



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on April 19, 2005

Date of Meeting: March 22, 2005

The Mayor and Council of the City of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda Street, Tucson, Arizona, at 5:39 p.m. on Tuesday, March 22, 2005, 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	Vice Mayor, Council Member Ward 3
Steve Leal	Council Member Ward 5
Fred Ronstadt	Council Member Ward 6
Robert E. Walkup	Mayor

Absent/Excused:

Shirley C. Scott	Council Member Ward 4
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Staff Members Present:

Michael D. Letcher	City Manager
Michael Rankin	City Attorney
Kathleen S. Detrick	City Clerk
Liz Rodriguez Miller	Assistant City Manager

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Pastor Jon Martinez, Victory Assembly of God, after which the pledge of allegiance was presented by the entire assembly.

Presentations

- a. Mayor Walkup proclaimed March 28 to April 3, 2005 to be Community Development Week. Emily Nottingham, Community Services Department Director, accepted the proclamation and invited the community to an event at the National Law Center on Friday, April 1, 2005. The event would acknowledge the importance of the Community Development Block Grant Program throughout Southern Arizona.
- b. Mayor Walkup proclaimed March 2005 to be Red Cross Month. Richard White, Executive Director of American Red Cross, Southern Arizona Chapter, accepted the proclamation. Mr. White announced the results of fundraising efforts for Tsunami relief. The goal for Southern Arizona was two-hundred, fifty-thousand dollars; contributions totaled nine-hundred thousand dollars. He also encouraged those in attendance to donate blood and take Red Cross first aid and CPR (cardiopulmonary resuscitation) training.
- c. Gary Hayes, Executive Director of the Pima Association of Governments, announced Arizona's Clean Cities Awards being presented to the City of Tucson and Council Member Ronstadt. Colleen Crowninshield, Coordinator of the Clean Cities Program in the Tucson region, presented the awards. In the Alternative Fuels category, the City of Tucson was recognized for Sun Tran's use of compressed natural gas. Council Member Ronstadt was recognized as a Clean Cities Pioneer for his instrumental role in promoting the use of alternative fuels in Tucson and thanked for bringing national attention to Tucson's Clean Cities Program. Council Member Ronstadt recognized Colleen Crowninshield and Jim Ford for their work.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced City Manager's communication number 133, dated March 22, 2005, would be received into and made a part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

- a. Council Member Dunbar announced the Town Hall scheduled for March 24, 2005 would be rescheduled. This Town Hall was to provide citizens with information on new Geo-based services.

- b. Mayor Walkup recognized the importance of President George W. Bush's visit to Tucson on March 21, 2005. He relayed the honor of speaking with the President, who was proud to have the opportunity to visit. Mayor Walkup also acknowledged those who helped the event run smoothly.

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

Mayor Walkup announced City Manager's communication number 134, dated March 22, 2005, would be received into and made a part of the record. He asked for the City Manager's report.

Michael D. Letcher, City Manager, reported:

- a. Free weekly workshops would be held every Wednesday afternoon at the Ronstadt Transit Center, beginning March 23, 2005 and continuing for thirteen weeks. The first workshop sponsored by the Parks and Recreation Department and the Department of Transportation would be Sidewalk Chalk Milagro. Other topics would include Origami, Drumming, and Lantern making. All are free to the public, directed by qualified instructors and would be repeated several times during the fourteen-week period. This open-air pilot program created by Parks and Recreation Superintendent Karen Larkin and Peg Weber was the beginning of an ongoing effort to engage and entertain commuters and visitors to the Ronstadt Transit Center
- b. Sun Tran would provide a free shuttle for the Race for the Cure participants on April 10, 2005, from El Con Mall to Reid Park.
- c. Mary Lou Focht would be receiving the Heart of the Downtown Award from Mayor Walkup on March 23, 2005 in a ceremony in the courtyard of the Old Town Artisans in the El Presidio Historic District downtown.

5. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced City Manager's communication number 148, dated March 22, 2005, would be received into and made a part of the record. He asked the City Clerk to read the Liquor License Agenda.

- b. New Licenses
 - 1. Foxy's Sports Grill, Ward 6
254 E. Congress Street
Applicant: Brian L. Fox
Series 12, City 09-05
Action must be taken by: March 31, 2005
Development Services Department has indicated the applicant is **not** in compliance with city requirements.

2. Mariscos Chihuahua #4, Ward 3
356 E. Grant Road
Applicant: Carina Mendoza
Series 12, City 11-05
Action must be taken by: April 2, 2005
Staff has indicated the applicant is in compliance with city requirements.
3. Atria Bell Court Gardens, Ward 2
6653 E. Carondelet
Applicant: Donna Lou Jacobs
Series 12, City 12-05
Action must be taken by: April 8, 2005
Staff has indicated the applicant is in compliance with city requirements.

Person/Location Transfer

4. Residence Inn By Marriott, Ward 6
5400 E. Williams Circle
Applicant: Michael R. Scaffidi
Series 7, City 10-05
Action must be taken by: March 27, 2005
Staff has indicated the applicant is in compliance with city requirements.

c. Special Event

1. United Way of Tucson & Southern Arizona, Ward 1
288 N. Church Avenue
Applicant: Teri L. Koopman
City T09-05
Date of Event: April 26, 2005
Fundraiser for United Way First Focus on Kids Division
Staff has indicated the applicant is in compliance with city requirements.
2. Barrio Hollywood – Fiesta Grande, Inc., Ward 1
614 N. Grande Avenue
Applicant: Erica Dahl-Bredine
City T19-05
Date of Event: April 2 - 3, 2005
Neighborhood Street Fair
Staff has indicated the applicant is in compliance with city requirements.

3. Tucson Breakfast Lions Club, Ward 5
4823 S. 6th Avenue
Applicant: Wayne Francis Locke
City T20-05
Date of Event: April 8 – 9, 2005
Fundraiser
Staff has indicated the applicant is in compliance with city requirements.

4. Satori, Inc., Ward 3
3727 N. First Avenue
Applicant: Yvonne Schultz
City T21-05
Date of event: April 30, 2005
Yearly Auction
Staff has indicated the applicant is in compliance with city requirements.

Kathleen S. Detrick, City Clerk, announced under Item 5b there were three requests for new licenses, and one person/location transfer. Application 5b1, Foxy's Sports Grill, was originally not in compliance with City requirements; however, Development Services has indicated the applicant was now in compliance. Under Item 5c, there were four requests for Special Event licenses.

Mayor Walkup called on Council Member Leal.

It was moved by Council Member Leal, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Scott absent/excused), that liquor license applications 5b1 through 5b4 and 5c1 through 5c4 be forwarded to the Arizona State Liquor Board with a recommendation for approval.

6. CONSENT AGENDA ITEMS A THROUGH L

Mayor Walkup announced the reports and recommendations from the City Manager on the Consent Agenda Items would be received into and made a part of the record. He asked the City Clerk to read the Consent Agenda.

A. LEASE AGREEMENT: FIRST AMENDMENT TO A LEASE AGREEMENT WITH COLTON PROPERTIES FOR CONSTRUCTION, OPERATION AND MANAGEMENT OF INTERMODAL CENTER PARKING FACILITY AND REPEALING RESOLUTION 19846

1. Report from City Manager MARCH22-05-146 WARD 6

2. Resolution No. 20032 relating to development; authorizing the City Manager to execute a First Amendment to a Commercial Lease Agreement and an Operational Agreement with Colton Properties, Inc. for the lease of 200 parking spaces in the Pennington Street Garage and repealing Resolution number 19846; and declaring an emergency.
- B. ASSURANCE AGREEMENT: (S04-016) PASEO ESTRELLA SUBDIVISION, LOTS 1 TO 104 AND COMMON AREAS “A-1” – “A-2”, “B-1” – “B-6”, “C-1” – “C-4”, “D” AND “E-1” – “E-2”
1. Report from City Manager MARCH22-05-136 WARD 1
 2. Resolution No. 20033 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. S04-016 of a final plat for the Paseo Estrella Subdivision, Lots 1 to 104, Common Areas “A-1”, “A-2”, “B-1” – “B-6”, “C-1” - “C-4”, “D”, “E-1” and “E-2”; and declaring an emergency.
- C. FINAL PLAT: (S04-016) PASEO ESTRELLA SUBDIVISION, LOTS 1 TO 104 AND COMMON AREAS “A-1” – “A-2”, “B-1” – “B-6”, “C-1” – “C-4”, “D” AND “E-1” – “E-2”
1. Report from City Manager MARCH22-05-137 WARD 1
 2. The City Manager recommends that, after 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. AGREEMENT: AMENDMENT TO THE LICENSE AGREEMENT WITH LEVEL 3 COMMUNICATIONS, LLC
1. Report from City Manager MARCH22-05-138 CITY-WIDE
 2. Ordinance No. 10131 relating to interstate telecommunications, authorizing the amendment to the non-exclusive right-of-way license pursuant to Tucson Code Section 7B-36 to Level 3 Communications, LLC, a Delaware Corporation; and declaring an emergency.
- E. TRANSPORTATION: AUTHORIZATION TO INSTALL PEDESTRIAN “HAWK” FLASHING SIGNALS AT ORACLE ROAD AND KELSO STREET AND TWENTY-SECOND STREET AND SAHUARA AVENUE
1. Report from City Manager MARCH22-05-139 WARD 3 AND WARD 4

2. Resolution No. 20034 relating to transportation; authorizing and approving the installation of High-intensity Activated Crosswalk (HAWK) pedestrian flashers at Oracle Road/Kelso Street and Twenty-Second Street/Sahuara Avenue; and declaring an emergency.
- F. INTERGOVERNMENTAL AGREEMENT: WITH AMPHITHEATER SCHOOL DISTRICT FOR THE INSTALLATION OF SCHOOL CROSSING “HAWK” FLASHING SIGNALS
1. Report from City Manager MARCH22-05-140 WARD 3
 2. Resolution No. 20035 relating to Intergovernmental Agreements; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and Amphitheater School District for the installation of upgrading school flashing signals to High-intensity Activated Crosswalk (HAWK) pedestrian flashers at school crosswalks; and declaring an emergency.
- G. ANNEXATION: RINCON HEIGHTS ANNEXATION DISTRICT, ORDINANCE ADOPTION
1. Report from City Manager MARCH22-05-141 WARD 4
 2. Ordinance No. 10130 relating to annexation; extending and increasing the corporate limits of the City of Tucson, Pima County, Arizona pursuant to the provisions of Title 9, Chapter 4, Arizona Revised Statutes, by annexing thereto certain portions of Sections 4 and 9, Township 16 south, Range 16 east, Gila & Salt River base and Meridian, Pima County, Arizona, more particularly described in the body of this Ordinance; and declaring an emergency.
- H. AGREEMENT: WITH THE SONORAN INSTITUTE FOR THE BUILDING FROM THE BEST OF TUCSON PROGRAM
1. Report from City Manager MARCH22-05-145 CITY-WIDE
 2. Resolution No. 20036 relating to planning; approving and authorizing a cooperative agreement between the City of Tucson and the Sonoran Institute; and declaring an emergency.
- I. TUCSON CODE: AMENDING (CHAPTER 10) REGARDING DEVELOPMENT OF A CAREER ENHANCEMENT PROGRAM FOR THE POLICE DEPARTMENT
1. Report from City Manager MARCH22-05-155 CITY-WIDE

2. Ordinance No. 10136 relating to Compensation Plan; amending Tucson Code Chapter 10, Article II. Compensation Plan, by adding new Section 10-53-3. Career Enhancement Program (CEP) incentive pay for commissioned police personnel through rank of Captain; and declaring an emergency.

Kathleen S. Detrick, City Clerk, announced a clerical correction to Item I. The Ordinance referred to adding a new Section, 10-53-3; it should be 10-53.3.

J. FINANCIAL PARTICIPATION AGREEMENT: WITH THE GRAFFITI ABATEMENT PROGRAM IN TUCSON (GAPIT) FOR GRAFFITI ABATEMENT SERVICES

1. Report from City Manager MARCH22-05-156 CITY-WIDE
2. Resolution No. 20038 relating to Financial Participation Agreements; authorizing and approving the Financial Participation Agreement with GAPIT for graffiti abatement services with the City of Tucson; and declaring an emergency.

K. APPROVAL OF MINUTES

1. Report from City Manager MARCH22-05-157 CITY-WIDE
2. Approval of minutes for the regular meetings of the Mayor and Council held on May 24, 2004 and February 15, 2005.

L. PRE-ANNEXATION, DEVELOPMENT AND INTERGOVERNMENTAL AGREEMENT: WITH THE ARIZONA BOARD OF REGENTS AND KB HOME TUCSON AT THE UA SCIENCE AND TECHNOLOGY PARK

1. Report from City Manager MARCH22-05-152 OUTSIDE CITY
2. Resolution No. 20040 relating to annexations; authorizing and approving the execution of a Pre-Annexation and Development Agreement and Intergovernmental Agreement between the City of Tucson, the Arizona Board of Regents, and KB Home Tucson; and declaring an emergency.

Mayor Walkup recognized Council Member Ronstadt.

It was moved by Council Member Ronstadt, duly seconded, that Consent Agenda Items A through L, including Item I as amended, be passed and adopted and the proper action taken.

Mayor Walkup asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

Absent/ Excused: Council Member Scott

Consent Agenda Items A through L, including Item I as amended, were declared passed and adopted by a roll call vote of 6 to 0.

7. CALL TO THE AUDIENCE

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for items scheduled for a public hearing. Speakers would be limited to three-minute presentations. He said there were a number of speakers.

- a. Michael Toney commented on President George W. Bush's visit to Tucson, and on the effects of "galloping development" on the community.
- b. Gregory Hill spoke in opposition to a planned housing development in the 400 block of East Elm.
- c. John Macko, President of the South Harrison Neighborhood Association, read a written statement of the direction of the Board of Directors of the Neighborhood Association, regarding problems with a Ward 4 Median Subcommittee.
- d. Elezabeth Cameron addressed the Mayor and Council regarding enforcement of the False Alarm Ordinance.
- e. Barbara Lehmann, representing the Dodge/Flower Neighborhood Association, expressed concern for the safety of neighborhood residents in the vicinity of the Compass Healthcare facility, where a City contract with (CPSA) Community Partnership of Southern Arizona allowed for intoxicated individuals to roam neighborhood streets after being transported for detoxification treatment.

16. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE FOX TUCSON THEATRE FOUNDATION AND THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT FOR RESTORATION, OPERATION AND MANAGEMENT OF THE HISTORIC FOX THEATRE

(Note: This item was taken out of order.)

Mayor Walkup announced City Manager's communication number 154, dated March 22, 2005, would be received into and made a part of the record. He asked the City Clerk to read Resolution 20039 by number and title only.

Resolution 20039 relating to Intergovernmental Agreements; authorizing the Mayor to execute on behalf of the City of Tucson the Amendment to the Intergovernmental Agreement between the City, the Rio Nuevo Multipurpose Facilities District, and the Fox Tucson Theatre Foundation entitled Intergovernmental Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre; and declaring an emergency.

Kathleen S. Detrick, City Clerk, announced a new Section 4 should be added to the Resolution, as advised by the City Attorney. This Section should read: "The City Manager may execute such other documents as may be required to give effect to this Resolution, the Amendment to the Intergovernmental Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre, to Resolution No. 19449, and to the Intergovernmental Development and Lease Agreement for Restoration, Operation and Management of the Historic Fox Theatre." The existing Section 4, as originally presented, would be renumbered as Section 5; this was the standard Emergency Clause.

At the request of Council Member Leal, Ms. Detrick repeated the new Section 4.

Council Member Leal stated he was uncomfortable with the new Section 4 granting the City Manager the authority to execute whatever he deemed necessary. He would like the new Section 4 to be brought before the Rio Nuevo Subcommittee.

Mayor Walkup recognized Michael Rankin, City Attorney.

Mr. Rankin clarified that the purpose of this section was based on additional documents needed to carry out the Agreement and Resolution being approved, as discussed earlier that day. For example, the tax credit element and agreements that would need to be signed with respect to the issue that Council Member Ibarra brought up regarding parking.

Council Member Leal wanted to verify the section related to the discussion earlier that day. It did not give the City Manager the ability to change things as they arose in the future.

Mr. Rankin answered affirmatively. He said it was not to change things, but to carry out the provisions of the Agreement and the Resolution that would be approved. Not that anything would be done differently; it would have to be consistent with the Agreement.

Mayor Walkup called on Council Member Ronstadt.

It was moved by Council Member Ronstadt, duly seconded, to pass and adopt Resolution 20039 as amended.

Mayor Walkup asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

Absent/ Excused: Council Member Scott

Vice Mayor Dunbar wished to clarify her vote. She stated there was a lengthy conversation during that afternoon's Study Session meeting about the Fox Theatre. She wanted to make it clear that she was voting for this because the Fox Board had promised the Council they would repay the loan. Personally, she was extremely disappointed with the fundraising aspects around the Fox. Over the last couple months, with all the media attention, she had several phone calls to her office from people saying they support the Fox. Her response had been to ask the callers if they had written a check; the answer was usually no. Perhaps if all those who supported the Fox had taken the time to write a check to the Fox, they would not be in the situation they were in. She hoped those who, in theory, supported the Fox would step up to the plate and write the checks so they could move the project along. She was being asked to trust the future would not be a repeat of the past five years. She guaranteed the public she would be watching to make sure the funds were repaid.

Resolution 20039, as amended, was declared passed and adopted by a roll call vote of 6 to 0.

8. PUBLIC HEARING: TUCSON CODE (CHAPTER 6) RELATING TO THE JOINT CITY OF TUCSON/PIMA COUNTY OUTDOOR LIGHTING CODE 2005 EDITION

Mayor Walkup announced City Manager's communication number 151, dated March 22, 2005, would be received into and made a part of the record. He said this was the time and place legally advertised for a public hearing on the adoption of revisions to

the Outdoor Lighting Code. He stated staff would make a brief presentation prior to beginning the public hearing.

Ernie Duarte, Director of Development Services, reported that the Outdoor Lighting Code was a new code aimed at controlling obtrusive aspects of excessive and careless outdoor lighting while attempting to preserve, protect and enhance the nighttime use and enjoyment of property. He explained the last time the City of Tucson updated the Outdoor Lighting Code was 1994. The current version being proposed was in place in Pima County for about three years. The proposed Code incorporates lighting limits and light trespass requirements. It was endorsed by the Mayor and Council Growth Subcommittee in January 2005.

Mayor Walkup announced the public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He stated no cards had been received. He asked if anyone wanted to speak.

No one requested to speak.

(Note: Council Member Ronstadt departed the chambers at 6:28 p.m.)

It was moved by Council Member West, duly seconded, and carried by a voice vote of 5 to 0 (Council Members Scott and Ronstadt absent/excused) to close the public hearing.

(Note: Council Member Ronstadt returned to the chambers at 6:30 p.m.)

Mayor Walkup declared the public hearing closed and asked the City Clerk to read Ordinance 10135 by number and title only.

Ordinance No. 10135 relating to Outdoor Lighting; repealing Ordinance No. 8210 adopted March 21, 1994 which enacted the 1994 Edition of the City's Outdoor Lighting Code and replacing Ordinance 8210 with the City of Tucson/Pima County Outdoor Lighting Code except for those provisions designated for use by Pima County and amending the Tucson Code Chapter VI, Buildings, Electricity, Plumbing and Mechanical Code, Article IV Electricity, Division II Outdoor Lighting Code, Section 6-101 Outdoor Lighting Code Adopted by replacing the provisions of Section 6-101 with the City of Tucson/Pima County Outdoor Lighting Code except for those provisions designated for use by Pima County; providing for a penalty; and declaring an emergency.

Mayor Walkup recognized Council Member West.

It was moved by Council Member West, duly seconded, to pass and adopt Ordinance No. 10135.

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

Upon roll call, the results were:

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

Nay: None

Absent/ Excused: Council Member Scott

Ordinance 10135 was declared passed and adopted by a roll call vote of 6 to 0.

9. PUBLIC HEARING: TUCSON CODE (CHAPTER 6), ADOPTION OF LOCAL SWIMMING POOL AMENDMENTS TO THE 2003 INTERNATIONAL BUILDING AND RESIDENTIAL CODES

Mayor Walkup announced City Manager's communication number 153, dated March 22, 2005, would be received into and made a part of the record. He said this was the time and place legally advertised for a public hearing on the adoption of local modifications to the 2003 editions of the *International Building Code* and the *International Residential Code*. He stated staff would make a brief presentation prior to beginning the public hearing.

Ernie Duarte, Director of Development Services, reported the proposed changes introduced two changes to pool safety. The proposed amendments required a fence and a gate between the home and pool and the installation of an "approved method" to prevent the entrapment of bathers by the pool drain and suction equipment. The changes made no provisions to the overall height requirements for the enclosure around the pool and the barrier between the home and the pool, which were governed by State Law. He stated staff recommended the continuance of this item to April 12, 2005 for the opportunity to meet with representatives of the pool industry and representatives of Tucson Association of Realtors to review the concerns on height requirements for the enclosures.

Mayor Walkup announced they would proceed with the public hearing, which would then be continued to a later date. He said one card had been received, and called on the first speaker.

Gary Duren introduced himself as an employee of a firm called Code Compliance. The firm was based out of Florida and has been involved in code and standards development for twenty years. He represented an organization called "Pool Safety Consortium" comprised of various producers of the technologies that meet national recognized standards and had third party certifications for the technologies referenced in the *International Building Codes* and *International Residential Code*. He wanted to make it clear there were no issues with the barrier provisions of the code and concurred that the recommendations were an improvement to the City Code.

Mr. Duren stated the exception was with the entrapment portion of the proposed amendment to the Code. The components in the language found in the *International*

Building Code and *International Residential Code* were based on the provisions found in the Federal Consumer Product and Safety Commission guidelines. Those guidelines prescribed what were known as layers of protection. The three layers of protection were: dual drains, requirements for a backup systems and requirements for covers that met a standard that dealt with items such as hair entanglement, mechanical entrapment, structural integrity and UV resistance.

Mr. Duren said he wrote a memorandum to the City and cited five technical reasons the Mayor and Council should not consider revising the entrapment portions. The historical position of the letter was the strongest reason Mayor and Council should not vote for this provision. The NASA Pool and Spa Code Institute submitted code modifications to the International Code Council to effectively revise or modify the current language in a similar manner. At public hearings at Cincinnati, Ohio, those changes were summarily rejected because the current code was very prescriptive. The standard in the code related to devices that provided a backup method was not an easy standard for anybody to meet. He stated the question that needed to be considered by Mayor and Council was if the proposed amendment improved the code. He believed it did not improve the code and in fact seriously degraded the level of safety that was provided by the current Code. He explained the proposal contained prescriptive measures for dual drains, however the measures for backup systems meeting the national consensus standard, ASME (American Society of Mechanical Engineers) A112.19.17, were absent. The proposal introduced several items such as the channel drain system, the gravity flow system and the combination in-let /out-let fixtures for Swim Jets. He added that Swim Jets was a trade name and that particular product was a proprietary product made by one manufacturer. Venturi Removal System is a similar type of system made by one manufacturer. Although reported to provide protection, none of the items mentioned [in the proposal] met national standards for safety and that was a very serious flaw. If the City had the resources to conduct the science and the research and hear what has been heard at the national level, it would be found that the approval of this ordinance would not meet the national standard for safety. He stated there was a National standard being adopted and he was certain the problems dealing with small children entrapped by the suction forces and pulls would be mitigated by the current Code being adopted. He encouraged Mayor and Council to consider current Code in favor of this proposal. He concluded he would be glad to answer any questions.

Mayor Walkup asked if there was anyone else to speak on this subject.

Lori Lustig, representing Southern Arizona Home Builders Association (SAHBA), said there were several items that needed to get addressed in this ordinance but did not feel the items were serious. She stated she had met with Patti Richardson of the Tucson Association of Realtors and appreciated the additional opportunity to meet with staff and hoped to have an agreement available on April 12, 2005.

Mayor Walkup called on Council Member West.

It was moved by Council Member West, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Scott absent/excused) to continue the public hearing to April 12, 2005.

Council Member West stated she was very concerned on some of the issues brought up in the public hearing and asked staff if they had done their homework on this issue.

Mr. Duarte said staff had done their homework. There were some issues raised in the last couple of days and they would like an opportunity to respond to the people that raised them. He wanted Mayor and Council to have an informed decision based upon the input received and said this was the reason to have the item continued.

Council Member West said she thought the guidelines were directed by the State and was concerned to hear standards did not meet safety requirements. She questioned who Mr. Duren was. She asked staff for a response.

Mr. Duarte was not sure who Mr. Duren was representing.

Mayor Walkup said the reason for the continuation of this was to iron out some issues. He thanked Mr. Duren for his presentation and input on the issue and said he had confidence in City Staff to untangle and do the safest thing for the children.

Council Member West stated that she was annoyed because the issues raised had developed within the last few days and this was a very important safety issue that needed to get addressed immediately.

Kathleen S. Detrick, City Clerk, announced the public hearing would be continued to April 12, 2005 and would be held in the Mayor and Council Chambers at City Hall, 255 West Alameda Street.

10. PUBLIC HEARING: ZONING (C9-98-34) GR PARTNERS – SPEEDWAY BOULEVARD C-1 TO C-2, REACTIVATION, TIME EXTENSION, AND CHANGE OF CONDITIONS

Mayor Walkup announced City Manager's communication number 142, dated March 22, 2005, would be received into and made a part of the record. He said this was the time and place legally advertised for a public hearing with respect to a request to reactivate the rezoning case and allow a time extension, and to change the conditions and preliminary development plan for property located on the north side of Speedway Boulevard, west of Pantano Road. He asked if the applicant or a representative was present.

Gary Kessler, the applicant, stated they had worked closely with staff trying to extend the time frame on the zoning issue. They agreed to all the stipulations and had no problems at that time.

Mayor Walkup announced speakers would be limited to five-minute presentations. He said one card had been received, and called on the first speaker.

Carla Pothier, a resident on the street just north of Speedway and west of Pantano, commended the City's progressive use of alternative fuels. She said hers was one of six families in a cul de sac concerned about the nature of the business that was possibly going to be rezoned. The biggest concerns were the loud sounds associated with hydraulic equipment, smells associated with such a business, and the possibility of chemicals draining into surrounding properties, which she knew were being addressed in that situation, but her concerns still existed. She said each of their homes had approximately one half to one acre of property behind them, a pristine area they would like to preserve. They were trying to keep their homes buffered from Speedway as much as possible. Another concern was the additional congestion on Speedway behind their homes. Additionally, there was another business of similar nature across Speedway, on the south side and to the east.

Mayor Walkup asked if anyone else wished to speak on the subject.

Michael Toney expressed concern with infill policy, the maintenance of air quality, and the use and preservation of natural vegetation.

Mayor Walkup asked if there was anyone else who wanted to speak, hearing no one, he asked for a motion to close the public hearing.

It was moved by Council Member West, duly seconded, and carried by a voice vote of 6 to 0, (Council Member Scott absent/excused) to close the public hearing.

Mayor Walkup recognized Council Member West.

Council Member West suggested to Mr. Kessler he try to work things out with the neighbors Ms. Pothier referred to because noise annoys, and she knew the area around the business was a quiet development. She expected Ms. Pothier to speak about the drainage issues brought up earlier when the car wash was going in, which Council Member West understood had been taken care of. She said Mr. Kessler should work with the neighborhood to ensure sound attenuation.

Council Member West moved, duly seconded, and carried by a voice vote of 5 to 1 (Council Member Leal dissenting, Council Member Scott absent/excused) to reactivate rezoning case C9-98-34 and approve the request as recommended by the City Manager.

11. PUBLIC HEARING: ZONING (C9-85-95) 22ND STREET/PANTANO PARKWAY ANNEXATION DISTRICT, I-1® ZONING, CHANGE TO CONDITIONS OF ORIGINAL CITY ZONING AND ORDINANCE ADOPTION

Mayor Walkup announced City Manager's communication number 149, dated March 22, 2005, would be received into and made a part of the record. He said this was the time and place legally advertised for a public hearing with respect to a request for a change of conditions on the project site located on the westside of the Pantano Wash, south of Twenty-Second Street. He asked if the applicant or a representative was present and had any brief comments before beginning the public hearing.

Patrick O'Neill, president of 911 Collision Centers Management, stated he had met with the neighbors, the industrial park and neighbors adjacent to the industrial park, and there was no known opposition. He had worked with the City and their staff to meet the recommendations to move forward with this.

Mayor Walkup announced speakers would be limited to five-minute presentations, and that he had received one card. He called on the first speaker.

Karen Ives, a homeowner in the vicinity of the project site, spoke in opposition to the rezoning. She said paint shops generally had a velocity stack which filtered the product, though some still escaped into the air. Paint shops also had inhalants which could be smelled in the air. Overspray escaped and landed on personal property and the wind determined how far it traveled. Toxins were emitted by paint shops, and therefore were not healthy to live near. Zoning had been set up to keep paint shops out of residential areas for the protection of citizens' health. Although reputable shops generally had what were called scrapers, they were not required by the City and she did not believe there was an ordinance for filtration systems, which still were not totally effective when used. Even if the business voluntarily used one, there was no enforcement if it went out. It was also a noisy type of business next to a residential area. Usually wrecked and damaged cars were sitting around a place of business like this. Home values in the area could be affected. Paint and body shops did not belong next to residential areas. Zoning was there for a reason, to protect the people, and she did not believe it should be changed.

Mayor Walkup asked if anyone else wished to speak on this subject. Hearing no one, he asked for a motion to close the public hearing.

It was moved by Vice Mayor Dunbar, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Scott absent/excused), to close the public hearing.

Mayor Walkup announced Ernie Duarte, Development Services Department Director, had a comment before they proceeded.

Mr. Duarte stated a letter was received late that afternoon from the Tucson Meadows Mobile Home Park, located just south of the project site. They supported the

project, in general, but there were approximately six items they felt needed to be addressed. Mr. Duarte was confident four of the items were addressed by the conditions placed on the rezoning case. Two of the items had not been discussed with the applicant. One was limiting the hours of operation. The other was providing emergency ingress and egress access for the mobile home park to this site. Since the Development Services Department had not spoken with the applicant, Mr. Duarte requested the opportunity to do so and continue the item to the next Mayor and Council meeting. This would also provide the opportunity to respond to the issues raised by Ms. Ives.

Council Member Ronstadt suggested Mr. Duarte attempt to address the issues with the applicant at that time, while Council continued with the remaining meeting items.

Mayor Walkup agreed, recommending Mr. Duarte return to the Council before the meeting adjourned, to see if a conclusion could be reached before proceeding on that item.

Vice Mayor Dunbar asked if the applicant could come forward at that time to address the issue.

Mayor Walkup called on the applicant.

Mr. O'Neill said he had met with the mobile home park residents twice, to address any questions or issues they had. Until that morning, when he received the letter from the Park, no other issues came up. He met with the general manager of the park a week prior and reviewed the conditions that were agreed to with the staff and he was informed there were no other issues to address at that time. The general manager was very happy with what they had come up with. Then, the general manager that morning said the owner of the park, who lived in California, had some issues he wanted to raise. The letter received that day was faxed to Mr. O'Neill, who faxed to the owner the agreement that has been drawn by staff. Mr. O'Neill went over the agreement with the general manager, who reviewed it with the owner. At that time all the owner's issues were addressed, and he seemed satisfied with the responses regarding the recommendation on the hours of operation. The south-facing doors would remain closed after 7:00 p.m. and not be open before 7:00 a.m. The industrial park had a common drive that encircled the whole park, which was never to be blocked. All businesses in the park had to have equal access to the drive. If there was an emergency in the mobile home park, they could come down the hill and drive through the industrial park. The issues were addressed with the owner, who faxed a letter saying that everything was fine. Mr. O'Neill spoke with the general manager and faxed the recommendations from City staff, and there were no other concerns from there.

Mayor Walkup recognized Michael D. Letcher, City Manager.

Mr. Letcher recommended the item be continued to allow time for both the applicant and staff and the mobile home park to work things out.

Vice Mayor Dunbar said the issues seemed to have been worked out. The two items brought up by the mobile home park seemed pretty simple. The applicant was present and they needed to proceed with their business. They should be respectful of the applicant's time. It appeared they had stood on their head to get it taken care of. The two items have reportedly been handled.

Mayor Walkup recognized Council Member West.

Council Member West asked about the paint fumes. She knew there was a way to mitigate that, and asked for an explanation.

Michael Quinn, business partner of Mr. O'Neill, said they operated four facilities in Tucson. They were more of a collision repair facility. As for the fumes and overspray, they have never had a complaint from any neighbors or surrounding properties. They used current technology, HVLP (high volume low pressure), which increased transfer efficiency on the paint. Other methods only applied approximately thirty five percent of the product coming out of the nozzle to the car. The technology they used applied approximately seventy percent to the vehicle. The rest got trapped by filters. They had about four different filters the fumes went through before getting emitted into the atmosphere. These were not mandated by law, but they were what the applicant chose to use, and what the facility in question would have. This technology met the Southern California statutes, which were the highest in the country. The hours of operation would be Monday through Friday, 8:00 a.m. to 5:00 p.m. or 6:00 p.m. They wanted employees to have time with their families.

Mayor Walkup asked if the paint was water-based.

Mr. Quinn said they used a European version of a Dupont product, which was urethane-based, and also met the SCAQMD (South Coast Air Quality Management District) standards.

Mayor Walkup recognized Vice Mayor Dunbar.

Vice Mayor Dunbar asked if they received many complaints from the people in the vicinity of their four other business locations, and had they received outstanding business awards.

Mr. Quinn said they had not received any complaints that he could think of, and they had received quite a few awards. They also formally adopted the "snake" bridge, the south side of which emptied out into the parking lot of their University location. They cleaned it twice a month. They were involved in the community, and were there to be a good, solid corporate partner.

Mr. O'Neill said when he met with the residents of the park, he also took the park manager to tour the Broadway facility so he could see exactly how the facility looked,

how the surrounding area was retained, how it was kept clean, let him hear the type of noises there would be, and any fumes. He felt there was no emission of fumes, odors, or overspray, and he was impressed with the quietness of the facility. These were all the precautions taken prior to putting the property in escrow.

It was moved by Vice Mayor Dunbar, duly seconded, to pass and adopt Ordinance 10133.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote, and for the City Clerk to read Ordinance 10133 by number and title only.

Ordinance 10133 relating to zoning: amending conditions of original City zoning in the area located on the south side of Bowline Drive approximately 300 feet west of Sarnoff Drive in case C9-85-95, 22nd Street/Pantano Parkway Annexation District; and setting an effective date.

Upon roll call, the results were:

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

Nay: None

Absent/ Excused: Council Member Scott

Ordinance 10133 was declared passed and adopted by a roll call vote of 6 to 0.

12. ZONING: (C9-04-22) YBARRA/DAVIS – GORET ROAD, SR/RX2 TO RX-1, CITY MANAGER’S REPORT

Mayor Walkup announced City Manager’s communication number 143, dated March 22, 2005, would be received into and made a part of the record. He stated this was a request to rezone property located on the north side of Goret Road, between Desert Shadows Drive and the Shannon Road alignment. The Zoning Examiner and the City Manger recommended approval, subject to certain conditions. He asked if the applicant was present, and whether he was aware of and agreeable to the proposed requirements.

Michael Marks, of MJM Consulting, representing applicant Luis Ybarra, stated the applicant is not related to Council Member Ibarra and all the rezoning conditions, as presented, were found to be acceptable.

Mayor Walkup recognized Council Member Ibarra.

It was moved by Council Member Ibarra, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Scott absent/excused) to approve the request for rezoning as recommended by the Zoning Examiner. Council Member Ibarra also stated for the record that he is not related to the applicant.

13. ZONING: (C9-04-24) MARVIN – RIVER ROAD, SR TO O-3, CITY MANAGER’S REPORT

Mayor Walkup announced City Manager’s communication number 144, dated March 22, 2005, would be received into and made a part of the record. He stated this was a request to rezone property located on the south side of River Road, west of Hacienda del Sol. The Zoning Examiner and the City Manager recommended approval, subject to certain conditions. He asked if the applicant was present, and whether she was aware of and agreeable to the proposed requirements.

Megan Johnson, of the Planning Center, stated they were in agreement with all the conditions.

Mayor Walkup recognized Vice Mayor Dunbar.

It was moved by Vice Mayor Dunbar, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Scott absent/excused), to approve the request for rezoning as recommended by the Zoning Examiner.

14. ZONING: (C9-04-01) KEMMERLY – FIRST AVENUE SH, MH-1, AND C-2 TO R-3 AND C-1, ORDINANCE ADOPTION

Mayor Walkup announced City Manager's communication number 150, dated March 22, 2005, would be received into and made a part of the record. He asked the City Clerk to read Ordinance 10134 by number and title only.

Ordinance 10134 relating to zoning; amending zoning district boundaries in the area located between Stone Avenue and 1st Avenue, on the north side of the Rillito River in Case C9-04-01, Kemmerly – First Avenue, SH, MH-1, and C-2 to R-3 and C-1; and setting an effective date.

Mayor Walkup recognized Vice Mayor Dunbar.

It was moved by Vice Mayor Dunbar, duly seconded, to pass and adopt Ordinance 10134.

Mayor Walkup asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

Absent/ Excused: Council Member Scott

Ordinance 10134 was declared passed and adopted by a roll call vote of 6 to 0.

15. CITY MANAGER: APPOINTMENT OF A CITY MANAGER

Mayor Walkup announced City Manager's communication number 147, dated March 22, 2005, would be received into and made a part of the record. He asked the City Clerk to read Ordinance 10132 by number and title only.

Ordinance 10132 relating to the City Manager; appointing a City Manager; authorizing and approving the agreement with the City Manager; and declaring an emergency.

Mayor Walkup recognized Vice Mayor Dunbar.

It was moved by Vice Mayor Dunbar, duly seconded, to pass and adopt Ordinance 10132.

Mayor Walkup asked if there was any discussion.

Council Member Ronstadt thanked Michael D. Letcher, City Manager, for his service during the interim period.

Council Member West thanked Mr. Letcher for having stepped in and been the dedicated professional that he was. She was thrilled he was staying because he brought a great deal to the City. She thanked him for his contributions.

Mayor Walkup said Mr. Letcher did a superb job over the past several months. He jumped into a very difficult situation, added professionalism to the process, looked forward and gave good guidance. He said Mr. Letcher was a professional, and his job was well done.

Mayor Walkup asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

Absent/ Excused: Council Member Scott

Ordinance 10132 was declared passed and adopted by a roll call vote of 6 to 0.

16. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH THE FOX TUCSON THEATRE FOUNDATION AND THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT FOR RESTORATION, OPERATION AND MANAGEMENT OF THE HISTORIC FOX THEATRE

(Note: This item was taken out of order and considered after Item 7.)

17. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

Mayor Walkup announced City Manager's communication number 135, dated March 22, 2005, would be received into and made a part of the record. He asked for a motion to approve the appointments in the report.

It was moved by Council Member West, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Scott absent/excused), to appoint James Horvath to the Citizens' Water Advisory Committee, and Norman Ross to the Veterans' Affairs Committee, representing the Jewish War Veterans, Friedman-Paul Post 201.

Mayor Walkup asked if there were any personal appointments to be made at this time.

There were none.

18. ADJOURNMENT 7:12 p.m.

Mayor Walkup announced the Council would stand adjourned until its next regularly scheduled meeting to be held on Tuesday, April 5, 2005, at 5:30 p.m. in the Mayor and Council Chambers, 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 March, 2005, and do hereby certify that it is an accurate transcription.

DEPUTY CITY CLERK

KSD:cs/sl