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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
on November 15, 2005

Date of Meeting: October 18, 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, October 18, 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
Shirley C. Scott	Council Member Ward 4
Steve Leal	Council Member Ward 5
Fred Ronstadt	Council Member Ward 6 (Arrived at 6:17 p.m.)
Robert E. Walkup	Mayor

Absent/Excused: None

Staff Members Present:

Mike Hein	City Manager
Michael Rankin	City Attorney
Kathleen S. Detrick	City Clerk
Mike Letcher	Deputy City Manager

## **2. INVOCATION AND PLEDGE OF ALLEGIANCE**

The invocation was given by Pastor Otis F. Brown, Jr., Siloam Freewill Church, after which the pledge of allegiance was led by Cub Scouts Packs 211 and 219.

Presentation:

- a. Mayor Walkup presented a proclamation to Chief Dan Newburn, Tucson Fire Department, proclaiming the value of the National Incident Management Systems in the community.
- b. Mayor Walkup proclaimed October 20, 2005 to be "Lights On After School Day." Lexie Escalante, President of the Metropolitan Education Commission Youth Advisory Council, and LaVonne Douville, Director of First Focus on Kids, United Way of Tucson, accepted the proclamation. Artwork created by children in the City and the County were presented to the Council.
- c. Mayor Walkup proclaimed the month of October 2005 to be "National Down Syndrome Awareness Month." Carolina Freund and Carolyn Gant, coordinators of the Buddy Walk Event, accepted the proclamation.

## **3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS**

Mayor Walkup announced City Manager's communication number 558, dated October 18, 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 Council to report on current events and asked if there were any reports.

- a. Council Member Scott announced she would be hosting a Town Hall on the Home Rule item on the ballot. The Town Hall was scheduled for October 19, 2005 at the Clements Center, located at 8133 E. Poinciana.
- b. Vice Mayor Dunbar stated Ward 3 would be participating in the Fourth Annual Halloween Haunting Party being held at Marty Birdman Center, 2536 N. Castro. There would be free food served, costume contests, and fun and games for the children.
- c. Council Member West informed the public of the loss of a long time public servant Susan Harbin, former Deputy Director of Development Services, who recently died due to a long illness.

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

Mayor Walkup announced City Manager's communication number 559, dated October 18, 2005, would be received into and made a part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

Mike Hein, City Manager asked Emily Nottingham to report:

- a. Emily Nottingham, Community Services Director, updated the Council regarding the dispute over the City using Housing and Urban Development (HUD) funds to financially assist low-income tenants for cooling in public housing. The issue had been resolved in the City's favor and funding could continue to be used for the cooling of public housing residences.

## 5. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced City Manager's communication number 560, dated October 18, 2005, 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 Applications

### New License

1. Stopani's, Ward 4  
5754 E. 22nd Street  
Applicant: Joseph Charles Gurrola  
Series 12, City 77-05  
Action must be taken by: October 20, 2005  
Staff has indicated the applicant is in compliance with city requirements.
2. Chipotle Mexican Grill #0668, Ward 3  
235 W. Wetmore Road, #101  
Applicant: H. J. Lewkowitz  
Series 12, City 79-05  
Action must be taken by: October 24, 2005  
Staff has indicated the applicant is in compliance with city requirements.
3. Neo of Melaka, Ward 3  
1765 E. River Road, Suite 131  
Applicant: Hock Chuan Yap  
Series 12, City 80-05  
Action must be taken by: October 29, 2005  
Staff has indicated the applicant is in compliance with city requirements.
4. Montana Ave, Ward 2  
6390 E. Grant Road  
Applicant: Randy D. Nations  
Series 12, City 83-05  
Action must be taken by: October 30, 2005  
Staff has indicated the applicant is in compliance with city requirements.

Person/Person Transfer

5. Alfie's Pub, Ward 5  
3940 E. 29th Street  
Applicant: Johnnie Ray Mauldin  
Series 06, City 82-05  
Action must be taken by: October 31, 2005  
Staff has indicated the applicant is in compliance with city requirements.  
Public Opinion: Support Filed

c. Special Event

1. Vietnam Veterans of America, Inc., Tucson Chapter 106, Ward 6  
900 S. Randolph Way  
Applicant: Juan Rodriguez  
City T89-05  
Date of Event: October 30, 2005  
To Honor the Armed Forces and it's Veterans  
Staff has indicated the applicant is in compliance with city requirements.
2. Tucson Community School Inc., Ward 3  
3201 E. Presidio  
Applicant: Catherine Linda Mahoney  
City T91-05  
Date of Event: October 29, 2005  
To Raise Money For Programs Offered By TCS  
Staff has indicated the applicant is in compliance with city requirements.
3. St. Ambrose Catholic School, Ward 6  
300 S. Tucson Blvd.  
Applicant: Leslie Ann Shultz-Crist  
City T93-05  
Date of Event: October 29, 2005  
Fundraiser  
Staff has indicated the applicant is in compliance with city requirements.  
Public Opinion: Protest Filed

Considered separately

4. Saints Peter and Paul Catholic School, Ward 6  
1436 N. Campbell Ave.  
Applicant: Paul V. Leonardi  
City T94-05  
Date of Event: October 29, 2005  
School Fundraiser  
Staff has indicated the applicant is in compliance with city requirements.  
Public Opinion: Protest Filed

Considered separately

5. League of Mexican American Women, Ward 6  
900 S. Randolph Way  
Applicant: Maria Zenaida Sanchez  
City T101-05  
Date of Event: October 23, 2005  
Community Fundraiser  
Staff has indicated the applicant is in compliance with city requirements.
  6. It's Happening Downtown Inc., Ward 1  
Jacome Plaza  
Applicant: Barbara A. Zelano  
City T102-05  
Date of Event: October 29, 2005  
Community Cultural Event  
Staff has indicated the applicant is in compliance with city requirements.
- d. Agent Change
1. Target #855, Ward 2  
6500 E. Grant Road  
Applicant: John Edward Schlieper  
City AC02-05  
Action must be taken by: October 30, 2005  
Staff has indicated the applicant is in compliance with city requirements.
  2. Target #1316, Ward 1  
1225 W. Irvington Road  
Applicant: John Edward Schlieper  
City AC03-05  
Action must be taken by: October 30, 2005  
Staff has indicated the applicant is in compliance with city requirements.
  3. Target #179, Ward 6  
5255 E. Broadway Blvd.  
Applicant: John Edward Schlieper  
City AC04-05  
Action must be taken by October 30, 2005  
Staff has indicated the applicant is in compliance with city requirements.
  4. Target #1439, Ward 6  
3699 E. Broadway Blvd.  
Applicant: John Edward Schlieper  
City AC05-05  
Action must be taken by: October 30, 2005  
Staff has indicated the applicant is in compliance with city requirements.

It was moved by Council Member Ibarra, duly seconded, and carried by a voice vote of 6 to 0, (Council Member Ronstadt absent/excused), that liquor license applications 5b1 through 5b5; 5c1, 5c2, 5c5, 5c6; and 5d1 through 5d4, be forwarded to the Arizona State Liquor Board with a recommendation for approval.

## **5. LIQUOR LICENSE APPLICATIONS**

### **c. Special Events**

3. St. Ambrose Catholic School, Ward 6  
300 S. Tucson Blvd.  
Applicant: Leslie Ann Shultz-Crist  
City T93-05  
Date of Event: October 29, 2005  
Fundraiser  
Staff has indicated the applicant is in compliance with city requirements.  
Public Opinion: Protest Filed

Kathleen S. Detrick, City Clerk, announced Item 5c3, a request for a special event by St. Ambrose Catholic School would be considered separately. The license had a protest filed and is located in Ward 6. Staff indicated the applicant was in compliance with City requirements.

Vice Mayor Dunbar asked if the protestor was present. There was no one.

It was moved by Vice Mayor Dunbar, duly seconded, and carried by a voice vote of 6 to 0, (Council Member Ronstadt absent/excused), to forward special event application 5c3, St. Ambrose Catholic School, to the Arizona State Liquor Board with a recommendation for approval.

## **5. LIQUOR LICENSE APPLICATIONS**

### **c. Special Events**

4. Saints Peter and Paul Catholic School, Ward 6  
1436 N. Campbell Ave.  
Applicant: Paul V. Leonardi  
City T94-05  
Date of Event: October 29, 2005  
School Fundraiser  
Staff has indicated the applicant is in compliance with city requirements.  
Public Opinion: Protest Filed

Kathleen S. Detrick, City Clerk, announced Item 5c4, a request for a special event by Saints Peter and Paul Catholic School would be considered separately. The license had a protest filed and is located in Ward 6. Staff indicated the applicant was in compliance with City requirements.

Vice Mayor Dunbar asked if the protestor was present. There was no one.

It was moved by Vice Mayor Dunbar, duly seconded, and carried by a voice vote of 6 to 0, (Council Member Ronstadt absent/excused), to forward special event application 5c4, Saints Peter and Paul Catholic School, to the Arizona State Liquor Board with a recommendation for approval.

**6. CONSENT AGENDA – ITEMS A THROUGH Q**

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. REAL PROPERTY: AUTHORIZATION TO ACQUIRE PROPERTY LOCATED AT 1099 EAST BROADWAY BOULEVARD FOR FUTURE RIGHT-OF-WAY PURPOSES (CONTINUED FROM THE MEETING OF SEPTEMBER 27, 2005)**

1. Report from City Manager OCT18-05-557 WARD 6
2. Resolution No. 20186 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain real property located at 1099 East Broadway Boulevard for future right-of-way purposes; and declaring an emergency.

**B. FINANCE: COMMUNITY SUPPORT FUND TRANSFER FOR MILITARY COMMUNITY COMPATIBILITY COMMITTEE**

1. Report from City Manager OCT18-05-563 WARD 6
2. Resolution No. 20199 relating to Finance; approving and authorizing the transfer of two thousand dollars (\$2000) from the Community Support Fund to Organization 001-183-1898-268, to assist in the future deliberations of the Military Community Compatibility Committee; and declaring an emergency.

This was a request by Council Member Ronstadt. Allocation of funds was as follows: Council Member Ronstadt - \$2000.00

- C. TUCSON CODE: AMENDING (CHAPTER 10A) RELATING TO THE SMALL BUSINESS COMMISSION
1. Report from City Manager OCT18-05-564 CITY-WIDE
  2. Ordinance No. 10207 relating to boards and commissions; repealing Resolution No. 15636 relating to the Small Business Commission and reconstituting it under the Tucson Code; amending the Tucson Code, Chapter 10A, Community Affairs, by adding a new article; making certain changes to the appointment qualifications of the Commission; and declaring an emergency.
- D. REAL PROPERTY: LEASE AGREEMENT WITH PAUL SCHWAM FOR PROPERTY LOCATED AT 510 NORTH STONE AVENUE
1. Report from City Manager OCT18-05-567 WARD 6
  2. Ordinance No. 10208 relating to real estate; authorizing and approving the lease of certain City-owned real property located at 510 North Stone Avenue to Paul Schwam, doing business as PSCHWAM Interests, L.L.C.; and declaring an emergency.
- E. TUCSON CODE: AMENDING (CHAPTER 26) ESTABLISHING STORMWATER QUALITY PROVISIONS
1. Report from City Manager OCT18-05-569 CITY-WIDE
  2. Ordinance No. 10209 relating to stormwater quality protection and enforcement; amending the Tucson Code by adding Stormwater Quality Provisions as a new Article II of Chapter 26 of the Tucson Code; stating purpose; establishing definitions; providing enforcement authority; prohibiting unlawful acts; establishing requirements; establishing penalties and remedies; and declaring an emergency.
- F. NEW DEVELOPMENT: ADOPTING THE WATER HARVESTING GUIDANCE MANUAL FOR THE CITY OF TUCSON
1. Report from City Manager OCT18-05-570 CITY-WIDE
  2. Ordinance No. 10210 relating to Planning and Zoning; authorizing the adoption of the City of Tucson Water Harvesting Guidance Manual to provide basic information and design ideas for water harvesting to developers, engineers, designers and contractors involved in new development; and declaring an emergency.

- G. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR NEIGHBORHOOD REINVESTMENT GRANT FUNDS FOR THE MILAGRO PLAYGROUND PROJECT
1. Report from City Manager OCT18-05-571 WARD 3
  2. Resolution No. 20200 relating to Intergovernmental Agreements; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and Pima County for Neighborhood Reinvestment Grant Funds for Miracle Manor Neighborhood Milagro Playground Project; and declaring an emergency.
- H. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR NEIGHBORHOOD REINVESTMENT GRANT FUNDS FOR THE QUINCIE DOUGLAS POOL
1. Report from City Manager OCT18-05-565 WARD 5
  2. Resolution No. 20201 relating to Intergovernmental Agreements; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and Pima County for Neighborhood Reinvestment Grant Funds for South Park Neighborhood Quincie Douglas Pool Slide Project; and declaring an emergency.
- I. RESOLUTION OF SUPPORT: FOR THE ENVIRONMENTAL RESTORATION OF THE SANTA CRUZ RIVER PASEO DE LAS IGLESIAS PROJECT
1. Report from City Manager OCT18-05-566 WARD 1
  2. Resolution No. 20202 relating to the environment, and economic development: endorsing of the United States Army Corps of Engineers' Paseo de las Iglesias Project for the environmental restoration of the Santa Cruz River between Los Reales Road alignment to Congress Street; and declaring an emergency.
- J. REAL PROPERTY: FOURTH AMENDMENT TO LEASE FOR CITY OFFICE SPACE IN THE PIONEER BUILDING
1. Report from City Manager OCT18-05-568 WARD 6
  2. Resolution No. 20203 relating to real estate; authorizing the Real Estate Administrator to execute a Fourth Amendment to a Lease Agreement with Holualoa Pioneer, L.L.C. for the lease of additional space in the Pioneer Building at 100 North Stone to be used by the City of Tucson's Office of Equal Opportunity Programs and Independent Police Review; and declaring an emergency.

K. FINANCE: COMMUNITY SUPPORT FUND TRANSFER FOR THE POSITIVE AGING FOR WOMEN CONFERENCE

1. Report from City Manager OCT18-05-562 WARD 2
2. Resolution No. 20204 relating to Finance; approving and authorizing the transfer of five hundred dollars (\$500) from the Community Support Fund to Organization 001-183-1898-268, to assist in covering associated costs for the Positive Aging for Women Conference; and declaring an emergency.

This was a request by Council Member West. Allocation of funds was as follows:  
Council Member West - \$500.00

L. FINANCE: COMMUNITY SUPPORT FUND TRANSFER FOR THE REYNOLDS ELEMENTARY SCHOOL HALLOWEEN FESTIVAL

1. Report from City Manager OCT18-05-555 WARD 4
2. Resolution No. 20205 relating to Finance; approving and authorizing the transfer of one hundred dollars (\$100) from the Community Support Fund to Organization 001-183-1898-268, to assist in covering associated costs of the Reynolds Elementary School PTA Halloween Festival; and declaring an emergency.

This was a request by Council Member Scott. Allocation of funds was as follows:  
Council Member Scott - \$100.00

M. GRANT AGREEMENT: WITH THE TOHONO O'ODHAM NATION AND THE YWCA FOR THE 2006 WOMEN AND MONEY CONFERENCE

1. Report from City Manager OCT18-05-572 CITY-WIDE
2. Resolution No. 20206 relating to finance; authorizing and approving the execution of a Grant-in-Aid Fiscal Agent Agreement between and among the City of Tucson, the Tohono O'odham Nation and the YWCA for making contributions to the YWCA of Tucson; and declaring an emergency.

N. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR INCARCERATION OF CITY PRISONERS

1. Report from City Manager OCT18-05-573 CITY-WIDE

2. Resolution No. 20207 relating to Intergovernmental Agreements; approving and authorizing execution of an Intergovernmental Agreement between the City of Tucson and Pima County for the incarceration of City Prisoners, FY 06; and declaring an emergency.

O. APPROVAL OF MINUTES

1. Report from City Manager OCT18-05-556 CITY-WIDE
2. Approval of minutes for the regular meetings of the Mayor and Council held on September 13 and September 20, 2005.

P. REAL PROPERTY: RELATING TO PARKING AGREEMENT WITH THE TUCSON MUSEUM OF ART

1. Report from City Manager OCT18-05-575 WARD 1
2. Resolution No. 20208 relating to Real Property; terminating the 1996 Amendment to the 1973 Lease Agreement with the Tucson Museum of Art; approving the parking agreement between the City and the Tucson Museum of Art to provide parking for guests, volunteers, and employees of the Tucson Museum of Art; and declaring an emergency.

Item P was considered separately at the request of Council Member West.

Q. INTERGOVERNMENTAL DEVELOPMENT AND PURCHASE AGREEMENT: WITH THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT AND PRESIDIO TERRACE, LLC FOR THE PRESIDIO TERRACE PROJECT

1. Report from City Manager OCT18-05-576 WARD 1
2. Resolution No. 20209 relating to Community Services; approving and authorizing an Intergovernmental Agreement with the Rio Nuevo Multipurpose Facilities District and Presidio Terrace, LLC, for the development of the Presidio Terrace Project adjacent to the Tucson Water Building; and declaring an emergency.

Item Q was considered separately at the request of Council Member West.

Kathleen S. Detrick, City Clerk, stated Consent Agenda Items P and Q would be considered after agenda Item 7, Call to the Audience.

It was moved by Council Member West, duly seconded, that Consent Agenda Items A through O, with the exception of items P and Q, which would be considered separately, be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any further discussion. Upon hearing none, he asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: Council Member Ronstadt

Consent Agenda Items A through Q, with the exception of items P and Q 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 items scheduled for a public hearing. Speakers would be limited to three-minute presentations and the Call to the Audience was scheduled to last for twenty-minutes.

Mayor Walkup called Bridgett Lawlor to the podium to speak. Ms. Lawlor was concerned her subject was in violation of the call to the audience rules.

Michael Rankin, City Attorney, stated the speaker was able to discuss Consent Agenda Items P and Q because they were not scheduled for a public hearing. He said the public could and should speak about them during call to the audience.

- a. Bridget Lawlor spoke about her concern over the proposed height of the Presidio Terrace Development and what the parking situation would be like. She urged the Council to take her concerns under advisement and protect her as a homeowner.

Council Member Scott asked staff what the height restriction was for the Presidio Terrace Development. She also asked if there would be another opportunity for the public to have input regarding the development.

Mike Hein, City Manager, replied there might be more than one speaker on the item. He appreciated the Council pulling Items P and Q from the Consent Agenda to allow people to speak during Call to the Audience. It was his anticipation that the two items would be considered immediately following the Call to the Audience. At that time staff would give an overview of the Presidio Terrace Development project and speak about some of the issues.

Council Member West pulled Items P and Q from the agenda, because earlier she asked Staff for the same information. She said staff was there and they would address the

issue as soon as people had the opportunity to speak. The items were delayed to give the audience the opportunity to speak.

Vice Mayor Dunbar asked the City Attorney to explain to the audience that the Council was not allowed to interact with them due to the Open Meeting Law, and why they were just listening.

Michael Rankin, City Attorney, explained it would be a little awkward, but because of the restrictions imposed by the State Open Meeting Laws, there could not be a discourse between the members of the audience and the Council during the Call to the Audience item. What was being encouraged at that time was for anyone who had comments to share with respect to Consent Agenda Items P and Q, which would be considered immediately following Call to the Audience, to make those concerns known at that time. Staff would then have the opportunity after Call to the Audience to address those concerns and discuss them with the Council Members.

Mayor Walkup explained that when the Call to the Audience was over, he would ask if anyone else wished to address the Mayor and Council on any subject. That would be the right time to address the Council, because once the Council was engaged in the subject, they would not be asking for input from the audience.

- b. Michael Toney spoke about Kidco impact fees discussed at a planning meeting and about the separation of church and state.
- c. Reverend Bishop Chicago spoke about his grievance with the Tucson Police Department over the disrespect shown to homeless people in the community.
- d. Evelyn Anderson, Granada Place Neighborhood Association, stated they were in favor of having lot seven of Presidio Terrace developed and had no objections. However, they were concerned about the height of the Presidio Terrace development which was originally fifty feet and now it might be one hundred and ten feet high. They hoped it would be more like the original plan.

(Note: Council Member Ronstadt arrived at 6:17 p.m.)

**6. CONSENT AGENDA – ITEMS A THROUGH Q** (Items P and Q taken out of order)

(Note: Consent Agenda Items P and Q were taken out of order.)

- P. REAL PROPERTY: RELATING TO PARKING AGREEMENT WITH THE TUCSON MUSEUM OF ART
  - 1. Report from City Manager OCT18-05-575 WARD 1

2. Resolution No. 20208 relating to Real Property; terminating the 1996 Amendment to the 1973 Lease Agreement with the Tucson Museum of Art; approving the parking agreement between the City and the Tucson Museum of Art to provide parking for guests, volunteers, and employees of the Tucson Museum of Art; and declaring an emergency.

Q. INTERGOVERNMENTAL DEVELOPMENT AND PURCHASE AGREEMENT: WITH THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT AND PRESIDIO TERRACE, LLC FOR THE PRESIDIO TERRACE PROJECT

1. Report from City Manager OCT18-05-576 WARD 1
2. Resolution No. 20209 relating to Community Services; approving and authorizing an Intergovernmental Agreement with the Rio Nuevo Multipurpose Facilities District and Presidio Terrace, LLC, for the development of the Presidio Terrace Project adjacent to the Tucson Water Building; and declaring an emergency.

Mayor Walkup announced they would be returning to Consent Agenda Items P and Q. He called on Council Member West to begin the discussion.

Council Member West said she asked for Consent Agenda Items P and Q to be considered separately because she had some confusion about what was meant, and did not realize it was just the beginning of the process. She asked staff to explain the project to the audience.

Mike Hein, City Manager, announced Karen Thoreson, Assistant City Manager, was present and would give the Council a review of the project and also speak specifically to the height issue. He thanked the Mayor and Council and reiterated that the past practice would have been to consider items pulled from the Consent Agenda prior to the Call to the Audience. In fact, the Council was allowing staff and the community to hear concerns prior to the final action.

Karen Thoreson, Assistant City Manager, gave an overview of the project. She said they were asking the Mayor and the Council to approve an amendment to a lease between the City and the Tucson Museum of Art that would allow the City to construct ninety parking spaces on the parking lot north of the Tucson Water Department, for the Museum. She stated they were also asking for approval of a development agreement between the City and Reliance Construction, represented by Peggy Noonan, who was present. The development agreement outlined the City's agreement to sell the property to Ms. Noonon, who would then develop at her own cost, condominiums and parking for housing that would be built on the site.

Ms. Thoreson explained the development agreement specified that no less than sixty units would be built and Ms. Noonan expressed interest in building more. The

height restriction on the property was currently fifty-two and a half feet. The sixty units specified in the development agreement could be built within the height restriction. However, Ms. Noonan suggested she wanted to come forward and request a PAD Amendment that would allow a higher development. In requesting a PAD Amendment, Ms. Noonan would be required to meet with the neighborhood to discuss her project. The neighborhood and other interested citizens would then be able to weigh in on the process. The Council would receive feedback from that process when they were ready to consider whether or not a change would be made to the PAD.

Ms. Thoreson stated this was just the beginning of the process. It was simply reaching an agreement that Ms. Noonan was the selected developer and she could build a minimum of sixty condominiums with parking and perhaps some retail on the site. In return for her agreement to do that, the City would agree to sell her the property at a market rate.

It was moved by Council Member West, and duly seconded, that Consent Agenda Items P and Q be passed and adopted and the proper action taken.

Mayor Walkup asked if there was further discussion. Upon hearing none, he asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

Consent Agenda Items P and Q were declared passed and adopted by a roll call vote of 7 to 0.

**8. TUCSON CODE: AMENDING (CHAPTER 11) RELATING TO CRIMES AND OFFENSES, REGULATING THE MANNER OF SALE OF PRODUCTS CONTAINING PSEUDOEPHEDRINE**

Mayor Walkup announced City Manager's communication number 574, dated October 18, 2005, would be received into and made a part of the record. He asked the City Clerk to read Ordinance 10211 by number and title only.

Ordinance No. 10211 relating to Crimes and Offenses; regulating the manner of sale of products containing pseudoephedrine; providing for the seizure and disposal of improperly displayed products; and providing for the refusal to sell pseudoephedrine products under suspicious circumstances; by amending Chapter 11, Article II, of the Tucson Code, by adding Sections 11-71 through 11-72; establishing an effective date; and declaring an emergency.

It was moved by Vice Mayor Dunbar, duly seconded, that Ordinance 10211 be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion.

Council Member West asked if the maker of the motion would consider an amendment to go back to the State Legislature to see if they could get them to establish a database.

Vice Mayor Dunbar said that was included as part of her motion. She said when they met during Study Session, several items were brought forward, one of which was to include the database. This item would be prepared in several stages with several ordinances. Ordinance 10211 was the first part, getting the pseudoephedrine off the counter, notifying retailers and making sure retailers understood they had to comply. If the police went into the retail stores and found the products available they would have the right to remove the product. This ordinance had to do with the retail. Vice Mayor Dunbar said that what Council Member West was asking for would be addressed in another ordinance.

Council Member West stated she did not want to lose sight of the database. She understood Ordinance 10211 was stronger than the State Code and congratulated the City Attorney and Captain Neri. However, she was still very concerned. She reiterated that she knew they were working on the database, but did not want to lose sight of it. She asked staff to place it under a future Mayor and Council Legislative item.

Michael Rankin, City Attorney, said in the interest of public information, he would begin by giving an overview of what Ordinance 10211 covered and explained what continuing discussions of the item would entail. He stated the ordinance was on the agenda per the Council's two previous Study Session discussions regarding the regulation of over the counter products that contained meth precursors, chemicals used in the manufacturing or cooking of meth. The ordinance would require products that contained aphedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine to be kept behind store counters and inaccessible to customers without assistance of a store employee. The ordinance would provide for the seizure and disposal of those items, if they were not properly displayed by the retail establishment, but only after a warning and a reasonable opportunity for the retailer to come into compliance had occurred. The ordinance also would acknowledge the retailer's right to refuse a sale of those types of products under circumstances that might cause a reasonable belief that the products might be used for an unlawful purpose.

Mr. Rankin stated the ordinance as written would have the provisions go into effect on November 1, 2005, which was consistent with the State law requirement going into effect October 31, 2005, with respect to restricted access. As was discussed at previous Study Sessions and as Captain Neri informed the Council, the purpose of the ordinance was to address the meth precursors, chemicals used in the manufacturing of meth, which had become the number one problem for law enforcement both locally and

nationally. The ordinance would address the issue of those meth labs, which created incredible hazards for the community and based in part on other jurisdictions' experiences with the success of that type of legislation.

Mr. Rankin continued that Captain David Neri would be returning on November 22, 2005 per the Council's earlier direction, to discuss other elements of the overall plan to deal with the meth problem. Part of that discussion would include ongoing efforts to develop a usable database to track sales of those types of products as well as to discuss long term and short term goals of law enforcement and other stakeholders with respect to that issue.

Captain David Neri, Tucson Police Department, stated the registry and arenas that were not adjacent to but were included in the original motion that was created were things the police department was currently working on and establishing and would return on November 22, 2005 with specific direction. He assured the Council they would not lose sight of the additional items. Captain Neri stated there were members of the Attorney General's Office in the audience. He spoke to prior to the meeting and they informed him they were in support of the exact same principles and components within the ordinance.

Captain Neri said he was representing both Tucson Police Department and the Counter Narcotic Alliance, to reaffirm their support of the Council's actions in creating the ordinance as well as the active steps to address the methamphetamine throughout the community. Methamphetamine production was an active and dangerous activity that continued in Tucson. Captain Neri reiterated his support of the components listed in the ordinance, more specifically the four ingredients aphedrine, pseudoephedrine, norpseudoephedrine, and phenylpropanolamine. Norpseudoephedrine, also known as KHT, had its own abuse and was considered a controlled substance. The inclusion of those four items was critical in the effort to discontinue production or the availability of home production in Tucson. He also verified with the City's crime lab that specific fact.

Captain Neri continued to explain the requirement for restricted access of additional products and retail items outside of the chemical components such as tincture of iodine and red phosphorus, was an arena the police would engage with. The local retail establishments would receive a recommended list from the Police Department of things they might watch for. He felt the addition of enabling the retailers to refuse sale of those products was an appropriate inclusion as well. Captain Neri praised the Council for taking out the penalty clause aspect, which made all of it enforceable so the police could utilize the resources they had to further the effort.

Council Member Leal stated he had been adamant about the City creating a regional database. To pursue that, he asked if it would be necessary for there to be a registry at the businesses to be able to have the data collection necessary to have that regional database.

Captain Neri replied there had been specific discussions about how that would be undertaken. He believed it would have to be an electronic registry, searchable by both the police as well as those retailers so they could ensure their own compliance.

Council Member Leal felt that would lead to a larger problem. He said the Council had been told earlier that the State would have a database. However, at the same time, when the State passed legislation, they said there could be no registries established. That would be a problem for the Council in their effort to create a database for the City, but the State had tied their own hands and did not have the ability to create a database for themselves. He asked how it would play out.

Mike Rankin, City Attorney, said with respect to how the State law would interplay with the effort to develop a registry or database, he would recommended that in continued discussions, there might be a time where it would be appropriate to schedule an executive session to discuss the legal issues with regards to what the City would do legislatively. That need may come up with respect to legal advice about how the City could legislate in the area of a registry.

Council Member Leal said if the State tied their own hands in their effort to tie the City's hands, no one would have a database. Instead they would be trying to protect the business owners, so the business owners would not have to be involved in creating a registry. With the Council moving forward on the ordinance, they would be creating the sense in the community that the City had come to a stage, where the City would have a registry. It would then make what the Council was discussing seem more efficacious than it really would be, because they might be stopped because of what the State had done.

Council Member Leal continued that a number of cities in the north had created two different ordinances, one like the proposed one and a second one to create a registry. If the State were to take action against them, they would not lose everything. He believed the issue was important enough that if need be, the City would create a registry whether or not the State said the City could. The violence in the community and the threat to families, police, and property was so great that Council should not stand by and be passive and allow the State to prevent the City from protecting the community. Council Member Leal stated the City should sue the State or let them sue the City and go to court. This was too important. If the Council needed to discuss that in an executive session at the next meeting, so be it. To make it clear, unless Council took the next step, what was being done at that time was not enough.

Council Member Leal said he had a second point he wanted to bring up. At the Federal level, HB3889 was very significant legislation, and asked that as a friendly amendment it should be included in the ordinance. The Federal Government was looking at Title 2, International Regulation of Precursor Chemicals. Of all the wholesale chemicals that went in the making of those drugs that go into Mexico, only half of them go to pharmaceutical companies that were producing drugs for colds, etc. The rest of them were going to manufacturers producing illicit drugs. Council Member Leal said the

Council clearly had to fight the issue on the local front and know that whatever success is gained here will be countermanded by what extra would come across the border. He stated it was incumbent upon the City to work with the Federal delegation and support HB3889. He asked Captain Neri if he was familiar with HB 3889.

Captain Neri, Tucson Police Department, replied he was familiar with HB3889. He stated there was clearly additional work to do. As listed in number two, second grouping of things that came forward in the original motion, there was an electronic listing as one of the four things the City of Tucson would lobby the State Legislature for.

In regard to legislation at the federal level, Captain Neri was aware of that and the attempts to control the importation of those types of chemicals into Mexico or control their egress into the United States. What he could not address was the appropriateness of continuing it as a friendly amendment. He deferred it to Mr. Rankin.

Mr. Rankin advised the Council they were getting outside the scope of the item with respect to amending to support legislation that was beyond the regulation just of the products noted. He confirmed Captain Neri's comments that part of the previous direction was with respect to the registry, so it would be part of the ongoing discussions. He thought the direction had been received to incorporate the discussion on November 22, 2005. HB3889 and the Council's position with respect to the additional things that were going on with the context of meth regulations.

Council Member West quoted a letter to the editor stating, "We're nibbling around the edges about this." She agreed with Council Member Leal in regards to going with Cottonwood in Phoenix and go on the record. They could take the City to court. Tucson was a community that was in need moving forward on that issue and getting it under control. It was causing a huge crime problem in the community and everybody was aware of that. It was time to move forward and do it aggressively.

Mayor Walkup asked to get back to the issue. He commented that everyone on the Council was very supportive of moving toward the establishment of a local electronic database. He could not imagine letting the conversation die for any reason. The Council would do it sequentially and get the ordinance passed. Then in November they could sit down and the Council would not fail in that task. The City would have a local electronic registry, regardless of what anybody told the Council.

Vice Mayor Dunbar stated Representative Pete Hirshberger, State Legislator, was in the audience. There was a legislative part of the meth alliance. There was a legislative committee that was also working on things to take forward. The audience was invited to attend all the meetings any time they wished. She stated there were about nine different groups that were meeting and she was a part of three of them.

It was moved by Vice Mayor Dunbar, duly seconded, that Ordinance 10211 be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any further discussion. Upon hearing none, he asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

Ordinance 10211 was declared passed and adopted by a roll call vote of 7 to 0.

Council Member Leal asked that the item be on the agenda for the next Mayor and Council meeting, both in regular session and executive session, so the Council could be more expeditious about it.

## **9. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS**

Mayor Walkup announced City Manager's communication number 561, dated October 18, 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 Vice Mayor Dunbar, duly seconded, and carried by a voice vote of 7 to 0, to reappoint Molly Hunter, Sue Krahe, Christine Miller, Lorraine Stockdale, Elizabeth Edwards, and Joan McNamara to the Pima County/City of Tucson Commission on Addiction, Prevention and Treatment; reappoint Phyllis A. Cowman to the Commission on Disability Issues; and appoint Al Sterman, Chris Lamar, Clayton C. Hamilton, Guyton Campbell, Joe L. Chitwood, John Crouch, Michael Lupien, Robert MacArthur, and Sam Behrend to the Technology Policy Advisory Committee.

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

Council Member West announced the personal appointment of Craig Chamberlin to the Commission on Disability Issues.

**10. ADJOURNMENT 6:40 p.m.**

Mayor Walkup announced the Council would stand adjourned until its next regularly scheduled meeting to be held on Tuesday, November 1, 2005, at 5:30 p.m. in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

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MAYOR

ATTEST:

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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 18<sup>th</sup> day of October, 2005, and do hereby certify that it is an accurate transcription.

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DEPUTY CITY CLERK

KSD:kad/sac