



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
On May 24, 2004_____

Date of Meeting: September 22, 2003

The Mayor and Council of the city of Tucson met in regular session, in the Mayor and Council Chamber in City Hall, 255 West Alameda, Tucson, Arizona, at 7:43 p.m., on Monday, September 22, 2003, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José J. Ibarra	Council Member Ward 1
Carol W. West	Council Member Ward 2
Kathleen Dunbar	Council Member Ward 3
Shirley C. Scott	Vice Mayor Ward 4
Steve Leal	Council Member Ward 5
Fred Ronstadt	Council Member Ward 6
Robert E. Walkup	Mayor
Kathleen S. Detrick	City Clerk

Absent/Excused:

None

Staff Members Present:

James Keene	City Manager
Mike Letcher	Deputy City Manager
Ernie Duarte	Development Services Director
Dan Newburn	Tucson Fire Department Chief
Michael House	City Attorney
Suzanne Mesich	City Clerk's Office
Debra Counsellor	Recording Secretary
Carrie Fairchild	Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by President Nathan Van De Graff, The Church of Jesus Christ of Latter-day Saints, and translated from American Sign Language to English by Paul Wynn after which the pledge of allegiance was presented by the entire assembly.

Presentation: Award to Daisy Mae's Steak House

Mayor Walkup, assisted by Chief Dan Newburn, presented an award to Daisy Mae's Steak House, accepted by Jake Root, for their contribution of dollar bills that had been displayed on the wall of Daisy Mae's to the firemen of New York City.

Mayor Walkup recognized school administrators who were visiting Tucson from Russia.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 512, dated September 22, 2003, would be received into and made a part of the record. He also announced that this was the time for mayor and council members to report on current events and asked if there were any reports.

A. "Kids Day America"

Council Member Dunbar said her ward held "Kids Day America" this past week and over 1,200 young people were fingerprinted and photographed, and their parents kept the records. She thanked the firefighters at station number five who allowed the kids to go inside their fire trucks, try on vests and so forth. She thanked Tucson Recycles and the water department staff, Vice Mayor Scott and Council Member West who had attended.

B. "Call City Hall"

Council Member Ronstadt said on Wednesday, September 24, 2003, he would be hosting "Call City Hall" on Cox Cable and Comcast. His guests would be President Likins of the University of Arizona and a representative of the science center. They would be discussing the university's proposal for a new science center in the heart of downtown, in Rio Nuevo. It would be a call-in program that he was sure would be rebroadcast. Callers would have an opportunity to talk about the proposal for a new science center.

C. Fox Theater Festival

Mayor Walkup said that on Saturday night the Fox Theater held a big festival downtown on Congress Street. He did not know how many people attended in the past, but encouraged everyone to go in the future. There were thousands of people having a wonderful celebration. They went into the Fox Theater and had an opportunity to go up into the balcony. The Fox Theater is coming along very well.

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

Mayor Walkup announced that city manager's communication number 513, dated September 22, 2003, would be received into and made a part of the record. He asked for the city manager's report.

A. Settlement of Two Legal Cases

James Keene, city manager, said in keeping with the open meeting law and the council's directive and policy he wished to report on the settlement of two cases, Chavez v. city of Tucson, which was settled in the amount of \$250,000, and Conklin et. al. v. city of Tucson, which was settled for \$27,500.

B. Library Plaza Renovation Project

Mr. Keene reported that some chain link fencing had gone up around the library plaza. That is part of the library plaza renovation project, which is a downtown Rio Nuevo project with some funding from back to basics, scheduled to be completed by November. The idea is to make the library plaza area more welcoming and accessible to the public, the Downtown Farmers Market, and other events.

C. Reid Park Zoo Article

Mr. Keene said the city of Tucson Reid Park Zoo was featured on the front page of the national publication of the *American Zoo and Aquarium Association*. Reid Park Zoo, Tucson Arizona Goes Green is the headline and the article focuses on conservation practices among accredited zoos and aquariums. Tucson Zoo is on the cover due to the new entrance feature at the zoo and some other improvements that incorporate various conservation techniques. The project is funded through the city's 2000 bond program that was approved by the voters.

D. Tucson 12 Recognition

At the September 2003 National Association of Telecommunications Officers and Advisors National Conference, Tucson 12, the city's television channel, received second place honors for overall excellence in government programming around the country. Channel 12 also received a first place award for the "We Are Tucson" 30-second promotional video, which he hoped the council had seen. It is run as an introduction and it is a great picture of Tucson. Jennifer McKinney, television production manager for channel 12, was named to the national board of directors at the NATOA annual business meeting and would represent the city for the next two years. He congratulated Channel 12 staff.

Mayor Walkup noted that a fence is up around the city hall annex building and had been for some time. He knew the city was working on asbestos remediation inside the building, but he asked Mr. Keene how the building would come down. Would it be brought down all at once?

Mr. Keene said the plan was to bring it down all at once with a lot of fanfare. He hoped that within the next month he would bring the council an estimated destruction and demolition date.

5. CALL TO THE AUDIENCE

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue that was not scheduled on the evening agenda. He advised that there would also be a call to the audience at the end of the meeting. He asked if anyone wished to address the council. There was no one.

6. CONSENT AGENDA

Kathleen S. Detrick, city clerk, announced that there were no items for consideration on the consent agenda.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 514, dated September 22, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) LIQUOR LICENSE APPLICATION(S)

New License(s)

(1) CIRCLE K STORE #5540
1555 W. Valencia
Applicant: Kim K. Kwiatkowski
City #065-03, located in Ward 1
Series #10

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance

Person Transfer

(2) BEST WESTERN EXECUTIVE INN
333 W. Drachman
Applicant: Panagiotis Lembessis
City #064-03, located in Ward 3
Series #6
(continued from the mayor and council meeting of September 15, 2003)

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Bus. License: DENIED

(c) Special Event(s)

*

(1) ST. MARGARET MARY PARISH
801 N. Grande Avenue
Applicant: Oscar White
City #T075-03, located in Ward 1

Staff Recommendation

Police: In Compliance
DSD: In Compliance

(2) FAMILY COUNSELING AGENCY
134 S. 5th Avenue
Applicant: Mary T. Wilson
City #T078-03, located in Ward 6

Staff Recommendation

Police: In Compliance
DSD: In Compliance

*See page 5

- | | | |
|-----|---|--|
| (3) | OUR LADY QUEEN OF ALL
SAINTS CHURCH
2915 E. 36 th Street
Applicant: Albert P. Borboa
City #T079-03, located in Ward 5 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (4) | SOUTHWEST FAIR
COMMISSION, INC., dba S.I.R.
4823 S. 6 th Avenue
Applicant: David J. Danish
City #T085-03, located in Ward 5
Date of Event: October 18, 2003 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Parks & Rec: In Compliance |

Kathleen S. Detrick, city clerk, noted that the liquor license agenda consisted of one request for a new license for the Circle K Store #5540, a Series #10, city #065-03 and a person transfer for Best Western Executive Inn, a Series #6, city #064-03, which was continued at the meeting of September 15, 2003, because of a recommendation for denial from business license. Staff had withdrawn that objection so both licenses carried recommendations for approval. There were four special event requests, St. Margaret Mary Parish, city #T075-03 had received a protest and would be considered separately. The remaining requests were recommended for approval.

It was moved by Council Member West, seconded by Council Member Dunbar, and carried unanimously by a voice vote of 7 to 0 that liquor license applications city #065-03; city #064-03; city #T078-03; city #T079-03; and city #T085-03, be forwarded to the state department of liquor licenses and control with a recommendation for approval.

7. LIQUOR LICENSE APPLICATIONS – (c) (1)

(c) Special Event(s)

- | | | |
|-----|--|--|
| (1) | ST. MARGARET MARY PARISH
801 N. Grande Avenue
Applicant: Oscar White
City #T075-03, located in Ward 1 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
|-----|--|--|

Council Member Ibarra asked if the protester to the St. Margaret Mary Parish request for a special event license was present and seeing no one, asked if a representative of the neighborhood or the church wanted to comment.

Margaret McKenna, said she was present on behalf of the Barrio Hollywood Neighborhood Association and as a member of St. Margaret's Parish. She spoke in support of the request for a special event liquor license for their fundraiser. Ms. McKenna said St. Margaret's is a part of the neighborhood association and a great part of the neighborhood. If they were not able to have the fiesta, they would be precluded from providing many services to the neighborhood's youth. She hoped the council would support the request.

Mayor Walkup asked the council's pleasure.

Council Member Ibarra said he thought the St. Margaret's Parish fiesta is a great event and hoped the council would support it because it does a lot of good for the west side.

It was moved by Council Member Ibarra, seconded by Council Member Leal, to forward liquor license application city #T075-03 to the state department of liquor licenses and control with a recommendation of approval.

Mayor Walkup asked if there was any discussion.

Council Member West said she hoped the neighbors could keep the noise down to a dull roar. It could be annoying to people who live next to such events. She suggested that the church invite the protestor to participate then maybe he would not mind the noise.

The motion to forward liquor license application city #T075-03 to the state department of liquor licenses and control with a recommendation of approval was carried by a roll call vote of 7 to 0.

8. MAGISTRATES: APPOINTMENT OF ANTONIO F. RIOJAS, JR., TIMOTHY J. CRANSHAW, AND MITCHELL S. EISENBERG AS CITY MAGISTRATES

Mayor Walkup announced that city manager's communication number 516, dated September 22, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9899, 9900, and 9901 by number and title only.

Ordinance No. 9899

Relating to city magistrates; appointing a City Magistrate of the City of Tucson; fixing compensation and declaring an emergency.

Ordinance No. 9900

Relating to city magistrates; appointing a City Magistrate of the City of Tucson; fixing compensation and declaring an emergency.

Ordinance No. 9901

Relating to city magistrates; appointing a City Magistrate of the City of Tucson; fixing compensation and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Leal, seconded by Council Member Ibarra, that ordinance no. 9899 appointing Antonio F. Riojas, Jr. as city magistrate 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: None

Ordinance no. 9899 was declared passed and adopted by a roll call vote of 7 to 0.

It was moved by Council Member Leal, seconded by Council Member Ibarra, that ordinance no. 9900 appointing Timothy J. Cranshaw as a city magistrate 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: None

Ordinance no. 9900 was declared passed and adopted by a roll call vote of 7 to 0.

It was moved by Council Member Leal, seconded by Council Member Ibarra, that ordinance no. 9901 appointing Mitchell Eisenberg as a city magistrate 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: None

Ordinance no. 9901 was declared passed and adopted by a roll call vote of 7 to 0.

**9. ANNEXATION: RESOLUTION OF INTENT TO ANNEX STATE OWNED PROPERTY
WITHIN THE PROPOSED STATE LAND III ANNEXATION DISTRICT**

Mayor Walkup announced that city manager's communication number 517, dated September 22, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution no. 19685 by number and title only.

Resolution No. 19685

Relating to annexation; declaring the intention of the Mayor and Council to annex certain real property owned by the State of Arizona; and declaring an emergency.

Mayor Walkup recognized the city manager.

James Keene, city manager, asked that this item be withdrawn from the agenda. He said he had just received a letter from the state land commissioner that raised concerns about proceeding with the annexation at this time. The issues that were brought up were understandable and corresponded with some of the planning that the city had underway in the Houghton corridor and other areas. The letter stated that currently there are 60-square miles, including the Houghton Road area, of unabsorbed trust land within the city's current boundaries and the planning, entitlement, and infrastructure requirements of this land need to be adequately addressed before the state considers additional annexations of trust land. Mr. Keene said that had been the focus and reason for doing the planning. Staff had a concern about the subject parcel staying outside the city limits because it is a four square mile area on Houghton Road, south of Interstate 10. It actually crosses I-10, so certainly it is going to be an integral part of that area. Staff's view is that having it in the city allows it to be incorporated with all of those planning efforts. He preferred that the annexation not be pursued at this point so that staff would have an opportunity to meet with the state land commissioner on this and other matters and then come back to council.

Kathleen S. Detrick, city clerk, announced that without objection the item would be continued.

10. ZONING: (C9-91-19B) LEWIS – TANQUE VERDE ROAD (SOUTHERN PORTION) C-2 ZONING, CHANGE OF CONDITIONS AND DEVELOPMENT PLAN AND ORDINANCE ADOPTION

Kathleen S. Detrick, city clerk, announced that the public hearing on this item was held on September 8, 2003, and the ordinance adoption was continued until this evening.

Mayor Walkup announced that city manager's communication number 510, dated September 22, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance no. 9892 by number and title only.

Ordinance No. 9892

Relating to zoning: amending Ordinance 7734 and Ordinance 7782 and amending conditions for the commercial portion of the approval of the zoning district boundaries in the area located at the northwest corner of Tanque Verde Road and Desert Links Drive Case C9-91-19B, Lewis – Tanque Verde Road, C-2 zoning; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Council Member West asked if the outstanding issues were resolved.

Ernie Duarte, development services director, noted that this case was held over from September 22, 2003. There were issues regarding traffic deceleration lanes, and use restrictions. He said those issues had been resolved.

Council Member West asked the developer's representative to respond.

Michael Marks, MJM Consulting, said they were completely in agreement with the conditions as presented in the council's material.

It was moved by Council Member West, seconded by Council Member Leal, that ordinance no. 9892 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: None

Ordinance no. 9892 was declared passed and adopted by a roll call vote of 7 to 0.

11. PUBLIC HEARING: ZONING (C9-98-08) WILMOT/INTERSTATE 10 PARTNERSHIP – INTERSTATE 10, C-2/SH TO C-2, TIME EXTENSION AND CHANGE OF PRELIMINARY DEVELOPMENT PLAN

Mayor Walkup announced that city manager's communication number 511, dated September 22, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing on a request for a change of preliminary development plan and a five year time extension for property located near the intersection of Wilmot Road and Interstate 10. The original five-year authorization expired August 3, 2003. He asked if the applicant or a representative was present and if so, were they aware of and amenable to the standard conditions recommended by the city manager. There was no one.

Kathleen S. Detrick, city clerk, said she had received a request from Linda Morales of the Planning Center, on behalf of Western Partners Tucson, LLC, for a continuance until the meeting of November 24, 2003. However, since this item had been advertised as a public hearing it would be appropriate to continue with the hearing.

Mayor Walkup asked if anyone in the audience wished to address the council. There was no one. He asked the council's pleasure.

It was moved by Vice Mayor Scott, seconded by Council Member West, and carried unanimously by a voice vote of 7 to 0, to continue the public hearing to November 24, 2003.

12. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Walkup announced that city manager's communication number 509, dated September 22, 2003, would be received into and made a part of the record. He asked if there were any appointments.

It was moved by Vice Mayor Scott, seconded by Council Member Leal, and carried by a voice vote of 7 to 0 to appoint Barbara J. Peck to the Pima County/City of Tucson Commission Addiction on Treatment and Prevention.

Council Member Dunbar announced her personal appointment of Michael Pesce to the Tucson Commission on Disability Issues.

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

13. RECONSIDERATION: APPOINTMENT TO THE PIMA COUNTY FLOOD CONTROL DISTRICT ADVISORY BOARD

Mayor Walkup announced that city manager's communication number 518, dated September 22, 2003, would be received into and made a part of the record. He asked the council's pleasure.

It was moved by Vice Mayor Scott, seconded by Council Member Leal, to reconsider this item.

Michael House, city attorney, advised that three appointments had been made under this item, so the motion should specify which one was being reconsidered.

It was moved by Vice Mayor Scott, seconded by Council Member Leal, to reconsider Mr. Figueroa.

Vice Mayor Scott said it was not her intent, as the material stated, to have Mr. Dinauer demoted and taken away. She thought the council should talk about having Mr. Figueroa put back on the Pima County Flood Control District Advisory Board and asked how that should be dealt with.

Mr. House said the council should first make a motion to reconsider one of the three appointments that was made.

It was moved by Vice Mayor Scott, seconded by Council Member Leal, to reconsider the appointment of Mr. Figueroa.

Mr. House said Mr. Figueroa was not appointed.

Vice Mayor Scott asked if he meant the council would have to reconsider the appointment of Mr. Dinauer and said she was trying to keep him on the board. She was not trying to get rid of him and to reconsider his appointment would be inappropriate.

Mr. House pointed out that the council had made three appointments and said one of the other two could be reconsidered. Mr. Figueroa could not be appointed unless one of the previous appointments was removed.

Council Member Ibarra asked who the three appointments were.

James Glock, director of transportation, said the three appointments were Michael Zeller, Linwood Smith, and Andrew Dinauer.

James Keene, city manager, said he understood the intent of wanting to get Mr. Figueroa back on the advisory board and the council's first action was limited to reconsidering the appointment of Mr. Dinauer, which would allow them to appoint Mr. Figueroa. It was his understanding that the other citizen appointments also served in some additional capacities on other city commissions that he thought had some appropriate linkages to the Pima County Flood Control District Advisory Board. He did not think it would be advisable for those individuals to be substituted. He said that raised the question of what to do with Mr. Dinauer and there were two things he wanted the council to consider. One was that the three individuals were filling appointments as the board is structured by Pima County Government, so he did not think the council was in a position to unilaterally add another slot for the city. Secondly, he thought Mr. Dinauer's participation could be accommodated as a staff person who would be going to the meetings regularly. If the council did want to appoint Mr. Figueroa to the board, Mr. Dinauer's expertise and informed connection to the board could be accommodated without having to make him an actual appointment.

It was moved by Vice Mayor Scott to adopt the manager's recommendation to reconsider Andrew Dinauer's appointment to the Pima County Flood Control District Advisory Board and substitute Mr. Figueroa, keeping Mr. Dinauer as an attendant at the meetings.

Kathleen S. Detrick, city clerk, said the motion should be separated because the council first had to reconsider the issue of the appointment of Mr. Dinauer as a representative of the city.

It was moved Vice Mayor Scott, seconded by Council Member Leal, to reconsider the appointment of Andrew Dinauer to the Pima County Flood Control Advisory Board.

Mayor Walkup asked if there was any further discussion.

Vice Mayor Scott said the reason she brought this issue up was that Mr. Figueroa had served the board faithfully for quite some time and did bring some citizen expertise. Unbeknownst to her and perhaps other council members he appeared at a regular meeting of the commission and was advised that he had been replaced. Unfortunately, no one had called to notify him of that. She thought the council needed to correct that. If the council is going to replace someone, it needs to know those kinds of details. She believed that Mr. Figueroa has been an asset to the community and if Mr. Dinauer could continue to attend

the meetings there would be a good blend and the city would have good representation at the county. She thought making this discourtesy right was probably the best thing the council could do, and in the future as a matter of course, they should notify someone in advance of his or her new status. She understood that Mr. Young was on this same committee some years ago and Mr. Figueroa replaced him.

Council Member West said according to the flood control district board Mr. Figueroa did know, so the council was hearing two different sides of the story. She apologized for bringing that up, but someone from the flood control district board told her that Mr. Figueroa was informed. Perhaps that is something the council should find out about for the future because they certainly did not want to slight anyone.

Vice Mayor Scott said she was just trying to avoid the confusion.

Mayor Walkup asked if there was any further discussion.

Ms. Detrick explained that this vote was to reconsider the appointment made by the mayor and council on May 19, 2003 of Andrew Dinauer as a representative of the city to the Pima County Flood Control Advisory Board and then there would be a separate motion to reconsider the appointment.

Council Member Dunbar said she was going to vote no on the motion, but she complimented Vice Mayor Scott for bringing the issue forward. It was a situation that looked like someone was not notified in the proper manner. She was sure that was just an error, staff does have a lot of work, but Mr. Figueroa had served for about ten years and she thought it was important if the council was going to make changes that they take the time to explain why. She thanked Vice Mayor Scott for bringing the issue forward, but in looking at the structure of the committee and Sahuarita, South Tucson, and Marana, all have engineers or people who appear to be in that line. She felt it was important to follow through with the council's previous decision.

Mayor Walkup asked for a roll call.

Upon roll call, the results were:

Aye: Council Members Ibarra and Leal; Vice Mayor Scott

Nay: Council Members West, Dunbar, and Ronstadt; Mayor Walkup

Absent/Excused: None

The motion to reconsider the appointment made by the mayor and council on May 19, 2003, of Andy Dinauer as a representative of the city to the Pima County Flood Control District Advisory Board was declared failed by a roll call vote of 3 to 4.

14. FINANCE: CONTINGENCY FUND TRANSFER FOR THE IMMIGRANT WORKERS' FREEDOM RIDE RALLY

Mayor Walkup announced that city manager's communication number 519, dated September 22, 2003, would be received into and made a part of the record.

Resolution No. 19686

Relating to finance; approving and authorizing the transfer of One Thousand Dollars (\$1,000.00) from the Contingency Fund to Organization 001-183-1838-268, for equipment and a police presence at the 2003 Immigrant Workers' Freedom Ride Rally; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

Council Member Ibarra asked why contingency funds could not be used for the subject event.

Michael House, city attorney, said it was his opinion that public funds could not be used to support the event. He said the legal issue was not whether the event was for a worthy cause. Merely because an event purports to further some lofty goal does not mean public funds can be used to support it. The question under the Arizona Constitution is whether the expenditure is for a public purpose that benefits the city in some tangible sense. In this situation, it had not been demonstrated that there was a connection between the event and a benefit to the city commensurate with the requested expenditure. Furthermore, taxpayers' money simply could not be used to promote private political and social causes. If public funds could be used to support this event, there would be no logical reason why public funds could not be directly given to a political party to promote its aims. Obviously, that would not be permitted; therefore, he recommended that the subject request be denied.

Mayor Walkup asked if there was further discussion

Council Member Ibarra said based on the city attorney's advice he would not move the issue, but he did have two requests. He asked that as soon as possible the council pass a memorial or resolution like the one passed by the Board of Supervisors last week. Second, he wanted to make sure that El Presidio Park was still reserved for Wednesday, September 24, and that the council would be billed for all of the logistical costs.

James Keene, city manager, said that was what he understood and he would submit a report to the council as soon as possible. One thing he had tried to make clear all along was there was nothing inappropriate about the rally itself and its purpose. He could not see why anything would change and that certainly seemed to be the priority issue for that day.

Council Member Ibarra reiterated that he was not going to make a motion and said he appreciated the legal opinion from Mr. House and he would put the other item on next week's agenda.

15. AGREEMENT: AMENDMENT TO THE LICENSE AGREEMENT WITH SFPP, L.P. dba KINDER MORGAN

Mayor Walkup announced that city manager's communication number 520, dated September 22, 2003, would be received into and made a part of the record. He asked the city manager to comment.

James Keene, city manager, said Ernie Duarte, development services director, and Chief Dan Newburn of the Tucson Fire Department would give the staff report and introduction. He noted that he had distributed a letter from himself to the council in response to a memorandum from the county administrator to County Supervisor Richard Elias, with copies to the Board of Supervisors and himself. It dealt with the issue of the replacement of the Kinder Morgan pipeline through Tumamoc Hill. He wanted to make sure that the council had a chance to read that letter. It stated that the city appreciates and is sensitive to the disturbance in the Tumamoc area. However, from staff's point of view a proposed relocation of the line to Starr Pass and Greasewood would actually place it much closer to a number of schools and neighborhoods, so it was not a preferred resolution from staff's point of view. He said that was the last bit of additional information that the staff had.

Ernie Duarte, development services director, said Kinder Morgan is the owner and operator of a fuel pipeline that runs through the city of Tucson. The city granted a license agreement to Kinder Morgan to use portions of city of Tucson rights-of-way to route the pipeline. As the council was aware, a portion of that pipeline just north of Grant Road and a little east of Silverbell Road ruptured on July 30, 2003. Kinder Morgan approached city of Tucson staff and began discussing permitting requirements associated with the replacement of the existing eight-inch pipeline. The proposed ordinance was an amendment to the license agreement that would allow Kinder Morgan to change the size of its pipe from eight inches to 12 inches and move portions of it out of private easements and into city rights-of-way. Those three areas are Silverbell Road from Grant Road to Anklam Wash, which is just north of Speedway Boulevard, La Cholla from Anklam to Calle Niagara, and Starr Pass Boulevard from Camino Santiago to approximately nine hundred feet west of Mission Road. The movement of the pipeline in these three areas is due to conflicts with existing utilities along with the construction of the new pipe in and around existing homes. In addition to the new rights-of-way, the agreement incorporates inspection report sharing and safety planning elements. Those are areas of concern raised by the mayor and council at its meeting of September 2, 2003. Representatives of Kinder Morgan met with the Fire Chief and key city staff to go over specifics related to the safety planning and operations. Dave Corman from Kinder Morgan was present and would present an overview of the Kinder Morgan pipe replacement program. Mr. Duarte said he would be glad to address any questions the council might have after Mr. Corman's presentation.

Mr. Keene said if there was any good news in this incident it would be the fact that the city does have a license agreement with Kinder Morgan that allows for some negotiation and conversation with them as they move to replace the line. It had been impressed upon him that it is not only in their interest to have the old line replaced for obvious safety reasons, but everyone is interested in having the line replaced. He thought staff was successful in incorporating into the license agreement some of the council members' concerns about notice to the Fire Chief and a number of other things. The last time the council met on this issue they heard about state and federal processes that gave the city no opportunity for that, so that had been very good. At the same time he knew the council would have questions and that was why having Mr. Corman and others present to address the issue was important. He knew Council Member Ibarra had sent a list of at

least six questions or concerns and other council members might have some issues to discuss.

Dave Corman, Kinder Morgan Energy Partners, director of project permitting for the company, said Kinder Morgan through its operating partnership, SFPP Limited Partnership, was proposing to replace and upgrade its existing eight-inch in diameter pipeline, the refined petroleum products pipeline, in the Tucson area. They own and operate the principal transportation infrastructure that supplies nearly all of the refined petroleum products that are used in Tucson, Phoenix, and the rest of Arizona. They are a public utility, a common carrier pipeline and they own and operate about four thousand miles of refined petroleum product pipelines in the western United States. They purchased the pipeline system from a company named Santa Fe Pacific Pipeline in 1998. They operate two pipelines in the Tucson area. He displayed a map showing the area, their Tucson terminal and the two pipelines, which are laid in the city streets, in Ajo Way, heading up 44th Street, through some existing railroad right-of-way, some old UP right-of-way, through South Tucson, and out along Starr Pass, through the backside of A Mountain, on up through some cross-country and smaller streets until they get to what they call the Weymouth Avenue valve site. He explained the colors on the map and said phase three is approximately one mile of pipeline that was replaced recently, following the emergency of July 30, 2003. That had been changed over to a 12-inch pipeline from an eight-inch diameter pipe. Two pipelines run parallel, about ten feet offset, throughout the entire right-of-way, which he pointed out on his map. Kinder Morgan owns easements and license agreements with various parties, the city, the county and other homeowners, and property owners including the University of Arizona, and in state lands. Those pipeline easements run anywhere from 30 to 40 to 60 feet in width. He reiterated that there are two pipelines, one is an eight-inch pipeline, which was built in 1955, and the other is the six-inch diameter pipeline built in 1956. The two pipelines run largely down existing county streets, city streets, through railroad right-of-way, commercial and industrial districts with a minor amount of residential up in the northwest quadrant near the line that's out there right now.

Mr. Corman said Kinder Morgan's intentions are to replace 11 miles of existing eight-inch diameter pipeline with brand new steel pipeline. As he said, the existing eight-inch pipeline was installed in 1955 and they wanted to move forward and replace it. It would cost them approximately \$12 million, a major capital investment for the company. They believe it is an urgent project. Following the release of product on July 30, 2003, they did some laboratory tests on the pipe and found that stress corrosion cracking was the cause of that release. That concerned them greatly because it is a type of defect that they had not seen before. They have performed internal inspections with computerized tools. The last one performed in the subject area was in 1996 and farther north, they were done in 1999. That particular defect was not seen at that time. Kinder Morgan proposes to replace the pipeline with state of the art steel. The design would be to put the new 12-inch pipeline offset from the existing two pipelines by about ten feet within the same 30-foot easements all the way through. However, they will require additional temporary construction space on city streets and in other areas to do that. The replacement will be designed in accordance with stringent US Department of Transportation standards. Kinder Morgan is regulated by the Department of Transportation in the design, construction, operation, and maintenance of their pipeline systems. In addition, the pipeline will fit into Kinder Morgan's overall computerized monitoring system, which monitors pressure, temperature, and all of the other characteristics of the product and the pipeline. Operators

monitor the entire system on computer screens at the terminal in Tucson 24 hours a day, continuously. The replacement pipe would be high tensile strength steel in state of the art coating. They are replacing 1955 vintage steel. Mr. Corman said the key point is that they want to replace 1955 vintage steel with state of the art high tensile strength steel, state of the art coatings and state of the art technology in general. They had been in close contact with the governor's office, city staff, the county and others, but the company was willing to spend the \$12 million for a reason. They urgently want to get the 11 miles of pipeline replaced with new steel. It was important to the company and to the community as well.

Mr. Corman said the construction would consist of two construction crews that would work simultaneously, about forty or fifty people on each crew. A total of about 80 to 100 people would be out there doing construction. Construction would take about ninety days to complete; their schedule is to begin construction on October 15, 2003. They are moving forward aggressively, working with the county, the city, and others to get the permits to do that and to conclude construction by February 1, 2004. They would be involved with all of the necessary requirements associated with working in city streets and county roads, including traffic plans, avoiding rush hour traffic, and working Saturdays if necessary. They would notify businesses before construction, making sure they do not cut them off and working with them very closely. They would typically have open at one time about two to three thousand feet in open country construction. He realized there was a concern about an open trench and said they are most certainly interested in working with the city and landowners where they do trenching to make sure that the situation is safe. Safety is paramount with a company like Kinder Morgan and they would not leave open trenches where people can be injured or otherwise cause a hazard along the right-of-way. They routinely x-ray 100% of all of the wells on their pipelines, he thought the US Department of Transportation required 20%. They would be at any one locale as they move down the streets for about two weeks, as are other utilities, from street cutting to the point where they actually patch up the street and keep moving. All the streets would be put back together in at least as good a condition as they currently are or better. They will not leave the streets in poor condition. The construction schedule is broken into two phases. They intend to start phase three on October 15 and finish by December 15. They intend to start phase four on October 15, but that will take a little longer, given the amount of city streets and the length of the pipe. It will be finished on February 1, 2004.

Mr. Corman said it was a very important project and he was present to request a minor license modification from the mayor and council. They have an existing license, it permits them to have pipelines in city streets, and they have had pipelines in city streets since 1955. The city had annexed county land and acquired the easements and so on in some of these licensed areas from the county and from other private owners, but since the lines were built in 1955 a lot of urban development occurred around these pipelines. One of the modifications that was discussed would occur along Silverbell. Because the pipeline had been encroached upon by side yards of some of the residential properties, it would be almost impossible to construct another pipeline in those side yards, within the fence lines of those homes. Because of construction issues and the space needed to put another pipeline in, they propose to move the pipeline into Silverbell Road for about a half a mile. Aside from that, there are potentially two other areas where they might have to move the pipeline out of private easements into the road right-of-way. Those are along Starr Pass Boulevard and La Cholla Boulevard. They do not know if that will happen, it is based on the substructure and whether the substructure requires it. Other than that they will be putting the pipeline in the same 30, 40, and 60 foot easements all the way through. In most cases, all of those easements give them multiple line rights. They are allowed to put

another pipeline in those easements and they do not have to ask for specific permission other than notifications and standard permitting, encroachment permits, and so on from cities, as well as their license agreement.

Mr. Corman said they had a good meeting with the fire chief and his staff. They will partner with the fire chief in making sure that some of the key issues that the council raised are resolved as they work together on a variety of things, including a detailed safety plan. They have an eight-volume spill contingency and response plan that they will share with the fire chief and his staff to resolve any concerns on that. Certainly, on mapping of the pipeline they will make available to the fire chief at any moment. They were identifying a point of contact for the city to be able to contact a representative of Kinder Morgan 24 hours a day in case there is any issue where they need Kinder Morgan's support.

The issue of Tumamoc Hill was raised. Tumamoc Hill is in the area on the northwest side of "A" Mountain and it is a very sensitive archaeological and ecological preserve, they recognized that and appreciated it. The pipelines were installed before the National Historic Preservation Act was even a law, before the Endangered Species Act was a law. They are very sensitive to that and they will obviously comply with those laws. To give an idea of the kinds of issues that exist, he said Kinder Morgan had done complete archaeological surveys along the entire alignment, working in coordination with state archaeologists. Any permits that are issued by state archaeologists they will adhere to in doing both the construction and the data recovery of those resources. They had no intention just to blow through there and not take a lot of care with respect to archaeological resources. They have also been in contact with Native American tribes and they will be present during construction to help monitor construction to make sure that none of the resources are damaged. They have two pipelines in their easement, they are both 30 and 40-foot easements, and they also have multiple line rights there. They have the right to put another pipeline in those easements, however, their intent is to put the pipeline in that same easement within the 30 or 40 foot easement depending on which property they are in. They will need temporary construction space. When those pipelines were put in, in 1955 and 1956, he could assure that a 100-foot corridor, which is standard pipeline, was graded in there and that is what the pipeline was put into at that time. What they propose to do is limit their pipeline construction to a very narrow 75 feet. That is very difficult for their construction manager, but they have agreed to do that and to keep that 75 feet within the original 100-foot disturbance, which is very well described by saguaro cactus that have never grown back into the right-of-way. They met with the U.S. Fish and Wildlife Service, who is in charge of the dangerous species issues and agreed on how to avoid affecting the cactus pigmy owl. That is the only endangered species issue and of course, they will be working with the university, the state lands department, and others with respect to native plant salvage. Any plants that are important for salvaging they will certainly be removing and putting back, or planting other plants. He said there was a whole salvage program that had to go forward with the construction. The most important thing, because archaeology is the big issue, is that Kinder Morgan would be spending a lot of money, which is fine because they need to do that in order to make sure that they avoid the archaeological resources or, if they are unavoidable, that they stop construction and do data recovery. Kinder Morgan will be digging up the resources, working with Native Americans and archaeologists from the university, recovering that data and then construction will move through it. If any bones are found, construction will stop and there are laws to deal with that. That was the Tumamoc Hill issue and if the council liked, he could talk more about it.

Finally, Mr. Corman said the biggest issue that had come up had been why not put it here, or reroute it there, why not go out on Interstate 10, or something like that. First, he said they looked at the I-10 idea very carefully and the frontage roads that run down the I-10 corridor look like a great place, but as it turns out, their discussions with the Arizona Department of Transportation indicated that they do not allow, as Cal Trans in California does not allow, hazardous liquid pipeline in their frontage roads or their controlled access areas, essentially where the on and off ramps are located. That means that a large portion of those frontage roads are not available at all. Kinder Morgan has been told that they may not be in those access roads and locations. Further, the department of transportation will not allow the pipeline in the rest of the access roads because they have recently been paved. That puts the pipeline into private right-of-way for the entire area along I-10. There are two issues with rerouting, one is it is an urgent project and he could not overemphasize the need that they want to spend \$12 million to go out and replace the pipeline in a very rapid fashion. Second, they want to go out and start looking at other routing, which they did in great detail last year as a part of a bigger east land project that they are looking at from El Paso to Phoenix. They looked at routes all through the city and ultimately this is the best route for a lot of reasons. Primarily, in trying to do any other routing, the acquisition of right-of-way alone, not to mention the political decisions of one neighborhood versus another, the right-of-way acquisition alone would take a year. That is Kinder Morgan's evaluation and that is untenable to them and should be untenable as a public policy situation to the council. They are offering to replace the infrastructure, a major part of the infrastructure and to do it right now. He urged the council to work with them on that.

Mayor Walkup asked if staff had any comments.

Chief Dan Newburn said staff had spent the last three weeks working closely with Kinder Morgan, especially trying to address the safety issues, which is his primary responsibility. He was satisfied Kinder Morgan had been responsive and some of the things that Mr. Corman said he could substantiate. They are putting in place a 24-hour, seven days a week, 365 days a year rapid response plan. There should be no surprises; they have been very forthcoming with all of their documents. They have volumes of safety documents and city staff literally gets to pick and choose what they think is important for Tucson. From the safety perspective as the city's fire chief he was very satisfied with the progress that had been made.

Mayor Walkup said there was some logic to the situation and the single most important issue for the council and city staff was the safety of everyone in the community. The council will be pursuing whatever is the safest avenue for the people and clearly, logic says that whatever option gets the job done the quickest has to be the safest option for the people. Mr. Corman mentioned right-of-way acquisition, but looking at the Interstate 10 route it looked as though if they went through the right-of-way they would still have the design issue of how to get it from one place to the other, then the installation and all of the problems, plus that would move the pipeline from one neighborhood to another neighborhood. He asked if Mr. Corman was sure a year is all that it would take, because logic indicated that it would be longer than that. He did not know what the truth was and the council was struggling with the judgement they were being asked to make. They wanted to do the right thing for the people, but they wanted to be sure they had all the information. To move the pipeline to any other location Mr. Corman was saying it would take a year, maybe longer. Mayor Walkup asked if that was true.

Mr. Corman said that was correct.

Mayor Walkup asked what would the design period and the installation be and would it be a year, year and a half, or two years to move it to any other location.

Mr. Corman said there were problems with moving the pipeline farther to the east. Considering where it is, thinking back to 1955 and 1956, when it was put in it was moved out of town, out of the community and to the west, to what was a very remote and rural area. Urban areas have moved out to the pipeline and that has happened to pipelines everywhere in the country because they serve metropolitan areas. The whole concept of getting the new pipeline in urgently, which is the number one priority, and taking a year plus—he said a year but he thought Kinder Morgan had been quoted as saying 18 to 24 months—depends on a lot of different issues and variables. One was how much any given neighborhood might oppose the placement. The situation could be politicized very easily if it is moved around. There is a public policy, typically, that he had seen throughout the country in permitting utilities. One is that utilities are kept in similar corridors. Companies try to group utilities together when they site them. It makes good common sense to put another pipeline in the same utility corridor rather than putting one here and one there. A six-inch pipeline is still going to be operating in the present corridor, on Tumamoc Hill and north of there. It will have to be maintained and accessed. He said a year and a half would not be unusual. He said the one issue that goes to that is condemnation. In Arizona the quick take laws are not as good as those in California where quick take on private properties takes about thirty days. In Arizona if people start saying no, recognizing that no one wants a pipeline in their backyard, it leads to condemnations, the courts, and that complicates things even more.

Mayor Walkup asked if one of the reasons to offset the pipeline was to stay clear of the active lines. They do not want to put the new pipeline in the close proximity of the six and eight inch lines. He asked if that was why it was being offset.

Mr. Corman said to offset is normal practice. They have parallel pipelines everywhere where they have introduced larger diameter lines over the years to smaller diameter lines. They typically offset about ten feet for maintenance, so that they can dig down to the pipeline without worrying about hitting the other line.

Mayor Walkup said that clearly the neighbors as the company is digging and replacing over two or three months are going to worry about a strike, about workers damaging the pipe in the process of trying to replace it. He asked if there was any discussion.

Council Member Ibarra said he appreciated that Kinder Morgan had taken the time to meet with the council. They had taken a lot of time to meet with him and he wanted to thank Jason Rose of Kinder Morgan who had been receptive to a lot of the issues. He and Council Member Leal represent the majority of the population through which the pipeline runs and their biggest concern was those neighborhoods. He thought the situation was one of either/or. Either they approve the license amendment or they do not and that is not what he was looking for in terms of Kinder Morgan. He was looking for a true partnership with Kinder Morgan and the city, saying that they would do two things. One, they were going to fix the deficiencies in the current line immediately. That meant they would do the internal inspections and find out where the immediate deficiencies are and address those as soon as possible. The second part of that was that Kinder Morgan would look at

rerouting the pipeline. One of the things he told Mr. Corman and Mr. Rose when they came to his office was that one of his ideas was Interstate 10, but it was not the only idea. He told them that they were the experts, they would see what they were looking for, and he asked them if there was another location. Could they go farther west, on the other side of the mountains or could they find a different route, but that was just an idea. What he was asking for was an opportunity for Kinder Morgan to go back in a true partnership fashion and say that the city was right. Their pipelines do go through a lot of neighborhoods and what if they went on the other side of the Tucson Mountains and brought it back that way, down Ajo? Maybe that would be a little bit different and it would go through less populated areas. He did not think Kinder Morgan had done that. He thought they had given the council two options, either do it or don't. That being the case he said he would ask one question after he made a motion and the reason he wanted to ask the question is because Kinder Morgan put the council in an either/or situation.

It was moved by Council Member Ibarra that ordinance no. 9902, with the addition of six conditions: 1. That all current deficiencies in the existing line must be repaired immediately; 2. Commit to changing the route of the existing line to a less populated area; 3. Establish a partnership with the fire chief to have all necessary information; 4. All open trenches are to be safely covered at the end of all working days for the safety of the neighbors; 5. The current line will be abandoned of any hazardous materials immediately after construction of the new line; 6. Change the underground depth from three feet to a minimum of six feet.

Council Member Ibarra clarified that the condition in his motion that Kinder Morgan commit to another route did not mean they had to commit to I-10. If that did not work for them, the condition stated they should commit to another route. If it was farther west into unpopulated areas so be it, but there had to be another route away from the neighborhood and away from the heavily populated areas. He thought Mr. Corman had already complied with condition number three, as he had with condition number four, which has happened a couple of times and he hoped Kinder Morgan could respond immediately. He said Kinder Morgan had agreed to the fifth condition also. He was adding the sixth condition, change the underground depth from three feet to a minimum of six feet, because he thinks three feet is too close to the surface for any construction. He thought the public would be better protected if the construction was done at six feet. He said he received Mr. Corman's letter and he would allow him to respond briefly to each of the six conditions and then add one more thing.

Mr. Corman said the depth for the burial of pipeline is regulated by the US Department of Transportation and it is not viewed as a minimum standard, it is viewed as an actual standard. Three feet of cover is what is required in constructing new high-pressure gasoline pipelines. To put it any deeper than that except where necessary to go under roads and streams, which they have to do and usually, to get the low scour depth on a stream, they have to go a little deeper than that. Under roads if horizontal directional drills or slick ores exist they have to go a little deeper than that, but with cross-country pipelining, they need to access the pipeline. That is the intent of the Department of Transportation regulation. They need to access their pipeline, to be able to provide easy access for maintenance of the pipelines, locate their pipelines and it just does not work well to put them at any deeper depth because they cannot be accessed. They use locators and so forth. They have concerns at individual locations. For instance, where there is deep plowing they have worked with landowners in specific locations, such as four feet of burial

cover. They have been able to do that so if there are specific areas to be considered they will work with the city on that.

Regarding condition number two, Mr. Corman said his view was that moving the pipeline anywhere further east of its present location gets it closer to the city center and into future potential conflicts with other land uses as they continue to grow from the city center out. It is best to keep the pipeline in the same easement and located as remotely as possible. Even though they operate the pipelines safely in urban environments all over the country if they have a preference, and they do in this case, they prefer to locate, in this case replace the line, in a more remote location. That is what they want to do and they do honestly want to partner with the city and Council Member Ibarra, but their biggest problem with routing the pipeline somewhere else is that it would delay the project. It is not just that they think they need to find locations that are less residential. The present location is a low residential area. He said delay on the replacement is not tenable to the company. He thought they had agreed on the other conditions.

Council Member Ibarra said what he asked was that the pipeline be moved to the west and Mr. Corman mentioned east. If east is not the appropriate location, which he agreed on, he asked that they go west, on the other side of the Tucson Mountains. The choice was to find a new area. He asked if there was a second to his motion.

Council Member Leal seconded the motion.

Council Member Ibarra said one of the things that Mr. Corman mentioned was the fact that they need to move immediately, that this was a public safety issue and the new line needs to be installed immediately. Council Member Ibarra said he agreed with that, he agreed that immediate repairs need to be made to the existing line. His problem was that by doing that and by committing to the new 12-inch line, they were committing to another 50 years for the pipeline to go under the neighborhoods. That meant that for the next 50 years those residents would be exposed to the risk of a future break. He asked if Mr. Corman could guarantee that the new 12-inch pipeline would not rupture.

Mr. Corman said he could not.

Council Member Ibarra said looking at other cities, some of their ruptures had been in very new lines, state of the art at the time and there were still ruptures. At the same time significant damage was done to homes and to people's lives. He understood that a new 12-inch line would be better than what was currently in place, he agreed with that, but he disagreed with the location of the line. He thought it should be moved away from the neighborhoods, to the west, to a less populated area solely because no one can guarantee that the brand new pipeline will not rupture. Its safety cannot be guaranteed. His concern was what is on top of the pipeline and the answer to that is homes, people and families. That was the difficulty. He said he had made a motion and he hoped the council would at least debate the issue. He asked if staff could address the six points in his motion.

Michael House, city attorney, said the only comment he had was that they were talking about a license agreement that the city had with Kinder Morgan, who was requesting an amendment to that agreement. If they were not agreeable to the conditions that were suggested by the motion, there was no point in passing the motion. If they agreed and the motion went forward, additional language would have to be written and

brought back to the council because, for instance, the point of changing the route of the existing line to a less populated area does not say where it would go. In order to amend the agreement the route would have to be specified, and there were other aspects of the motion that needed to be clarified.

Council Member Ibarra said he appreciated that. He understood exactly what Mr. House was saying and he thought Mr. Corman understood, as did everyone else. That was why he asked as a voluntary aspect that the city and Kinder Morgan commit to a partnership. Mr. Corman knew as well as he and a lot of others that there are certain powers that the city does not have over Kinder Morgan. The city cannot go beyond a certain level because this is a federal and state issue and he understood that. He was asking that a true partnership where Kinder Morgan voluntarily meets the city halfway be established to work out the understandings and commitments. That was his wish. He said that was the end of his comments and he reserved the right to debate and defend them at the end of the discussion.

Mayor Walkup called on Council Member Leal.

Council Member Leal said he wanted to build on Council Member Ibarra's comments. With regard to moving west, Mr. Corman said the problem with that was that while it is currently less inhabited it will grow, as has the city in the last 55 years.

Mr. Corman said that is possible.

Council Member Leal said part of what the council did a few weeks ago was build into the city's land use procedures the requirement that city staff inform the mayor and council, when a land use issue comes before it, if there is a pipeline going through the property. Then they can judge appropriately and make an informed choice so that what happened in the last 55 years will not happen in the area, if it be to the west as Council Member Ibarra described. Mr. Corman said the pipeline is new steel, state of the art. As Council Member Leal understood, the operating pressure, some fourteen hundred pounds, is to be the same. He asked what the burst strength of the line is.

Mr. Corman said he did not know, but he might be able to find out.

Council Member Leal said the pipe being state of the art in some ways is a part of the security. The rest of the security, if there is any, has to do with the maintenance program, the technologies that are used, who inspects it, and what the methodologies are. They could have stainless steel pipe three feet thick, but if the testing is indifferent, if there is an uncooperative corporation commission, the wrong technology, the state of the art pipe starts not to matter too much. Some six or eight months ago, the news was dominated by a train derailment in Southern California. Many 60-ton boxcars went off the track, into the dirt, plowed the dirt, and it did not take long for it to go through the three feet of dirt, tear the line open and start a huge fire. Council Member Leal was concerned that the three feet had more to do with making it cheaper to put the line in than it did with maintenance. He was not sure there had been a lot of maintenance, so he was not comfortable in trusting that that was what was going to happen. He asked if Kinder Morgan was changing the technology that had been used to test the pipe from that which was used in the past.

Mr. Corman said the testing technology is very advanced. Integrity management regulations had just been passed by the US Department of Transportation in the last couple of years, so their whole program of integrity management is much advanced over what it was just four years ago.

Council Member Leal said in spite of that, the technology did not put the city in a position of catching and dealing with the rupture that happened recently.

Mr. Corman said that was correct. As he said earlier the street corrosion cracking that happened at that location in the eight-inch pipe, which was built in 1955, was not something that Kinder Morgan detected. The best form of leak detection, the best way to make the pipeline safe is new steel in the ground. That is the best way by far.

Council Member Leal said the steel would be new now, but as Council Member Ibarra stated, they would be setting the community up to confront similar issues in the future as the line aged. If the technology Kinder Morgan used did not show the problem a couple of months ago, he was not comfortable that it would show the problem in the future. He noted that Council Member Ibarra had asked if Mr. Corman could guarantee that there would not be a problem in the future. Thankfully and honestly, Mr. Corman had stated no. Council Member Leal thought for the reasons that he and Council Member Ibarra had laid out the council should not act expediently. The people in Tucson 55 years ago made decisions about how things were going to work and they did not have the past to learn from. The council does and they should learn from that past and act appropriately. He thought they should not put the community in a box and make a decision that is expedient based on a dilemma that had come about by Kinder Morgan waiting a long time to replace a line, to maybe manage a line right. It seemed like the indifference of the corporation was attempting to put the council in a box and make them act expediently. He did not think they should, that was why he and Council Member Ibarra raised the issues they raised and that was why they had taken the position they had and made the motion they made.

Mayor Walkup asked if there was any other discussion.

Council Member West said she valued the opinion of the fire chief. She was not an engineer, but common sense says a new pipeline is going to be safer than one that is in the ground. They could wait for the other shoe to drop, but she was not willing to do that. She asked the fire chief to comment further on the amendment to the license agreement and whether or not he felt it was sound, as well as any other professional information about safety that he could provide.

Chief Newburn said he is not an expert on pipelines, but intuition told him that it was probably necessary to replace the 50-year old pipe if there was an opportunity to do so. It seemed counterintuitive not to do that. There was an event on July 30 and it was fortunate that that event was managed the way it was. It was his understanding that Kinder Morgan could replace their eight-inch pipe based on the current agreement. If 12-inch pipe more effectively solves the needs of the community, if indeed it is a higher-grade pipe, a better tensile strength, clearly there must be an American Society of Testing and Materials (ASTM) standards that could be referenced and that the company could be held to. They have thousands and thousands of miles of pipeline across the United States, so clearly there are some industry standards. He said he was very sensitive to the concerns of the community. In one sense, he did not think anyone felt terribly good about having a pipeline running through their neighborhood, down the middle of their street, but in his profession, it

is relative. The community is surrounded by threats, by significant threats. Vehicles haul the most acutely hazardous materials on the planet up and down the streets on a daily basis. A railroad goes through the community as well as an interstate highway, it goes on and on. On the other hand, it is to some extent a matter of statistics. In his 30 years as a professional firefighter in Tucson this was the first pipeline event that he was aware of. That was not a bad track record. He was trying to find some balance. His job is public safety and he could not in any way, shape or form minimize his position in terms of his responsibility to the community. On the other hand, he had to be realistic and say in the grander scheme of threats to the community the pipeline in one sense had been a pretty good neighbor and it had a pretty good track record. The opportunity to take 50-year old pipe and pull it out of the ground and replace it seemed clearly to be the appropriate thing to do.

Mayor Walkup noted that he and the fire chief talked about an alternative to the pipeline. He said the safest thing to do was to shut the pipeline down and not have any pipeline running gasoline through the community. He asked the fire chief if the council did that, what would the negative impact be to the community?

Chief Newburn said if the pipeline were shut down fuel would still have to be brought to the city. He understood that the volume of fuel that is carried daily in the eight-inch pipeline would be the equivalent of about six hundred tanker trucks a day coming and going down the freeways and onto the city streets to the tank farm at Palo Verde and Ajo.

Mayor Walkup said the council's task was to come up with what they thought within reason, was the safest thing to do for the community. The city is going to have a pipeline. Even if it is run to the west, even if a way could be found to get it through the mountains and over to the west side, where it will start and end is about the same, so the risk is still running through someone's neighborhood. He maintained that the safest thing he had heard was that Kinder Morgan could be done with the project by February of next year. An anomaly, one failure in 50 years, had put them in the position to replace all of the eight-inch pipeline with a safer pipe using current technology. That appeared to him to be the safest thing. That would not put the community in jeopardy of spending the next two years trying to find a way to get it from where the line originates to where it ends in a different route and all of the problems associated with that while the eight-inch pipe would continue to operate. Clearly, short of shutting it down and putting it in tank cars, the safest thing to do would be to replace it as fast as possible in its current location and be sure the neighborhoods are involved with the process. They should understand exactly what is being done, how it is being done, and have the construction crews in and out of the neighborhoods as quickly as possible. He recognized the city manager.

Mr. Keene said he wanted to follow up on the fire chief's comments in response to what Council Member West asked. He thought he was clear on the question or choice of relocating the pipeline. They had only talked about relocating to the west, but the pipeline runs through other parts of the city so he did not know if it would be relocated to the south also as part of that. He asked what the motion meant by saying all current deficiencies in the line must be taken care of immediately. Council Member Ibarra mentioned sending probes through or whatever and repairing the pipe as needed. Kinder Morgan said they thought the safest solution is to replace the line in its entirety. Mr. Keene said some clarity was needed as to the range of that. If Kinder Morgan says the only safe solution is to replace the line in its entirety and the city is saying it also needs to be relocated that is a

different order of magnitude than if they go in and do a few spot repairs. He thought the council needed some answers on that.

Mr. House said if Kinder Morgan did not agree to the terms of the motion he would suggest to the maker of the motion and the second that the appropriate action would be to withdraw the motion and move to deny.

Council Member Leal said when he was elected he decided he was not elected to do other people's no saying for them. He was elected to pursue the public interest of the people of Tucson.

Mr. House said he was suggesting that a motion to deny the amendment would be the appropriate motion.

Mayor Walkup said there was a motion on the floor.

Council Member Ibarra interrupted that Council Member Dunbar had a question, so he would hold his comments.

Mayor Walkup recognized Council Member Dunbar.

Council Member Dunbar asked if the council could make a substitute motion.

Mr. House said that was correct.

Council Member Dunbar thanked Chief Newburn and said that if he was comfortable she felt a lot better. She did not like the thought of six hundred tanker trucks running through the community. Since she had been on the council, she knew of two tanker trucks that had accidents on I-10. The city manager's material pointed out that all Kinder Morgan had to do is replace an eight inch line with an eight inch line, yet they are willing to come into the community and invest \$12 million to replace 11 miles of pipeline. It was interesting, listening to her colleagues discuss the citizens who live in the area, but she thought they should remember that the community has grown around the pipeline. There were no homes in that area when the pipeline was installed.

The council had a letter from a person who lives in the area stating, "First allow me to qualify my comments, to follow by stating that I have lived with this situation for over 25 years and I'm also through my profession familiar with the methodology of installation and maintenance. The current owners of the pipeline inherited the conditions existing from Santa Fe who inherited them from the Southern Pacific. This is similar to purchasing a used car from a second owner. Doesn't that make the maintenance records just a little obscure? When I purchased the property, I was aware of the pipeline and the related easement. The pipeline was installed before the homes and parks along Silverbell were built. When Silverbell was improved, the work was actually delayed so the Southern Pacific could clean and inspect and reroute the pipeline before it became less accessible. City of Tucson engineering has records showing specific locations and elevations of this pipeline. The original easements indicate a distance of 60 feet to any permanent structure from the pipeline. Many structures are much closer. Who is to blame for that? The current owners have been forthright and honest with those of us who share property with them. They should be commended instead of chastised. This method of transporting fuel is much more economical and safer than any option and the consumer is the primary recipient of those benefits. I say stop the whining and tabloid exploitation using media opportunities and

support this business. Let's get behind their efforts and assist them in any way possible including locating the new 12-inch line in Silverbell Road and any other reasonable request. "

It was moved by Council Member Dunbar, and seconded by Council Member Ronstadt, that ordinance no. 9902 be passed and adopted.

Mayor Walkup asked if there was any discussion.

Council Member Ibarra said he would vote against the substitute motion because again, the council was being put in an either/or situation. Either do this or 600 trucks will be coming through the city. He thought that was a scare tactic that was wrong. A problem cannot be solved, a partnership cannot be established if one side has to take this or that. He thought that was wrong. He thought the council could do both. They could fix the current pipeline's existing deficiencies along the entire line, but the only way to truly resolve the issue, to truly ensure the community's safety, and he had too much respect for the fire chief to go further, but the only way to truly ensure the safety of the neighborhood was to get the pipeline out of the neighborhood, out of all of the neighborhoods and move it somewhere else. Mr. Corman had said he could not guarantee a brand new 12-inch line, so the same problem would still be there, maybe not today or tomorrow, or in two years, but the problem would still exist. Ten years from now the problem would still be there. The best solution is to get the pipeline out of the neighborhood to another location, maybe to the west. That was the only way to resolve the problem. At the same time the council should not be sitting there saying, either go with this or there will be 600 tankers coming through the city. That is totally inappropriate. The fact of the matter is that the situation could be worked out, there could be a partnership. He understood where everyone was coming from and he did not want to take up any more time. He just wanted to make sure that his comments were on the record because the citizens were all of the council's constituents and they have to stand up for them first and foremost. He appreciated the dialogue and appreciated the respect that everyone had shown because it was an important issue and everyone dealt with it in a respectful way. He appreciated that.

Mayor Walkup asked if there were any other comments.

Council Member Ronstadt said Kinder Morgan had briefed him, he had talked to a lot of people, and had read letters from residents who were aware of the pipeline. It was his recollection that the neighbors had been spoken to or contacted and that Kinder Morgan was working with them. He did not believe there was an issue of pitting anything against anyone. He thought staff had said earlier that moving the pipeline just changed one audience for another. For example, the letter that went to the mayor and council today about Tumamoc Hill echoed the sentiment that if the pipeline is taken from one set of neighbors another set is compromised. Specifically, it talked about Cholla High School, Tolson Elementary School, Tucson Park West Neighborhood, University House Apartments, Paseo Vista Neighborhood, and Starr Pass Shadows. It seemed to him that placing a fuel line next to an elementary school or a high school would be a lot more egregious than leaving it in place where it has been for the past 50 years and where people understand and know of its existence. He thought that needed to be said. The residents know the line is there, the letter that Council Member Dunbar read made that very clear. He thought that ultimately, as the fire chief said, he is not an engineer, neither is Council Member Ronstadt, but just the gut sense, the intuitive sense of taking out a 50 year old pipe and replacing it with brand new and current technology infrastructure makes

a lot of sense and is the ultimate solution to address a safety concern. He thought the council needed to look at the issue in those terms and not try to politicize it or shift the burden onto a high school, elementary school, or other neighborhoods.

Mayor Walkup asked if there was any further discussion.

Vice Mayor Scott said she knew that the issue before the council was the 11 miles and asked if she could assume that there are more pipes within the city limits of Tucson and the surrounding area that also belong to Kinder Morgan.

Mr. Corman said they have two pipelines in the subject corridor, a six-inch diameter, and an eight inch diameter line.

Vice Mayor Scott clarified she was talking about areas outside the subject area.

Mr. Corman said the pipelines that go into the Tucson terminal come from El Paso, Texas, so they leave the city limits as they proceed southwest or southeast from there and of course as they proceed up the rail corridor going north toward Phoenix, that's all.

Vice Mayor Scott asked if, while Kinder Morgan replaced the line with an aggressive program, would that have an effect one way or the other on the pipeline that they are linking to? The Council could say what they would do about this particular incident, but other pipes throughout the community might also be in some need of attention. While they focus on the subject area are there tests at the other ends of the extensions of the pipeline that are also ongoing that would alert them prior to another rupture.

Mr. Corman said absolutely. As he stated earlier they are bound by the new Department of Transportation IMP rules, which require a very sophisticated program of internal inspection with the smart PIGS, as they are called. It measures microns of metal and when they find anomalies that are of such a serious nature they are required under the plan that was approved by the Department of Transportation to go out and dig it up immediately or shut it down. That is the responsible thing to do and that is what they would do if they were to find one. There are other levels that they have to go to within 30 days, or 180 days, so there is a very sophisticated program regulated by the Department of Transportation. They send their smart PIGS through all of the lines at least every five years.

Vice Mayor Scott said the thing that brought this to the council's attention is the fact that there was an incident, it was serious, and there was a loss of gasoline into the community in a dangerous way. It was very fortuitous nothing evil came of it other than yes, there were contaminated houses, that was bad enough, it was in the air, et cetera, but no lives were lost.

Mr. Corman noted that it was announced in some press releases that Kinder Morgan has a larger project, their east line project, which would be to expand and replace a good bit of their pipeline between El Paso and Phoenix and there are loops of that eight-inch pipe, the same vintage 1955 pipe, north of Tucson to Phoenix that would be replaced on that project. Again, that is a larger project of about 230 miles. It will take a couple of years to permit that and Kinder Morgan has announced that it will begin permitting on it next month.

Vice Mayor Scott said while every one was focusing on the 11 miles there are others and she was concerned at this point that while they focus on that Kinder Morgan will

continue to monitor the other pipes that it links to. She asked if Mr. Corman could say that their attention to the other pieces would be ongoing and that another incident is not imminent because she assumed that all of the pipes are of the same vintage.

Mr. Corman said they were not. The lines going east of Tucson were built in the sixties.

Vice Mayor Scott noted they are not quite so old.

Mr. Corman said they are not and the answer to her question was that as a result of the recent release and the somewhat unique stress corrosion cracking that they've discovered they have actually begun a program of integrity evaluation that will further enhance what they were doing in terms of looking at their other pipe of the same design and age. The answer to her question was that they were enhancing that program.

Vice Mayor Scott asked if that meant they were undergoing another scrutiny of what they would call normal safety precautions, looking at the integrity of the pipe itself and any other weaknesses that might not have been drawn to their attention up to this point.

Mr. Corman said that was correct.

Mayor Walkup asked the city clerk to read ordinance no. 9902 by number and title only.

Ordinance No. 9902

Relating to licenses; authorizing an amendment to the License Agreement with SFPP, L.P., to use and operate pipeline facilities in certain rights-of-way within the City of Tucson; and declaring an emergency.

Mayor Walkup asked for a roll call on the substitute motion to pass and adopt ordinance no. 9902.

Council Member Ibarra said he would be voting no on the motion because he thought that although the line needed to be replaced, getting it out of the neighborhoods and putting it farther to the west, on the other side of the Tucson Mountains, was a more appropriate location.

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

Mayor Walkup agreed that the issue is one of safety for the community and even if it is moved to the west, it would still be in someone's way. The important thing was to get it done as fast as possible. Mr. Corman said it could be done by February and to the mayor that was fast. He encouraged them to get on with the repairs.

Ordinance no. 9902 was declared passed and adopted by a roll call vote of 5 to 2.

For the purpose of the emergency clause and that purpose only, Mayor Walkkup called for the roll call vote.

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

Ordinance no. 9902 was declared passed and adopted by a roll call vote of 7 to 0, with the emergency clause.

16. CALL TO THE AUDIENCE

Mayor Walkkup announced that this was the time any member of the public was allowed to address the mayor and council on any issue. Speakers would be limited to three-minute presentations. He asked if anyone wished to address the mayor and council. There was no one.

17. ADJOURNMENT: 9:28 p.m.

Mayor Walkkup announced that the council would stand adjourned until its next regularly scheduled meeting to be held on Monday, October 6, 2003, at 2:00 p.m., in the Mayor and Council Chambers in City Hall, 255 W. Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the city of Tucson, Arizona, held on the 22nd day of September, 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