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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
on October 24, 2006

Date of Meeting: September 12, 2006

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 5:34 p.m. on Tuesday, September 12, 2006, 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	Vice Mayor, Council Member Ward 2
Karin Uhlich	Council Member Ward 3
Shirley C. Scott	Council Member Ward 4 (Electronic Attendance)
Steve Leal	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
Roger Randolph	Deputy City Clerk

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

The invocation was given by Reverend Roger Phillips, after which the pledge of allegiance was presented by the entire assembly.

Roger Randolph, Deputy City Clerk, announced Council Member Scott was unable to be present at the meeting and would be participating by telephone. He said this was allowable under the Mayor and Council Rules and Regulations. He stated Council Member Scott would be watching the meeting by television and a conference telephone was in place that would allow her to participate in the meeting. Mr. Randolph said Council Member Scott would vote on all matters in the same way as those members physically present. He said all votes would be taken by roll call, rather than by voice votes. He announced that all reasonable efforts would be made to provide Council Member Scott with copies of any handouts.

Mr. Randolph also announced Susie Rogers would be assisting with anyone in the audience needing Spanish language translation for items listed on the agenda.

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

Mayor Walkup announced City Manager's communication number 483, dated September 12, 2006, 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 West reported the Ward 2 Back to Basic's allocations. Projects included were: Fort Lowell Road sidewalks, Grady Street improvements, the additional entrance into Udall park to effectively coordinate with the newly installed traffic signal at Tanque Verde and Rancho Esperanza, shade structure at Udall dog park, landscape for the new west entrance to Udall Park, housing rehabilitation for seniors and low income residents, and median art work at Wrightstown and Pantano Roads. She said they were partnering with Tucson Unified School District's Davidson Elementary to build a park on the school grounds. Council Member West thanked Mayor Walkup for contributing fifty thousand dollars of his Back to Basics funds this year for the Davidson Elementary School ADA (Americans with Disabilities Act) playground. She said the dedication for the school would be on September 27, 2006. She also announced the Ward 2 town hall would be held at 7575 E. Speedway on September 13, 2006.
- b. Council Member Trasoff announced there would be a Mayor and Council Strategic Focus Area Subcommittee Rio Nuevo/Downtown, Arts, Culture and History meeting on September 21, 2006 at the Ward 6 office. She said after the meeting there would be a reception for the artists from Art Fair, who contributed the artwork in the community room. Council Member Trasoff said she and

Council Member Ibarra went to Phoenix with the Tucson Fire Department and the members of their honor guard, for the dedication of the 9/11 memorial. She also announced the following Youth Employment Enrichment Program allocations: Sonoran Glass Art Academy for eighteen Tucson high school students to learn the art of glass blowing with Tom Philabaum; Raices Taller 222 for the New Visions art exhibit of young people; Tu Nidito Children and Family Services for sponsoring ten participants in the Seasons of Hope conference; Ballet Tucson for the sponsorship of a trainee, Isaac Shirat; and Handi-Dog, for the training of a service animal for a twelve year old boy who suffered from cerebral palsy.

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

Mayor Walkup announced City Manager's communication number 484, dated September 12, 2006, 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, said he did not have anything to report, but he believed Council Member Scott had a meeting scheduled regarding the waste energy proposal.

Council Member Scott said the meeting would be on September 18, 2006 at the Clements Center, for anyone interested in discussing a proposal for an incinerator suggested by Davis Monthan Air Force Base.

#### **5. LIQUOR LICENSE APPLICATIONS**

Mayor Walkup announced City Manager's communication number 490, dated September 12, 2006, would be received into and made a part of the record. He asked the Deputy City Clerk to read the Liquor License Agenda.

##### **b. New License**

1. Rosati's on 6th, Ward 6  
1838 E. 6<sup>th</sup> St.  
Applicant: James Cummings  
Series 12, City 85-06  
Action must be taken by: September 22, 2006  
Staff has indicated the applicant is in compliance with city requirements.
2. Ascolese's Italian Ristorante, Ward 6  
222 S. Church Ave.  
Applicant: Joseph Anthony Ascolese  
Series 12, City 87-06  
Action must be taken by: September 25, 2006  
Staff has indicated the applicant is in compliance with city requirements.

Person Transfer

3. Great Wall of China Restaurant, Ward 4  
2445 S. Craycroft Rd.  
Applicant: Christina An  
Series 06, City 86-06  
Staff has indicated the applicant is in compliance with city requirements.

c. Special Event

1. Tucson Botanical Gardens, Ward 6  
2150 N. Alvernon Way  
Applicant: Nancy Roubicek Laney  
City T39-06  
Date of Event: October 8, 2006  
Fundraising Event – The Butterfly Affaire  
Public Opinion: Written Argument in Favor Filed  
Staff has indicated the applicant is in compliance with city requirements.
2. Arizona Theatre Company, Ward 6  
330 S. Scott Ave.  
Applicant: Eileen Marie Bagnall  
City T40-06  
Date of Event: September 30, 2006  
Annual Benefit Gala  
Staff has indicated the applicant is in compliance with city requirements.
3. Artsake Foundation, Ward 6  
5<sup>th</sup> Ave. btwn. Toole & Broadway, Congress btwn. Aviation & 6<sup>th</sup> Ave.  
Applicant: Jeb Bley Schoonover  
City T41-06  
Date of Event: October 7, 2006  
Fundraiser  
Staff has indicated the applicant is in compliance with city requirements.
4. Kingdom Investment Foundation of Tucson, Ward 6  
446 N. Campbell  
Applicant: Steven James Nissen  
City T42-06  
Date of Event: September 16, 2006  
U of A Football Home Tailgate Party  
Public Opinion: Written Arguments Opposed Filed  
Staff has indicated the applicant is in compliance with city requirements.  
Considered separately  
Continued from the Mayor and Council meeting of September 6, 2006

5. Kingdom Investment Foundation of Tucson, Ward 6  
446 N. Campbell  
Applicant: Steven James Nissen  
City T43-06  
Date of Event: September 23, 2006  
U of A Home Football Tailgate Party  
Public Opinion: Written Arguments Opposed Filed  
Staff has indicated the applicant is in compliance with city requirements.  
Considered separately  
Continued from the Mayor and Council meeting of September 6, 2006
6. Kingdom Investment Foundation of Tucson, Ward 6  
446 N. Campbell  
Applicant: Steven James Nissen  
City T44-06  
Date of Event: September 30, 2006  
U of A Home Football Game Tailgate Party  
Public Opinion: Written Arguments Opposed Filed  
Staff has indicated the applicant is in compliance with city requirements.  
Considered Separately  
Continued from the Mayor and Council meeting of September 6, 2006
7. St. Margaret Mary Roman Catholic Parish, Ward 1  
801 N. Grande Ave.  
Applicant: Oscar White  
City T48-06  
Date of Event: October 7 & 8, 2006  
Fundraiser  
Public Opinion: Written Argument in Favor Filed  
Staff has indicated the applicant is in compliance with city requirements.
8. It's Happening Downtown, Inc., Ward 6  
26 E. Congress St.  
Applicant: David G. Olsen  
City T50-06  
Date of Event: September 23, 2006  
Community Cultural Event  
Staff has indicated the applicant is in compliance with city requirements.
9. Tucson Museum of Art, Ward 1  
140 N. Main Ave.  
Applicant: Charlie E. Bodden  
City T51-06  
Date of Event: September 21, 2006  
Exhibition Opening Reception  
Staff has indicated the applicant is in compliance with city requirements.

10. Tucson Optimist Clubs, Ward 6  
900 S. Randolph Way  
Applicant: Esthermarie Hillman  
City T53-06  
Date of Event: September 28-October 1, 2006  
Raise Funds for Optimist Clubs  
Staff has indicated the applicant is in compliance with city requirements.
11. Our Lady Queen of Saints Roman Catholic Church, Ward 5  
2915 E. 36th St.  
Applicant: Darlene M. Dooley  
City T54-06  
Date of Event: September 22 & 23, 2006  
Charitable Ministries Religious Education Fundraiser  
Staff has indicated the applicant is in compliance with city requirements.

d. Agent Change

There were no agent changes scheduled for this meeting.

It was moved by Council Member Leal, duly seconded, that liquor license application 5b1 through 5b3, 5c1 through 5c3, and 5c7 through 5c11 be forwarded to the Arizona State Liquor Board with a recommendation for approval.

Mayor Walkup asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

It was carried by a roll call vote of 7 to 0 to forward liquor license applications 5b1 through 5b3, 5c1 through 5c3, and 5c7 through 5c11 to the Arizona State Liquor Board with a recommendation for approval.

## 5. LIQUOR LICENSE APPLICATIONS

### c. Special Event

4. Kingdom Investment Foundation of Tucson, Ward 6  
446 N. Campbell  
Applicant: Steven James Nissen  
City T42-06  
Date of Event: September 16, 2006  
U of A Football Home Tailgate Party  
Public Opinion: Written Arguments Opposed Filed  
Staff has indicated the applicant is in compliance with city requirements.  
Continued from the Mayor and Council meeting of September 6, 2006
5. Kingdom Investment Foundation of Tucson, Ward 6  
446 N. Campbell  
Applicant: Steven James Nissen  
City T43-06  
Date of Event: September 23, 2006  
U of A Football Home Tailgate Party  
Public Opinion: Written Arguments Opposed Filed  
Continued from the Mayor and Council meeting of September 6, 2006
6. Kingdom Investment Foundation of Tucson, Ward 6  
446 N. Campbell  
Applicant: Steven James Nissen  
City T44-06  
Date of Event: September 30, 2006  
U of A Football Home Tailgate Party  
Public Opinion: Written Arguments Opposed Filed  
Continued from the Mayor and Council meeting of September 6, 2006

Roger Randolph, Deputy City Clerk, announced the first item to be considered separately was Item 5c4, located in Ward 6.

Council Member Trasoff asked to consider Items 5c4, 5c5, and 5c6 together. She said this was a request from Sam Hughes Place Championship Dining. They requested several special event licenses for a series of events before University of Arizona home football games. She said the Council approved one special event license two weeks ago for the same applicant and she wanted to report back before deciding on the others.

Mary Zulli said she was instrumental in bringing this development to the neighborhood. She mentioned that it had been a controversial step. She said one of many options for that site was to build a Walgreens drug store. She said most of the neighborhood rejected that idea, however, they agreed that a Walgreens would not give

them any trouble; it would be better to have a Walgreens than a liquor store, restaurant or bar that would cause lots of trouble. Ms. Zulli said to bring what they considered new urbanism to the neighborhood, they had an agreement that would bring them highly increased residential density as well as increased commercial density. She said in exchange, the developer, Town West, would agree to certain conditions. She said there were four conditions she was going to focus on: parking, signage, clean-up and special events.

Ms. Zulli said Ordinance 6610 was enacted in conjunction with the rezoning that would allow this type of development, and all parking had to exist in that block, sufficient for the activities taking place there. She said there was to be no parking elsewhere. She said the idea was to encourage pedestrian traffic, to encourage people to enjoy each other in a more human way without their automobiles. She said the difference between old urbanism and new urbanism was the parking.

Ms. Zulli said with respect to signage, one of the things noticed with neighborhood bars masquerading as restaurants was they frequently displayed canvas or plastic covered signs with invitations touting beer. She said they decided if they could just enact a regulation that forbade that type of activity, they would save themselves a lot of trouble.

Ms. Zulli said with respect to clean up, it was very clear in the ordinance that clean up had to occur immediately after any special event. Ms. Zulli said clean up was to be done on an ongoing basis, not just on the property, but any residual garbage that ended up in the neighborhood as well.

Ms. Zulli said they agreed to twelve special events every year. She said when they agreed to those special events, they did not decide all of the rest of the agreement would be void.

Ms. Zulli said all of the parking had to be accounted for and the signage had to be consistent, all the way through, irrespective to the need of the special events. She stated when they were talking about special events, the developer suggested things like a string quartet and a jazz evening. She said they were not naïve to believe those were the only types of events that would happen. She said with the signage and saying that the parking had to be accounted for, they knew the event had to be confined to the area of the parking lot, with the plaza and outdoor eating area and all of the spaces remaining open. Ms. Zulli said the signage should not encourage random traffic from up and down Campbell.

She said the pictures presented to Council Member Trasoff showed the signage rule was being violated and was encouraging students to come by advertising beer. She said they had no objection to special events or alcohol being served, but they were objecting to the tone of the event and that it occasioned the violation of the zoning provisions presented by the neighborhood and the developer to the City, and enacted into law.

Ms. Zulli said they respectfully suggested any liquor license for this type of event at that location be contingent on them obeying all of the zoning regulations they signed along with the Sam Hughes Neighborhood Association. She said they understood one of the conditions was that it be held in conjunction with a fundraiser. She thought if that was the case, the sponsoring organization should be noted in all of the advertising. She said if there was not time to investigate each organization, the members seeing the notices might give notification if it was not an official event of the organization.

She said the Sam Hughes Neighborhood Association supported having these types of development in the neighborhood and they supported these events and they supported it all over the City. However, she said that could not happen if irresponsible commercial tenants were allowed to disobey rules that were put into place in good faith.

Susan Banner stated she was speaking for a neighbor who lived within three hundred feet of the complex and for several neighbors who were unable to attend the meeting. She said they received the notifications for these special events in an avalanche of mail. She said they were not concerned by the first one, but once they started to come in threes they got concerned. The City, 446 N. Campbell and Town West came to the majority decision and created the mixed use facility that stood there now and it had been no problem. She said before the final agreement was reached, she remembered sitting in on the meeting with the architect and developer who named various hypothetical events. She said they might have been stupid not to think a tailgate party might be one of the special events, but they never anticipated seven tailgate parties.

Ms. Banner said they were concerned with the quality of life in the neighborhood with a string of tailgate parties, along with safety, litter and traffic. But most of all, they were concerned about the message it sent. She said if she was shopping for a house in the Sam Hughes neighborhood and came upon the party on September 2, 2006, she would not look there any longer. She said by ten in the morning they had set up and appeared to be operating. The next morning, she went to see the aftermath and took pictures. She said there were many signs advertising the tailgate party, and promoting beer. She said hanging in front of La Ferlita's was a sign that read, "Welcome Back Students, Coors beer." She said after the party, surrounding all of the landscaping, the entire block that comprised 446 N. Campbell was littered with paper cups, beer bottles, empty beer cases, toilet paper and vomit. Ms. Banner said their waste disposal was supposed to be in keeping with the landscaping, and it was visibly standing open, with piles of garbage rolling out.

Ms. Banner said the initial worry was how it would affect the neighborhood, but when they looked into it, they found issues about waste disposal, the signage and the CC&R's, and Ordinance 6610 said no temporary signs. She said the tailgate party took up so much space at the same time at least four other businesses in the complex were open, that parking spaces were not available for their patrons. She said she did not object to events that served alcohol, but she did object to events with the sole purpose of selling as much alcohol as possible.

Ms. Banner said a sponsor to the tailgate parties was a rock radio station with no appeal to adults. She said the radio station's website indicated Sam Hughes Place would hold tailgate parties every home game this year, which was like a forgone conclusion that the Mayor and Council would grant the Special Event permit. She asked the Mayor and Council not to recommend the permits be granted to people who did not keep their written agreement with the neighborhood or the City, nor who presumably continued to violate the agreement on an ongoing basis. Ms. Banner requested special events be required to conform to the wording of the CC&Rs. She said a lot of thought went into the regulations, but they were meaningless if the City did not require people to follow them.

Matthew McKinnon said he was wearing two hats. He said he was the general manager and one of the partners of Sam Hughes Place Championship Dining. He said he was also speaking on behalf of Kingdom Investment Foundation of Tucson, which was a national organization, with a national charter. Mr. McKinnon said they took in money for children with special needs, and their families. He said Town West was the developer who had negotiations with the Homeowners Association, and drafted a memorandum of understanding between the developer and the Homeowners Association. He said as the lessee of the building, he was given a copy of the agreement along with his CC&Rs and purchase agreement. He said when he reviewed the purchase agreement, they did not see anything they were in violation of for the first event that was granted a license for September 2, 2006. He said as complaint letters came in, they looked more closely at what they did and at the rules and regulations that were signed when he leased the building.

Mr. McKinnon stated the signage that read "Welcome Back Students, Coors Light" was not their's. He said it belonged to La Ferlita's Pizza Café. He said with that special event, parking was an issue. He said he had several letters from people who lived in the complex stating that the parking situation actually improved by them doing an outside event. He said it was due to them hiring an extra valet. He said they hired a security company to monitor the ingress and egress of people. The last basketball season presented a problem with people parking there and going to the game. He said it was impossible to tell who was dining in the restaurant or one of the other buildings and who was parking and going to the game. He said that was an ongoing problem he struggled with everyday, with students who liked to park in the complex and walk to class. He said they hired parking attendants to be sure that did not happen.

Mr. McKinnon said he leased the property northeast of the complex with a temporary parking permit. He said they paved it and striped it. He said the permit was until November, and it was used for employee parking. He said that was over thirty spaces each day, for his staff. He said they had window hangers made for the employees and invited everyone in the complex to park across the street. He said, after the September 2, 2006 special event, he used Championship Dining funds to purchase fifteen spots from the University of Arizona for the employees to park off-premises and open up even more spaces.

Mr. McKinnon said before they started the tailgate event, they asked La Ferlita's Pizza Café, 6<sup>th</sup> Street Café, and the ice cream shop if they wanted to participate. He said they did have a beer trailer and were serving beer. He said classic rock radio station 107.5 was also there. He said there were no complaints from any other business owners about the parking.

Mr. McKinnon said one problem they continually faced was that eighty percent of the condominiums were owned and leased to students, and along with the students came parties and trash. He said the event they held on September 2, 2006 was set up and ready to go by ten but they did not start serving until noon. He said the complex parties were starting when he got there at eight in the morning. He said the items in the medians and common areas were red and clear plastic cups and beer bottles, which were not being distributed at his event. He said these were from the residential parties.

Mr. McKinnon stated the security company they hired monitored people coming and going from the special event. He said they placed someone at the front door to make sure no one could come and go from the establishment with a drink in their hands. Mr. McKinnon pointed out they made sure anyone who was old enough to drink had a wristband on, which was impossible to switch without destroying it. He said they did a very good job and had zero problems, with no acts of violence. He said there were two hundred fifty gallons of garbage receptacles in and around the area. He said during basketball season he noticed cars parking behind the complex along 7<sup>th</sup> Street. He said as people walked through the parking lot, they deposited their trash in the parking lot, in the bushes, and along the streets. He said with the extra garbage cans, it was controlled better.

Mr. McKinnon said Gary Proper was a University of Arizona alumnus who lived above Championship Dining. Mr. Proper told Mr. McKinnon it was the cleanest the place had looked since they started, and he could not believe there was a game the previous night. He said the only item mentioned that he saw in their CC&Rs was the temporary signage. On the day of the event, there was signage donated by Finley Distributing, which he since realized the CC&Rs said they should not have. He said it was not an issue and would not happen again. He said he was not trying to cater to a younger crowd; the price point of the restaurant was not the younger crowd. He said if signage was an issue it could be worked with.

Mr. McKinnon said he signed a lease, as a business owner, giving him the right to apply for a special event permit. He said when he signed the lease, he was never given restrictions as to what the special event could be. Mr. McKinnon was only told it would have to comply with the City and the State liquor board. He stated he believed it had. He said he did have the memorandum of understanding between the developer and the Homeowners Association, and with the exception of the signage he was in compliance. He stated they were there to boost morale for the sporting events, and to build an all-ages, fun atmosphere. He said if there was something that needed to be tailored to the neighborhood, they would do that.

Council Member Trasoff stated it was a difficult situation for her and they had spent a lot of hours working on it with staff, neighbors and some of the owners. She said it was an egregious breach of the CC&Rs to have that kind of signage because it was so particular about no alcohol signs, even as part of the permanent displays, could be seen from the street. She said with that strictness, it should have been very clear there were no temporary signs allowed. She said she appreciated Mr. McKinnon clarifying the one sign did not belong to Championship Dining, and she took that into account. She said she saw the photographs of the cleanup, and her staff looked into the ones that could be attributed to him and which ones may not have been. She said she also empathized because the neighbors did not care where it came from; it was there after the game.

Council Member Trasoff said one thing she did have to applaud Championship Dining for was the security. However, one concern she had was that when they granted the licenses two weeks ago, she made a point of addressing the handicap parking issue. She said her staff worked with Championship Dining staff, yet three of the spaces were filled with vehicles that did not present handicap identification. She said Championship Dining staff was told twice during the event that the spaces were being used by unauthorized cars, and nothing was done about it. She said this concerned her, especially when the fundraiser was for people with special needs.

Council Member Trasoff said she had a question about one of the elements in the CC&Rs which said forbidden uses of the property was for bars which had as their predominate function the sale of alcoholic beverages. She said the restaurant did not fit that description and his rationale about the price point was well-taken, but the event outside seemed almost entirely about the sale of liquor. She mentioned that she appreciated the temporary parking Mr. McKinnon arranged, but it ended as of November 1, 2006. She stated she had to recommend against approval.

Council Member Trasoff said she did not want to be unfair, especially toward anything that was charitable. She said she had to make a point that when City staff tried to contact the local people from the charity, they could not tell staff the purpose of the charity or where the money would be going. She said Mr. McKinnon addressed it here, but the person contacted could not say where the money would be going or what the charity was about. She said that was unsettling. She said the main reason for recommending against approval of the permit was the signage. She said it upset the neighbors who worked hard on the CC&Rs, as a condition to approve the rezoning, to work with the developer. She said she would not recommend denial of the applications for Items 5c5 and 5c6 because they could meet with the neighbors and address the parking issue in the next week. She said she knew they had withdrawn their request for events after November 1, 2006 because there would not be extra parking.

Council Member Trasoff said the licenses being considered were from 2:00 p.m. until 10:00 p.m., but they started the previous party at noon. She asked him to please look at the details and work with the neighbors in the next week. She said if they wanted, it could be brought back to Mayor and Council and they would consider the final two that were requested.

It was moved by Council Member Trasoff, duly seconded, that liquor license application 5c4, be forwarded to the Arizona State Liquor Board with a recommendation for denial, and that liquor license applications 5c5 and 5c6 be held for reconsideration.

Mike Rankin, City Attorney, asked if items 5c5 and 5c6 were being continued rather than scheduled for reconsideration.

Council Member Trasoff answered affirmatively.

Mayor Walkup asked if there were any comments.

Council Member Leal said he appreciated what the neighbors had said, and appreciated Council Member Trasoff's recommendation and overview. He said it suggested they look at similar issues with the Franklin Street project.

Upon roll call, the results were:

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

Nay: None

The motion to forward liquor license application 5c4, Kingdom Investment Foundation of Tucson, to the Arizona State Liquor Board with a recommendation for denial, and to continue liquor license applications 5c5 and 5c6, was declared passed and adopted by a roll call vote of 7 to 0.

**6. CONSENT AGENDA – ITEMS A THROUGH F**  
(This item was taken out of order and considered after Item 7)

**7. CALL TO THE AUDIENCE**  
(This item was taken out of order)

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for any 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 called on the first speaker.

a. Michael Toney spoke about the University of Arizona Science Center intergovernmental agreement.

b. Russ Dove spoke about immigration issues.

(This item was returned to after Item 12)

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

(This item was taken out of order)

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 Deputy City Clerk to read the Consent Agenda.

**A. LIBRARY SERVICES: INTERGOVERNMENTAL AGREEMENT AMENDMENT WITH PIMA COUNTY FOR IMPROVEMENTS TO THE MIDTOWN LIBRARY**

1. Report from City Manager SEPT12-06-486 CITY-WIDE
2. Resolution No. 20451 relating to Library Services; authorizing and approving an amendment to the Intergovernmental Agreement between the City of Tucson, and Pima County for improvements to the Midtown Library; and declaring an emergency.

**B. TUCSON CODE: AMENDING (CHAPTER 7B), RELATING TO LIMITED POINT-OF-PRESENCE TELECOMMUNICATIONS LICENSES**

1. Report from City Manager SEPT12-06-487 CITY-WIDE
2. Ordinance No. 10317 relating to competitive telecommunications; providing for a twenty mile limitation for limited point-of-presence telecommunication licenses; amending the Tucson Code by amending Tucson Code Sections 7B-26.1 and 7B-36; authorizing the Director of Information Technology to deal administratively with changes in limited point-of-presence licenses; and declaring an emergency.

**C. REAL PROPERTY: ACQUISITION OF EASEMENT FOR A WATER FACILITY LOCATED AT CRAYCROFT ROAD AND CAMINO DEL CELADOR**

1. Report from City Manager SEPT12-06-489 OUTSIDE CITY
2. Resolution No. 20452 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain easements in, over, under, and across real property located at the northeast corner of Craycroft Road and Camino Del Celador for the relocation of a water pressure reducing valve; and declaring an emergency.

- D. INTERGOVERNMENTAL AGREEMENT: WITH ORO VALLEY FOR FIXED-ROUTE BUS SERVICE AND ADA ELIGIBILITY CERTIFICATION
1. Report from City Manager SEPT12-06-488 OUTSIDE CITY
  2. Resolution No. 20453 relating to transportation; approving and authorizing execution of an Intergovernmental Agreement between the City of Tucson and Oro Valley for the provision of Fixed-Route Bus Service (Sun Tran) and ADA eligibility certification for designated areas of Oro Valley; and declaring an emergency.
- E. REAL PROPERTY: VACATION AND SALE OF A PORTION OF JUHAN PARK TO LEGACY BUSINESS PROPERTIES, LLC
1. Report from City Manager SEPT12-06-498 WARD 1
  2. Ordinance No. 10319 relating to real property; vacating and declaring portions of City owned real property located within Juhan Park, Tucson, Arizona, to be surplus property and authorizing the sale thereof to Legacy Business Properties, LLC; and declaring an emergency.
- F. MAYOR AND COUNCIL: AMENDMENT TO MAYOR AND COUNCIL RULES AND REGULATIONS RELATING TO ELECTRONIC ATTENDANCE
1. Report from City Manager SEPT12-06-500 CITY-WIDE
  2. Resolution No. 20457 relating to Rules and Regulations of the Governing Body; amending procedures for Members' Electronic Presence at a meeting; and declaring an emergency.

It was moved by Council Member Trasoff, duly seconded, that Consent Agenda Items A through E, except item F which would be considered separately, be passed and adopted and the proper action taken.

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

Upon roll call, the results were:

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

Nay: None

Consent Agenda Items A through E, with the exception of Item F, were declared passed and adopted by a roll call vote of 7 to 0.

**6. CONSENT AGENDA – ITEM F**

F. MAYOR AND COUNCIL: AMENDMENT TO MAYOR AND COUNCIL RULES AND REGULATIONS RELATING TO ELECTRONIC ATTENDANCE

1. Report from City Manager SEPT12-06-500 CITY-WIDE
2. Resolution No. 20457 relating to Rules and Regulations of the Governing Body; amending procedures for Members’ Electronic Presence at a meeting; and declaring an emergency.

Roger Randolph, Deputy City Clerk, said Council Member Scott requested Item F be considered separately.

Council Member Scott said she wanted to thank her colleges for considering the item. She said when the ordinance was originally passed it said there would be a limit of two electronic attendances allowed for a Council Member. She said this ordinance would allow for attending more than two meetings electronically. She said she wanted it to be clear to the public there might be circumstances when a council member was fit and able, but may have a temporary disability, which was what she had suffered. She said the City Attorney presented a memorandum to the Council to clarify whether or not it complied with Arizona Open Meeting Laws and the Arizona Revised Statutes. She asked Mr. Rankin to clarify whether it was within the boundaries.

Mike Rankin, City Attorney, said this was correct. He said the restriction of no more than two times in a particular year to appear electronically was just a stipulation the Council had made and it could be amended or removed and remain consistent with all of the Arizona Revised Statutes and the Open Meeting Law.

It was moved by Council Member Scott, duly seconded, that Consent Agenda Item F be passed and adopted and the proper action taken.

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

Upon roll call, the results were:

Aye:	Council Members Ibarra, Uhlich, Scott, Trasoff, and Leal; Vice Mayor West and Mayor Walkup
Nay:	None

Consent Agenda Item F was declared passed and adopted by a roll call vote of 7 to 0.

**7. CALL TO THE AUDIENCE**

(This item was taken out of order and considered after Item 5 and again after Item 12.)

**8. PUBLIC HEARING: FEDERAL TRANSIT ADMINISTRATION SECTION 5309 CAPITAL INVESTMENT GRANT APPLICATION FOR FEDERAL FISCAL YEAR 2006**

Mayor Walkup announced City Manager's communication number 491, dated September 12, 2006, would be received into and made a part of the record. He announced this was the time and place legally advertised for a public hearing on the Federal Transit Administration grant application and before they began, staff would make a brief presentation.

Jim Glock, Transportation Department Director, said the grant made under number 5309 was a grant that was made available for their consideration through the actions of the congressional delegation for a special appropriation. He said it consisted of funding the purchase of ten lift-equipped replacement buses for Sun Tran and funding for the Sun Tran storage and maintenance facility.

Mayor Walkup announced speakers would be limited to five-minute presentations. He asked if there were any speakers. There were none.

Mayor Walkup asked for a motion to close the public hearing.

It was moved by Vice Mayor West, duly seconded, to close the public hearing.

Mayor Walkup asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

The public hearing was declared closed by a roll call vote of 7 to 0.

Mayor Walkup asked the Deputy City Clerk, to read Resolution 20455 by number and title only.

Resolution No. 20455 relating to transportation; authorizing and approving the submission of a Federal Transit Administration (FTA) Section 5309 Capital Grant Application for Federal Fiscal Year 2006; and declaring an emergency.

It was moved by Council Member Uhlich, duly seconded, to pass and adopt Resolution 20455.

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

Upon roll call, the results were:

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

Nay: None

Resolution 20455 was declared passed and adopted by a roll call vote of 7 to 0.

**9. PUBLIC HEARING: FEDERAL TRANSIT ADMINISTRATION SECTION 5307 FORMULA GRANT APPLICATION FOR FEDERAL FISCAL YEAR 2006**

Mayor Walkup announced City Manager's communication number 492, dated September 12, 2006, would be received into and made a part of the record. He announced this was the time and place legally advertised for a public hearing on the Federal Transit Administration grant application and before they began, staff would make a brief presentation.

Jim Glock, Transportation Department Director, said this was the annual formula grant, plus some funding through the Pima Associations of Governments, allocation of some Federal Highway Administration Surface Transportation Program funds towards the transit program. He said it allowed for the purchase of twelve new low floor replacement buses for Sun Tran and fourteen replacement vans and six expansion vans for Van Tran. He said under federal rules, they were mandated to spend one percent of the funding allocation toward transit enhancements in compliance with the Americans with Disabilities Act. He said it would allow for the funding of expanded video surveillance at the Sun Tran and Van Tran facilities. He said it would also allow them to address the items associated with the maintenance of the capital assets they utilized federal funds to acquire. He said they would be able to use a portion of the funds to rehabilitate and renovate the public transportation administration customer service center in downtown Tucson and support Oro Valley's Coyote Run through the purchase of an expansion van for that system.

Mayor Walkup announced speakers would be limited to five minute presentations. He asked if there were any speakers. There were none.

Mayor Walkup asked for a motion to close the public hearing.

It was moved by Council Member Trasoff, duly seconded, to close the public hearing.

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

Upon roll call, the results were:

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

Nay: None

The public hearing was declared closed by a roll call vote of 7 to 0.

Mayor Walkup asked the Deputy City Clerk, to read Resolution 20454 by number and title only.

Resolution No. 20454 relating to transportation; authorizing and approving the submission of a Federal Transit Administration (FTA) Section 5307 Formula Grant Application for Federal Fiscal Year 2006; and declaring an emergency.

It was moved by Vice Mayor West, duly seconded, to pass and adopt Resolution 20454.

Mayor Walkup asked if there was any discussion.

Council Member Trasoff asked Mr. Glock to explain the issue with Coyote Run.

Mr. Glock said the Federal Transit Administration recognized the City of Tucson as the regional recipient of Federal Transit Administration funds. The City was in the position to support those activities of other jurisdictions associated with transit as they sought Federal funds. He said Coyote Run was a dial-a-ride system operated in Oro Valley, and they had successfully met the criteria to become a subrecipient to the City of Tucson's grant status under the Federal Transit Administration. They requested to be able to acquire one additional van, in this particular grant program, under the surface transportation program funds allocated by Pima Association of Governments.

Council Member Trasoff asked Mr. Glock if the City augmented this request to include this request for Oro Valley. The City was the recipient, and the funds were then passed on to Oro Valley.

Mr. Glock said that was correct.

Upon roll call, the results were:

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

Nay: None

Resolution 20454 was declared passed and adopted by a roll call vote of 7 to 0.

**10. APPEAL: (S-06-09) APPEAL OF THE SIGN CODE ADVISORY AND APPEALS BOARD DECISION – FIRST AND RIVER STORAGE, LLC, FIRST AND RIVER SELF-STORAGE (CITY APPEAL NO. S-06-002)**

Mayor Walkup announced City Manager’s communication number 494, dated September 12, 2006, would be received into and made part of the record.

Mayor Walkup said this was an appeal on a decision of the Sign Code Advisory and Appeals Board.

Roger Randolph, Deputy City Clerk, said the City Attorney would summarize the procedural question presented in the case and the nature of the action.

Mike Rankin, City Attorney, said this was an appeal from a decision of the Sign Code Advisory and Appeals Board which denied a request for a sign area variance to First and River Self-Storage. He said the appellant was requesting the Mayor and Council reverse the decision of the Board and grant the submitted variance, which would allow one freestanding sign to be placed inside a required thirty-foot landscape buffer on First Avenue, and exceed the maximum allowance of one hundred square feet total signage per tenant. He stated, as was true with all of the appeals they would be hearing, appeals to the Mayor and Council from the Sign Code Advisory and Appeals Board were on the record, so they did not consider new evidence. He said the applicant and affected persons could provide argument as to why they should uphold, reverse or modify the decision of the Board.

Council Member Uhlich asked, in terms of “affected persons,” if the public was allowed to comment, or if it was limited to people within a certain parameter.

Mr. Rankin said under the rules, an opposition to the appeal could be presented by an affected neighbor, which included someone who was affected by the decision whether to grant or not grant the variance. He said there was no requirement for a specific number of feet which limited the proximity of an “affected person.”

Vice Mayor West said she would like to bring something else to the attention of the City Attorney. She said she had received emails which she forwarded to him without opening them about these cases. She said she also received a number of phone calls that she did not return regarding these cases. She asked Mr. Rankin to explain to the Council

and the audience why they could not accept those emails and phone calls and letters on something like this.

Mr. Rankin said Vice Mayor West raised a good point. He said, in hearing the appeals, the Council was sitting in a quasi-judicial capacity. Communications from interested parties, whether it was the applicant or people asking them to uphold the decision of the Board, would be considered ex parte communications that would taint the process. He said the appropriate approach was to have the hearing and consider the evidence provided in the verbatim transcript, as well as the staff materials and make the decision on that basis, not from phone calls and emails they may have received.

Vice Mayor West thanked Mr. Rankin for the clarification.

Mr. Randolph said staff from Development Services Department would now present a summary of the appeal that was before them.

Debbie Capple, Development Services Department, said this was the Mayor and Council Appeal Case S-06-002 for the First and River Self Storage case at 4980 North First Avenue. She said the property was located five hundred feet north of River Road, on the east side of First Avenue. The Scenic Corridor Zone district provisions pertaining to freestanding sign placement and allowable sign area required that all signs be located behind a thirty-foot landscape buffer and restrict a single tenant to a maximum of one hundred square feet of total sign area. The applicant requested a variance to allow one, twenty square-foot freestanding sign to be placed inside the required thirty-foot landscape buffer on First Avenue. She stated it would exceed the maximum allowance of one hundred square feet of total signage per tenant by 49.3 square feet. She said staff had recommended denial to the Sign Code Advisory and Appeals Board (SCAAB). She said a motion was made at the meeting to grant a partial variance to allow the freestanding sign to be placed inside the thirty-foot landscape buffer and not approve the area of variance. The motion failed; thus, the variance was denied. She said the applicant was now appealing to the Mayor and Council the SCAAB decision and requesting the decision be reversed and the variance be granted.

Mr. Randolph announced the order of appeal that would be followed for each of the four sign code appeals on the agenda, which were Items 10, 11, 12 and 13. He stated the applicant, Mike Addis of Addisigns Inc., would have an opportunity to speak, followed by opposition to the appeal presented by an affected neighbor or one designated representative of the affected neighbors speaking in support of the Sign Code Advisory and Appeals Board decision. He said there would be other rebuttal as permitted by Mayor and Council. The governing body could then question the party filing the appeal or direct questions toward staff in order to establish reasons for granting or denying the appeal. After the presentation, the Mayor and Council could discuss the case or act on it. The time limit for argument was ten minutes for each side. He said the parties could use that ten minutes either by directly addressing the Council or in rebuttal and could divide it any way they chose, however the time limit was ten minutes. He said the evidence to be considered was the verbatim transcript of the Sign Code Advisory and Appeals Board

hearing. No new evidence or testimony would be allowed. He said Mayor and Council could also consider the argument of the parties in reaching a decision.

Mike Addis, Addisigns Inc., thanked Mayor and Council and staff for the opportunity to appeal the decisions that were before them. He stated, because there were several cases, they were going to try to take them and speak to the issues as they related to all of the items. Mr. Addis said the Sign Code Advisory and Appeals Board (SCAAB) was down two members, which made it difficult to get a decision through. He said, because of that, it had been less than ideal for the appeal process to the Sign Code Advisory and Appeals Board. He stated it was not just a single issue, and by representation of the individuals that were represented there, there were a lot of people affected by the Scenic Corridor. Mr. Addis said there were issues where they needed relief in particular to the First Avenue Self Storage. He said there were some transformer boxes of which pictures were presented by staff at the Sign Code Advisory and Appeals Board. He said he had some photographs that were similar to what staff had. He said there was a hardship for the position of the sign, and not even that was considered by the Board at the time when it was presented. He said, specifically, the First Avenue Self Storage needed relief to put the sign in the buffer zone. He said there was an appeal process where the sign could go out on City property. He did not think it would be ideal, and it would put it out even closer than what he was requesting to put it in toward the back side of the buffer zone. He said, as far as the overall of the Scenic Corridor, he would like to say the Scenic Corridor had a limitation of .75 to one. He said, because of that, the scenic corridor and because of some of the uniqueness of certain properties and their unique design and their shape, for instance, First Avenue Self Storage that was down the hill, it made it difficult to be seen. He said there was a point where the signage became counterproductive, if someone had to squint, and had to try to look to see it, if it was difficult to be seen, if it was placed behind large buffers, then it became a little bit of an issue of safety. He said, regarding First Avenue Self Storage, he thought all of those items existed. He said he thought it would be in the best interest of the Mayor and Council to consider overturning the decision that was made by the Sign Code Advisory and Appeals Board for the First Avenue Self Storage.

Mr. Randolph stated that next would be any opposition of the appeal presented by an affected neighbor or designated representative of the affected neighborhood speaking in support of the Sign Code Advisory and Appeals Board.

Hearing none, Mr. Randolph said there would be other rebuttal as permitted by the Mayor and Council.

Mayor Walkup announced he received cards which he was not sure were considered rebuttals. He called on the first speaker, and advised there was no time limit, but asked that comments remain brief.

Frank Bangs, said he appeared on behalf of the Arizona Sign Association. He said, at the risk of abusing the process the City Attorney outlined, he would be very brief. He said he would like the Mayor and Council to think about these appeals as the canary

in the mine. He said the appeals, together with a number of variance requests documented over the last three or four years, indicated to the Association there may be something wrong with the sign regulations as they applied to scenic routes. He said the Association, in conjunction with its Tucson members, had begun to draft some proposed amendments, which they would take to staff and the sign committee to see if they could not resolve some of those problems. He said, at the risk of abusing the process, that was all he had to say that evening, but simply that they looked forward to bringing them forth in the immediate future.

Jude Cook, said he was with Cook and Company Signmakers. He said what he was going to address actually addressed four more issues they were talking about, in Items 10 through 13. He said he was trying to remain generic because he had experienced the variance board himself, so what he was saying applied across the board. He said the variance board experience he had, he was going to reiterate what Mr. Addis said, was there was a seven member board with five members. He said one had to have four votes to make anything fly. The last time he was down there, they had four members, and there were a diverse bunch of personalities on that board. He said he had one person specifically, who had vetoed everything he saw on the variance. He said he went down, failed the first time, regrouped, went back, and got it because he had five members the second time. He said the board problem was more than just voting things down; they could not get decent odds because they were dealing with five members and had to have four votes.

Mr. Rankin, said he was going to have to interrupt because it really was going outside the process the Council had established by Resolution for the hearing of appeals. He said he thought what had been said so far was for the information of the Council, but was not to bear on their decision on the merits of the appeal in front of them. He thought they should get back to the order of proceedings as described by the Deputy City Clerk, that was specific to the individual appeal they were hearing at that time.

Mayor Walkup announced that meant he would like Mr. Cook to sit down for the moment. Mayor Walkup said he would regroup with the Council to see if there were any questions or concerns they had.

Vice Mayor West said she had a question, but she did not know when she should ask it because it was about the Sign Code Advisory and Appeals Board. She said what she wanted to know was if the Council appointed the members jointly, or if each Council Member had individual appointments. She said she believed they appointed members jointly.

Mr. Rankin said he was not sure. He said he could look at the Code, and answer very quickly, but it was true there were seven members and they currently had five with a couple of vacancies.

Vice Mayor West said the reason she thought they appointed them jointly, and asked of there was there was some mix up on the representation on the Commission. She said the City Clerk's Office was to resolve that, and they never did. This was not something that could be left unresolved; they needed to be able to move forward. She read through the transcript, and one of the motions actually passed, but because there were only five members, and four were needed to pass anything, it was really hampering the way the group should be working. She said they were good people, who were there every time, but there were just not enough of them.

Mr. Rankin said Vice Mayor West's comments jogged his memory. The members were appointed jointly, and there were certain disciplines and areas of expertise that were preferred for the appointments to the Board.

Council Member Uhlich said, having heard that, and with those in attendance understanding that, and even recognizing the current issues related to perhaps the Board and the possibility of reviewing the Ordinance as it stood, she had reviewed the documents on that particular appeal and as the Ordinance and Sign Code now read, and as the process currently stood, she found no justification noting hardship that would, in her mind, affirm any kind of overturn on that particular piece. She certainly understood there may be a desire to look at the scenic corridor piece more comprehensively, and that seemed to her to be a more appropriate path in order to address what seemed to be some of the concerns.

It was moved by Council Member Uhlich, duly seconded, to affirm the decision of the Sign Code Advisory and Appeals Board, thereby denying the applicant's request.

Mayor Walkup asked if there were any further discussions. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

Affirmation of the decision of the Sign Code Advisory and Appeals Board, thereby denying the applicant's request, was declared passed and adopted by a roll call vote of 7 to 0.

**11. APPEAL: (S-06-10) APPEAL OF THE SIGN CODE ADVISORY AND APPEALS BOARD DECISION – TITLE GUARANTY AGENCY OF AZ AND QUIK MART (CITY APPEAL NO. S-06-003)**

Mayor Walkup announced City Manager's communication number 495, dated September 12, 2006, would be received into and made a part of the record. He said this was an appeal of the decision of the Sign Code Advisory and Appeals Board.

Roger Randolph, Deputy City Clerk, said the City Attorney would summarize the procedural question presented in the case and the nature of the action.

Mike Rankin, City Attorney, stated this was an appeal of a decision of the Sign Code Advisory and Appeals Board denying a request for a sign area variance to Quik Mart. The appellant requested Mayor and Council reverse the decision and that the submitted variance be granted, which would allow one freestanding sign to be placed inside the required thirty-foot landscape buffer on Houghton Road, exceed the maximum allowance of one hundred square feet to total signage per tenant by one hundred twenty five square feet, and exceed the allowed area of a freestanding sign by twenty square feet.

Mr. Randolph said staff from Development Services Department would present a summary of the appeal that was before them.

Debbie Capple, Development Services Department, said this was Mayor and Council Appeal Case number S-06-003 for the Quik Mart at 10265 East Irvington Road. She said the property was located on the northwest corner of Houghton and Irvington Road. Ms. Capple said the property was currently vacant with plans to construct a new Quik Mart store with a fuel island and a car wash. She stated the Scenic Corridor Zone district provisions pertaining to freestanding sign placement and allowable sign area required that all signs be located behind a thirty-foot landscape buffer and the size of a freestanding sign was twenty square feet in area and further restricted a single tenant to a maximum of a hundred square feet of total sign area. She stated the applicant was requesting a variance to allow one, forty square foot freestanding sign on Houghton Road, to be placed inside the required thirty-foot landscape buffer, allow one, forty square foot freestanding sign on Irvington Road, exceed the allowed area of a freestanding sign by twenty square feet, and exceed the allowed area of hundred square feet of total signage for a tenant by 125.2 square feet.

Ms. Capple said at the meeting, staff had recommended denial and felt the requested variance far exceeded what the current sign code allowed and would result in a special privilege to the property. She said at the hearing, the variance request was denied. She said the applicant was now appealing to the Mayor and Council the Sign Code Advisory and Appeals Board (SCAAB) decision and was requesting the decision be reversed and a variance be granted.

Mr. Randolph said, following the order of appeal, the first to speak would be the applicant, Mike Addis of Addisigns, Inc.

Mike Addis, Addisigns, Inc., stated Quik Mart was moving into this location encompassing several businesses which included a food store and putting in a car wash on the property, plus future expansion for additional businesses. He said they needed more than what was granted under the scenic corridor and that was what brought them to the Sign Code Advisory and Appeals Board. He said combining and putting together the signage in the Scenic Corridor could be difficult. Comparatively speaking, the Scenic Corridor was .75, the signage in the general business district in the City of Tucson was three to one. He said in the county it was 1.5 to one. He said because of the cap it became a difficult process to adequately sign a parcel that was a little bit larger, like the Quik Mart. He said, as mentioned before, he had a list of approximately eleven variances that were granted along the Houghton corridor, including the Fry's shopping center at Rita, where they were allowed one point five to one. He said they were not requesting that when they went before the Sign Code Advisory and Appeals Board, and again they felt the request was consistent in conjunction with the signage that was granted under previous variances. He said they thought if the Sign Code Advisory and Appeals Board and Mayor and Council did not give relief then what would happen was a business like Quick Mart would be penalized beyond what other businesses had enjoyed in the area.

Mr. Randolph stated that next would be any opposition of the appeal presented by an effected neighbor or designated representative of the affected neighbor speaking in support of the Sign Code Advisory and Appeals Board decision.

Hearing none, Mr. Randolph said if there was no further rebuttal, the governing body could question the party filing the appeal, or direct questions to staff, or the Mayor and Council could discuss the case and act upon it.

Council Member Scott said this was another appeal to a variance request that was denied by the appeal committee. She said the original request was a variance to install signage within the thirty-foot scenic corridor natural landscape buffer, which, under the existing ordinance did not allow for any structures to be built within that buffer. She said the appeal also asked for an increase in the square footage of the sign and she believed it was important to preserve the landscape buffers along the scenic corridors, as they were intended to improve the appearance of these very important roadways. She said this particular scenic corridor was Houghton Road which would be a very critical main road within the Houghton Area Master Plan. The roadway would eventually have a lot of retail, commercial, and restaurant uses located adjacent to it. She said because Houghton Road was a very important roadway for future commercial development, it was important that the Scenic Corridor ordinance be reviewed to minimize the need for all these appeals. She did not believe it was public policy to consistently approve or disapprove variances through an ordinance that might be outdated. She said it was better to review the ordinance and update it so they could take into consideration current concerns that might apply.

It was moved by Council Member Scott to deny the appeal for that item and further added that staff immediately begin to meet with the private sector and the Sign Code Advisory and Appeals Board, review and update the ordinance through extensive public input and a review by the Environmental Planning and Resource Management Subcommittee and the Transportation Subcommittee, and hopefully through a significant public input and review by these two Subcommittees and everyone else, they might be able to come up with and craft a better, more updated and pertinent ordinance. She said she also wanted to ask that appointments to the Sign Code Advisory and Appeals Board be expedited.

Council Member Leal said he did not believe they could move the two items together.

Mike Rankin said the motion should be split. He said Mayor and Council should first act on the appeal that was in front of them. Then, if Council Member Scott's direction to staff with respect to review of this section of the Code could be made as a second motion. He said that would be appropriate.

Council Member Leal asked if the second motion would need to be agendaized, or if they could vote on it.

Mr. Rankin said the Council could give directions staff that evening.

It was moved by Council Member Scott, duly seconded, to affirm the decision of the Sign Code and Advisory and Appeals Board, thereby denying the appellant's request.

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

Upon roll call, the results were:

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

Nay: None

Affirmation of the decision of the Sign Code and Advisory and Appeals Board, thereby denying the appellant's request, was declared passed and adopted by a roll call vote of 7 to 0.

It was moved by Council Member Scott to direct staff to immediately begin meeting with the private sector and the Sign Code Advisory and Appeals Board, to review and update the ordinance currently in effect through extensive public input and review by the Mayor and Council Environmental Planning and Resource Management Strategic Focus Area Subcommittee and the Mayor and Council Transportation Strategic Focus Area Subcommittee. She said, hopefully, through this process, significant public

input and review, and through the Subcommittees, they would be able to craft a better ordinance, and appointments to the Sign Code Advisory and Appeals Board be expedited. There was no second to the motion.

Council Member Uhlich said she wanted to note for Council Member Scott that she was worried about presuming there were problems with the ordinance at that point. She said she appreciated Council Member Scott's comments at the onset and appreciated her desire to be responsive to some of the feedback; however she did not know if there was any guidance they might receive in terms of how best to proceed with staff at that point. To initiate that process in conjunction with the appeals that were before them, she was not sure if her colleagues had any thoughts on how to proceed.

Vice Mayor West said she tended to agree.

Council Member Leal said Council Member Uhlich was right to ask the question. He said they heard there were issues, but he was not sure they had insight as to whether those assertions really were indicative of a problem that showed something systemically wrong with the ordinance. He said he thought it would require some conversation among the Council, which was probably more appropriate, for a Study Session, to talk with staff to get some historical review of how it works, how it has not worked, was there really anything systemically wrong, or was it really working well. He said from that, they could make an intelligent decision as to whether to take the step suggested by Council Member Scott.

Council Member Uhlich said currently in her Subcommittee, they were looking at specific recommendations that actually had been forwarded from the Sign Code Advisory and Appeals Board. She said she was wondering, since the motion by Council Member Scott was not part of what was forwarded by SCAAB, perhaps the Board believed at that point, that was not the priority in terms of any amendments to the Code. She said she wanted to acknowledge the good work of the Board, in working on some aspects of the Sign Code. She said she certainly respected Council Member Scott's desire to make sure they visited areas that might be broken.

Mayor Walkup said, since Council Member Scott was watching the meeting on television, he hoped she was getting the feeling of the Council. He said they appreciated her motion, but he thought the majority felt her motion was something to discuss during Study Session, after which they could take the appropriate action. He said since her motion was not seconded, it would die, or she could gracefully withdraw her motion.

Council Member Scott said she would withdraw her motion, and appreciated the fact that they should have a discussion in Study Session. She said she was alright with that. She said she thought when there was an ordinance that sat on the book for quite a long time without review ever, it was worthy of at least another look as modern and new things came along.

Mayor Walkup said he appreciated Council Member Scott's understanding.

**12. APPEAL: (S-06-11) APPEAL OF THE SIGN CODE ADVISORY AND APPEALS BOARD DECISION – PYRAMID CREDIT UNION AND DESERT DENTAL GROUP (CITY APPEAL NO. S-06-004)**

Mayor Walkup announced City Manager's communication number 496, dated September 12, 2006, would be received into and made a part of the record. He said this was an appeal of the decision of the Sign Code Advisory and Appeals Board.

Roger Randolph, Deputy City Clerk, said the City Attorney would summarize the procedural question presented in the case and the nature of the action.

Mike Rankin, City Attorney, said this was an appeal of a decision of the Sign Code Advisory and Appeals Board denying a request for a sign area variance to Desert Dental Group. The appellant requested Mayor and Council reverse the decision and grant the submitted variance, which would allow a freestanding sign to be placed inside of the required thirty-foot landscape buffer on Houghton Road, exceed the maximum allowance of 0.75 square feet per foot of street frontage for the development, allow tenants in the development to exceed the maximum sign area per foot of tenant frontage, exceed the number of freestanding signs allowed along Houghton Road by one, and exceed the allowed area of one freestanding sign by twenty square feet.

Mr. Randolph announced staff from Development Services Department would present a summary of the appeal that was before Mayor and Council.

Debbie Capple, Development Services Department, said this was Mayor and Council Appeal case S-06-004, 8251 through 8265 South Houghton Road for Desert Dental. She said the subject development was located at the southeast corner of Houghton and Rita Ranch Road next to an existing Pyramid Credit Union. She said when the development was first built, it just consisted of the Pyramid Credit Union, but now had plans to have two medical office buildings with one hundred eighty three feet of street frontage along Houghton Road. The Scenic Corridor Zone district provided provisions pertaining to freestanding sign placement and size of allowable sign area, that required all signs to be located behind a thirty-foot landscape buffer, restricted the amount of allowable sign area and limited the number and size of a freestanding sign.

Ms. Capple said on September 11, 2002, the Sign Code Advisory and Appeals Board granted a variance to the Pyramid Credit Union to install one twenty square foot, six foot high single faced freestanding sign and one, three square foot, three foot high traffic directional sign inside the thirty-foot landscape buffer on Houghton Road, with the condition that the sign be placed as far back into the landscape buffer as was feasible. She said they did comply with the .75 as required by the Tucson Sign Code. She said the requested variance in this case was to allow the following: to allow the development to exceed the maximum sign area of .75 square feet per foot of street frontage on Houghton Road. She said the request would allow the development to have one square foot of sign area per foot of street frontage. She said they also asked to allow all tenants in the

development to exceed the allowed .75 square feet of sign area per foot of tenant frontage. She said this request would allow tenants in the development to have one square foot of sign area per foot of tenant frontage. She said they also wanted to install three, forty six square foot wall signs for future tenants. She said they also wanted to allow one, forty square foot tenant directory sign to be placed on Houghton Road inside of the required landscape buffer. That sign would require a variance to exceed the number of freestanding signs allowed on Houghton Road, as Pyramid Credit Union already had the allowed freestanding sign. She said a twenty square foot sign area variance and a variance to allow the sign to be placed inside the thirty-foot landscape buffer would also be required. She said, at the meeting, staff had recommended a partial variance to allow all of the above except for the placement of the sign in the thirty-foot landscape buffer. She said they felt, based on the size of the development, the limited amount of street frontage on the applicant's property along Houghton Road and the setback of the proposed buildings from the street, that they could support the granting of the partial variance.

Ms. Capple said at the hearing the variance was denied. The applicant was appealing to the Mayor and Council the SCAAB decision, and requested the SCAAB decision be reversed and that a variance be granted.

Mr. Randolph said the first item on the order of the appeal would be the applicant, Mike Addis of Addisigns, Inc.

Mike Addis, Addisigns Inc., said he appreciated appearing before Mayor and Council and staff. He said the recommendation by staff in this particular case was justified. He said the staff recommendation was to grant a one-to-one ratio for the square footage of the signage, and to allow for the freestanding sign to be positioned out on Houghton Road. He said across the street, they were allowing 1.5 to one, which was justified because of the setback and the difficulty of the visual impact from Houghton Road to the large setback where the tenants were at the Fry's shopping center. He said this property was also encompassing a similar type of application where the building setback was, one of the buildings was behind another building that faced off of Houghton Road. Mr. Addis said a one-to-one ratio was not excessive and the staff recommendation was good. He said they were turned down by the Sign Code Advisory and Appeal Board and that was why they came to Mayor and Council. He said that was all he would say as far as that particular site, but he thought there were others in the audience who could speak to the issues. He said he would like to mention one more item. He did not know if it had impact, but he would like to hear from staff as far as the variances and the number of variances that were related to the Scenic Corridor and how they were impacted. He thought that would help to start the process of the Study Session discussion, in order to effectively create some Code changes.

Mr. Randolph stated that next would be any opposition to the appeal presented by an effected neighbor or one designated representative of the affected neighbor speaking in support of the Sign Code Advisory and Appeals Board decision.

Hearing none, Mr. Randolph said, if there was no further rebuttal, the governing body could question the party filing the appeal, or direct questions to staff, or the Mayor and Council could discuss the case and act on it.

Council Member Trasoff said she was a little confused. She asked if it was usual that this many requests for variance be filed in one request in variance. She also asked if the denial was for everything because one portion was denied or if one portion was approved and one segment denied.

Craig Gross, Development Services Department Deputy Director, responded by saying it varied tremendously, upon the particular merits of the property, how many variances were requested. He said typically there were not this many. He said, on the Scenic Routes, they typically saw a variance request to exceed the .75 per linear foot of street frontage, and also perhaps to exceed the maximum hundred square foot sign per tenant if there was a large tenant such as a Fry's or Albertson's, and occasionally, a variance to perhaps ask for a larger freestanding sign. He said this was more than what was typical.

Council Member Trasoff asked, in this particular case, again just for clarification, whether certain portions were allowed, and was the applicant appealing the one portion that was denied.

Ms. Capple said the motion was to deny the requested variance, so it included all the items she delineated.

It was moved by Council Member Scott, duly seconded, to affirm the decision of the Sign Code Advisory and Appeals Board, thereby denying the appellant's request.

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

Upon roll call, the results were:

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

Nay: None

Affirmation of the decision of the Sign Code Advisory and Appeals Board, thereby denying the appellant's request was declared passed and adopted by a roll call vote of 7 to 0.

7. **CALL TO THE AUDIENCE**  
(This item was taken out of order)

Mayor Walkup asked if he could reopen Call to the Audience, because he believed there were some people who did not get the opportunity to speak.

Mike Rankin, City Attorney, said Mayor Walkup had the ability to reopen Call to the Audience to allow people to speak.

Mayor Walkup asked if there was anyone who wished to address the Council at that time.

- a. Mark Mayer spoke regarding the appeals on the September 12, 2006 agenda and the composition of the Sign Code Advisory and Appeals Board.
- b. Barry Kitay spoke regarding the appeals on the September 12, 2006 agenda. He felt the intent of the Code needed to be kept in mind, and suggested it might need reviewing.

13. **APPEAL: (S-06-12) APPEAL OF THE SIGN CODE ADVISORY AND APPEALS BOARD DECISION – TUCSON BROADWAY OFFICE PLAZA AND NOVA FINANCIAL CENTER (CITY APPEAL NO. S-06-005)**

Mayor Walkup announced City Manager's communication number 497, dated September 12, 2006, would be received into and made a part of the record. He said this was an appeal of the decision of the Sign Code Advisory and Appeals Board.

Roger Randolph, Deputy City Clerk, said the City Attorney would summarize the procedural question presented in the case and the nature of the action.

Mike Rankin, City Attorney, said this appeal was a little different. He said it was an appeal of a decision of the Sign Code Advisory and Appeals Board denying a request for a sign area variance to Tucson Broadway Office Plaza and Nova Financial Center. The applicant/appellant requested the Mayor and Council reverse the Board's decision and grant the submitted variance which would allow the text or copy of the sign to scroll on an electronic message sign located on the six-story office building at 6245 E. Broadway Boulevard.

Mr. Rankin said the basis for the denial of the appeal in this instance was a finding by the Board of a lack of jurisdiction. That was advice provided by his office, and advice he would repeat to the Council that evening. He said jurisdiction to grant variances was limited to things like the number of signs, the height of signs, the size, the placement in restricted areas, etcetera. He said neither the Board of Adjustment nor the Mayor and Council, sitting in the quasi-judicial capacity it was sitting in that night, could grant what was called either a use variance or a variance that would allow for a use that

was prohibited by the terms of the Code. He said it was his legal opinion that this requested variance was outside the jurisdiction of the Board to grant in the first place.

Mr. Randolph said staff from Development Services Department would present a summary of the appeal before them.

Debbie Capple, Development Services Department, said this was Mayor and Council Appeal case number S-06-005 for the Tucson Broadway Office Plaza and Nova Financial Center, located at 6235 through 45 East Broadway Boulevard. At that site, there was a six-story office building that had been changed into the Nova Financial Center. She said in May of 2005, a sign permit was issued by the City of Tucson to Addisign Company to install a 74.4 square foot electronic message sign on the east elevation of the existing six-story office building located at 6245 East Broadway. She said the permit stated the copy or message could not change more than once an hour. On June 6, 2006 the applicant filed a request with the Development Services Department for a hearing before the Sign Code Advisory and Appeals Board (SCAAB) for a variance to allow the text or copy to scroll and change more than once per hour on the existing 74.4 square foot wall sign. The City Attorney's Office advised staff and then staff advised the applicant that the requested variance to allow the text or copy to scroll and change more than once per hour was not within the Board's jurisdiction to hear, because it was a legislative change to the Sign Code requirements. She said it should be noted in 1997 an ordinance was adopted by Mayor and Council to change the allowance from changing not more than once per minute to changing no more than once per hour.

Ms. Capple stated the applicant was requesting a variance to allow the text copy to scroll on the existing 74.4 square foot wall sign and the requested variance would allow the text copy to scroll and change more than once per hour. The Board denied the variance based on the fact the request was prohibited by the Tucson Sign Code and the granting of the variance would be out of the jurisdiction of the Board. Should the applicant want to address the issue of the scrolling or changing the text or copy more than once per hour, the Development Services Department would suggest that the initiated sign code amendment through the Citizen Sign Code Committee and then for further review by Mayor and Council.

Roger Randolph, Deputy City Clerk, said the first item on the order of appeal would be hearing from the applicant, Mike Addis of Addisigns, Inc.

Mike Addis, Addisigns Inc., thanked Mayor and Council for the opportunity to appear before them. He said they installed a sign, and subsequently to the installation of the sign, Nova Home Loans received a notification. He said he would read an excerpt of the letter that was addressed to the Sign Code Advisory and Appeals Board. He read, "in the mortgage industry, a great number of Federal and State regulations must be complied with. Interest rates expressed as a percentage are not acceptable alone; they must be followed by a corresponding APR and other term-related information. The Arizona State Banking License number must appear in all of our promotions." Mr. Addis stated that was why they approached the Board to allow for the addition of the APR to be shown

after the interest rate, because the interest rates were not allowed to be shown solely. He said he did not know if that would be a problem from a safety standpoint, or for the purposes of scrolling. He said he realized there was a potential to open up a can of worms, and since the can was somewhat open, he would say that other entities, like Pima College at Speedway and Stone, did not fall under the jurisdiction of the Sign Code. He said it would be good for the City to enforce that across the board, and not restrict a single business that was very impactful in the City of Tucson to comply with State and Federal regulations. He said that was why they appealed to the Sign Code Advisory and Appeals Board.

Mr. Randolph stated that next would be any opposition to the appeal presented by an affected neighbor or one designated representative of the affected neighbor speaking in support of the Sign Code Advisory and Appeals Board decision.

Hearing none, Mr. Randolph said if there was no further rebuttal, the governing body could question the party filing the appeal, or direct questions to staff, or the Mayor and Council could discuss the case and act on it.

Council Member Trasoff said the City Attorney's recommendation was the ruling they could and must follow, and she thought it was the appropriate one.

It was moved by Council Member Trasoff, duly seconded, to affirm the decision of the Sign Code Advisory and Appeal Board, thereby denying the appellant's request.

Mayor Walkup asked if there was any further discussion.

Vice Mayor West said, from what she was hearing from the City Attorney, she did not think they even had to move on the item.

Mr. Rankin said it would be appropriate to move to exhaust the administrative remedies that were provided in the Code, which included an appeal to the Mayor and Council. He recommended acting on the motion.

Vice Mayor West asked that a Study Session item be added to include that the Sign Code Advisory and Appeals Board needed to heed legal opinions in the future. She said it was a waste of time.

Council Member Leal said he was also going to ask that the composition of the Sign Code Advisory and Appeals Board be added to a Study Session agenda, so they could address that and remedy some of the problems they were advised about.

Mayor Walkup said he trusted that future agenda items were being kept track of, and he asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

Affirmation of the decision of the Sign Code Advisory and Appeal Board, thereby denying the appellant's request, was declared passed and adopted by a roll call vote of 7 to 0.

**14. ZONING: (C9-03-16) SWIERGOL – FORT LOWELL ROAD, MS-1 TO O-2, ORDINANCE ADOPTION**

Mayor Walkup announced City Manager's communication number 482, dated September 12, 2006, would be received into and made a part of the record. He requested the Deputy City Clerk read Ordinance 10318 by number and title only.

Ordinance No. 10318 relating to zoning: amending zoning district boundaries in the area located approximately 140 feet south of Fort Lowell Road at the Longfellow Avenue alignment and north of the Blacklidge Wash in Case C9-03-16, Swiergol – Fort Lowell Road, MH-1 to O-2 and setting an effective date.

It was moved by Vice Mayor West, duly seconded, to pass and adopt Ordinance 10318.

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

Upon roll call, the results were:

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

Nay: None

Ordinance 10318 was declared passed and adopted by a roll call vote of 7 to 0.

**15. ZONING: (C9-02-18) FORT LOWELL REAL ESTATE – FORT LOWELL ROAD, MH-1 TO P, ORDINANCE ADOPTION**

Mayor Walkup announced City Manager's communication number 481, dated September 12, 2006, would be received into and made a part of the record. He requested the Deputy City Clerk read Ordinance 10312 by number and title only.

Ordinance No. 10312 relating to zoning: amending zoning district boundaries in the area located approximately 135 feet south of Fort Lowell Road on the north side of the Blackledge Wash in Case C9-02-18, Ft. Lowell Real Estate – Fort Lowell Road, MH-1 to P; and setting an effective date.

It was moved by Vice Mayor West, duly seconded, to pass and adopt Ordinance 10312.

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

Upon roll call, the results were:

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

Nay: None

Ordinance 10312 was declared passed and adopted by a roll call vote of 7 to 0.

**16. ZONING: (C9-05-04) P & L GROUP – AJO WAY, R-1 TO R-3 ZONING, CHANGE OF CONDITIONS AND PRELIMINARY DEVELOPMENT PLAN**

Mayor Walkup announced City Manager's communication number 493, dated September 12, 2006, would be received into and made a part of the record. He said this was a request to rezone property located on the Southwest corner of Ajo Way and Pandora Avenue. He said the City Manager recommended approval subject to certain conditions.

Mayor Walkup asked if the applicant was present.

Gene Goldstein, applicant on behalf of the property owners, Tres Characas, LLC, said he was aware of and agreeable to the proposed requirements.

It was moved by Council Member Ibarra, duly seconded, to approve the change of conditions and preliminary development plan for C9-05-04.

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

Upon roll call, the results were:

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

Nay: None

Approval of the change of conditions and preliminary development plan for zoning case C9-05-04 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 485, dated September 12, 2006, would be received into and made a part of the record.

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

**18. RECONSIDERATION OF RESOLUTION 20435, ADOPTED SEPTEMBER 6, 2006, TO ENABLE AN EARLIER EFFECTIVE DATE**

It was moved by Council Member Leal, duly seconded, to reconsider Resolution 20435.

Mayor Walkup asked if there was any further discussion.

Council Member Uhlich said this was the item she had recused herself from, but asked if she could vote on reconsideration of the emergency clause.

Mike Rankin, City Attorney, said under the Arizona Conflict of Interest law, she could not participate in any manner of the consideration of the item.

Mayor Walkup asked for a roll call vote.

Upon roll call, the results were:

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

Nay: None

Abstained: Council Member Uhlich

Reconsideration of Resolution 20435 was declared passed and adopted by a roll call vote of 6 to 0 (Council Member Uhlich abstained).

It was moved by Council Member Leal, duly seconded, to pass and adopt Resolution 20435.

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

Upon roll call, the results were:

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

Nay: None

Abstained: Council Member Uhlich

Resolution 20435 was declared passed and adopted by a roll call vote of 6 to 0 (Council Member Uhlich abstained).

**19. ADJOURNMENT** 7:36 p.m.

Mayor Walkup announced the Council would stand adjourned until its next regularly scheduled meeting to be held on Tuesday, September 19, 2006, 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 12<sup>th</sup> day of September 2006, and do hereby certify that it is an accurate transcription.

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DEPUTY CITY CLERK

KSD: bt/sl