

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Pastor David Houchin, 22nd Street Baptist Church, after which the pledge of allegiance was presented by the entire assembly.

Proclamations

A. Community Development Week

Mayor Walkup declared April 21 to 27, 2003 to be "Community Development Week" and Friday, April 25, 2003, as the "Community Development Week Day of Celebration." He read the proclamation.

Emily Nottingham, director of community services, said in this time of difficult federal budgets it is particularly important to properly recognize federal programs that are effective for local communities and the star federal program is doing that in the community development block grant program. She invited everyone to a celebration on Friday, April 25, at Robles Junction, co-hosted with Pima County, the city of South Tucson, and Marana. They would have good food and would recognize the good work of the community development block grant program, which supports back to basics, housing rehab, human services, and other important city and county programs. She thanked the mayor and council.

Mayor Walkup asked Todd Sander, director of information technology and Steve Postil, telecommunications administrator, to assist him in presenting the Public Access Grant Awards.

Mr. Sander explained that the grants were funded through money that was paid into a special public access fund by the telecommunications providers in Tucson who have a franchise with the city. He presented an award to the United Cerebral Palsy of Southern Arizona, whose project focuses on the acquisition of assistive technology and telecommunications equipment that will give a voice to children and adults with the most severe disabilities who are unable to speak. The devices can predict and complete words and sentences, convert text to speech with an integrated synthesizer program, learn the impaired or unintelligible speech of an individual with disabilities and convert it to intelligible synthesized speech or text file on a personal computer. The devices can be run with available use of one finger, foot movement, or eye movement.

Mr. Sander presented a grant to the Southern Arizona Community Diaper Bank, which would replace their inadequate inventory system and provide for a creative, innovative web-based diaper ordering process. It will allow the Diaper Bank to efficiently plan for community needs, assess and distribute inventory and provide agencies with real time information on the status of their requests. The Diaper Bank collected, stored, and distributed 800,000 diapers last year to 30,000 needy Tucsonans.

The Angel Charity for Children received a grant for a project that would create a specialized telecommuting architecture to support distributed volunteers. The 150 volunteers at Angel Charity for Children do the vast majority of their work from their workplaces or homes. This telecommuting solution will dramatically improve the effectiveness of the volunteers by providing better collaboration among the members and providing for distributed entry of forms, meeting minutes, newsletters, bylaws, committee postings and other functions via their web site. It will also provide a method for donors to make online contributions.

The Tucson Zoological Society received a grant for a project that will collaborate with the Reid Park Zoo Education Department to establish and maintain an innovative web site for children and students. Additionally, a computer will allow zoo volunteers to staff an information center in the zoo with access to the web for responding to or posting student questions during class visits.

Mr. Sander said Wingspan's information and referral program connects people to medical and mental health care provider support groups, legal counsel, and other crucial resources. Their grant award would allow them to make their extensive information and referral database available online 24 hours a day through a searchable data base housed on their web site, increasing the number of people they can reach. It will enable people who are hesitant or unable to walk in or call Wingspan to receive information they need.

The Tucson Urban Gardens project, Urban Food Resources Mapping and Gleaning, received a grant award for a project that combines geo spatial information technology with community based social science to develop a map of urban food resources for Tucson's neighborhoods. These neighborhood maps will illustrate the excess of available nutritious food resources within the urban community and be the first critical step to organize gleaning and redistribution efforts to avoid waste and get food to those who need it most.

The next recipient was Pima College Adult Education for its Project RAISE, which provides access to people with developmental disabilities by the creation of an Internet computer lab to give computer training and Internet access to Tucson adults with developmental disabilities. The project will enhance basic education skills and employability. The computer lab Project RAISE will be able to better meet its service goals of enabling Tucson area adults with developmental disabilities to acquire critical knowledge and skills and increase their employment potential.

The Primavera Foundation's grant will use telecommunications and advanced Internet technology funds to implement an interactive web site primarily for Primavera Works Programs. This web site will match prospective employers, citizens, business organizations, and civic groups with Primavera services. Proposed functions of the site will include online application forms for business, residential, and government customers, tracking of contracts, tracking and accepting volunteer requests, maintenance of e-mail lists, presentations of maps to facilities, publication of service facilities and contract information.

Big Brothers-Big Sisters of Tucson has received funding to support technology costs associated with the redesign and support of their web site as well as three new computers to meet the needs of the program expansion. The new technology will allow Big Brothers-Big Sisters to more quickly and accurately ensure successful matches and will provide a method for increasing the reliability of data collection. The redesign of the web site will make for a more customer-friendly site highlighting Big Brothers-Big Sisters programs and the importance of their one-to-one mentoring program. It will also allow them to recruit mentors through internet technology.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 218, dated April 21, 2003, would be received into and made a part of the record. He also announced that this was the time for any member of the council to report on current events and asked if there were any reports.

Vice Mayor Scott thanked everyone who attended the ward four budget town hall meetings and for their suggestions. She appreciated their input.

Council Member West invited the public to a town hall meeting on Friday, April 25, 2003, on the high cost of prescription drugs, to be held at Fellowship Square, 8111 E. Broadway. A very distinguished panel would be participating, Tim Nelson, the general counsel to the governor; Representative Linda Lopez; Dr. Daniel C. Malone, U of A College of Pharmacy; and Stew Grabel, Pima Council on Aging.

Council Member Ronstadt invited the public to participate on April 23, 2003, in the Dine Out for Safety Program, a fund raising project for the Southern Arizona Center Against Sexual Assault. Various restaurants were donating a portion of diners' bills to the center and various celebrities would be at different restaurants. Some of the participating restaurants in his ward were Barrio Grill, Feast, Fioritos—he would be at Frog and Firkin—Kingfisher, Magpies, Nonie's, and a whole host of others across the city were participating. It is a wonderful program and a major fundraiser for the center, which was formerly known as the Rape Crisis Center.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's report number 219, dated April 21, 2003, would be received into and made a part of the record. He also announced that this was the time for the city manager to report on current events.

A. 2003 Environmental Communicator of the Year Award

James Keene, city manager, said the Arizona Water and Pollution Control Association has selected Tucson Water to receive the 2003 Environmental Communicator of the Year Award. The award recognizes Tucson Water's accomplishments in informing and educating the community about the use and importance of reclaimed water. The annual award will be presented at the AWPCA Annual Conference, which will be held in Tucson at the end of the month. Staff has been told that Tucson's memorable reclaimed water music video, which was created in partnership with teachers and fifth graders from Manzo Elementary, figured prominently in their decision to award this prestigious honor to Tucson Water.

B. Take Our Daughters and Sons to Work Day

This Thursday, April 24, the city of Tucson would sponsor its annual Take Our Daughters and Sons to Work Day. That is a day when youth have an opportunity to see their parents at work and explore government service as a possible career choice, always of course steering them away from a career in city government after they have spent the day. The theme for this year's event is "A New Generation at Work." Youth will have the opportunity to shadow family members at work and see activities sponsored by departments such as the Sweetwater Wetlands Tour, a clinic with a golf pro, public safety demonstrations, information technology tour and more.

C. Transportation Awards

Mr. Keene advised that the department of transportation received three statewide awards during the 52nd Annual Arizona Department of Transportation Roads and Streets Conference last week in Tucson. Projects receiving the 2003 Arizona Transportation Quality Initiative Award of Merit were the Pantano Road Improvement Project from Golf Links to Escalante, the Solar Powered Traffic Control signals at Pantano Wash and Harrison Road, Tucson Fire Stations number four and five, the Diamondback bicycle/pedestrian bridge.

D. Native Seed Search

On April 4, 2003, the Native Seed Search celebrated 20 years of seed conservation at the fifth annual Flavors of the Desert Dinner at the Tucson Convention Center. Mr. Keene said a crowd of more than 1,000 people enjoyed an unusual banquet of tapari bean tamale pie, blue corn muffins and native pumpkin custard with mesquite meal and local pecans. Steve Shimin, Tucson Convention Center Executive Chef, received a standing ovation for his use of native foods.

The Tucson International Mariachi Conference, now in its 21st year, has returned to the Tucson Convention Center. The purpose of the conference is to preserve, enhance, and foster the traditional values of Hispanic culture, music, art, and dance. The convention center will host workshops beginning on April 22, and the conference culminates Friday night with a spectacular celebration in the arena. Forty percent of the attendees typically come from out of town, but Tucsonans join in on Saturday, when Fiesta de Garibaldi takes place in Armory Park. This year, 40,000 people are expected to join in the festivities.

5. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time when the mayor and council invited any member of the audience to come forward with any matter that is not on the agenda. Speakers would be limited to three-minute presentations. He announced that there would be a call to the audience at the end of the meeting. He had received written requests from three people who wished to speak and said he would call on them, then anyone else who wished to speak.

A. KIDCO Fees; Employee Dispute Process

Ray Figueroa, representative of the American Federation of State, County, and Municipal Employees, Council 97, AFL-CIO, said he had a couple of issues, the first being the KIDCO program that the council discussed during its study session. He said his understanding of that program was that it was meant to help parents who have to work to be independent by not having to be on government assistance. He thought that was the whole idea and commended Vice Mayor Scott for trying to assist that program.

His second concern was the ongoing budget process and the fact that AFSCME was not allowed to bring their dispute before the council. He heard the pledge of allegiance at the beginning of this meeting and he listened to the words. He thought about how they talk about justice for all, but he did not see justice for all in the budget process.

B. Animal Control Laws

Elizabeth Cameron, said she was again present about the dog issue and asked that the council direct the city manager to review the issue and put it on a council agenda. She said the proposal was sent to Pima Animal Control, they met on Thursday and the council should be getting a communication from them asking that they revisit the law that she has been expressing concern about. Upon looking at it she said the problems that brought about the law were people who do not look out for the rights of the community or the needs of the community, but look at their own personal agendas. She asked the mayor and council to form a commission, suggested it be named Animal Control for Tucson, made up of individuals who are not members of boards, not volunteers, and not paid staff of animal control groups. They should be local people from each ward, disabled people who have service animals from Top Dog or Handi Dog. The commission should look at the law that will be coming back to the council for revision and also look at the animal ordinance that she has been trying to get through Council Member Ibarra and different organizations. The commission should look at the problems specifically for Tucson, not Pima County. The county's problems are different than the city's. The laws that were changed magnified and changed the problems the city has. She asked the council to put the issue on an agenda. There was a series of four different articles and an article was also done by the *Arizona Daily Star* and she had the latest copy of the failure of the dog licensing in Pima County. She said she would be glad to work with anybody on this issue and she hoped Council Member Ibarra would help her. They have been trying to have meetings to do that, it has come to a head, and it is time to do something about all of the loose, unwanted dying animals.

C. Campaign Financing Law

Benny White, said he was going to speak on his favorite subject, the First Amendment. He had a copy of a memorandum dated April 11, from Dennis McLaughlin, assistant city attorney, to Kathleen Detrick, city clerk, who is also the city election official having to do with the interpretation of an Arizona Statute that determines whether something is a contribution. It is a part of a series. Last year there was another, what he considered to be very silly, interpretation that if he put a sign in his yard and did not let every candidate put a sign in his yard that was somehow a contribution, value to be determined, but it has to be declared. He did not think that is enforced and he did not believe the interpretation he referred to was enforceable either. The law says if a candidate appears on a radio talk show and the host of the talk show says something like why should people vote for a particular candidate and that candidate responds that they are the best person for the office, it is a contribution. If a candidate does that 12 or 15 times during a campaign they will violate their campaign finance rules and the contract that they signed for public financing or campaigns and they will be removed from office. He said it is another one of those things where yes, there is some legal justification, the Ninth Circuit Court has an opinion that this is the way it ought to be, they also say that the phrase "Under God" and the pledge of allegiance are unconstitutional. People chose not to conform to that opinion and he did not know why the city was going to go with the one he was talking about. As the council addresses this issue in future council meetings he asked them to ask why the city needs to do this, where was it going with the campaign laws that Tucson is enacting.

D. Mountain Avenue Art Selection Process

Judi Stern, chair of the Mountain/First Avenue Neighborhood Association, said their boundaries are Mountain Avenue on the east, First Avenue on the west, and south from Glenn to Spring and Alturas Streets, and represented approximately 660 households. Long before the association was formed, she attended meetings on the Mountain Avenue improvements. Some of the early public meetings at Salpointe High School included beautiful scale models of the proposed bicycle and pedestrian enhancement plan.

Mayor Walkup interjected that the issue Ms. Stern was addressing was listed on the agenda. He was advised that it was listed on the study session agenda and told Ms. Stern to proceed.

Ms. Stern said the original plan showed a bicycle and pedestrian enhancement project to run north from Speedway all the way to the Rillito along Mountain Avenue. The residents were enthusiastic about it because they had been living on a paved wash and they were looking to see a user friendly, treelined avenue for the people going to and from the university and to get in and out of the neighborhood, especially when it rained. During the process the planners and city representatives assured the residents that there would be continuity in the project and she did not recall any mention of an art project during any of the meetings until they voted the second time. Something happened to the funding on the stretch south of Grant, so when it was constructed there was no money for her area, which later became the second phase. She attended more meetings, her association hosted two, to voice their concerns. John Alexander (ph) and Tom McGovern (ph) presented their plans for the second phase in March, preceding the second bond election and the following March. They had big concerns over the dangerous intersections at Copper and Mountain because there is a visibility problem at that intersection. Each time Mr. Alexander and Mr. McGovern addressed the association she asked them to begin with whatever was a done deal. The members are intelligent adults who tend to get angry over being subjected to half-truths and snow jobs. They lost on getting the issue of visibility at the southeast corner of Mountain and Copper resolved. They did succeed in removing a parking lot outside Salpointe's west gate. No one seemed to hear the residents' protest at having the Salpointe student drivers crossing the bike lanes.

To the point of the public art process, Ms. Stern said they asked Mr. Alexander several times when the association would have input on the public art project. Each time he assured them he would inform them when the time came. Well, that happened the day the piece at Glenn and Mountain was installed. She knows Mr. Glock apologized for that oversight, however, the residents were stunned to hear that \$143,000 of tax money could be allocated in 1995 and no mention was made publicly until the association objected to it being shoved down their throats. They do not object to public art. They object strongly to the process that is currently in place. When the project changed from a bicycle and pedestrian enhancement project to a drainage project, no information about public art was on the bonding ballot. Until recently, she said they were completely unaware of the arts council's authority to choose for the neighborhood. After all of the years of living on a paved wash, figuring out how to get in and out of their homes after a heavy rain, the last thing they wanted was to be reminded with public art to celebrate their water disasters.

Their council member supported them in trying to work out the problem with the department of transportation, the artist, and the arts council. She was grateful for their decision to remove the offensive sculptures, but the association members did not appreciate the arrogance and patronizing attitudes of the artist and the arts council members. She asked if the council could please review the process and perhaps use one similar to the one the city and parks and recreation department used to hire an architectural firm to build a gym at Northwest Center. Several of the association's members served on citizen advisory committees where many public meetings were held during the preliminary and final design stages. She and Liz Lane (ph) served on a panel to interview the three architectural firms' finalists who competed for the contract. The winning firm agreed to and held several public meetings. Not only were the association's concerns dealt with, adjustments were made to the design plans. Although every citizen may not applaud the outcome, most would agree that the cooperation between the architects, parks and recreation and city staff, and the community at large has been open and fair. Her neighborhood expects the same process to apply to public art. After all, they are paying for it and they have to live with the result.

E. Increased Fees for the Tucson Convention Center

Diana Henderson, spoke about the increase in fees at the Tucson Convention Center. She represented the Tucson Medical Society Alliance, which is made up of physicians' spouses dedicated to making a positive difference in health education in the community. One of the ways they are most effective is through a program called "It's Up to Youth." In March of this year, they held their tenth annual event with four hundred participants at the Tucson Convention Center. The event is an all day event that promotes healthy lifestyle choices for 7th and 8th graders. The students were urged to abstain from sex, drugs, alcohol, and tobacco. Some of the presentations were given by recovering teenage addicts. Students could choose breakout session on raves, depression and suicide, anger management, and healthy lifestyles, presented by professionals in each of those fields. If the council decided to increase the rental rates for nonprofit organizations at the TCC, her group would no longer be able to sponsor events like the one she had just described for students who come from all over Southern Arizona. Her organization is nonprofit and funds for the one-day event are raised through grants, various fundraisers, and primarily donations from physicians. In years past, they have had the support of the mayor and many community leaders acting as mentors. It is an opportunity for the students to discuss careers and vocations where mentors have been involved. She asked the council to give serious consideration to their action and the impact it will have on the availability of the Tucson Convention Center to all nonprofit organizations.

F. Massage Therapists Licensing – Senate Bill 1003

Margaret Avery Moon, said she was concerned about the pending state regulation for massage therapists, Senate Bill 1103. The city of Tucson has had a license requirement for 32 years. Her school was one of the first schools in Tucson, 21 years ago and currently, four schools offer 1,000 hours or more of education. A lot of people work and employ others in the city and the pending requirement of 500 hours reflects the city of Phoenix ordinance. She understands that no deliberate effort has been made to see that it reflects what Tucson has. She asked the council to look into the matter and ensure that the proposed required hours reflect competency of the therapists that will be coming out of the schools. Having the required training decreased by 50% will have a great economic impact on the practitioners as well as on the public that receives the treatments.

Mayor Walkup asked if anyone else wished to address the council and said that would be the last speaker under this item.

G. Massage Licensing Requirements

Victoria Dance, said she was concerned about Senate Bill 1103 because she believed Tucson was about to inherit the massage parlor problems that Phoenix has because it reduces the required hours of training. Tucson requires 1,000 hours and Phoenix has 500. The effect of that would be to compare the phone book, the Yellow Pages, from Maricopa County and Tucson. She has been a massage therapist in Tucson since 1984 and she lived a charmed life because of the city's strong ordinance. It is known throughout the country for its strength and is an ordinance the city can be proud of. It is about to go down the tubes and she believed the city would inherit a lot of enforcement and implementation costs. When the door is opened so wide for licensure it is so easy, with such a low bar, for people who want to use massage as a façade for massage parlors there is very little they have to do, very little commitment that they have to make. They can go to school for three months and have a license instead of going to school for a full year. They can pay a lot less money to get a license. There is also no sense of professionalism, which is a great protection. If a person does not know how to make money or be in a profession they go to a school with a strong educational curriculum and through that process they learn how to be a professional, somebody without that who is propositioned has nothing to fall back on. She said some people argue that it is not fair to practitioners to require them to come up to a one thousand hour level, but she suggested that the city should be protecting the public, not individual therapists and she believed the city's ordinance does that already. She would like to see the city contact the senators in Phoenix, she believed the bill was introduced by Senator Allen. It has to be done in a timely fashion because the bill has almost gone through, but with the city's help perhaps an amendment can be made or something can be done to protect Tucson's law.

6. CONSENT AGENDA – ITEMS A THROUGH K

Mayor Walkup announced that the reports and recommendations from the city manager on the consent agenda would be received into and made a part of the record. He asked the city clerk to read the consent agenda items.

- A. ELECTION: CALLING A PRIMARY ELECTION ON SEPTEMBER 9, 2003 AND A GENERAL ELECTION ON NOVEMBER 4, 2003
 - (2) Report from City Manager APRIL21-03-220 CITY-WIDE
 - (1) Ordinance No. 9832 relating to elections; pursuant to the provisions of Chapter IV, Section 1(20) and Chapter XVI, Section 6, of the Tucson Charter, and of Arizona Revised Statutes, Section 16-204, calling the September 9, 2003, City Primary Election and the November 4, 2003, City General Election.
- B. ASSURANCE AGREEMENT: (S02-029) DESERT WILLOW ESTATES PHASE II LOTS 111 TO 232, 338, 339, AND COMMON AREAS "A-8", "A-13", "A-17" TO "A-19", "A-23", "B-3", "B-6", "B-8", "B-10" TO "B-13" AND BLOCKS A TO D

- (1) Report from City Manager APRIL21-03-221 W4
 - (2) Resolution No. 19556 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S02-029 of a final plat for the Desert Willow Estates Subdivision, Lots 111 to 232, 338, 339, Common Areas "A-8", "A-13", "A-17" – "A-19", "A-23", "B-3", "B-6", "B-8", "B-10" – "B-13" and Blocks A-D; and declaring an emergency.
- C. FINAL PLAT: (S02-029) DESERT WILLOW ESTATES PHASE II LOTS 111 TO 232, 338, 339, AND COMMON AREAS "A-8", "A-13", "A-17" TO "A-19", "A-23", "B-3", "B-6", "B-8", "B-10" TO "B-13" AND BLOCKS A TO D
- (1) Report from City Manager APRIL21-03-222 W4
 - (2) The City Manager recommends that, after the approval of the Assurance Agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- D. ASSURANCE AGREEMENT: (S02-030) DESERT WILLOW ESTATES PHASE III LOTS 233 TO 337, 340 TO 353, AND COMMON AREAS "A-1" TO "A-10", "B-1" TO "B-5" AND BLOCKS A TO D
- (1) Report from City Manager APRIL21-03-223 W4
 - (2) Resolution No. 19557 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S02-030 of a final plat for Desert Willow Estates Subdivision, Lots 233 to 337, 340 to 353, Common Areas "A-1" - "A-10", "B-1" – "B-5", and Blocks A-D; and declaring an emergency.
- E. FINAL PLAT: (S02-030) DESERT WILLOW ESTATES PHASE III LOTS 233 TO 337, 340 TO 353, AND COMMON AREAS "A-1" TO "A-10", "B-1" TO "B-5", AND BLOCKS A TO D
- (1) Report from City Manager APRIL21-03-224 W4
 - (2) The City Manager recommends that, after the approval of the Assurance Agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.
- F. ASSURANCE AGREEMENT: (S02-023) HOUGHTON VILLAGE LOTS 1 TO 55, AND COMMON AREA "A"
- (1) Report from City Manager APRIL21-03-225 W4

- (2) Resolution No. 19558 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S02-023 of a final plat for the Houghton Village Subdivision, Lots 1 to 55 and Common Area "A"; and declaring an emergency.

G. FINAL PLAT: (S02-023) HOUGHTON VILLAGE LOTS 1 TO 55, AND COMMON AREA "A"

- (1) Report from City Manager APRIL21-03-226 W4
- (2) The City Manager recommends that, after the approval of the Assurance Agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.

H. AGREEMENT: AMENDMENT TO PARTIAL SETTLEMENT AND WORK SHARING AGREEMENT WITH THE ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY FOR THE WESTERN CONTAINMENT SYSTEM AT THE BROADWAY NORTH LANDFILL

- (1) Report from City Manager APRIL21-03-229 W2
- (2) Resolution No. 19559 relating to the Environmental Management Office and water; approving an amendment to the Partial Settlement and Work Sharing Agreement with the Arizona Department of Environmental Quality (ADEQ); and declaring an emergency.

I. PUBLIC IMPROVEMENTS: PANTANO ROAD, GOLF LINKS ROAD TO ESCALANTE ROAD DISTRICT PAVING IMPROVEMENT

- (1) Report from City Manager APRIL21-03-231 W4
- (2) List of Unpaid Assessments
- (3) Resolution No. 19549. Resolution providing for the issuance of City of Tucson Improvement Bond, Series No. 819, for the 'Pantano Road, Golf Links Road to Escalante Road District Paving Improvement.'

* J. GRANT APPLICATION: FEDERAL TRANSIT ADMINISTRATION CAPITAL GRANT APPLICATION FOR FISCAL YEAR 2003

- (1) Report from City Manager APRIL21-03-230 CITY-WIDE
- (2) Resolution No. 19560 relating to transportation; authorizing and approving the submission of a Federal Transit Administration Section 5307 Capital Grant Application for Fiscal Year 2003; and declaring an emergency.

*Continued to April 28, 2003 at the request of staff

K. INTERGOVERNMENTAL AGREEMENT: WITH THE ARIZONA DEPARTMENT OF ECONOMIC SECURITY FOR SOCIAL SERVICES BLOCK GRANT FUNDS

- (1) Report from City Manager APRIL21-03-234 CITY-WIDE
- (2) Resolution No. 19561 relating to intergovernmental agreements; approving and authorizing execution of an intergovernmental agreement with the Arizona Department of Economic Security for Title XX Social Services Block Grant Funds; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member West and seconded by Council Member Ibarra that consent agenda items A through K, with the exception of item J, be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Consent agenda items A through K, with the exception of item J, were declared passed and adopted by a roll call vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced city manager's communication number 227, dated April 21, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

Person Transfer(s)

(1) GARCIA'S MEXICAN RESTAURANT Staff Recommendation
419 W. Congress
Applicant: H.J. Lewkowitz Police: In Compliance
City #013-03, located in Ward 1 DSD: In Compliance
Series #6 Bus. License: In Compliance
Continued from the meeting of April 14, 2003

* (2) PARILLA DEL REY Staff Recommendation
5358 S. Nogales Highway
Applicant: Nil Kay Police: Denied
City #018-03, located in Ward 5 DSD: In Compliance
Series #6 Bus. License: In Compliance
Protests Filed

*See page 13

(c) Special Event(s)

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| (1) | STRENGTH BUILDING PARTNERS
6538 E. Tanque Verde Road
Applicant: Judith P. French
City #T026-03, located in Ward 2 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (2) | CODAC BEHAVIORAL HEALTH SERVICES, INC.
4644 E. Ft. Lowell, McMahon's
Applicant: Diana T. Whitman
City #T027-03, located in Ward 2 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (3) | SANTA CRUZ CATHOLIC CHURCH
1220 S. 6 th Avenue
Applicant: Rebecca M. Lujan
City #T028-03, located in Ward 5 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (4) | ST. JOSEPH'S PARISH FIESTA
215 S. Craycroft
Applicant: Mathias P. Wirtz
City #T032-03, located in Ward 6 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |

Kathleen S. Detrick, city clerk, advised that liquor license application city #013-03, Garcia's Mexican Restaurant was continued from the meeting of April 14, 2003, and had carried a recommendation for denial from the Tucson Police Department at that time. However, the police department reports that the establishment is in compliance and the application carried a recommendation of approval. The application for Parilla Del Rey, city #018-03, carried a recommendation for denial from the Tucson Police Department and protest and support letters had been filed with her office. The remainder of the applications carried recommendations of approval.

It was moved by Vice Mayor Scott, seconded by Council Member West, and carried unanimously by a voice vote of 7 to 0, to forward liquor license applications city #013-03; city #T026-03; city #T027-03; city #T028-03; and city #T023-03, to the state department of liquor licenses and control with a recommendation for approval.

7. LIQUOR LICENSE APPLICATION – (b)(2)

Person Transfer(s)

- | | | |
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| (2) | Parilla Del Rey
5358 S. Nogales Highway
Applicant: Nil Kay
City #018-03, located in Ward 5
Series #69
Action must be taken by: May 2, 2003
Public Opinion Protest Filed | <u>Staff Recommendation</u>

Police: Denied
DSD: In Compliance
Bus. License: In Compliance |
|-----|---|--|

Kathleen Detrick, city clerk, reported that on liquor license application 7 (b) (2), Parilla Del Rey, the police department had a recommendation of denial and that protest letters, as well as support letters, had been filed. Ms. Detrick noted the license was located in ward five.

Mayor Walkup recognized Council Member Leal.

Council Member Leal asked that the police department come forward and give the background on their recommendation before he asked if the applicant or the protesters were present.

Officer Jeannie Nagore, special investigations section, Tucson Police Department, stated that Parilla Del Rey was applying to place a series 6 (bar) license at 5358 South Nogales Highway, the former Sagebrush Cantina. Mr. Nil Kay is the applicant.

Officer Nagore reported that during a review of the application, it was found that Mr. Kay was not truthful when answering questions 15 and 16 on the questionnaire. Question 15 asks *"Have you ever been detained, cited, arrested, indicted or summoned into court for violation of any law or ordinance..."* Question 16 asks *"Have you ever been convicted, fined, posted bond, been ordered to deposit bail, imprisoned, had sentence suspended, placed on probation or parole for violation of any law or ordinance..."* Mr. Kay answered "no" to both these questions.

It was discovered that the Tucson Police Department arrested Mr. Kay on November 9, 1994 under case #9411090796 for ARS 4-244 (16) licensee/employee to give or furnish spirituous liquor to a person under 21 years of age. On November 23, 1994 Mr. Kay was arraigned in Tucson city court and found guilty of furnishing spirituous liquors to a person under 21 years of age. That same day, Mr. Kay was ordered to pay a fine for this violation.

Based on this information, the Tucson Police Department does not feel that Mr. Kay is capable, qualified, or reliable to hold a liquor license and is forwarding a recommendation of denial.

Council Member Leal called on Thomas Aguilera, the applicant's attorney.

Mr. Aguilera stated that he had spoken with Officer Nagore last week about this issue and everything that Officer Nagore had reported was factually true, except that there were a few things left out of the discussion that the council had just heard. As the council knew, in a situation where an applicant makes an application for a liquor license, they also submit a questionnaire. He said that the questionnaire was what was in question here. Mr. Kay, who has been a licensee for the last decade at a liquor store on South Sixth, did submit a questionnaire after hiring a gentleman named John Saunders. Mr. Saunders was a former Arizona Department of Liquor License and Control investigator for many years, and who now has a consulting business for people that are in a position to fill out applications, and helps them do it correctly. Mr. Saunders helped Mr. Kay fill out the questionnaire.

Mr. Aguilera said in speaking with Mr. Saunders, who unfortunately could not be there, found out that Mr. Saunders helps the applicants fill out the forms by reading the

questions to them. In this case the questions that he read were as follows, *"Have you ever been detained, cited, arrested, indicted, or summoned into court..."* The next question was, *"Have you ever been convicted, fined, posted bond, ordered to deposit bail, imprisoned, or sentence suspended..."* Mr. Kay indicated to Mr. Saunders that indeed that was not the case, but as you go down question 18 says, *"Have you or any entity in which you have held an ownership, been an officer, or member, or director, or manager, ever had a business or professional application or license rejected, denied, revoked, suspended, or fined..."* Mr. Kay submitted his answer to that question as "yes" and cited the 1994 incident on his addendum to his questionnaire and fully disclosed the incident to the liquor department.

Mr. Aguilera went on to say that Mr. Kay was a gentleman that came from Cambodia and for 22 years of his life lived under the repressive regime of the Khmer Rouge. That communist regime killed some of his family members and many of his classmates. When the words suspended, imprisoned, and posted bond, are mentioned to Mr. Kay they conjure up an image of being taken away in handcuffs and being put in a forced labor camp. Mr. Kay misinterpreted the severity of the questions. Mr. Kay fully disclosed the incident and in his mind believed that he fully complied by telling them that almost a decade ago he had one incident. Mr. Kay bought the liquor store on South Sixth in May 1994, prior to the incident in November. He was a new licensee. Mr. Kay has not had an incidence since or been fined and has shown himself to be a reliable and capable licensee.

Mr. Aguilera said that Mr. Kay, in this inquiry, is not obliged to discuss the location qualifications, which are public convenience and best interest of the community. Letters of protest were untimely filed. The letters were filed on April 15 and April 17. The last day to file those letters was March 27, the last day of the posting period. Mr. Aguilera asked that the record reflect untimely protest letters and that they not be part of this record. He went on to say that the protest letters were not only untimely, but they looked like protest letters about location. He read briefly from a protest letter that was filed by Ms. Herrera of the Sunnyside District which states, *"I share this history with you because Mr. Kay did not come before this neighborhood association prior to his purchasing and moving forward with his plans for Parilla Del Rey. Had he come before us prior to his investing in this location, he would have heard we were not in favor of having a location catering toward weddings, quinciañeras, parties, and especially a bar."*

Mr. Aguilera said that this was not a bar and that the council would hear briefly from the site developer, Mr. Crevelone, who was an experienced restaurant owner in Nogales for many years, and is still a licensee in this state with no problems. He said that they are taking a very long bar that existed at the old Sagebrush and cutting it in half, and expanding the kitchen. Mr. Aguilera presented the Sagebrush's history of violations and said that it really took a lot of hard work for a licensee to accumulate as many violations as the Sagebrush had accumulated. He understood why the neighborhood association would be skeptical and concerned, when looking at the history of the Sagebrush, but the taint of the Sagebrush should not rub off on the new licensee.

Mr. Aguilera said this location has a series number 6 license, a person-to-person transfer, and eventually somebody will run an establishment there because of the license being at the location. He thought that the Sunnyside Neighborhood Association, and the other neighborhood association close by, should be excited because they know the

entity, they know the gentleman, and he has been doing business in their community for over a decade. Mr. Aguilera presented a letter written to Mr. Kay by Sunnyside some years ago, *"...because of your gracious donation to our neighborhood youth and our event it was a success. You have helped our association to promote outdoor activity and positive social interactions of local children and families and we thank you very much. It is our wish that we will work together again."* Mr. Aguilera stated that Mr. Kay has worked together with the neighborhood associations.

Mr. Aguilera stated Ms. Herrera's complaint about not having met with them prior to entering into this business transaction was not legally valid. There was no legal basis for it and there was no requirement in Title 4 that licensees and applicants seek the approval of neighborhood associations in terms of whether or not there should be a business that looks a certain way or caters to a certain group. This is a person to person transfer. It is important that Mr. Kay does connect with the community and show it, and he has done so. Mr. Kay has visited individually with many of the members of the neighborhood association. He is there every day at his liquor store from 8:00 in the morning to, many times, 8:00 at night, six days a week. He is part of this community. Mr. Kay immediately corrected the honest mistake that he made on questions 15 and 16 and submitted a correction to the liquor department. Mr. Aguilera was not sure but thought it was the practice of the liquor department to provide that information to the police department.

Mr. Aguilera said that Mr. Kay thought this incident was disclosed, and in his mind this whole apparatus of that fine happened on one day with the state and the city of Tucson. He thought it was disclosed all in one fell swoop. When he read question 15 and 16 a little more closely he saw the word "fined" buried beneath those big words about imprisoned and arrested. Mr. Kay pleaded "no contest" to this at the Tucson Police Department, which means "I don't plead guilty, I plead no contest." The judge can make a factual finding that guilt is probable, find guilt, and impose a fine. All of that happened within a period of four or five days. Mr. Kay was compliant, he worked to resolve the problem. He consistently does liquor training throughout his business and has not had a problem since.

Mr. Aguilera said that in addition to reliability and capability Mr. Kay also has shown honesty and a willingness to work as a good licensee in the neighborhood. Mr. Aguilera knew that times were tough in this area and he understood what Council Member Leal went through there, and they did want to make this a better place. The renovations going on at the business looked wonderful. Mr. Kay has received compliance from the city of Tucson development services department, and Mr. Balak has been there inspecting. Mr. Balak provided an in compliance memo. In addition, Mr. Kay has shown that over the years he has paid state and city sales taxes. Mr. Aguilera knew, as did Council Member West, that for applicants who do not pay their taxes, that this city council has made a determination to use that as a factor to determine reliability. Mr. Kay has a compliance letter from the revenue department.

Mr. Aguilera asked that this application be sent to Phoenix with a recommendation for approval. He thanked the council for their time and said that he and his client would be available for questions.

Council Member Leal asked Mr. Aguilera, that given it was a restaurant, why was Mr. Kay applying for a bar license instead of a restaurant license.

Mr. Aguilera answered that it was purely economic and a valid question, one that Ms. Herrera raised in her untimely protest. The location already had a series 6 license and it did not require Mr. Kay to serve food like the 60/40 or 50/50. Mr. Kay was making an economical decision to serve food and not to spend more fees for a new license. Mr. Aguilera said it was not cheap owning a series 12 license. If you are the person writing the check you have to write another whole set of fees just to keep the series 12 license active, and you have to keep the series 6 license on ice for 36 months or it evaporates. It is a business decision to protect the assets that are bought and the series 6 license has a value on the market. Mr. Kay one day might decide to sell the series 6 license on the open market, but right now it was just one less problem for Mr. Kay, having to make an application for a series 12 license in addition to a series 6 license.

Council Member Leal asked if Mike Crevelone was present.

Mike Crevelone, said that this afternoon Mr. Aguilera had shown him the indictments that were issued to the Sagebrush, and he was appalled and amazed that these existed to such an extent. He thought it was unfair to even consider that from where they are going from here. Mr. Kay had hired him to consult and develop a restaurant. Mr. Crevelone and Mr. Kay's intention was to incorporate the facility into an upscale restaurant. There is 6,000 square feet and there is one room that they intend to have as a meeting facility for quite a few companies in that neighborhood such as, Raytheon, Chamberlain, Intuit, and Bombardier. The crux of their business was to incorporate that community into a daytime environment and he thought they could do a just job in that direction.

Mr. Crevelone said to the west of the property was Midvale Park and there was no facility in that area that came close to the type of operation that they wanted to develop. He said the facility had a huge bar and they cut it down about 75%. The square footage in the kitchen was approximately 5% and he intended to increase that to 25%. The main intent was to enhance the area and to have an environment that could really be enjoyed, offering everything from crab legs, shrimp, prime rib, swordfish, salmon, and all kinds of fresh seafood. They intend to have an extensive menu and have it available to the corporate executives, as well as the people that live in Midvale Park and all around that area. That is the major intent and he invited Council Member Leal to come down since it is in his ward.

Council Member Leal asked if Frank Soto was present.

Frank Soto said he came to speak on behalf of Mr. Kay. He said that he was the co-founder of the Western Little League with Phil, who had passed away. They had started the league over 40 years ago when the city was not responsible for any fields or playgrounds. At that time they built their own fields, their own fences, their own advertisement without help from the city because the city was not committed to little league. They started with their own kids, Phil had eleven and he had seven, so they had enough to start their own league. From there they got a bunch of good kids, three doctors, several went to the academy, some went to jail, others went to IBM, customs. What he was saying was that they were not that responsible and the parents brought them up good.

Mr. Soto said that now when crime is rampant on the southside and they need whatever neighborhood involvement from the private sector, they do have a lot more sponsors of the little league teams besides Mr. Kay, who had contributed a lot of money. The Sunnyside board president, Ms. Herrera, is a lady of stature, from a very honest family. Mr. Soto wanted to separate himself, and said he had not talked to Ms. Herrera for this license. Mr. Soto believed that because of Mr. Kay's past involvement to the community he had already proven his worth. Mr. Soto said he had been with Ms. Herrera and with the neighborhood association in fighting other people who wanted to come and bring in more liquor licenses. He had done a very unscientific study that showed there were 14 bars that they said that the buck stops here and it has.

Mr. Soto said Mr. Kay had already proven that he could be a good citizen of the community and he has been. When one of the teams came up with some rappy catching equipment Mr. Kay was contacted and he got what was needed for the team. That is the kind of a man Mr. Kay is, he helps the community and he is already settled in the community. Mr. Soto said that Mr. Kay looked at the thing about being in trouble with the law as putting hand cuffs on, but Mr. Soto told Mr. Kay that they do not do business that way. They will drag you to court to plead guilty or not guilty.

Mr. Soto said he did not want to go against his association and felt at this time he was not going against them. He went on to say that his wife was involved in health issues in the community, his daughter is involved in educational things, his other daughter is managing the baseball team that he had to get back to by 5:00. He wanted to apply to the council's good sense and fair mindedness and to let Mr. Kay go about his business.

Council Member Leal thanked Mr. Soto for all the good he has done over the years on the southside. He called on Yolanda Herrera La Fond.

Yolanda Herrera La Fond, Sunnyside Neighborhood Association president, said that the council had heard some great testimony. She did protest by letter late, but that she had contacted the ward five office immediately upon seeing a request for a license application. She said that she spent several hours trying to work this through. She called Mr. Balak and questioned some of the changes in that establishment that were not there prior. One of the questions she asked about was the extension of premise, the patio built on the outside with a separate entrance.

Ms. Herrera said that the council had heard some sad stories and some good stories. The letter that Mr. Kay had received from the association was a standard letter that they send out to anyone that makes any type of donation to their cause. She said as the council knew, the Sunnyside Neighborhood Association is youth friendly. Youth are their focus. Their 10th Annual All American Award Ceremony coming up May 9, which the council was invited to, focuses on youth education, leadership, community, and bonding.

Ms. Herrera said that she could tell the council a sad story. On February 10, her phone rang, there were four youths that passed away, underage drinkers. That was what was before the council today, underage drinking. Whether or not Mr. Kay is a good upstanding member of the community was not at issue, it was the fact that he does have a record of selling underage youth. Ms. Herrera said this was a location that had the same promises made to them when Sagebrush came to them. They were going to cater to businesses, that they were going to cater to Raytheon, Intuit, it would just be a meeting place. The council had seen the stack of fines from the Sagebrush.

Ms. Herrera said that neighborhoods are constantly made promises. If they wanted a restaurant, let them apply for a series 12 license. This was a flat out bar and it was going to be harder to protect the youth in that area from underage drinking. They do not know who is going to be managing, they do not know how many people are going to be sitting in that patio passing drinks over, coming and going, or even if they will be identified correctly. Mr. Kay will not be there 24/7 because he has the other establishment. She said that they had spoken in the past, and Mr. Kay had not come before the neighborhood and if he had he would have heard their concerns.

Their concerns are for the youths of Tucson and the world, who are our future leaders. Ms. Herrera said that she is a past DUI diversion counselor and is currently employed at Sunnyside High School as a transition specialist, working with youth at risk. She did not know how else to appeal to the council's good sense of protecting our youth. She said it was about underage drinking and she asked the council not to let them cloud the issue.

Council Member Leal said that the council had heard a great range of testimony that covered all parts of what this application was about. A couple things stood out to him. The owner's consultant pointed out the problem with the application and that not stating the history correctly was seriously problematic, and only then was it changed. The consultant would not be there to hold the hand of the applicant during the life of the license, while it was in place at the location. Council Member Leal thought that a person's reflexes should lead them to stating the truth as opposed to being ambivalent about stating the truth, and then having to be prodded by others to state the truth. That was a problem and gave him pause.

Council Member Leal addressed the question of what kind of license had been asked for. He agreed that if this was a restaurant then apply for a restaurant license, not a bar license. Unfortunately, it is difficult for the city to keep track of what goes on, even in restaurants with the 60/40 split, because they are only audited after the fact and if there is a complaint. He would like to see a split done monthly, through the computer in the cash register so that the city could tell whether the 60/40 split was actually being honored. There would not be any of that with a bar license, even if there was a complaint. The police had also seen fit to recommend a denial. For those reasons he made the following motion.

It was moved by Council Member Leal, seconded by Council Member Ibarra, and carried by a voice vote of 7 to 0, that in liquor license application 7 (b) (2), city no. 018-03, be forwarded to the state liquor board with a recommendation for denial.

8. ZONING: (C9-02-06) WALGREEN'S – ALVERNON WAY 0-3 TO C-1, ORDINANCE ADOPTION

Mayor Walkup announced that city manager's communication number 228, dated April 21, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9833 by number and title only.

Ordinance No. 9833

Relating to zoning: amending zoning district boundaries in the area located at the northwest corner of Alvernon Way and Grant Road in Case C9-02-06, Walgreen's – Alvernon Way, 0-3 to C-1; and setting an effective date.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Dunbar, seconded by Council Member West, that ordinance no. 9833 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: Council Member Ibarra

Ordinance no. 9833 was declared passed and adopted by a roll call vote of 6 to 0 (Council Member Ibarra absent/excused).

9. WATER: ADOPTION OF WATER SYSTEM EQUITY FEE (CONTINUED FROM MEETING OF APRIL 7, 2003)

Mayor Walkup announced that city manager's communication number 233, dated April 21, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9828 by number and title only.

Ordinance No. 9828

Relating to water; amending certain portions of the Tucson Code, Chapter 27, Article II, Rates and charges, Section 27-32.1, Monthly reclaimed water service charges, Section 27-33, Monthly potable water service charges, Section 27-35, Charges for installation of water service connections, Section 27-36, Area-specific water development fee, Section 27-37, Agreements for construction of water facilities authorized, Section 27-38, Provisions for refund of cost of water mains or water facilities installed by private contract under certain conditions authorized, Section 27-43, Charge when meter not registering properly; and declaring an emergency.

Mayor Walkup asked if staff had a presentation.

James Keene, city manager, stated since this was a study session item as well as a regular agenda item he thought it would be beneficial for staff to make a presentation.

David Modeer, director of Tucson Water, said the proposed water system equity fee is truly about fairness. It is about those who generate the costs being largely responsible for paying the cost of constructing certain facilities in the water system. This policy has been fostered and encouraged by the mayor and council in a number of items over the past several years. Numerous water facilities have been constructed, only to allow for continued reliable service for the substantial amount of new customers that avail themselves of the city's service each and every year. These facilities are built well in advance of their actual need, as utility facilities are very costly and in order to be built at the least cost possible must be constructed with sufficient capacity to serve well into the future. Up to this point, all water customers have paid for the facilities despite the fact that they receive no benefit from the facilities. The proposed system equity fee is an opportunity to right that inequity. It will place the cost for increased capacity where it should be, which is on those who actually benefit from the system, the new customers who in large part have yet to locate in Tucson. The proposed fee was studied extensively and endorsed by the citizens water advisory committee and the citizens water rate design committee. The adoption of the fee will provide tangible benefits to the citizens and stable water rates at a time when financial resources are being taxed by rising costs of necessities such as gasoline, consumer goods, property taxes, et cetera, while real wages are at best flat or losing ground. These costs and the needed water rate increase if the proposed fees are not approved will hurt those who can least afford such costs. Water is a basic of life and no one can live without it. At the same time, those who can most afford it will be benefiting from the subsidy that is provided by existing ratepayers, a subsidy for those who move here and buy new homes.

Locally, other municipalities have already implemented water-related fees for new construction. Oro Valley requires a \$2,074 cost for each new home and Oro Valley has experienced some of the highest growth rates in the area. Metro Water's fee for a new connection to its system is \$1,188. Pima County currently requires nearly a \$3,000 fee for each sewer connection inside and outside the city. Adopting a system equity fee will ensure that Tucson Water's residents are not the only citizens in the area required to subsidize new growth while other jurisdictions have seen the need for new growth to assume some of the costs required to facilitate such growth.

Mr. Modeer said affordability seemed to be a crucial element of the opposition to the fee and he wanted to provide a few very recent statistics related to new home construction in the home building industry. A government report that was released last week said that the average of new homes in the United States rose 15%. Some of the areas of the arid west saw home inflation rates of 25%, particularly such areas as Southern California, Seattle, and the San Francisco area. All of those areas have substantial water related fees. He did not know the actual growth rate for Tucson but he doubted that it is substantially different from the rest of the country. The growth in the value of new homes comes in spite of such fees. There is substantial demand for new homes. If new home prices increased even close to the national average in Tucson the adoption of the system equity fee would only be an extremely small amount of this inflationary growth and only a one time cost. The same report listed that the average price of new homes in the nation exceeds \$160,000. That number is very close to the Tucson number. If the numbers continue to grow and show no signs of slowing here or

across the nation the system equity fee would have a negligible impact on the price of a new home, but it would have a very significant impact on the monthly water costs for the average wage earner. The average wage earner in Tucson has already been priced out of the new home market. Affordable homes in Tucson are approximately in the neighborhood of \$98,000. One of the most affordable home markets in the U.S. is Las Vegas, Nevada. It is also the fastest growing area in the United States and it has had significant water related development fees for many years, and has had stable water rates for at least the last dozen years.

Looking at a comparison between Tucson and Phoenix, he said Tucson's average price in housing, compared to the national average at one hundred, is \$103.4, a little higher than the national average. However, in Phoenix, the average housing price compared to the national average is \$89.3, despite the fact that nearly every municipality in the Maricopa area has significant water related development fees as well as other impact fees. What that should tell people is that housing prices do not bear to a significant degree on the types of fees that are imposed, but are more related to the capability of the populace to afford housing and the availability of reasonably priced land for construction. The home building industry in 2002 enjoyed one of its best years financially. As reported in the *Wall Street Journal*, many of the home building industry developers saw record increases in earnings, some of them exceeding 40%.

Mr. Modeer said one of the areas that caused staff a great deal of concern was expressed early on in the development of the subject proposal. That was how would it impact the low income housing groups and their efforts to try to put as many people as possible who are in the worst shape financially into family homes. By working out a partnership between community services and Tucson Water, staff developed a system that would ensure that none of those groups would be forced to have to contribute to the system equity fee. Tucson Water will see that community services is made whole through a portion of its low income program. Mr. Modeer hoped that the council would look at the proposed system equity fee for what it really is, a distribution of fair costs to those who generate the costs and a way to provide some relief to existing ratepayers who have been paying the subsidies for Tucson's growth for many years. It allows staff to see the fruits of a lot of things they have been doing in the water department to keep rates stable and ensure that they stay stable now and into the future.

Mr. Keene acknowledged the work of Mr. Modeer and his staff; it had been excellent staff work as far as the analysis and the focus. They have been working on the subject proposal for a year. When the public hearing was held he thought they had made the case for the proposed fee, but there was a concern from the nonprofit builders about the impact. Since that time, as Mr. Modeer pointed out, staff met with those groups and came up with a solution that works and he thought the nonprofit builders were happy. He thought staff had done everything the council asked them to do in the course of developing the subject proposal and recommended that the council act on it.

Mayor Walkup asked the council's pleasure.

Council Member Leal said he appreciated staff's work and this ethic is one that he has long supported, he has made a number of motions to discover and eliminate subsidies in water. He knew that staff's goal and intention was toward socioeconomic justice, in a way. When the subject proposal was last before the council he remembered three issues being raised.

One of them was how to deal with affordable housing. Staff had factored a mechanism into this proposal to get at keeping the added cost of the water equity fee to be placed into the mortgage, thus increasing the number of people who would not qualify for a loan. He knew that was what they had tried to address with the mechanism of using home funds. When he thinks about the intention of home equity and about the couple who have lived in a house already for 30 years in the community, then want to build a house a block or a mile away and through their rates of the 30 years they have been in the community have paid through their volume charges an amount of money to deal with creating capacity. He was torn because on one hand he supports the ethic of eliminating subsidies. However, at the same time he was troubled at not being able to give that couple some kind of credit to recognize what they have paid in to create equity so that when they go to build a new house the city is not making them pay twice.

The second part of that was that the total cost of the fee is factored into the mortgage, which he was afraid would artificially inflate property values around the community. His desire was to see a recovery system, which the city is attempting to get. Maybe there was a reason why, on a case-by-case basis where there is new construction, the city could not have them pay a monthly amount that over some period of time would generate the amount of money that the proposed fee would generate. In that way it would stay off the mortgage and not artificially ripple through community, artificially raising property values and having an effect on other affordable housing in the community.

The fourth question had to do with the issue of proportionality because the city has had a desire to achieve equity. He did not know that the proposed fee, even though that question was raised, made the distinction between the two bedroom house and the five bedroom house. They are being treated the same, but different uses will emerge from those. He said those were his concerns and asked staff to address the question of how could the city create a credit for the couple that has been in Tucson and paid into the system. They are not like the people who moved here last week from Tennessee or New Jersey and are building and have not paid into the system. Do any of the other cities have a mechanism for credit for people that have been here for some time?

Mr. Modeer said he was not aware of any of the cities in the areas that staff looked at, whether Maricopa County cities, or Las Vegas, Southern California, who have water resource related fees that provide a different mechanism for people who purchase a new home who had already been living in a different home. People move, traditionally, a number of times in areas, not usually just once or twice. He said it would be very difficult to do that. He said people should keep in mind that the system equity fee is not money that was lost by the property owner. When the property owner goes to resell the house, they recoup that money in the sales price of the home. It will figure into the value of their house. The same would be true on the existing house that they sell. The value of that home as it relates to the value of the market probably incorporates the cost that they have paid into the capacity that was built into the system. Recalling some of the statistics he just quoted, he said in one year home prices went up 15% nationally and were probably very similar locally. They are accelerating at a very rapid pace because there is a great deal of demand. The value that is built into the home, both in the hardwood that it is built with and the fees such as those proposed, is always recovered at the sale. It is never lost money to the individual. To go back and figure how much the existing homeowner paid into developing the capacity and how much could they get credit for,

how much is the price of the home related to inflation and the cost, is very, very complicated. He was certain that that complicating factor is why other cities that have the subject fees do not have a structure like that. The second reason was that even given the extent that the individual has contributed to a certain degree to the excess capacity in the system, when they buy that new home they are still going to create additional demands on the system that were not there in the old home, so while they have paid in somewhat, they have not paid necessarily a full amount into it. However, even then they never lose that money.

Mr. Keene said he appreciated the methodology on the background, the idea of someone paying into the system for 30 years. However, one could make the same case for all of the ratepayers who do not buy a new house. Those ratepayers without the water system equity fee are going to continue to pay double in the future by having their rates higher than they need to be because there is no system equity fee. The real question would be how would those numbers break out over time. He thought the majority of people were not necessarily moving into these new houses. The point was extra capacity due to growth. This is not a practical answer, but he thought if someone were using the same pipe and the same meter and someone is in their house and wants to tear it down and build a new one, that is not a growth situation in the same way as far as the overall system and that certainly could be a credit. The proposed fees addressed how to deal with the fact that there is system-wide growth on the entire system. He hoped that was just a piece of Council Member Leal's concern on this issue because looking at the larger issue of existing thirty year residents subsidizing growth outside the city for years and years and continuing that, it is a bigger problem than the case Council Member Leal raised.

Council Member Leal said he agreed and he was trying to break out of seeing it as an either/or situation to trying to remedy the large injustice that has been going on for sometime. The proposed fee is a vehicle that addresses that, but it also has some injustices in it, although they are less than the ones the proposed fees were attempting to solve, so it is better. He was chaffing because he would like to find something that does not have any injustices, or has fewer injustices. He knew that, as Mr. Modeer said, theoretically the homeowner does not lose any money, they will get it back, but that is built into a 30-year mortgage, and \$1,500 can become \$4,500. If that \$1,500 could be built into an added surcharge onto the monthly bill of the home, and over a ten-year period treated like an improvement district with a ten-year amortization, then the \$1,500 would not become \$4,500, artificially raising property costs and values and affecting housing costs across the community. He asked what about tethering it to the monthly bill as opposed to forcing the homeowner to put it into the mortgage.

Mr. Modeer said certainly something like that was possible. It would require staff to set up another program, become a financier in essence, of the fee to monitor and be able to collect the fee. What would happen when the homeowner moved out, which happens quite extensively in the Tucson area? He said there is a good 20% turnover annually. The question he had was how would the city recoup that cost if the homeowner moved? Homes go up for sale continually and if the fee has not been paid off, the city would get into the collection business and the average rate of collection of bad debts is pretty low, as the council is probably well aware. He did not know how to address that issue. It was not that it was impossible, but it did have a lot of difficulties that would have to be faced.

Mr. Keene said his concern was that the administrative apparatus that could be required to set that up would rival the cost concerns on the mortgage side. It deals with Tucson Water not only being a banker, but also tracking and dealing with innumerable issues and complaints. When a property sells, for example, prior to the charge being paid that would obviously have to somehow be paid off or carried onto the new property and he worried that it was such a cumbersome apparatus that the city's administrative overhead of managing it could get to be significant. If the issue was a real deterrent, he wondered if there was some other way. He knew that it was a cash issue, some people might not have the opportunity, but some people could pay it as more of a down payment or find some other shorter term lending source to borrow from rather than rolling it in and amortizing it over a 30-year period. He understood that Council Member Leal's concern was about the 30-year multiplication of the fee.

Council Member Leal said to the last point, the issue of proportionality, staff must have had a conversation about whether or not there should be difference between a two, three or five bedroom house.

Mr. Modeer said the mechanism that staff followed, which was set forth by the court decrees within Arizona, follows that process. It was not that it could not be done. It could be modified in future years. To look at that aspect of it would require a different type of study in order to be able to deal with not necessarily bedrooms, but fixtures or water usage, or something like that. It cannot be done, it was not part of the study staff followed. If that was the council's desire, staff could come back in future years with a modification and look it in that manner.

As the council well knew, Mr. Keene said every methodology has pros, cons, and tradeoffs. He thought the desire in this case was to come up with an initial methodology that best met the fairness test. One of the concerns, obviously, with just the bedroom issue was that it does not necessarily deal with the land and outdoor water usage issues, which can often be significant. That was why Mr. Modeer was talking about fixtures and ways to deal with that issue.

Council Member Leal said that was a good point and he would stop with his comments.

Mayor Walkup asked if there was any further discussion.

Council Member West said she was hearing some comments that made her think it would be a good idea to continue the subject proposal for a week. She could not see moving ahead with it until some of the concerns that some other people had were worked out. She was disappointed because she had heard a lot of rhetoric by the council that growth should pay for itself. This was an opportunity to implement that. It was something that the council, at its public hearing, heard from neighborhood groups and others who spoke in favor of the proposed equity fee. The ratepayers, especially the poor, need a break in their water rates. They have subsidized growth for a long time and whether a person stays in the house they currently live in or moves into a new house, there is cost to hook up for water service and that is a fact.

It was moved by Council Member West to continue this item for one week so that some of the questions and concerns could be worked out.

Mr. Keene said his concern with continuance was threefold. First, there was no way the issues could be worked out within a week. The issues were complex policy choices, not like the issue with the not-for-profit homebuilders that they could remedy. Secondly, he thought that if the proposal were postponed for anything that could not be resolved in a week in de facto would mean looking at having to proceed with a rate increase for 2003, just given the kind of schedule they have. Third, he thought there were a lot of people who thought a lot of progress had been made. Staff did the work with the not for profits and he understood that some of them were present. He said he would argue against a continuance in this case because he thought it would be for a purpose that staff could not deliver in the short term.

Mayor Walkup asked if the proposal was acted on and rejected, what would be the process for adjusting the water rates. What would happen then? He said it sounded like an either/or.

Mr. Modeer said he would have to immediately go back and revise the water department's financial plan, which included the proposed revenues for next year and the ensuing four years and included stable water rates. Staff would have to go back and immediately begin preparation of a rate increase and would, he hoped, have it ready to be brought to the mayor and council in September. He was talking about somewhere between a 3.5 and 4.6 percent rate increase in order for the department to keep working on its projects and keeping the Clearwell Facility running.

Mayor Walkup said he had not heard a second to Council Member West's motion to continue this item and asked if there was any further discussion.

The motion was seconded by Council Member Dunbar.

Council Member Ronstadt said he shared Council Member West's frustration. People on the governing body had had wonderful comments about the cost of growth paying for itself, and about how it was time for impact fees to be initiated. As a matter of fact, he thought one of the council members was still advocating that the council should adopt the county's impact fee structure without doing any kind of study. The reality is that the city did a study on the proposed impact fee and no one had called into question the validity of that study. There may be other alternatives to set up as a policy, but the council had proceeded with the one proposed. He thought the time had come for growth to pay for itself. The city should not continue to strap the cost of growth on the current water users through increased fees, which if the proposed equity fees were in place would be unnecessary, or at least would not be necessary to the degree that they otherwise would have to be. He thought very clearly that if the proposed equity fees did not pass at this meeting it would be a de facto vote. The people who vote no at this meeting would be saying that they would vote yes to a water rate increase, because that was the choice. It was an either/or situation and a very clear one.

It was moved by Council Member Ronstadt, seconded by Council Member West, that ordinance no. 9828 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members West and Ronstadt; Mayor Walkup

Nay: Council Members Ibarra, Dunbar, and Leal; Vice Mayor Scott

Absent/Excused: None

Ordinance no. 9828 was declared failed by a roll call vote of 3 to 4.

Mr. Keene said staff would get to work on the rate increase.

10. FINANCE: TENTATIVE ADOPTION OF THE FISCAL YEAR 2004 BUDGET

Mayor Walkup announced that city manager's communication number 235, dated April 21, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19562 by number and title only.

Resolution No. 19562

Relating to finance; adopting a tentative budget for the 2004 Fiscal Year and fixing times and places, confirming time and place to conduct a Truth in Taxation public hearing and to conduct a public hearing on said budget, to adopt the final budget in a special meeting, and to fix time and place to determine the primary and secondary tax levies for said fiscal year.

Mayor Walkup asked the council's pleasure.

Council Member Ronstadt said by passing the proposed resolution the council was setting a financial cap for the budget, not solidifying any of the choices they had discussed, which would be done at a later time. Passing the proposed resolution would also include direction to staff to make appropriate revisions to the schedule attached to the resolution in order to reflect the direction provided at study session.

It was moved by Council Member Ronstadt, seconded by Council Member West, that resolution no. 19562 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none and he recognized the city manager.

James Keene, city manager, said in very simple terms the figure on attachment A., page a.1, right after the item, the total budget of \$957,243,020, will change to \$957,793,020. That reflects the increase of \$550,000 due to that potential additional revenue. That will also set the limits in the different funds that are within it. That is in keeping with the comment that Council Member Ronstadt made as the council sets the overall cap and sets the cap essentially within the funds in the different service areas. There is flexibility in moving that funding. If the council decides it wants to put a 100,000 here or 500,000 somewhere else that can be accommodated after it has adopted the tentative budget prior to adopting the final budget.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members West, Dunbar, and Ronstadt; Vice Mayor Scott and Mayor Walkup

Nay: Council Members Ibarra and Leal

Absent/Excused: None

Resolution no. 19562 was declared passed and adopted by a roll call vote of 5 to 2.

11. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

Mayor Walkup announced that city manager's communication number 232, dated April 21, 2003, would be received into and made a part of the record. He asked the council's pleasure.

It was moved by Council Member Leal, seconded by Vice Mayor Scott, and carried by a voice vote of 7 to 0 to appoint Mr. Sam Rugel to the Electrical Code Committee.

Mayor Walkup asked if there were any personal appointments. There were none.

12. CALL TO THE AUDIENCE, for persons desiring to speak

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council. Speakers would be limited to three minutes presentations. He had received one written request to speak and would limit the total for this item to 15 minutes.

A. Flooding On Placita Del Jubilo

Elezabeth Cameron, said the flooding on her street has been brought up many times and Habitat wants to put a wall behind her house, six inches further back that would flood other houses. That is not acceptable. To her surprise, earlier in the day when she called the police the past five years of problems in her neighborhood suddenly came to a head when she asked an officer what the police officer told her. There were children playing in her front yard with a basketball hoop, in the middle of the street, a two-year old running out there, and other kids two, five, six, and eleven years old. The police told her that they could not act because it was not their jurisdiction. She had been informed that that means because the city has never made Placita Del Jubilo a legal street, they basically cannot do anything. That explains why every time she has a problem in the neighborhood the police tell her to take it to civil court. She asked the council to have the street legally inspected so that it can become a legal street and the flooding problems can be resolved. It blew her away this morning as she was getting ready to come to the council meeting and her car was being hit by a basketball, to be told that the police could not do anything. The number of times that she has called about the firecrackers and stuff have never resulted in any arrests being made and that explained why. Placita Del Jubilo is not a legal street, they lost \$150,000 in neighborhood reinvestment money for a bunch of reasons, mainly the flooding, and the fact that they are not a legal street. It has been six years and she was asking if there was something the mayor could do to rectify the situation.

B. Employee Wage Dispute

Ray Figueroa, American Federation of State, County, and Municipal Employees (AFSCME), continued his earlier comments about the issue of the city's blue collar wage disputes. In the past, they had disagreements with the city manager, which they brought to the attention of the council, the city manager brought forth his issues and the council made a decision. Mr. Figueroa said he was not aware that the council had given up that authority to the city manager. He thought the process was the same and asked the council to review it again and let it come forth as a wage dispute.

Richard Cook, said he had the same complaint as Mr. Figueroa that in the past he has had wage disputes before the council. He thought he had been around longer than some of the council members. Employees have always had an opportunity to bring their disputes to the mayor and council. Whether they won or lost they always had that opportunity. They had a chance to have a voice. Now it is being denied and that did not make him happy. It infringed upon his freedom of choice, on the process that was established by the city. He asked the council to reconsider and at least hear the issue. It never hurts to listen to the facts.

C. Item 10 – Water System Equity Fee

Alan Levin, apologized for being late to address this item and said he missed the council's public hearing at which it was continued. He owns Century Park Research Center between Kolb and Wilmot, north of the railroad tracks and south of Valencia, about 264 acres, a development that was started in 1985 by T.F. Hayden (ph) and Buck O'Reilly. He said he furnished a copy of a letter to Tucson Water about three weeks ago concerning an agreement between the developer and the Tucson Water Department. The developer was going to spend a lot of money putting in the infrastructure, between \$800 to \$1 million for a well site, off-site, 200 well site. Originally it was going to be a 160,000-gallon tank, a 1,500-gallon per minute booster pump, but it was changed in 1987 to a 2,500 gallon per minute booster pump. There are five of them and the tank is now 360,000 gallons. Part of that agreement was that the developer had to also connect Littleton to the new well site. The developer went ahead and did that and the agreement was that as he developed the parcel he would not be required to pay the southeast area fees for infrastructure because he was putting the infrastructure in. Everyone else in the *Southeast Area Plan* paid \$3,240 per meter. He used a two-inch meter as an example because that is what they put in at the park. He took the letter to the water department about three weeks ago and finally got a response last Wednesday. He kept pushing them, he needed a response, and Bill Tillman (ph) finally got one from the city attorney's office. Unfortunately, they feel that Mr. Levin needs to pay the system equity fee. After he got that letter he went ahead and got the records for that particular well site. He got the water bills for the last two years for all of his tenants at Century Park and he had copies of everything he was talking about, which he would be more than happy to supply to the mayor and council or whoever, and he would appreciate any phone calls or questions.

He continued that he looked at the average daily peak water use and came up with about 26 gallons per minute. The only things the development uses are evaporative coolers and toilets. They have no large water users and the well was designed for 2,500 gallons per day. There was a provision in the agreement between the developer and Tucson Water that if the usage ever got above 976 gallons the developer would help pay for the infrastructure. *Southeast Area Plan* water fees were not applicable. After having paid all that money and fees he could not understand the equity in what the city was trying to do, at least for Century Park. He could not speak for other developers or what they have had to do in respect to Tucson Water, but he knew for a fact that between \$800,000 and \$1 million was spent on a well site that the city has benefited from. He uses less than three percent of the water. He visited with an employee at Tucson Water and that well site is the sole source for all water between Kolb, over to Littleton and north and south of the Interstate, down to the prison sites, so that water went somewhere, but it did not go to Century Park. He appreciated the fact that the proposed equity fee was voted down, but people keep saying the developers need to bear the costs and he wanted them to know that he has been.

Mr. Levin said that in June of 2001 he had a set of plans in the development services for a tenant. They had to be in by September. The fire department required a fire hydrant about a quarter mile south of Littleton on Wilmot. He said that was not a problem, he could get a fire hydrant. Part of the annexation agreement was that a fire hydrant be put at that location, which he agreed to and he had a white paper estimate from the city manager's office telling him what the costs would be. The letter said that one was the last of the promised fire hydrants. He went ahead, did the design, and started putting it in. He signed an agreement with Tucson Water and item six on the agreement said that he would not be reimbursed for any infrastructure over the design. He put in a 12-inch line instead of an eight-inch line. He was never reimbursed for the fire hydrant. Basically, he had to sign the agreement or he would not get a fire hydrant. He had no choice. He complained to John Jones, to the city manager's office, and they told him it was not right, but that is the way it is, he needed a fire hydrant for his certificate of occupancy. He said there was no doubt that developers have to pay for growth and what is happening. He appreciated the problems the mayor and council were having with money, budgets, and so forth, everyone is having those problems.

He grew up in Northwest Kansas in a farming community with about 2,000 people in the county's biggest town. Their whole revenue source was tied to the price of wheat, milo, and corn. That was it. That is what they had to work with. They had two options, they could either become more productive and conservative, or more efficient in the way they did things. He realized that there were going to be increases, but he wondered if there were ways to save money other than cutting people or services. Could the city be more productive and efficient in what it does? He said he would be more than happy to provide copies of his documents if anyone wanted them.

Mayor Walkup asked if anyone else wished to address the council. There was no one.

13. ADJOURNMENT: 4:43 p.m.

Mayor Walkup announced that the council would stand adjourned until its next regularly scheduled meeting to be held on Monday, April 28, 2003, at 7:00 p.m., at the Tucson Convention Center, Graham/Greenlee Rooms, 260 S. Church Avenue, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcription of the meeting of the Mayor and Council of the city of Tucson, Arizona, held on the 21st day of April, 2003, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:DA:DP:mjv
Pr agnst tp:nd