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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
on February 8, 2011.

Date of Meeting: October 13, 2010

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 Wednesday, October 13, 2010, 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:

Regina Romero	Council Member Ward 1 (arrived at 5:36 p.m.)
Paul Cunningham	Council Member Ward 2
Karin Uhlich	Council Member Ward 3
Shirley C. Scott	Vice Mayor, Council Member Ward 4
Richard G. Fimbres	Council Member Ward 5
Steve Kozachik	Council Member Ward 6
Robert E. Walkup	Mayor

Absent/Excused:

None

Staff Members Present:

Mike Letcher	City Manager
Roger W. Randolph	City Clerk
Martha Durkin	Chief Deputy City Attorney

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

The invocation was given by Dr. Lester Potts, Tucson Veteran, after which the Pledge of Allegiance was presented by the entire assembly.

Presentations:

- a. Mayor Walkup proclaimed October 17 to 23 to be “National Save for Retirement Week.” Mike Hermanson, Human Resources Administrator, accepted the proclamation.

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

Mayor Walkup announced City Manager’s communication number 457, dated October 13, 2010, was received into and made part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

- a. Council Member Romero invited the public to two events: Midvale Park Neighborhood’s Fifteenth Annual Fiesta and El Pueblo Farmers’ Market grand opening. She reminded the community of the importance to vote in the upcoming election.
- b. Council Member Cunningham invited the public to three events: the 8<sup>th</sup> Annual Positive Aging for Women Conference, Friday Tucson Farmers’ Market and a water harvesting workshop presented by the Watershed Management Group.
- c. Council Member Uhlich extended her gratitude to the men and women of the Tucson Fire Department for their recent demonstration of training drills to the Ward 3 staff.
- d. Council Member Fimbres invited the public to three events: the National Latino Aids Awareness Day, Health Beyond the Borders, and a Town Hall in Ward 5 on Proposition 400.
- e. Council Member Kozachik announced the dates of upcoming fundraisers for Mobile Meals of Tucson, the Pumpkin Patch for the Tucson Girls Chorus, and Chick-Fil-A’s fundraiser for the Winterhaven Festival of Lights.

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

Mayor Walkup announced City Manager’s communication number 458, dated October 13, 2010, was received into and made 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 Letcher, City Manager, recognized Tucson 12 for receiving five Rocky Mountain Regional Emmy Awards. He added individual awards were given to Mitch Riley for photography and editor and Jeanie Bergen for writing.

## 5. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced City Manager's communication number 463, dated October 13, 2010, was received into and made part of the record. He asked the City Clerk to read the Liquor License Agenda.

### b. Liquor License Application(s)

#### New License(s)

1. Yuki's Sushi, Ward 3  
2962 N. Campbell Ave.  
Applicant: Shinyoung K. Watabe  
Series 12, City 60-10  
Action must be taken by: October 15, 2010

Staff has indicated the applicant is in compliance with city requirements.

2. Empire Pizza, Ward 6  
137 E. Congress St.  
Applicant: Thomas Adam Browne  
Series 12, City 61-10  
Action must be taken by: October 17, 2010

Tucson Police Department and Revenue Investigations have indicated the applicant is in compliance with city requirements.

Planning & Development Services Department has indicated the applicant is not in compliance with city requirements

This item was considered separately.

3. Arco AM/PM, Ward 5  
3601 S. Park Ave.  
Applicant: Inder Preet Kaur  
Series 10, City 62-10  
Action must be taken by: October 22, 2010

Staff has indicated the applicant is in compliance with city requirements.

4. Panda Buffet, Ward 6  
2419 E. Broadway Blvd.  
Applicant: Xixiang Zou  
Series 12, City 63-10  
Action must be taken by: October 22, 2010

Staff has indicated the applicant is in compliance with city requirements.

5. Safeway Food & Drug #1983, Ward 1  
2140 W. Grant Rd.  
Applicant: Janice Louise Martin  
Series 9S, City 65-10  
Action must be taken by: October 7, 2010  
  
Staff has indicated the applicant is in compliance with city requirements.
6. Safeway #234, Ward 2  
8740 E. Broadway Blvd.  
Applicant: Janice Louise Martin  
Series 9S, City 66-10  
Action must be taken by: October 7, 2010  
  
Staff has indicated the applicant is in compliance with city requirements.
7. Safeway Food & Drug #2611, Ward 2  
10380 E. Broadway Blvd.  
Applicant: Janice Louise Martin  
Series 9S, City 67-10  
Action must be taken by: October 7, 2010  
  
Staff has indicated the applicant is in compliance with city requirements.
8. Safeway Food & Drug #1988, Ward 2  
7177 E. Tanque Verde Rd.  
Applicant: Janice Louise Martin  
Series 9S, City 68-10  
Action must be taken by: October 7, 2010  
  
Staff has indicated the applicant is in compliance with city requirements.
9. Safeway Food & Drug #1984, Ward 2  
9125 E. Tanque Verde Rd.  
Applicant: Janice Louise Martin  
Series 9S, City 69-10  
Action must be taken by: October 7, 2010  
  
Staff has indicated the applicant is in compliance with city requirements.
10. Bashas' #100, Ward 2  
3275 N. Swan Rd.  
Applicant: Michael Joseph Basha  
Series 9S, City 70-10  
Action must be taken by: October 10, 2010  
  
Staff has indicated the applicant is in compliance with city requirements.

11. Safeway Food & Drug #1986, Ward 4  
9050 E. Valencia Rd.  
Applicant: Janice Louise Martin  
Series 9S, City 72-10  
Action must be taken by: October 7, 2010

Staff has indicated the applicant is in compliance with city requirements.

Public Opinion: Written Arguments Opposed Filed

This item was considered separately.

12. Safeway Food & Drug #1874, Ward 4  
6360 E. Golf Links Rd.  
Applicant: Janice Louise Martin  
Series 9S, City 73-10  
Action must be taken by: October 7, 2010

Staff has indicated the applicant is in compliance with city requirements.

13. Safeway Food & Drug #1989, Ward 4  
9460 E. Golf Links Rd.  
Applicant: Janice Louise Martin  
Series 9S, City 74-10  
Action must be taken by: October 7, 2010

Staff has indicated the applicant is in compliance with city requirements.

14. Safeway #268, Ward 5  
1940 E. Broadway Blvd.  
Applicant: Janice Louise Martin  
Series 9S, City 75-10  
Action must be taken by: October 7, 2010

Staff has indicated the applicant is in compliance with city requirements.

NOTE: State law provides that for a new license application, "In all proceedings before the governing body of a city...the applicant bears the burden of showing that the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license". (A.R.S. Section 4-201)

Person Transfer

NOTE: There are no person transfer(s) scheduled for this meeting.

c. Special Event(s)

1. Tucson Celtic Festival Association, Ward 3  
4502 N. 1st Ave.  
Applicant: Sharon Ann Caldwell  
City T95-10  
Date of Event: November 5, 2010 - November 7, 2010  
(A Cultural Festival)

Staff has indicated the applicant is in compliance with city requirements

2. St. Demetrios Greek Orthodox Church, Ward 3  
1145 E. Fort Lowell Rd.  
Applicant: George A. Makris  
City T97-10  
Date of Event: November 6, 2010  
(Fundraising)

Staff has indicated the applicant is in compliance with city requirements.

d. Agent Change/Acquisition of Control

NOTE: There are no agent change(s) scheduled for this meeting.

It was moved by Council Member Uhlich, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license applications 5b1, 5b3 through 5b10, 5b12 through 5b14 and 5c1 and 5c2 to the Arizona State Liquor Board with a recommendation for approval.

**5. LIQUOR LICENSE APPLICATIONS**

b. Liquor License Application(s)

New License(s)

2. Empire Pizza, Ward 6  
137 E. Congress St.  
Applicant: Thomas Adam Browne  
Series 12, City 61-10  
Action must be taken by: October 17, 2010  
Tucson Police Department and Revenue Investigations have indicated the applicant is in compliance with city requirements.

Roger W. Randolph, City Clerk, announced the first item to be considered separately was Item 5b2, Empire Pizza, located in Ward 6.

Council Member Kozachik said he confirmed with Ernie Duarte, Planning and Development Services Department Director, that until the applicant conformed with some of the outstanding façade requirements, they would not receive a permanent Certificate of Occupancy.

It was moved by Council Member Kozachik, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license application 5b2 to the Arizona State Liquor Board with a recommendation for approval.

## **5. LIQUOR LICENSE APPLICATIONS**

### **b. Liquor License Application(s)**

#### **New License(s)**

11. Safeway Food & Drug #1986, Ward 4  
9050 E. Valencia Rd.  
Applicant: Janice Louise Martin  
Series 9S, City 72-10  
Action must be taken by: October 7, 2010

Roger W. Randolph, City Clerk, announced the final item to be considered separately was Item 5b11, Safeway Food & Drug #1986, located in Ward 4. He added this application currently held a liquor license and the request was simply for a sampling privilege license.

Vice Mayor Scott asked if the representative from Safeway was in the audience and if he wished to address the Mayor and Council.

Jerry Lewkowitz, representing Safeway Food & Drug, gave a brief history of this particular license. He said the store had been licensed for many years and added they had a superb training program with only one violation for one hundred seventeen Arizona stores. He also noted Safeway was certified in training by the Arizona Department of Liquor Licenses and Control (ADLLC).

Mr. Lewkowitz said, with regard to that particular legislation, he added years ago A.J. Stores decided they wanted to sample wines and spirits for their customers and convinced the ADLLC, at that time, to bestow a number six license, which in effect was a bar license used only for sampling.

Mr. Lewkowitz stated Total Wine and More and BevMo applied for the number six license as well and use it for sampling. He noted according to the law, a number nine license, as it was now, was an offsale license only including beer, wine and liquor. There could be twelve samplings a year under the current license. He stated the 9S license was passed by the legislature to allow sampling in stores only. Safeway and most other grocery and drug stores were now receiving the 9S license so they could provide sampling by their trained employees to provide different samples to their customers.

Mr. Lewkowitz noted Safeway would cordon off a particular area when samplings occurred, along with a log book, as well as a scanner and security to ensure no one entered the area under the age of twenty-one. He said there was a limit as to how much liquor could be served. At best, he said, he thought it could be done for holidays such as Thanksgiving or Christmas, all with trained employees and most importantly, with security.

Mr. Lewkowitz said it would not be the kind of thing where someone could drop in and get a shot and go to the next Safeway for another; the employees were highly trained and Safeway had only one violation in all these years for sale to a minor. He added what was important was the control aspect and that was what Safeway was doing, along with other grocery stores on the agenda.

Vice Mayor Scott called on the speaker who wanted to speak in opposition to the liquor license application.

Thomas Willard, Rita Ranch Neighborhood Association, which encompassed the Safeway supermarket in question, said the Association's position was that they were not in favor of the passage of this license for liquor sampling use. He noted that Mr. Lewkowitz said the sampling would be closely watched and monitored. The Association was sure it would be; however, he said familiarity bred contempt and they were concerned that in time, the sampling would not be watched as closely as they would like it to be.

Vice Mayor Scott asked if there was anyone else in the audience who wished to speak in opposition to the application. Hearing no one, she asked the City Attorney why the Association's representative could not be supported.

Martha Durkin, Chief Deputy City Attorney, said the applicant was found to be qualified and the location was not a problem; thus, there was no basis for recommending a denial, even in spite of the opposition filed by the Rita Ranch Neighborhood Association. She added that that type of license allowed for sampling.

Vice Mayor Scott said she appreciated the comments provided by Mr. Willard, but given the qualifications of the applicant and the restrictions imposed by State law on providing samples to customers under this type of license, she would move to recommend approval.

It was moved by Vice Mayor Scott, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license application 5b2 to the Arizona State Liquor Board with a recommendation for approval.

## **6. CALL TO THE AUDIENCE**

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for items scheduled for a



public hearing. Speakers were limited to three-minute presentations, and the call to the audience was scheduled to last for thirty minutes.

Mayor Walkup also announced that pursuant to the Arizona Open Meeting Law, individual Council Members could ask the City Manager to review any matter, ask that the matter be placed on a future agenda, or respond to criticism made by speakers. However, the Mayor and Council could not discuss or take legal action on matters raised during “call to the audience.”

- a. Christine Glanz spoke about her business and others that were suffering, in the Broadway and Houghton area, a designated scenic route, where signs could not be placed. She asked if there was any way possible to allow for signs in that area.

Vice Mayor Scott asked staff if someone from the sign department could look into Ms. Glanz’ request.

- b. Tom Palomares spoke about his concerns and the negative aspects of the *Sign Code* in trying to generate business in Tucson.

Council Member Cunningham asked staff to follow up with Mr. Palomares’ concerns.

- c. Eric Ruden spoke about different tax issues germane to Tucson business owners.
- d. Robert Reus spoke in opposition to Proposition 401.
- e. Karen Christensen spoke about the Tucson Pima Arts Council and artists at work generating revenue for the City.
- f. Clara Dupnik spoke in support of Proposition 400.
- g. Ken Rineer, President of Gun Owners of Arizona, spoke about a written petition he submitted to the Mayor and Council on June 15, 2010, asking that they repeal the Ordinance banning firearms from City parks, and the City’s failure to act on his petition. He also spoke about an event he attended at Hi Corbett Field where he was not allowed to attend because he had a firearm, and said the Parks and Recreation Department failed to provide a safe secure storage for his firearm.

Council Member Kozachik asked staff to report back by memo on the status of the Ordinance and what occurred at the event attended by Mr. Rineer. He said it was his understanding that the Parks and Recreation Department adopted the changes.

- h. Keith Cooper spoke in opposition to the proposed half-cent sales tax.
- i. Jesse Lugo spoke about the economic situation with regard to Tucson’s small business community.

- j. Roger Tamietti spoke about the City’s firefighters and support for Proposition 400.
- k. Mia Hansen, Executive Director of Tucson Meet Yourself, spoke in support of continued funding for Tucson Meet Yourself. She also reported on the success of the event, which took place the previous weekend.
- l. Shannon Cain gave the eighth installment of her performance piece entitled, *“Tucson, the Novel: An Experiment in Literature and Civil Discourse.”*
- m. Luke Knipe spoke in support of Proposition 400.

**7. CONSENT AGENDA – ITEM A THROUGH D**

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

**a. APPROVAL OF MINUTES**

- 1. Report from City Manager OCT13-10-462 CITY WIDE
- 2. Mayor and Council Regular Meeting Minutes of May 4, 2010 and May 11, 2010.

**b. TUCSON FIRE: PROPRIETARY INFORMATION AGREEMENT WITH RAYTHEON COMPANY**

- 1. Report from City Manager OCT13-10-460 CITY WIDE
- 2. Resolution No. 21636 relating to the Fire Department and Fire Protection; authorizing, and approving the execution of, a Proprietary Information Agreement between the City of Tucson and Raytheon Company, which will regulate any exchange of proprietary information that may be necessary for Raytheon and the Tucson Fire Department to cooperatively evaluate the applicability of, and if appropriate, test certain Raytheon technology to determine its potential use to Fire Service; and declaring an emergency.

**c. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR ANIMAL CARE AND ENFORCEMENT SERVICES (CONTINUED FROM THE MEETING OF SEPTEMBER 8, 2010)**

- 1. Report from City Manager OCT13-10-465 CITY WIDE

2. Resolution No. 21617 relating to Intergovernmental Agreements; authorizing and approving the Fiscal Year 2011 Intergovernmental Agreement between the City of Tucson and Pima County for Animal Care and Enforcement Services; and declaring an emergency.
- d. GRANTS: GRANT-IN-AID AGREEMENT WITH THE TOHONO O'ODHAM NATION FOR DISTRIBUTION OF FUNDING TO VARIOUS ENTITIES
1. Report from City Manager OCT13-10-461 CITY WIDE
  2. Resolution No. 21637 relating to finance; approving Grant-in-Aid funding from the Tohono O'odham Nation for 2010 for certain entities; authorizing the Director of the Department of Finance to enter into Fiscal Agent Agreements between the City of Tucson, the Tohono O'odham Nation and such entities; and declaring an emergency.

It was moved by Vice Mayor Scott, duly seconded, and passed by a roll call vote of 7 to 0, that Consent Agenda Items a – d be passed and adopted and the proper action taken.

**8. APPEAL: (T10SA00237) APPEAL OF THE SIGN CODE ADVISORY AND APPEALS BOARD DECISION - TUCSON NISSAN BODY SHOP, 5102 EAST 22ND STREET (CONTINUED FROM THE MEETING OF OCTOBER 5, 2010)**

Mayor Walkup announced City Manager's communication number 466, dated October 13, 2010, was received into and made part of the record. He also announced this was an Appeal on a decision of the Sign Code Advisory and Appeals Board (SCAAB).

Roger W. Randolph, City Clerk, announced the City Attorney would first summarize the procedural question presented in this case and the nature of the action.

Martha Durkin, Chief Deputy City Attorney, said this was an Appeal to the Mayor and Council from SCAAB's decision to deny the Applicant's request for a variance. The Appeal was conducted pursuant to Resolution 15967 which provided very specific limitations on the Appeal being heard.

Ms. Durkin said the Applicant was requesting a variance from the height and size provisions of the *Sign Code* in order to allow the continuing use of a sign that lost its non-conforming status when the Applicant changed the use of the property. The Applicant changed the use of the property from retail to service, the specifics of which were set forth in the Mayor and Council's Communication.

Ms. Durkin stated the Appeal was limited to the record, meaning that the Mayor and Council could consider the transcript of the proceedings before the Board, together with the exhibits and evidence provided to the Board. She said new evidence could not be considered, nor could evidence already presented be re-weighed. The Mayor and

Council could consider the arguments presented at the evening's meeting in reaching a decision. She added that, at the conclusion of deliberation, the Mayor and Council could choose to uphold the decision, reverse the decision, or modify the decision of the Board.

Ms. Durkin noted, in the event the Mayor and Council chose to reverse the decision of the Board and grant the requested variance, the findings described in Section 3-126 of the *Sign Code* must be made.

Ms. Durkin said, in this particular case, on the advice of the City Attorney, Council Member Kozachik would not be participating in the consideration of the Appeal based on his submission of a letter to the Board expressing his support of the variance requested. She said the Mayor and Council sat in a quasi-judicial capacity when hearing Appeals and due process required that none of the members have a prejudgment or perceived to have a prejudgment of the case.

Mr. Randolph said the order of the Appeal was as follows:

- 1) The Appellant, Johnny Lohrman, General Manager of Thoroughbred Nissan, located at 5102 East 22<sup>nd</sup> Street, would present his case first.
- 2) An affected neighbor or one designated representative of the affected neighbors would present the opposition.
- 3) Rebuttal by the Appellant.
- 4) Any other rebuttal as permitted by the Mayor and Council.
- 5) Questions by the governing body of the party filing the Appeal or direct questions to staff in order to establish reasons for granting or denying the Appeal.
- 6) Discussion by the Mayor and Council with possible action.

Mr. Randolph stated that the time limit for each side of the argument was ten minutes. Both parties could use that time in any way they decided to either in direct address or in rebuttal. He said it was their choice, but the maximum time limit was ten minutes.

Johnny Lohrman, Appellant, stated two things would be heard at the evening's meeting; one side was the business aspect. He said times were tough; Thoroughbred Nissan went from about one hundred fifteen employees down to less than eighty. He was proud to say the company was currently back up to ninety-three employees, six of which were from the paint and body department. Mr. Lohrman acknowledged Bruce Daley, from Thoroughbred Paint and Body, who was one of his biggest competitors. He said he had ninety-three employees but it would not have been appropriate to bring them all to the meeting, although there were many visitors from Thoroughbred Paint and Body and he respected that.

Mr. Lohrman said there was a loud minority representing the Twenty Ninth Street Coalition who say his sign was big and ugly, a scam for Thoroughbred to save money,

and that they did not feel it qualified as a transitional historic landmark sign. He said they were wrong, as he believed it did.

Mr. Lohrman said the facts were that the Tucson-Pima County Historical Commission (TPCHC) defined what a transitional historic landmark sign was. He added that the sign met all the criteria currently defined in the Commission's latest draft dated March 2010. The age, material, technology, design and shape, neon illumination, integrity of the location, and regionalism of the sign met the criteria that defined it as a transitional historic landmark sign set forth by the TPCHC. Mr. Lohrman reiterated that this sign was, in fact, a transitional historic landmark sign.

Mr. Lohrman said *Sign Code* Section 3-126, A through F stated the SCAAB may grant a variance if it found A through F was met. He said that all of the criteria, in A through F, were satisfied in this instance. He stated SCAAB said that the variance would create a special privilege for them, but added this was not true. He added there was a list of potential transitional historic landmark signs, such as the one in question; that listed well over one hundred signs. Mr. Lohrman stated SCAAB also said the circumstance was self imposed which was not correct.

Mr. Lohrman said the special circumstances that the property had a sign on it which qualified as a transitional historic landmark sign were in no way self imposed by the owner. Mr. Lohrman noted lastly, that the reason the property could not be reasonably signed, had nothing to do with the lot size or street frontage but rather the physical circumstances that this sign qualified as a traditional historic landmark sign and should not be removed.

Mr. Lohrman said he had support for this sign; he did not bring down all the employees but the support was there, and also in the historic community. He added support for this sign included Council Member Kozachik, who wrote in a letter to SCAAB in support of the variance being granted for Thoroughbred Nissan's adaptive reuse of the discount furniture sign that had been in place at that location for forty-nine years.

Mr. Lohrman noted that Council Member Kozachik also added that this variance served as affirmation to the community and its commitment to preserve remnants of its historical heritage whenever appropriate, and it was important to the character of Tucson's community to be able to preserve those vestiges and whenever doing so was fit with the proposed use and surrounding areas. He added this was one such example.

Mr. Lohrman noted Jonathan Mabry of the Historic Preservation Office stated in an email to the City that he concurred with the Applicant's documentation that the sign was designed to match the building; and while the building might not meet the age and significance criteria of the National Register of Historic Places, the sign met the criteria for a transitional historical landmark sign, recommended by the Historic Landmark Sign Subcommittee of the Tucson-Pima County Historical Commission.

Mr. Lohrman asked the Mayor and Council to grant the variance to the *Sign Code* in a way that would let the sign stand forever. He said a variance would let them restore the sign to its original illumination, including the neon, paint it and bring it back to life, and adaptively reuse it and restore it to give respect to its historic value.

Mr. Randolph said an affected neighbor or a designated representative would now speak in opposition to the Appeal.

Bruce Daley said he would speak in two capacities, first representing Mark Mayer and the Twenty Ninth Street communities. He said Mr. Mayer was out of town on a family emergency but had emailed the letter he wanted him to read before the Mayor and Council.

Secondly, Mr. Daley said he was representing his business, Thoroughbred Paint and Body, which after thirty-one years, was no longer related to Thoroughbred Nissan. He said he also represented the twenty-three hard working, taxpaying employees and their dependents holding the “NO” symbols at that evening’s meeting. Mr. Daley added those employees would be financially impacted by the Mayor and Council’s decision. He said he hoped the Mayor and Council would decide against the proposed sign variance.

Mr. Daley proceeded to read Mr. Mayer’s letter out loud:

“The Twenty Ninth Street Quarter Communities urges you to uphold the unanimous decision of the Sign Code Advisory and Appeals Board to deny the variance requested that would have allowed this oversized and unsightly sign to remain. The sign is located within the boundaries of our five member neighborhoods and to reverse the Board’s decision would thwart our many efforts to improve the character and appearance of our community. As you may have noted, in the record, the Twenty Ninth Street Quarter Communities filed a letter opposing the variance request which was signed by our Chair and presiding officers of each of the five neighborhood associations. We also filed substantial documentation in support of that letter and our representative appeared before the Board at the variance hearing.”

“A summary of our reasons for opposing the variance are as follows: first, our neighborhood area has one of the highest concentrations of oversized nonconforming signs in the City, in particular 22<sup>nd</sup> Street, Craycroft and Alvernon, are lined with freestanding signs that are two, three, and even four times larger and taller than the *Code* has allowed at any time since 1980. These signs are exactly the type that led *Life Magazine* in 1970 to dub Speedway as ‘the ugliest street in America’ and the sign at issue here is just one more such example. It has a height of thirty-five feet, which is three and a half times more than the ten-foot limit first established in 1980. It has a face area of two hundred thirty square feet, which is more than four times the fifty square foot limit established at the same time.”

“Other areas of the community have either gradually improved or are newer with most signs meeting the modern standards in the first place. Our area, however, is still

saddled with the blight of decades past and cannot afford variance requests to act as loopholes perpetuating this condition. Second, the variance request did not even remotely meet any of the seven legal tests, all of which are necessary to grant a variance. For example, the need for a variance cannot be self imposed; however, that was exactly the case here, as it was the Nissan dealership that acquired and then changed the use of the property of its own volition.”

“Another example is that there must be special circumstances related to the property; but there were none here as the property is rectangular, large, and level and open to view while the passing roadway runs straight as an arrow. None of the other five variance tests were met either and there simply would have been no lawful basis for the variance to have been granted by the Board.”

“Third, as the record shows, the only basis that the Appellant can put forward for the variance was the assertion that the sign and associated building have some type of historical and architectural significance. Even if this were true, however, it would not have been a basis for granting the variance. Only the Mayor and Council alone have the authority to establish historic districts and historic landmarks and the Mayor and Council have established neither on this property or any other within many miles of it.”

“Furthermore, the Applicant’s assertions of historical and architectural significance has no merit anyway as the Applicant cited no independent authority to support his assertions, while we provided the Board substantial documentation to the contrary. We presented a thorough inventory of some two hundred potential historic signs that members of a historic commission subcommittee had compiled over the last two years and neither the subject sign nor any of its sister monstrosities up and down 22<sup>nd</sup> Street was on the list.”

“We also presented the modern architecture preservation project list of one hundred buildings built in the 1945-1975 era that were determined to be deserving of such recognition, and again, neither the building or the site or any other building within two miles are on this list.”

“Lastly, as SCAAB has noted repeatedly, any architectural significance that the building may have had was shattered when the Applicant replaced the plate glass windows with the industrial type overhead garage doors. Simply put, the claims of historic and architectural significance were a little more than an inventive smoke screen in an attempt to add this grossly oversized sign to the Appellant’s stable of three other mega signs in its nearby complex. In sum, the Twenty Ninth Street Corridor Communities area is blanketed with unsightly oversized signs that do not meet today’s standards. There was no legal basis to grant the requested variance and the assertions of a historic and architectural significance were both irrelevant and not supported by any independent authority. For these reasons, we urge you to support our neighborhood efforts and uphold SCAAB’s decision to deny this request.”

Mr. Daley said, in his second capacity, as the owner of Thoroughbred Paint and Body, he hoped City officials would be able to see that granting a variance, based on a historic sign loophole, would be very detrimental to nearby competing businesses that were forced by current code to limit their signage to a fraction of the height and size of the old big signs.

Mr. Daley noted having a competitor start up a business, whether a donut shop or a paint and body shop, directly across the street was not good news. However, if City officials saw to it that no unfair advantage was given to one business without extending the same advantage to other businesses, the situation would be livable. He added, hopefully, the Mayor and Council would decide against granting the sign variance.

Mr. Randolph stated the next step was any rebuttal by the Appellant.

Mr. Lohrman said the reality was that the City's Planning and Development Services Department had an ad hoc committee currently drafting an ordinance to bring before the Mayor and Council to define what was and what was not a classic or transitional historic landmark sign. He said that was submitted as evidence; the criteria that was put forth in the draft was very simple: it said a transitional historic landmark sign must meet all the criteria and within that, it said it must meet two of the three, or one of the two but it did not have to meet all of them. Mr. Lohrman stated his sign met all the criteria across the board, top to bottom, with regard to the age, materials, technology, design, illumination, shape, integrity, safeness, location and regionalism of the sign.

Mr. Lohrman added that if the sign was not saved, and was taken down now, the ordinance currently being drafted that said signs that met the criteria would get privileged to the *Sign Code* and would not be considered a non-compliant sign anymore, might or might not be passed. He said there was an opportunity to not only save what was a transitional historic landmark sign as defined by the drafted Ordinance, but also show support of a local business, which had competitors. Mr. Lohrman noted both were affected by the current economy but the reality was they were in business and he wanted to keep his sign. He believed the sign could be brought back to its original state and said he would work with Mr. Mabry toward that end.

Mr. Lohrman stated, if they were granted the variance, it would be more than just a sign for a body shop. It would be a sign to the people of Tucson as to what the Mayor and Council tried to do for local businesses and for the historic significance of the signs. He added signs were seen along Miracle Mile and Oracle and throughout the City. Mr. Lohrman said this was one example of a great sign that should be saved.

Mr. Randolph said next would be any rebuttal allowed by the Mayor and Council.

An unidentified speaker said they only asked that the Mayor and Council to provide a level playing field for all businesses.



Mr. Randolph said next was the time allowed for the Mayor and Council's discussion.

Council Member Romero asked what the procedure was with respect to the owner having to bring the sign down and/or replace it with a newer one. She also inquired whether signs, at other locations that sold automobiles, had been replaced with newer signs and followed code.

Ernie Duarte, Planning and Development Services Department Director, said the non-confirming sign would have to be removed which was triggered by the change of use from retail to service and a fifty square foot sign, ten feet tall, could be put in its place. He stated that, typically, most of those signs were done in conformance with the Tucson *Sign Code*.

Vice Mayor Scott asked whether there was a line of sight involved regarding traffic safety if the current sign was taken down.

Mr. Duarte stated one of the criteria for a new permit application would be maintenance of sight visibility triangles so that a traffic hazard would not be created by allowing a blockage of sight visibility. He added a new sign permit would be looked at for that specific issue.

Mayor Walkup asked if there was any further discussion.

It was moved by Council Member Fimbres, duly seconded, to affirm the decision by the Sign Code Advisory and Appeals Board, thereby denying the Appellant's request based on the information presented at the evening's meeting and in addition to the recommendations from staff and the SCAAB.

Council Member Cunningham said he had a question. He made of mental note of all the businesses on 22<sup>nd</sup> Street from Craycroft to Swan and wondered how many other signs in that corridor were as high as the one being discussed.

Mr. Lohrman said Council Member Romero was correct in that there were a lot of automotive dealers along 22<sup>nd</sup> Street. He said when the Thoroughbred building was built, things looked good. In applying for that sign, when they went through construction, because the signs were grandfathered in, they were able to erect new signs that were eighty percent of the current sign's height. He said it had to be brought down twenty percent but the height was maintained to eighty percent of the prior sign's existence.

Mayor Walkup asked if there were any more questions. Hearing none, he asked for a roll call vote of the motion.

The motion to affirm the decision of the Sign Code Advisory and Appeals Board, denying the Appellant's request, was passed by a roll call vote of 6 to 0 (Council Member Kozachik recused).

**9. MAYOR AND COUNCIL: MEETING SCHEDULE FOR 2011**

Mayor Walkup announced City Manager's communication number 459, dated October 13, 2010, was received into and made part of the record. He asked the City Clerk to read Ordinance 10842 by number and title only.

Ordinance 10842 relating to Administration; establishing the meeting dates of the Mayor and Council for 2011; and declaring an emergency.

Council Member Kozachik said this item was part of the budget balancing options which Mayor and Council asked staff to bring back. He said he appreciated the City Manager's Office putting together the lists of the pros and cons to see whether it made financial sense to make a change to the schedule.

Council Member Kozachik read through some of the pros and cons.

Council Member Romero said it should be noted that Election Day should be kept open so everyone was able to vote, as well as, keep open National Night Out which was the week prior to August 9<sup>th</sup>.

It was moved by Council Member Kozachik, duly seconded, and passed by a roll call vote of 7 to 0, to pass and adopt Ordinance 10842 with Option 1, to retain the present schedule.

**10. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS**

Mayor Walkup announced City Manager's communication number 464, dated October 13, 2010, was received into and made part of the record. He asked for a motion to approve the appointments in the report.

It was moved by Council Member Fimbres, duly seconded, and carried by a voice vote of 7 to 0, to approve the appointment of Charles Rogers to the Veterans' Affairs Committee (VAC) representing the Disabled American Veterans (D.A.V.) Cactus Chapter #2.

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

**11. ADJOURNMENT: 7:10 p.m.**

Mayor Walkup announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, October 19, 2010, 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 13th day of October 2010, and do hereby certify that it is an accurate transcription.

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DEPUTY CITY CLERK

RWR:tl:sac