Chapter 25, Section 25-304(a)(1) and 25-304(a)(6) by adding an updated flood study, revising the elevation benchmark reference, repealing all ordinances in conflict therewith, providing for severability , and declaring an emergency

**12. Ordinances**

**Section Minutes:** Ms. Wilkening said there were no significant changes since these ordinances were previewed at the last Council meeting.

- A. Ordinance No. 3042 An Ordinance amending Chapter 4, Article I, Section 4-1 of the Broken Arrow Code pertaining to Definitions; repealing all Ordinances to the contrary; and declaring an emergency

<b>Motion:</b>	<b>Move to adopt Ordinance No. 3042, an Ordinance amending Chapter 4, Article I, Section 4-1 of the Broken Arrow Code pertaining to Definitions; repealing all Ordinances to the contrary; and declaring an emergency</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Craig Thurmond, Philip Tucker, Richard Carter, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

- B. Ordinance No. 3043 An Ordinance amending Chapter 4, Article II, Section 4-13 of the Broken Arrow Code pertaining to transporting intoxicating beverages in open containers and possession in public places; repealing all Ordinances to the contrary ad declaring an emergency

**Item Minutes:** Councilor McCaleb asked if staff will now be able to approve requests for serving alcohol without bringing requests to Council. Ms. Wilkening said that is correct. Councilor McCaleb said he objected to not establishing a City policy for reviewing and approving requests for alcohol permits prior to updating the ordinance. He requested that 12B and 12C be taken separately.

<b>Motion:</b>	<b>Move to adopt Ordinance No. 3043, an Ordinance amending Chapter 4, Article II, Section 4-13 of the Broken Arrow Code pertaining to transporting intoxicating beverages in open containers and possession in public places; repealing all Ordinances to the contrary and declaring an emergency</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Philip Tucker, Richard Carter, Craig Thurmond, Mike Lester
<b>Nays:</b>	Wade McCaleb

<b>Motion:</b>	<b>Move to adopt the emergency clause for Ordinance No. 3043</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Philip Tucker, Richard Carter, Craig Thurmond, Mike Lester
<b>Nays:</b>	Wade McCaleb

C. Ordinance No. 3044 An Ordinance amending Chapter 4, Article V, Section 4-86 of the Broken Arrow Code pertaining to transporting low point beer in opened containers and possession in public places; repealing all Ordinances to the contrary and declaring an emergency

<b>Motion:</b>	<b>Move to adopt Ordinance No. 3044, an Ordinance amending Chapter 4, Article V, Section 4-86 of the Broken Arrow Code pertaining to transporting low point beer in opened containers and possession in public places; repealing all Ordinances to the contrary and declaring an emergency</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Craig Thurmond, Mike Lester, Philip Tucker, Richard Carter
<b>Nays:</b>	Wade McCaleb

<b>Motion:</b>	<b>Move to adopt the emergency clause for Ordinance No. 3043</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Philip Tucker, Richard Carter, Craig Thurmond, Mike Lester
<b>Nays:</b>	Wade McCaleb

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

**Section Minutes:** Councilor Tucker asked about the emergency call back notice regarding a lost child, specifically if the parents were located. Chief Wuestwald said he believed everything worked out well as he would have heard if it had not.

At 7:34 p.m., Mayor Lester said the Broken Arrow Economic Development Authority meeting was cancelled for this evening so at this time he would ask for a motion to recess in order to enter into the Broken Arrow Municipal Authority meeting.

<b>Motion:</b>	<b>Move to recess to enter into the Broken Arrow Municipal Authority meeting</b>
<b>Motion by:</b>	Craig Thurmond
<b>Second by:</b>	Philip Tucker
<b>Ayes:</b>	Wade McCaleb, Craig Thurmond, Richard Carter, Philip Tucker, Mike Lester
<b>Nays:</b>	None

Mayor reconvened the regular Council session at 7:58 p.m.

<b>Motion:</b>	<b>Move to enter into Executive Session</b>
<b>Motion by:</b>	Richard Carter
<b>Second by:</b>	Philip Tucker
<b>Ayes:</b>	Wade McCaleb, Craig Thurmond, Richard Carter, Philip Tucker, Mike Lester
<b>Nays:</b>	None

14. **Executive Session** for the purpose of confidential communications between the City Council, the Acting City Manager and the City Attorney for the purpose of discussing and taking possible action on the proposed purchase and appraisal of 133.05 acres of real property located along the Creek Turnpike between Aspen Avenue and Elm Avenue, in Broken Arrow, Tulsa County, Oklahoma; the potential purchase and appraisal of property located in the 2800 Block of East Kenosha also known as Comino Villa; the purchase and appraisal of land located North of Albany and East of Elm Place for a conference center; all under 25 O.S. § 307(B)(3); Litigation involving City of Broken Arrow, Oklahoma v. Helen M. Blankenship, Trustee of the Helen M. Blankenship Living Trust, Tulsa County District Court Case Number CJ-2008-01125; City of Broken Arrow v. Ray H. Wilburn, Tulsa County District Court Case Number CJ-2006-5913; Robert J. Burton, a married person v. The City of Broken Arrow, Oklahoma, Tulsa County District Court Case Number CJ-2009-02468; and State of Oklahoma, ex rel., Karen Franklin v. Horizon Construction Company, et al., Tulsa County District Court Case Number: CJ-2008-8620, all under 25 O.S. § 307(B)(4); The Council is advised that disclosure will seriously impair the ability of the public body to process this pending litigation 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.

At 8:22 p.m., Mayor Lester reconvened the regular Council session.

<b>Motion:</b>	<b>Move to authorize the City Attorney to settle the case of City of Broken Arrow v. Blankenship for the sum of \$15,000.00</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Craig Thurmond, Philip Tucker, Richard Carter, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

<b>Motion:</b>	<b>Move to authorize the City Attorney to settle the case of City of Broken Arrow v. Wilburn for the sum of the Commissioners award</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Craig Thurmond, Philip Tucker, Richard Carter, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

<b>Motion:</b>	<b>Move to authorize the City Attorney's filing of an application for costs and attorney's fees in case of Karen Franklin v. City of Broken Arrow</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Craig Thurmond
<b>Ayes:</b>	Craig Thurmond, Philip Tucker, Richard Carter, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

<b>Motion:</b>	<b>Move to not pursue the purchase of real property located along the Creek Turnpike between Aspen and Elm</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Craig Thurmond, Philip Tucker, Richard Carter, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

<b>Motion:</b>	<b>Move to authorize the City Attorney to proceed as directed with regard to the acquisition of real property for a conference center</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Craig Thurmond
<b>Ayes:</b>	Craig Thurmond, Philip Tucker, Richard Carter, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

<b>Motion:</b>	<b>Move to agree to foreclosure in the case of Burton v. City of Broken Arrow</b>
<b>Motion by:</b>	Philip Tucker
<b>Second by:</b>	Richard Carter
<b>Ayes:</b>	Craig Thurmond, Philip Tucker, Richard Carter, Wade McCaleb, Mike Lester
<b>Nays:</b>	None

At 8:22 p.m., Mayor Lester asked for a motion to once again enter into the Broken Arrow Municipal Authority meeting.

<b>Motion:</b>	<b>Move to recess Council in order to enter into the Broken Arrow Municipal Authority meeting</b>
<b>Motion by:</b>	Craig Thurmond
<b>Second by:</b>	Philip Tucker
<b>Ayes:</b>	Wade McCaleb, Craig Thurmond, Richard Carter, Philip Tucker, Mike Lester
<b>Nays:</b>	None

Mayor Lester reconvened the regular Council session at 8:24 p.m.

**15. Adjournment**

<b>Motion:</b>	<b>Move to adjourn</b>
<b>Motion by:</b>	Craig Thurmond
<b>Second by:</b>	Philip Tucker
<b>Ayes:</b>	Wade McCaleb, Craig Thurmond, Richard Carter, Philip Tucker, Mike Lester
<b>Nays:</b>	None

The meeting adjourned at 8:24 p.m.

Attest:

\_\_\_\_\_

Mayor

\_\_\_\_\_

City Clerk



