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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
on January 10, 2006

Date of Meeting: December 13, 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 5:36 p.m. on Tuesday, December 13, 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
Karin Uhlich	Council Member Ward 3
Shirley C. Scott	Council Member Ward 4
Steve Leal	Vice Mayor, Council Member Ward 5
Nina J. Trasoff	Council Member Ward 6
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 Kathleen S. Detrick, City Clerk, after which the pledge of allegiance was led by Brownie and Junior Girl Scout Troop 390.

Kathleen S. Detrick, City Clerk, announced Christina Romero was in attendance to provide Spanish translation assistance for anyone who needed it. Ms. Romero announced, in Spanish, if anyone needed her services, to gather at one end of the chambers.

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

Mayor Walkup announced City Manager's communication number 660, dated December 13, 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 Trasoff announced there had been some double bookings at the Ward 6 conference room and requested that those with upcoming bookings please call Ward 6 to confirm. She also announced that on December 21 and 22, the Downtown Farmer's Market Arts and Crafts Mercado would be held on the south lawn of the Main Library.

**CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS**

Mayor Walkup announced City Manager's communication number 661, dated December 13, 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, reported:

- a. Council Member Scott was elected to the Board of Directors of the National League of Cities and Towns.

**5. LIQUOR LICENSE APPLICATIONS**

Mayor Walkup announced City Manager's communication number 659, dated December 13, 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. Cafe Milano, Ward 1  
47 W. Congress  
Applicant: Maria B. Borella  
Series 12, City 101-05  
Action must be taken by: December 24, 2005  
Staff has indicated the applicant is in compliance with city requirements.

Location Transfer

2. Wild Noodles, Ward 3  
2990 N. Campbell Ave. #130  
Applicant: Atul Jain  
Series 07, City 99-05  
Action must be taken by: December 17, 2005  
Staff has indicated the applicant is in compliance with city requirements.

c. Special Event

1. Casa Support Council for Pima Co., Ward 2  
3800 E. River Road  
Applicant: Sharon L. Irvine  
City T112-05  
Date of Event: February 12, 2006  
Fundraiser  
Staff has indicated the applicant is in compliance with city requirements.

d. Agent Change

1. Trader Joe's, Ward 6  
1101 N. Wilmot Road  
Applicant: H.J. Lewkowitz  
City AC14-05  
Action must be taken by: December 17, 2005  
Staff has indicated the applicant is in compliance with city requirements.
2. Trader Joe's, Ward 6  
4766 E. Grant Road  
Applicant: H.J. Lewkowitz  
City AC15-05  
Action must be taken by: December 17, 2005  
Staff has indicated the applicant is in compliance with city requirements.

3. Trader Joe's, Ward 3  
4209 N. Campbell Avenue  
Applicant: H.J. Lewkowitz  
City AC16-05  
Action must be taken by: December 17, 2005  
Staff has indicated the applicant is in compliance with city requirements.
4. Guilin Restaurant, Ward 6  
3250 E. Speedway Blvd.  
Applicant: Sunny Kin Sun Wong  
City AC18-05  
Action must be taken by: December 30, 2005  
Staff has indicated the applicant is in compliance with city requirements.
5. Szechuan Omei Restaurant, Ward 6  
2601 E. Speedway  
Applicant: Phong Huynh  
City AC20-05  
Action must be taken by: December 31, 2005  
Staff has indicated the applicant is in compliance with city requirements.

It was moved by Council Member Scott, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license applications 5b1, 5b2, 5c1, and 5d1 through 5d5 to the Arizona State Liquor Board with a recommendation for approval.

## **6. CONSENT AGENDA – ITEMS A THROUGH K**

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. ECONOMIC DEVELOPMENT: EXTENSION OF FINANCIAL INCENTIVES FOR DEVELOPMENT IN THE DOWNTOWN CORE
  1. Report from City Manager DEC13-05-657 WARDS 1 AND 6
  2. Resolution No. 20236 relating to development; amending Resolution 19388 to extend the time period for incentives for development in the downtown core to June 30, 2013, by waiving certain building permit fees and refunding certain public infrastructure costs and fees; and declaring an emergency.

- B. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR THE COMMUNITY SERVICES TENANT SAFETY NET PROGRAM
1. Report from City Manager DEC13-05-662 CITY-WIDE
  2. Resolution No. 20237 relating to Intergovernmental Agreements; authorizing and approving the execution of an Intergovernmental Agreement between the City of Tucson and Pima County for grant funds for Eviction Prevention; and declaring an emergency.
- C. REAL PROPERTY: RIGHT-OF-WAY ACQUISITION – ALVERNON WAY AND PIMA STREET FOR BUS SHELTER UPGRADES
1. Report from City Manager DEC13-05-663 WARD 6
  2. Resolution No. 20238 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary certain rights-of-way located on the southwest corner of the intersection of Alvernon Way and Pima Street for upgrades to the existing bus stop facility; and declaring an emergency.
- D. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY REGARDING THE RIO VISTA NATURAL RESOURCE PARK
1. Report from City Manager DEC13-05-664 WARD 3
  2. Resolution No. 20239 relating to Intergovernmental Agreements; approving the Intergovernmental Agreement between the City of Tucson and Pima County for Design, Construction, Ownership, Operation and Maintenance of the Rio Vista Natural Resource Park; and declaring an emergency.
- E. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY REGARDING THE EASTSIDE SPORTS COMPLEX AND SENIOR CENTER
1. Report from City Manager DEC13-05-665 WARDS 2 AND 4
  2. Resolution No. 20240 relating to Intergovernmental Agreements; approving the Intergovernmental Agreement between the City of Tucson and Pima County for Design, Construction, Ownership, Operation and Maintenance of the Eastside Sports Complex and Senior Center Site; and declaring an emergency.

- F. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY REGARDING THE SOUTHEAST COMMUNITY PARK
1. Report from City Manager DEC13-05-666 WARD 4
  2. Resolution No. 20241 relating to Intergovernmental Agreements; approving the Intergovernmental Agreement between the City of Tucson and Pima County for Design, Construction, Ownership, Operation and Maintenance of the Southeast Community Park; and declaring an emergency.
- G. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY REGARDING THE HOUGHTON GREENWAY
1. Report from City Manager DEC13-05-667 WARDS 2 AND 4
  2. Resolution No. 20242 relating to Intergovernmental Agreements; approving the Intergovernmental Agreement between the City of Tucson and Pima County for Design, Construction, Ownership, Operation and Maintenance of the Houghton Greenway; and declaring an emergency.
- H. ANNEXATION: MELPOMENE/22<sup>ND</sup> STREET ANNEXATION DISTRICT, ORDINANCE ADOPTION
1. Report from City Manager DEC13-05-669 WARD 4
  2. Ordinance No. 10222 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 13 and 24, T.14S., R.15E., and a portion of Section 19, T.14S., R.16E., Gila & Salt River Meridian, Pima County, Arizona, more particularly described in the body of this ordinance; and declaring an emergency.
- I. APPROVAL OF MINUTES
1. Report from City Manager DEC13-05-656 CITY-WIDE
  2. Approval of minutes for the regular meetings of the Mayor and Council held on November 15 and November 22, 2005.
- J. REAL PROPERTY: ACQUISITION OF REAL PROPERTY LOCATED AT 945 EAST OHIO STREET
1. Report from City Manager DEC13-05-674 WARD 5

2. Resolution No. 20247 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 945 East Ohio Street for use by the Tucson Police Department; and declaring an emergency.

Item J was continued to the meeting of December 20, 2005 at the request of staff.

K. FRANCHISE AGREEMENT: FIRST AMENDMENT TO THE GAS DISTRIBUTION AND TRANSPORTATION FRANCHISE AGREEMENT WITH SOUTHWEST GAS

1. Report from City Manager DEC13-05-679 CITY-WIDE
2. Ordinance No. 10228 relating to franchise agreements; approving and authoring the First Amendment to the Gas Distribution and Transportation Franchise Agreement with Southwest Gas Corporation relating to the franchise fee; and declaring an emergency.

It was moved by Vice Mayor Leal, duly seconded, that Consent Agenda Items A through K, with the exception of Item J, which would be continued to the meeting of December 20, 2005 at the request of staff, 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, Uhlich, Scott, and Trasoff;  
Vice Mayor Leal and Mayor Walkup

Nay: None

Consent Agenda Items A through K, with the exception of Item J, which was continued, were declared passed and adopted by a roll call vote of 7 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 fifteen minutes. He asked if there was anyone in the audience who wished to address the Council.

- a. Robert Blizzard commented since the new barricade ordinance went into effect, as a disabled person he was finding it a challenge to get around because the barricades often block access to sidewalks. He requested that the City Council

revisit the ordinance to determine how it was working, or not working, and talk to the community about the issue.

- b. Michael Toney spoke on several issues which included alleged Rio Nuevo violations, Kidco funding, and the proposed I-10 tunnel.
- c. Janet Woodville spoke regarding her hope that the Hope VI Project would be completed without delay.
- d. Raymond Sidoma, President of the Martin Luther King Apartment Council, addressed his concern regarding delaying the Hope VI Project and the possibility of losing the grant money.
- e. Dennis Ambrose, Vice President of the Martin Luther King Apartment Council, presented the Mayor and Council with a letter from the residents of Martin Luther King Apartments regarding delays with the Hope VI Project and the relocation of residents.

**8. PUBLIC HEARING: ZONING (C9-02-32) A-C INVESTMENTS – AJO WAY, R-1/R-2/I-1 TO I-1, CHANGE OF PRELIMINARY DEVELOPMENT PLAN (CONTINUED FROM THE MEETING OF NOVEMBER 1, 2005)**

Kathleen S. Detrick, City Clerk, announced she had received a request from staff, concurred by the applicant, to continue the Public Hearing for one week, until the date of December 20, 2005. She also said this had been noticed as a public hearing, so there might be people in the audience who wished to address the Council.

Mayor Walkup announced City Manager's communication number 675 dated December 13, 2005, would be received into and made a part of the record. This was the time and place legally advertised for a public hearing on a request to allow a change to the preliminary development plan for property located on the northeast corner of Kino Parkway and Ajo Way.

Mayor Walkup asked if the applicant or representative was present, and if they had any brief comments. There was no one.

It was moved by Council Member West, duly seconded, and carried by a voice vote of 7 to 0, to continue the public hearing to December 20, 2005.

Ms. Detrick, announced the Public Hearing would be held Tuesday, December 20, 2005 in the Mayor and Council Chambers, 255 West Alameda, at or after 5:30 p.m.

**9. PUBLIC HEARING: GRANT-ALVERNON AREA PLAN AMENDMENT – PERRY HEATING AND COOLING – COMMERCIAL USES**

Mayor Walkup announced City Manager's communication number 676, dated December 13, 2005, would be received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing on an amendment to the *Grant-Alvernon Area Plan*, to allow community commercial uses for the property located at 3256 and 3266 East Grant Road.

Mayor Walkup asked if the applicant or representative was present and if they had any brief comments. The public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He asked the speakers to come forward when their names were called, to state their name and address, and whether they lived in the City or not.

Sam Robison, representing Perry Heating and Cooling, stated he understood Planning Department staff had recommended denial of the amendment, but at the last Planning and Zoning Commissioner's hearing, they had recommended approval with some modifications. Mr. Robison stated in lieu of having the entire property be amended only the Grant Road portion, one hundred seventy feet back from Grant Road be zoned at C-2, and remaining two hundred seventy feet be rezoned to parking. That was the agreement at that time.

Mr. Robison stated he was confused as to how to proceed. Perry Heating and Cooling had been at the address since 1949. They were not intensifying their use. They would like to have more parking for their service trucks. In order to do that, they need to rezone to allow for a construction service in the area plan. They were currently in violation of the area plan and were grandfathered in when the area plan was adopted. Perry Heating and Cooling wants to continue the existing use. They were willing to accept the recommendation of the Planning Commissioners in lieu of rezoning the entire property to C-2, doing only the C-1 portion to C-2 and a portion of R-2 to parking for the service trucks.

Mr. Robison stated Perry Heating and Cooling had only received one letter in objection from an adjacent property owner to the amendment and six letters from adjacent property owners in approval. He had improved the property by installed fencing for security. Mr. Robison stated he would be happy to answer any questions for the Council.

Mayor Walkup said there might be questions later and Council would move on with the Public Hearing.

Shel Kulich stated he and his wife owned the property at 3251 E. Edison and they had a common border with Perry Heating and Cooling. When he purchased the property two years ago there was dirt on the other side of the wooden fence that separated Perry

Heating and Cooling property from his. Now there was a chain-link fence with razor wire, parking, storage, and trash. He called that intensified use. He did not approve of what had happened even though some neighbors had.

Mr. Kulich said the Planning Commission recommended the parking zone be outside and across the fence from the property. If that happened the neighbors west of Perry Heating and Cooling might do the same, which would mean two penetrations into what was a residential community. He did not see that as being appealing to the residential community. He was not happy with it, and thought some other neighbors might not be happy with it, since they share about three hundred feet of the property line. It was contemptuous to him to see a penitentiary-like fence bordering his property. He said he did not call it an improvement.

Mr. Kulich stated Perry Heating and Cooling had not been a model neighbor. They tore down the fence between them without any discussion. They rebuffed any communication with the neighbors. They denied or rejected what was originally an oral agreement to put slats in the chain-link fence, before the neighbors realized it was a violation. They had not done much to enhance what was there. Mr. Kulich said he had pictures taken by Mr. Wolf, a photographer, showing trash that was in the Perry Heating and Cooling yard.

Mr. Kulich did not understand why the City would reward a neighbor who went from C-1 to C-2 and said that he had enhanced the value of the property and increased the commercial penetration into a residential neighborhood. He did not think of the community or the neighbors. The tenants of the property did not deserve to have this kind of proposition go forward.

Mr. Kulich replied to Vice Mayor Leal that his property was residentially zoned.

Ronnie Kotwica, President of Palo Verde Neighborhood Association, stated the neighborhood association opposed the amendment to the *Grant-Alvernon Area Plan* and the rezoning request of Perry Heating and Cooling. Ms. Kotwica had a petition for Mayor and Council that was circulated on the residential streets impacted by the rezoning request. The neighbors living across the street and adjacent to the property were concerned with the intrusion in a residential zone with excessive lighting at night, vehicles using the gate for ingress/egress to the property by using residential streets, excessive noise from the business, and the degradation of the area with the fence and razor wire that they view "24/7".

Ms. Kotwica also presented a document from neighborhood association presidents opposing the amendment. She explained the neighborhood was one that shares an entire perimeter with mom and pop businesses on the arterial streets. One collector street bisects the neighborhood and the rest of the streets in the one square mile area were residential. The neighborhood has six schools, of which four were in the northwest quadrant where the rezoning issue was. The high school was bound by three residential streets and one collector street. Pima Medical Institute was situated on an arterial street,

with student access via two residential streets. Palo Verde Christian School was bordered by two residential streets. Students were transported by car, adding to the high volume of traffic into the northern portion of the neighborhood. Pima Country Day School was the fourth school in the northwest quadrant.

Ms. Kotwica stated that the neighborhood plan was intended to be the “blueprint” of growth/land use patterns for the future. It allowed residents within the plan to identify how they want their neighborhood to look in the future. A change to the plan violates all the work done by the residents in the area.

Ms. Kotwica said the proposed use took what was once a residential use and turned it into a commercial parking use. That would encroach into a residential area by violating the long established boundaries between commercial and residential and it was not compatible with the existing residential uses. The change would have a negative and long lasting effect on adjacent, existing residential uses. If the City were to violate the trust of the adjacent residents and neighborhoods by allowing the proposed land use change, further action would be required by the City. It would create a series of zoning violations, since what the property owner was in need of was a storage area to go with additional parking. Materials storage would result in the parking area creating a zoning violation, as storage materials would not be allowed in a parking zone. The responsibility would unfairly be placed on the residents and neighborhood to monitor that the change of zoning was being properly used for parking only.

Ms. Kotwica stated the business owner purchased property for a use that was not allowed in the plan. It was a risk he took hoping that the Mayor and Council would give him the right to use the property as he saw fit. That approach totally discounts and ignores the impact of his proposed use on his neighbors in the area. It underlined a lack of concern for the impact his business would have on neighbors who have invested in the area long before he chose to expand his business. An amendment to the plan would set a very serious precedent. It would let others know that if they follow the same pattern, their projects also have a chance of being approved, allowing further encroachment into the neighborhood with a non-compatible use. Such land use changes are not reversible. A land use change were permanent and if it were to be rezoned again, it would be rezoned for a use that was even more incompatible than the one requested at that time.

Ms. Kotwica asked the Mayor and Council not to legitimize the tact taken by the property owner. The message should not be that the City will give an owner a right of use simply because they own the property. There should have been discussion of their proposed use on the property with adjacent residents, property owners, and representatives of the neighborhood association to learn if they would support the change. She asked the Mayor and Council not to let the residents who have made their main investment of their lives in this area, be the losers in this issue.

Stewart Wolf presented Mayor and Council with pictures of Perry Heating and Cooling’s yard. He also submitted an e-mail he wrote to Butch Perry, owner of Perry Heating and Cooling. Mr. Wolf described each picture he had taken that day and

submitted a petition signed by all the residents of the property on Edison which adjoins Perry Heating and Cooling. The first picture was the southern border of Mr. Kulich's property via Edison Street. Mr. Kulich installed a wood fence to try to enhance the appearance of the property although it was hard to overcome. The second picture was taken from a two-story building. This was what residents saw everyday when they walked up and down the stairway: piles of trash, the vehicles, and self-storage buildings. The third picture showed more trash next to the buildings. The fourth picture showed the view when standing in front of the buildings looking through the razor wire fence with the trucks lined up. Mr. Wolf showed more pictures of trash. He said the pictures showed Perry Heating and Cooling had decided to store wrought iron and park pickup trucks on top of the wrought iron. The final two pictures were of trash that accumulated as the wind blew in the chained property.

Mr. Wolf said the pictures gave Council a visual of what the residents were talking about. In the last couple of days, eight of the eleven residents signed a petition stating they opposed the rezoning. The other three residents could go either way. The last item was an e-mail dated November 3, 2004 sent to Mr. Perry prior to the residents knowing there was a violation. A wooden fence, that was presumed to be owned by a different property owner, was torn down. Mr. Perry owned it, the fence was taken down, the lot was graded, and the seven-foot chain-link fence with razor wire was put up. There was no discussion between Mr. Perry and the residents. The neighborhood asked through e-mail if wooden slats could be put in the fence to block the view. Mr. Perry verbally agreed to install the wooden slats, but did not give residents the courtesy of a response.

Mr. Wolf stated the Perry representative would come up and tell of all the good neighborly things and that was how it was presented at the Planning Commission meeting. He stated Perry Heating and Cooling did zero, not one proactive act, to mitigate the problems they had created.

Eric Douglas stated he lived around the corner from Perry Heating and Cooling. He saw the fence go up. He understood that Perry Heating and Cooling had received permission to expand and a couple of weeks ago he received a notice in the mail noticing the public hearing. He went online and pulled up all information regarding the hearing. The first thing that bothered him was that Perry Heating and Cooling put up the fence without prior approval, and requested to go from a C-1 to a C-2 zoning. He liked the idea because there was a large apartment complex to the south of him and cars were running up and down the street. It was a narrow street with no curbs or sidewalks, about fourteen feet narrower than other streets. The neighborhood paid for speed humps to be put in because of the cars going up and down. He stated that he was in a quandary, wanting more apartments or wanting something else.

Mr. Douglas said the main thing was Perry Heating and Cooling did improvements without prior approval. He wanted to know why they tore down the fence, when they could have put the chain-link behind the wooden fence, leaving an aesthetic view of the fence instead of chain link and razor wire. The biggest part of this whole thing was that going from a C-1 to a C-2 zoning, you could not go back. He applauded

Perry Heating and Cooling for their growth, but sometimes one has to move to another location because one does not fit this area. Going from a C-1 to a C-2, if approved would allow a larger, bigger kind of industry to go in there. What if Perry Heating and Cooling decided to move locations because they were not able to acquire any more land. Another business may move in with manufacturing or something else and make all kinds of noise and racket and degrade the neighborhood. He said he lived around the corner and did not see the trash, but Perry was already trashing the neighborhood because of the garbage and everything.

Mr. Douglas said he was not happy about having more apartments in the neighborhood, but having a major business going in and trashing the neighborhood was not his idea either.

Mayor Walkup allowed Mr. Robison to respond to the comments made.

Sam Robison stated it was unfortunate that there was so much confusion with the previous speakers. Perry Heating and Cooling issued letters to all the neighborhood associations, at least twenty or thirty, back in August to meet with them to discuss the project. No one from the neighborhood associations showed up at the neighborhood meetings. Perry Heating and Cooling issued over ninety letters to surrounding businesses in the *Grant-Alvernon Area Plan* and three business owners showed up, Mr. Kulich to the east, a property owner to the west, and the owner from across the street. The chain-link fence and razor wire could not stay if they get the rezoning. Perry Heating and Cooling proposed to the neighborhood to build a nice decorative wall. Perry Heating and Cooling was going to leave the southern most one hundred feet zoned R-2 for a house or duplex, probably not much different from Mr. Kulich's apartment. The parking area would be totally screened with a decorative six-foot high solid wall with a couple of feet made with decorative wrought iron.

Mr. Robison said it was unfortunate that some of the speakers tonight did not talk to Perry Heating and Cooling. Perry Heating and Cooling could not access Edison at all. There would be no commercial vehicle traffic on or off of Edison. Ms. Kotwica stated she had a petition signed by all of the owners on Edison, but he had a letter from the property owner directly across the street, due south, approving and in support of their plans.

Mr. Robison wanted to clarify some of the issues that they were willing to work on with the neighborhood. Perry was family owned and did not want to grow. Perry Heating and Cooling had existing vehicles already and their service people take the trucks home and park them in their driveways or on the street. They just want to screen off the service vehicles, trash, and dumpsters. It was basically going to be an island, land-locked, not visible to the neighborhood.

Mayor Walkup asked if there was anyone else wishing to be heard on the item. Hearing none, he asked for a motion to close the public hearing.

It was moved by Council Member Trasoff, duly seconded, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the City Clerk to read Resolution 20246, by number and title only.

Resolution No. 20246 relating to planning and zoning; amending the *Grant-Alvernon Area Plan*; and declaring an emergency.

Council Member Trasoff stated she understood Perry Heating and Cooling's long standing presence in the community and accepted their representatives word on their efforts to reach out; the fact remains that the neighborhood was not in favor of the rezoning. The neighborhood associations had spoken out strongly against it. The company moved forward without rezoning and a rezoning such as that was being requested would have been a serious incursion into the neighborhood and inappropriate land use.

It was moved by Council Member Trasoff, duly seconded, to deny the request to amend the *Grant-Alvernon Area Plan*.

Mayor Walkup asked if there were any further discussions.

Vice Mayor Leal asked the staff if it was illegal for commercial property to have razor wire on its fence when it was next door to residential.

Albert Elias, Urban Planning and Design, Director, stated he did not believe the zoning code provision did so; it might be some other code, but it was not in the *Land Use Code*.

Vice Mayor Leal asked staff to check the code and if action was needed, to take it.

Mr. Elias stated in the event the plan amendment was denied, there would be a need to abate the violation, which would include the removal of the existing parts.

Mayor Walkup asked for a roll call vote on the motion.

Upon roll call, the results were:

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

Nay: None

The request to amend the *Grant-Alvernon Area Plan* was denied by a roll call vote of 7 to 0.

**10. PUBLIC HEARING: TUCSON CODE – AMENDING (CHAPTER 23), THE LAND USE CODE; REGARDING BOTTLING PLANTS AND PERISHABLE GOODS MANUFACTURING**

Mayor Walkup announced City Manager's Communication number 668, dated December 13, 2005, would be received into and made a part of the record. He also announced this was the time and place legally advertised for a public hearing on proposed amendments to the *Land Use Code*.

Mayor Walkup asked if the applicant or representative was present and if they had any brief comments. The public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations.

James M. Sakrison, representing Kalil Bottling Company and Pepsi Bottling Company, stated both parties were present if Council needed to address them.

Mr. Sakrison stated how much he appreciated Vice Mayor Leal, his staff, and the City staff who helped to get the matter resolved. In review, during 1993-1994 the *Land Use Code* was amended and no one realized bottling plants such as Kalil's and Pepsi's were made nonconforming uses. No one caught that, even though both Pepsi and Kalil went in for building permits during the interim period until about 2003. At that time Pepsi was building a big warehouse.

Vice Mayor Leal had convinced Pepsi to move their plant from Casa Grande to Tucson and it created a problem because staff at Development Services realized there was no provision for a bottling plant in the City of Tucson. Pepsi had to go through a process for about eight to ten months and Kalil had to go through a process of about six months, with considerable help from staff, to change the *Land Use Code*. With help from Sarah More, Vice Mayor Leal and staff they were able to accomplish it. That was what was in front of the Council today, to put Kalil and Pepsi back where they were in 1993. It did not change the use of their properties; it would allow them to go forward with any additional construction and to get a building permit without having to go through a year-long process.

Vice Mayor Leal stated Mr. Sakrison was right in his recollection of how they got there. It was an inadvertent problem that was created twelve years ago. They talked Pepsi into coming into the community, and discovered this and then found out it also affected Mr. Kalil. Everyone all worked together to remedy it. It was a good thing. It was manufacturing in the community and we want to take care of that kind of business activity. He wanted to thank staff, Mr. Sakrison, and the private sector for helping to make the system viable.

Mayor Walkup asked if there was anyone else in the audience wishing to speak. Hearing none, he asked for a motion to close the public hearing.

It was moved by Vice Mayor Leal, duly seconded, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the City Clerk to read Ordinance 10225 by number and title only.

Ordinance No. 10225 relating to Planning and Zoning; amending Tucson Code Chapter 23, Land Use Code, Article II, Zones, Division 7, Industrial Zones, Section 2.7.2 “I-1” Light Industrial Zone, by adding a new subsection 2.7.2.2.A.4.; and declaring an emergency.

It was moved by Vice Mayor Leal, duly seconded, to pass and adopt Ordinance 10225.

Upon roll call, the results were:

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

Nay: None

Ordinance 10225 was declared passed and adopted by a roll call vote of 7 to 0.

**11. ZONING: (C9-05-11) SHULTE – SPEEDWAY BOULEVARD SR TO O-3, ORDINANCE ADOPTION**

Mayor Walkup announced City Manager’s communication number 677, would be received into and made a part of the record. He asked the City Clerk to read Ordinance 10227 by number and title only.

Ordinance No. 10227 relating to zoning: amending zoning district boundaries in the area located on the south side of Speedway Boulevard, east of the Pantano Wash in Case C9-05-11, Shulte – Speedway Boulevard, SR to O-3; and setting an effective date.

It was moved by Council Member West, and duly seconded, that Ordinance 10227 be passed and adopted and the proper action taken.

Upon roll call, the results were:

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

Nay: None

Ordinance 10227 was declared passed and adopted by a roll call vote of 7 to 0.

**12. REAL PROPERTY: DEVELOPMENT AGREEMENT WITH CONGRESS STREET REDEVELOPMENT, LLC FOR THE DEPOT PLAZA DEVELOPMENT PROJECT**

Mayor Walkup announced City Manager's communication number 673, dated December 13, 2005, would be received into and made a part of the record. He asked the City Clerk to read Resolution 20245 by number and title only.

Resolution No. 20245 relating to community services; approving and authorizing a Development Agreement with Congress Street Redevelopment, L.L.C., for the development of Depot Plaza Project; and declaring an emergency.

Council Member Trasoff thanked the residents who shared their comments. The community wanted to see movement on the project. There were motions and direction that were given as a starting point, but Council had to look at the amount of money in grants and outside funds on the line if Council did not proceed. The fact that the residents came down so strongly supportive of this was important in terms of improving the quality of life and strengthening downtown. The project would support the growth of businesses and the overall activity on the east end of town. All parties had approved the development agreement and there were a couple of points within it that still needed some work. The outstanding issues were worked out amicably. The Fifth Avenue vacation still had to go through the historic process and review and during that process issues might be resolved.

It was moved by Council Member Trasoff, duly seconded, to pass and adopt Resolution 20245.

Upon roll call, the results were:

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

Nay: None

Resolution 20245 was declared passed and adopted by a roll call vote of 7 to 0.

Council Member Trasoff stated that it was really critical, as they go through this redevelopment, that they not lose those valued business that have been the anchor for downtown to this point they needed to respect them and do what they could to assist them. Certainly parking that was going to be displaced by the redevelopment was a critical issue, as they look at the redevelopment of downtown. She said what they were trying to do with the Depot Plaza was an excellent example of the City's actions in support of east end business, as long as the City makes good in terms of the parking. She said there were a couple of recommendations that she would be making as a two-part motion.

It was moved by Council Member Trasoff in two-parts, duly seconded, that City staff commit to maintain no less than two hundred fifty daytime public parking and two hundred seventy five evening public parking spaces within a six hundred-foot radius of the northeast corner of Fifth and Congress, on the east end of the Congress District. These spaces would be on the street, on the current Greyhound Bus Depot site, and at the Historic Depot. The City would commit to maintaining the spaces until such time as the parking garage described in the second part of the motion was built. The six hundred-foot radius would only run south and west of the railroad tracks and includes Broadway on the south side, but no parking spaces south of Broadway, and that the temporary spaces extend to the west side of Sixth Avenue.

Council Member Trasoff said the second part of the motion was that Staff was directed to ensure a minimum of three hundred fifty parking space for the east end of Congress Street, within the next five years, to commence in January 2006. A parking garage would be built within six hundred feet of the northeast corner of Fifth Avenue and Congress, with the same boundaries as previously described, excluding areas north of the railroad tracks, and include Broadway to the south, but no areas south of Broadway and not include Sixth Avenue in the permanent spaces. This direction would be satisfied if an entity other than the City builds this parking capacity within the same geographic area. The public parking would be dedicated to monthly and hourly public parking for all east end of Congress businesses.

Council Member Trasoff apologized for her lengthy motion but she thought that it was important to act on behalf of the businesses in the east end of the district and that the City make allowance for the parking, both on a temporary and a permanent basis.

Mayor Walkup announced that the motion had been moved and seconded and asked if there was any further discussion.

Council Member Trasoff stated that the only other comment that she wanted to add was that among the unanswered issues in the letter of agreement was the possibility of a shuttle. She asked that, with enough notice, for staff to work with the Rialto, with Congress Hotel, and any other businesses that have special events that would require additional parking extended outside the six hundred-foot parking radius to the Pennington Garage. Staff would need to look into using Tucson Inter City Express Transit (T.I.C.E.T) or other shuttle service. It would be a benefit to the City to show parking and transportation would be available so people would start using the Pennington Garage.

Vice Mayor Leal stated they had focused on the number of spaces and the comfort level for people making the decision about whether to come downtown and finding a parking space and the confusion and chaos of construction that may occur. Staff had said if the garage on Broadway was built, it would be suggested prior to the Depot Plaza being concluded, to put two shifts on construction for the parking garage so it could be done in eight months to a year as opposed to two years, thus helping all the businesses

downtown. It might offset confusion during the construction period. He said he would like staff to get back to the Council with a memo.

Mayor Walkup expressed the desire to stay on a tight construction schedule not only for the residences involved, but also for the businesses in the area. It was a great part of the City. A lot had been invested in that area to make sure the residents were looked out for as best as possible.

Council Member Scott stated she wanted to make staff aware there was paperwork in progress in regard to historic designation, and that should be taken into account whenever any action was taken because it was a historic district. There may be additional paperwork that would need to be looked at before other comments and ordinances were made.

Mayor Walkup recognized Richard Oseran, representing Hotel Congress, who stated he did not understand if Council Member Trasoff was going to make another motion that the letters between him and Assistant City Manager Karen Thoreson entitled "Depot Plaza Agreement" together with their attachments, be accepted into the record to reflect their correspondence regarding other related concerns.

Mr. Oseran said approximately around January 2004, Mayor and Council voted to have staff return with an agreement between Congress Street Redevelopment and the City of Tucson; it would also provide an agreement between Hotel Congress and the City of Tucson. In the December 13, 2005 letter from Assistant City Manager Karen Thoreson, titled "Depot Plaza/Hotel Congress Agreement," the response from him in the form of a letter was attached. He said he made copies available and delivered a signed copy to Ms. Thoreson this morning. The letter included all the issues raised in the resolution in January 2004, with full or partial agreements on all of those items. He wanted to make sure that was also voted on as part of Council Member Trasoff's motion to insure the compliance of what was agreed upon.

Council Member Trasoff stated she neglected to add that she wanted it written into a formal part of the record so that his concerns, as well as his agreements were part of the formal record.

Kathleen Detrick, City Clerk, asked for the record, the date of the letter.

Council Member Trasoff stated the date of the letter was December 13, 2005.

Ms. Detrick stated she would have to read the letter into record.

Mike Rankin, City Attorney, asked for a moment to read the letter.

Mayor Walkup asked for a five-minute recess.

RECESS: 6:43 p.m.

RECONVENE: 6:50 p.m.

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
Karin Uhlich	Council Member Ward 3
Shirley C. Scott	Council Member Ward 4
Steve Leal	Vice Mayor, Council Member Ward 5
Nina J. Trasoff	Council Member Ward 6
Robert E. Walkup	Mayor

Absent/Excused: None

Kathleen S. Detrick, City Clerk, stated after discussion with the City Attorney, she needed to add some clarification to the motion made by Council Member Trasoff. In addition to her original motion regarding the parking issues, we are incorporating into the record the letter dated December 13, 2005 and associated December 9, 2005 letters and attachments thereto, to reflect the concerns raised by Mr. Oseran, which were addressed in Ms. Trasoff's motion and direction concerning the parking needs on the east end of Congress. That would be included as part of the motion.

Council Member Trasoff agreed.

Motion passed by a voice vote of 7 to 0.

**13. REAL PROPERTY: DEVELOPMENT AGREEMENT WITH PATHWAY HOLDINGS, LLC FOR THE SILVERBELL RESIDENTIAL SUBDIVISION**

Mayor Walkup announced City Manager's communication number 672, dated December 13, 2005, would be received into and made a part of the record. He asked the City Clerk to read Resolution 20243 by number and title only.

Resolution No. 20243 relating to real estate; authorizing and approving the execution of a Development Agreement between the City of Tucson and Pathway Holdings, L.L.C. for the construction of the Silverbell Residential Subdivision located at Silverbell Road and Goret Road; and declaring an emergency.

It was moved by Council Member Ibarra, duly seconded, to pass and adopt Resolution 20243.

Upon roll call, the results were:

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

Nay: None

Resolution 20243 was declared passed and adopted by a roll call vote of 7 to 0.

**14. INTERGOVERNMENTAL AGREEMENT: WITH THE ARIZONA BOARD OF REGENTS REGARDING THE HOPE VI MARTIN LUTHER KING REVITALIZATION PLAN**

Mayor Walkup announced City Manager's communication number 671, would be received into and made a part of the record. He asked the City Clerk to read Resolution 20244, by number and title only.

Resolution No. 20244 relating to Intergovernmental Agreements; approving the Intergovernmental Agreement between the City of Tucson and the Arizona Board of Regents for the design, development, and implementation of an evaluation tool to measure the effectiveness of the HOPE VI Martin Luther King Revitalization Plan; and declaring an emergency.

It was moved by Council Member Trasoff, duly seconded, to pass and adopt Resolution 20244.

Upon roll call, the results were:

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

Nay: None

Resolution 20244 was declared passed and adopted by a roll call vote of 7 to 0.

**15. INTERGOVERNMENTAL AGREEMENT: WITH THE ARIZONA BOARD OF REGENTS REGARDING A PREVENTIVE HEALTH MAINTENANCE PROGRAM FOR THE RESIDENTS OF THE MARTIN LUTHER KING APARTMENTS**

Mayor Walkup announced City Manager's communication number 678, dated December 13, 2005, would be received into and made a part of the record. He asked the City Clerk to read Resolution 20248 by number and title only.

Resolution No. 20248 relating to municipal housing; approving and authorizing execution of an Intergovernmental Agreement between the City of Tucson and the Arizona Board of Regents for a Mobile Health Program to provide a preventative health maintenance program to the residents of the HOPE VI Martin Luther King Revitalization Plan; and declaring an emergency.

It was moved by Council Member West, duly seconded, to pass and adopt Resolution 20248.

Upon roll call, the results were:

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

Nay: None

Resolution 20248 was declared passed and adopted by a roll call vote of 7 to 0.

**16. REAL PROPERTY: VACATION OF RIGHTS-OF-WAY FOR THE DEPOT PLAZA DEVELOPMENT PROJECT**

Mayor Walkup announced City Manager's communication number 670, dated December 13, 2005, would be received into and made a part of the record. He asked the City Clerk to read Ordinance 10226.

Ordinance No. 10226 relating to real property; vacating and declaring portions of certain city-owned rights-of-way located on 5<sup>th</sup> Avenue, 10<sup>th</sup> Street and Toole Avenue to be surplus property; and declaring an emergency.

It was moved by Council Member Trasoff, duly seconded, to pass and adopt Ordinance 10226.

Richard Oseran, representing Congress Hotel, stated before Federal funds could be expended under the National Historic Preservation Act there was a Section 106, it required that there be an evaluation of the adverse affects caused by a new development on historic properties. In that context, there were several historical properties within the affected project area, (APE), and the Hotel Congress was one of them.

Mr. Oseran said no funds could be spent until the process was complete. It required a representative of Housing and Urban Development (HUD), a representative of the State of Arizona State Historic Preservation Office (SHIPO), and entitled people who were affected to be consulting parties to the agreement. Staff neglected to perform a Section 106 in the development until just recently. SRI Company from New Mexico was hired to perform the determination of diverse consequences. The process would then allow for mitigation of the adverse affects. The process would now be in place pursuant to Federal law. Hotel Congress had no problems with the Tenth Street Project or the

vacation of Toole Avenue for the purposes of the project and align property boundary. Fifth Avenue was what they had a problem with because of the nature of Fifth Avenue, the historic grid and the nature of parking being affected by what happens to that property. It was proposed in the concept of the development that the footprint of the development exceed out into the existing right-of-way of Fifth Avenue. They had opposed this for various reasons. A meeting had occurred and the State Historic Preservation Officer weighted in on the issue and there was not a determination in regard to what the recommendations were going to be. If the process was not resolved through a memorandum agreement it would go on to another process. The whole time that process was occurring, there could not be construction and development of that development. To transfer that property to the Congress Street Development, while the Section 106 was ongoing, was not the right thing to do. There had been some indication through discussions this evening, if the motion was to be granted that there would be no conveyance to the developer until the Section 106 process was complete. He said he would like the motion to reflect that.

Council Member Trasoff stated she understood from discussions with staff that the vacation of that property would not be final until after the Section 106 historic process had been completed. An earlier agreement did not call for conveyance of the property to the developer until after approval from HUD for demolition, which meant the environmental historic review 106 process would have been completed. The vacation of the right-of-way would not impact that one way or another.

Council Member Trasoff asked Mr. Oseran to keep her staff updated on the complete process. Mr. Oseran agreed and said he understood the importance of letting the public know where they could park in advance for special events.

Upon roll call, the results were:

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

Nay: None

Ordinance 10226 was declared passed and adopted by a roll call vote of 7 to 0.

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

Mayor Walkup announced City Manager's communication number 658, dated December 13, 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 Trasoff, duly seconded, and carried by a voice vote of 7 to 0, that Father Frederick Tillotson be appointed to the Pima County/City of Tucson Commission on Addiction, Prevention and Treatment.

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

Council Member West announced her personal appointments of Andee Leisner to the Minority Women Business Enterprise Commission and Robert Kattnig to the Tucson Rodeo Grounds/Parade Citizens Oversight Committee.

**18. ADJOURNMENT 7:00 p.m.**

Mayor Walkup announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, December 20, 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 13<sup>th</sup> day of December 2005, and do hereby certify that it is an accurate transcription.

---

DEPUTY CITY CLERK

KSD:kd/bt

LAW OFFICES

**Richard S. Oseran, PLLC**

145 South 6<sup>th</sup> Avenue

Tucson, Arizona 85701

Telephone  
(520) 882-0044

Facsimile  
(520) 622-0521

FILED AT MAYOR & COUNCIL  
MEETING December 13, 2005 Rgy  
ITEM # Regular # 12  
BY: Council Member Trasoff

December 13, 2005

City Clerk File Note:

As indicated in the attached excerpt from the minutes of the meeting of the Mayor and Council held December 13, 2005, the attached letter dated December 13, 2005, and associated December 9, 2005 letters and attachments thereto are incorporated into the record and included as part of the motion. (DD:bp:rm 01/10/2006)

**Via hand delivery**

Karen Thoreson  
Assistant City Manager  
City Hall  
255 W. Alameda St.  
Tucson, AZ 85701-4204

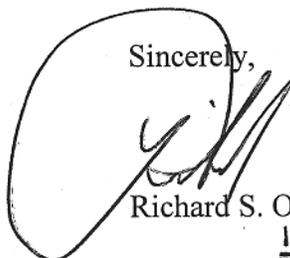
**Re: Depot Plaza Project**

Dear Karen:

Enclosed please find a fully executed original of the Depot Plaza Hotel Congress Agreement dated December 9, 2005, with an Addendum, which is my letter to you of December 9, 2005. I have added an asterisk to "Concurrence" above my signature line reflecting our concurrence to the issues set forth in paragraphs (a), (c), (d), (f), and (i). We also concur that the Agreement, along with the Addendum, reflect our partial agreement as to paragraphs (b), (e), (g), and (h), and further identifies our respective positions regarding part of those paragraphs to which agreement has not yet been reached.

Hopefully, we can come to an agreement on the remaining issues shortly.

Sincerely,



Richard S. Oseran

12-16-05 jsp

RSO:bh  
Enclosure  
c, via fax:

Mayor and City Council  
Mike Hein

	DISTRIBUTION	LOG NO. 120561
Mayor	_____	Elections/Records Mgmt.
Council	_____	Asst City Clerk
City Attorney	_____	Mgmt. Asst.
City Manager	_____	Office Supervisor
City Clerk	_____	Early Voting
Exec. Asst.	_____	Records Center
Posting	_____	CFA/Financial Mgmt.
Public File	_____	Asst. City Clerk
Suspense	_____	Mgmt. Coord.
	_____	Mgmt. Asst.
	_____	Systems Analyst
	_____	Payroll/Procure

KEY: ✓ Information Copy  
X - Action Copy  
O - Original

Public Records Copy



CITY OF  
TUCSON  
OFFICE OF THE  
CITY MANAGER

December 9, 2005

Richard S. Oseran  
Congress Tap Room, Inc.  
dba Hotel Congress  
311 E. Congress St.  
Tucson, AZ 85701

**Re: Depot Plaza Hotel Congress Agreement**

Dear Richard:

On January 5, 2004, as part of the City's HOPE VI Grant application, the Mayor and Council directed staff to negotiate and resolve a number of issues related to the Hotel Congress and the development of the Depot Plaza project. The Mayor and City Council further directed staff to return to the Mayor and Council with an agreement with the Hotel Congress not later than the date when staff provides the Council with a proposed development agreement between the City and Congress Street Redevelopment, L.L.C., for the Depot Plaza project. Since then, a substantial effort on the part of both the Hotel Congress and staff to resolve the identified issues has taken place. This letter is intended to memorialize, by issue area, the agreed upon actions and to set out future processes as appropriate.

a. The sale, lease or conveyance to Hotel Congress of the property that is currently the subject of a Temporary Revocable Easement (TRE) and that is currently used by Hotel Congress per the TRE for outdoor dining, special events and parking.

City and Hotel Congress Proposed Action:

Subject property was sold to the Hotel Congress on August 12, 2004. A Temporary Revocable Easement (TRE) was also issued to Hotel Congress covering public property along the east side of 5th Avenue and the area bounded by 5th, Toole and former 10th. That portion of the TRE affecting 5th Avenue may be terminated upon 90 days written notice to Hotel Congress. That portion of the TRE affecting the triangle may be terminated upon 60 days written notice to Hotel Congress. In the event the City terminates the TRE, the City shall relocate the existing fence along the Hotel Congress property line. The TRE also granted Hotel Congress an option to purchase additional public property abutting its property if that additional property is not used for the realignment of 5th Avenue at its intersect with Toole Boulevard.

b. The continuation of access to the Hotel Congress via the adjacent portion of 5<sup>th</sup> Avenue for the purposes of accommodating delivery and service trucks without impeding the flow of traffic along 5<sup>th</sup> Avenue or guest access to Hotel Congress.

City Proposed Action:

Fifth Avenue will remain open as part of the Downtown's traffic circulation system. 5th Avenue will continue to have two standard traffic lanes sized sufficiently for traffic maneuvering and flow with parking, of not less than the existing 12 spaces on both sides of the street. Two of these will be designated for loading purposes at limited times and we will seek your input on what those times should be. Existing access to the Hotel Congress for guests, deliveries and servicing will not change.

Hotel Congress Proposed Action:

Fifth Avenue will remain open as part of the Downtown's traffic circulation system. 5th Avenue will continue to have two standard traffic lanes sized sufficiently for traffic maneuvering and flow with parking, of not less than the existing 12 spaces on both sides of the street. **In addition to the 12 parking spaces, the existing loading zone will remain in place between the hours of 6:00 a.m. and 5:00 p.m., and which will provide additional parking from 5:00 p.m. to 6:00 a.m.** ~~Two of these will be designated for loading purposes at limited times and we will seek your input on what those times should be.~~ Existing access to the Hotel Congress for guests, deliveries and servicing will not change.

c. The designation of an area or space for Hotel Congress trash collection that does not diminish the Hotel's available parking or negatively impact customer access or enjoyment.

City and Hotel Congress Proposed Action:

A trash collection area for use by the Hotel Congress is designated on the south side of Toole Avenue north of the Hotel's parking lot on City property. The trash collection project is under design and being funded by the City.

d. Hotel Congress' ability to confer and provide input with design elements of the Project related to parking, pedestrian and vehicular access and trash removal to the extent that such elements impact the Hotel Congress.

City and Hotel Congress Proposed Action:

Hotel Congress has recently been defined as a "consulting party" within the Section 106 historical review process. Adverse consequences of the project

will be mitigated through this process. The first meeting in furtherance of that process was held on November 8, 2005. Hotel Congress has attended recent public meetings in regard to design review and the City has advised the Hotel Congress it will continue to be individually noticed of public meetings.

e. The availability of parking spaces within the parking garage planned as part of the Project for use by the Hotel Congress under a commercially reasonable lease agreement for the purpose of providing overnight parking for Hotel guests.

City Proposed Action:

Subject to the City's administrative waiver process (which allows the City Manager to provide a parking variance on city property) as many as ten spaces will be made available for lease on a project cost basis for Hotel Congress parking.

*The City provides a commitment to build a parking garage of a minimum of 350 spaces in the vicinity of the East End of Congress, within the next five years commencing January 2006. The East End of Congress is defined as within 600 feet of the Northeast corner of 5<sup>th</sup> and Congress (600 feet is equivalent to a five minute walk). This commitment would be void if another entity develops a similar size parking structure within the same geographic area in the same five year timeframe. You have our assurances that the public parking that is developed in the area will be for the entire East End and that the City will not reserve that public parking for any other private interest, other than monthly or hourly public parking.*

(This language should resolve the concerns you note below and in "h").

Hotel Congress Proposed Action:

Subject to the City's administrative waiver process (which allows the City Manager to provide a parking variance on city property) as many as ten spaces will be made available for lease on a project cost basis for Hotel Congress parking. Replacement parking for the parking which will be displaced by the Depot Plaza project will be made available in the planned 5<sup>th</sup> and Broadway public parking garage **prior to the time that construction will displace current available parking at the Depot Plaza site.** ~~You have requested that the 5<sup>th</sup> and Broadway garage be in place prior to disrupting existing parking. I'm sorry, but that is not possible as this delay will significantly damage the financial feasibility of the Depot Plaza Project. However, you have our assurances that we will proceed on the new parking garage as quickly as possible.~~

f. The accommodation or replacement of tour bus and loading zone parking that currently exists on 5<sup>th</sup> Avenue and Toole Avenue.

City and Hotel Congress Proposed Action:

Loading Zone parking will be accommodated on 5th Avenue in its current location. Tour bus parking will continue in its current location on the north side of Toole Avenue just west of 4<sup>th</sup> Avenue.

g. The provision of temporary parking for the benefit of Hotel Congress during the construction phase of the 4<sup>th</sup> Avenue underpass and the Depot Project, at sites designated by the City.

City Proposed Action:

Parking, signed for the Hotel Congress and the Rialto, will be made available at the former Greyhound site during 4<sup>th</sup> Avenue underpass and Depot Plaza construction. Secured parking is also available at the Pennington Garage at cost, the payment for which shall come from the reserve account referred to in Greg Shelko's letter of June 3, 2005, attached as Exhibit A. Staff will continue to pursue all other temporary parking options as needed, including the use of the Ronstadt Center at night. Additional parking along Toole Avenue will also be added.

Hotel Congress Proposed Action:

Parking, signed for the Hotel Congress and the Rialto, will be made available at the former Greyhound site during 4<sup>th</sup> Avenue underpass and Depot Plaza construction. Secured parking is also available at the Pennington Garage at cost, the payment for which shall come from the reserve account referred to in Greg Shelko's letter of June 3, 2005, attached as Exhibit A. Staff will continue to pursue all other temporary parking options as needed, including the use of the Ronstadt Center at night **and the use of a City shuttle between the Pennington Garage and East Congress scheduled to meet the needs of the Hotel Congress.** Additional parking along Toole Avenue will also be added.

h. The possible addition of public metered and garage parking as part of the Depot Plaza Project and 4<sup>th</sup> Avenue improvements in order to address parking needs on the east end of downtown.

City Proposed Action:

Additional metered parking spaces are being provided throughout the east end of the Downtown. The TEAM/Park Wise 2004 Parking Master Plan identifies a public parking facility to be built at the northwest corner of 5th

Avenue and Broadway Boulevard. Greg Shelko's letter, Exhibit A, regarding parking solutions for the Hotel Congress, confirms that Hotel Congress will have the exclusive use of 13 additional spaces at the Historic Depot at cost as set forth in that letter. Additionally, all other Historic Depot parking, including designated tenant parking, will be available for public use during off hours of each respective tenant. The Depot parking lots will be signed according to the agreement as set forth in this paragraph.

Hotel Congress Proposed Action:

Additional metered parking spaces are being provided throughout the east end of the Downtown. The TEAM/Park Wise 2004 Parking Master Plan identifies a public parking facility to be built at the northwest corner of 5th Avenue and Broadway Boulevard. **This facility will be available for use by the Hotel Congress prior to the time that parking is displaced as a result of the development of the Depot Plaza project.** Greg Shelko's letter, Exhibit A, regarding parking solutions for the Hotel Congress, confirms that Hotel Congress will have the exclusive use of 13 additional spaces at the Historic Depot at cost as set forth in that letter. Additionally, all other Historic Depot parking, including designated tenant parking, will be available for public use during off hours of each respective tenant. The Depot parking lots will be signed according to the agreement as set forth in this paragraph.

- i. Enhanced public safety measures for the proposed Plaza that will address public safety both through design and implementation (e.g., additional peace officer patrols, installation of lighting and signage, etc.)

City and Hotel Congress Proposed Action:

In addition to utilizing "Safe by Design" techniques for development of Depot Plaza public spaces, the Tucson Police Department is committed to providing a highly visible presence in the Depot Plaza public frontage. The Department also plans to extend the hours for off-duty police working at the Ronstadt Transit Center to reduce crime in the area. The Depot Plaza development will also include retail and other street activating uses for the entire 5th Avenue street frontage.

Richard S. Oseran  
December 9, 2005  
Page 6

The City of Tucson recognizes that the continued success of the Hotel Congress is vital to its efforts to revitalize Downtown Tucson. Staff remains committed to working with the Hotel Congress in furtherance of this goal. The Mayor and Council will discuss this issue on the evening of December 13, 2005 during the Regular Session.

Sincerely,

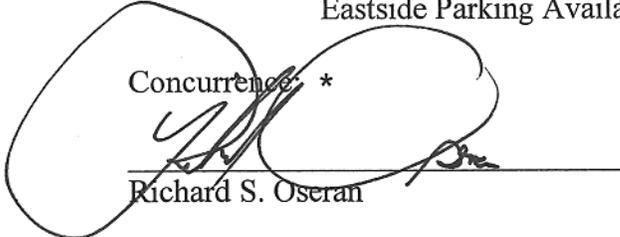


Karen Thoreson  
Assistant City Manager

KT:bh

Attachments: Letter from Greg Shelko dated June 3, 2005, Exhibit A  
Eastside Parking Map  
Eastside Parking Availability 2006-07

Concurrence: \*



Richard S. Oseran

\*except as set forth in paragraphs (b), (e), (g) and (h) and my letter of December 9, 2005 labeled Addendum and attached hereto.





**ADDENDUM**

LAW OFFICES

***Richard S. Oseran, PLLC***

145 South 6<sup>th</sup> Avenue

Tucson, Arizona 85701

Telephone  
(520) 882-0044

Facsimile  
(520) 622-0521

December 9, 2005

**Via facsimile 791-5198**

Karen Thoreson  
Assistant City Manager  
City Hall  
255 W. Alameda St.  
Tucson, AZ 85701-4204

**Re: Depot Plaza Project**

Dear Karen:

Please be advised I just received your revised Depot Plaza Hotel Congress Agreement.

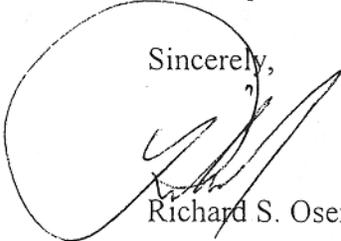
1. As to paragraph (b), your City Proposed Action is unacceptable as it would further reduce the number of existing public parking spaces on 5<sup>th</sup> Avenue.
2. As to the italicized portion of paragraph (e), your City Proposed Action is unacceptable for various reasons. A parking lot south of Broadway would be included in your 600 foot radius. Broadway Boulevard is considered a barrier in the ParkWise Master Plan. Also, a 350 space public parking garage does not meet the current or future needs of the east end of Congress Street. Finally, the Hotel Congress will not be in business in five years under your proposed plan. Consequently, you must reduce the 600 foot radius to a 300 foot radius, the five- year commitment to a two-year commitment and change the 350 public parking spaces to approximately 700 public parking spaces to meet the parking shortfall. If another entity were to develop a public parking garage within the two-year time period of less than 700 spaces, the City commitment would be only for the balance, if any. This would be consistent with the parking needs identified in the City's Master Plan.
3. The City Proposed Action in paragraph (g) is unacceptable only to the extent that it does not include a shuttle necessary to meet the needs of the east end of downtown during the construction period.

Karen Thoreson  
December 9, 2005  
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4. Also, as to paragraph (h), the City Proposed Action is acceptable, providing our revisions to your italicized City Proposed Action for paragraph (e) are accepted.

Hopefully, you can make these necessary changes, and we would be willing to enter into an agreement and support the commencement of the Depot Plaza Project at this time.

Sincerely,



Richard S. Oseran

RSO:bh  
c, via fax: Mike Hein

P.S.: Your Eastside Parking Availability Chart has inaccurate counts which I will be happy to discuss with you.