



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on August 9, 2016.

Date of Meeting: December 8, 2015

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 5:35 p.m., on Tuesday, December 8, 2015, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Rothschild and upon roll call, those present and absent were:

Present:

Regina Romero	Council Member Ward 1
Paul Cunningham	Council Member Ward 2
Karin Uhlich	Vice Mayor, Council Member Ward 3
Shirley C. Scott	Council Member Ward 4
Richard G. Fimbres	Council Member Ward 5
Steve Kozachik	Council Member Ward 6
Jonathan Rothschild	Mayor

Absent/Excused: None

Staff Members Present:

Michael J. Ortega	City Manager
Michael Rankin	City Attorney
Roger W. Randolph	City Clerk

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Pastor Larry Munguia, The S.O.B.E.R. Project after which the Pledge of Allegiance was presented by the entire assembly.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Rothschild announced City Manager’s communication number 452, dated December 8, 2015, 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.

Current event reports were provided by Council Members Scott Fimbres and Vice Mayor Uhlich. A recording of this item is available from the City Clerk’s Office for ten years from the date of this meeting.

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

Mayor Rothschild announced City Manager’s communication number 453, dated December 8, 2015, 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.

Current event report was given by Michael J. Ortega, City Manager, and Michael Rankin, City Attorney. A recording of this item is available from the City Clerk’s Office for ten years from the date of this meeting.

5. LIQUOR LICENSE APPLICATIONS

Mayor Rothschild announced City Manager’s communication number 454, dated December 8, 2015, 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. BK Carne Asada & Hot Dogs, Ward 1
5118 S. 12th Ave.
Applicant: Benjamin L. Galaz
Series 12, City 86-15
Action must be taken by: December 5, 2015

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

2. Food Mart, Ward 4
1909 S. Craycroft Rd.
Applicant: David Hashim Qasimyar
Series 10, City 88-15
Action must be taken by: December 7, 2015

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

3. Market Friendly, Ward 3
3701 E. Grant Rd.
Applicant: Hussain A. Saleh
Series 10, City 89-15
Action must be taken by: December 12, 2015

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(s)

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

c. Special Event(s)

1. Community Food Bank of Southern Arizona, Ward 5
242 S. Park Ave.
Applicant: Michael McDonald
City T142-15
Date of Event: January 16, 2016
(Holiday Staff Party)

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

2. Jazz in January dba Tucson Jazz Festival, Ward 6
300 E. Congress St.
Applicant: Paul Alan Wheeler II
City T144-15
Date of Event: January 18, 2016
(Jazz Music Event)

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

3. Downtown Tucson Partnership, Ward 6
485 S. Stone Ave.
Applicant: Brandi Renee Haga-Blackman
City T146-15
Date of Event: December 19, 2015
(Celebration of the Holidays/Season)

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

Public Opinion: Written Arguments Opposed Filed

This item was considered separately

4. Saint Patrick's Day Parade of Tucson, Inc., Ward 1
283 N. Stone Ave.
Applicant: Teresa Doyle Mellum
City T147-15
Date of Event: January 9, 2016
(Silent Auction/Fundraiser)

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

d. Agent Change/Acquisition of Control

1. Tommy's Saloon, Ward 3
2747 N. Stone Ave.
Applicant: Lisa Anne Markham
Series 6, City AC26-15
Action must be taken by: December 14, 2015

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

NOTE: The local governing body of the city town or county may protest the acquisition of control within sixty days based on the capability reliability and qualification of the person acquiring control. (A.R.S. Section 4-203.F)

It was moved by Council Member Scott, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license applications 5b1 through 5b3, 5c1 through 5c4, with the exception of 5c3, which was considered separately following Item 6, and 5d1 to the Arizona State Liquor Board with a recommendation for approval.

6. CALL TO THE AUDIENCE

Mayor Rothschild 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.

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

Comments were made by:

Roy Trout	Alona Del Rosario	Mary Kelso
Damien Clinko	Christopher Gates	Fred Ronstadt
Dr. Eric Shindler	Richard Crouser	Ken Scoville
Robert Reus	Ashley St. Clair	Wesley Cox

A recording of this item is available from the City Clerk’s Office for ten years from the date of this meeting.

5. LIQUOR LICENSE APPLICATIONS

(This item taken out of order)

c. Special Event(s)

3. Downtown Tucson Partnership, Ward 6
485 S. Stone Ave.
Applicant: Brandi Renee Haga-Blackman
City T146-15
Date of Event: December 19, 2015
(Celebration of the Holidays/Season)

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

Public Opinion: Written Arguments Opposed Filed

Council Member Kozachik explained the application was for the Downtown Tucson Partnership to use space at the Clifton Homes during the Parade of Lights. He said three letters opposing the request were received primarily because of a concern that took place on November 14, 2015, that was a loud party.

Brandi Renee Haga-Blackman spoke in support of the Parade of Lights on December 19, 2015, from 4:00 p.m. until 9:00 p.m. She said their request was to sell alcohol to “moms and dads” that wanted to enjoy the parade. She explained the letters that were written in opposition were related to previous events that lasted until midnight and later.

It was moved by Council Member Kozachik, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license application 5c3 to the Arizona State Liquor Board with a recommendation for approval.

7. CONSENT AGENDA – ITEMS A THROUGH G

Mayor Rothschild 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 DEC08-15-455 CITY WIDE
2. Mayor and Council Regular Meeting Minutes of April 21, 2015
3. Mayor and Council Study Session Legal Action Report and Summary Minutes of April 21, 2015

b. BOARDS, COMMITTEES AND COMMISSIONS: TERMINATING THE CITY MANAGER APPOINTMENT ADVISORY COMMITTEE AND THE CITY POLICE CHIEF APPOINTMENT ADVISORY COMMITTEE

1. Report from City Manager DEC08-15-456 CITY WIDE
2. Resolution No. 22507 relating to Boards and Commissions; dissolving and terminating the City Manager Appointment Advisory Committee; and declaring an emergency.
3. Resolution No. 22506 relating to Boards and Commissions; dissolving and terminating the City Police Chief Appointment Advisory Committee; and declaring an emergency

c. TUCSON CODE: AMENDING (CHAPTER 22) TUCSON SUPPLEMENTAL RETIREMENT SYSTEM RELATING TO PENSIONS, RETIREMENT, GROUP INSURANCE, LEAVE BENEFITS AND OTHER INSURANCE BENEFITS

1. Report from City Manager DEC08-15-457 CITY WIDE
2. Ordinance No. 11327 relating to Tucson Supplemental Retirement System (TSRS); Tucson Code Chapter 22, Pensions, Retirement, Group Insurance, Leave Benefits and other Insurance Benefits, Article III, Tucson Supplemental Retirement System, Division 1, types of Retirement and Benefits; Amending Section 22-30, Definitions; Amending Section 22-33(B), Optional Membership; Amending Section 22-33(E), Reentry into

Membership; Amending Section 22-34(E), Qualified Military Service; adding Section 22-36(B)(3), Military Leave during Active Employment; Amending Section 22-36(E), additional Service - Prior Government or Military Service; Amending Section 22-37(D), Payment of Benefits; Deferred Commencement; Amending Section 22-37(G), Suspension of Pension Benefits upon Reemployment; Amending Section 22-39(A), Qualification; Amending Section 22-39(B), Application Process; Amending Section 22-40(F), Refund Guarantee; Amending Section 22-42(A), Explanation of Benefit Options; Amending Section 22-42(C), Joint and Survivor Annuity; Amending Section 22-43.1(B), System Administrator Review and Approval; Amending Section 22-43.1(B), System Administrator Review and Approval; Amending Division 2, Administration of the System, Section 22-46, Finance Director Duties; Amending Section 22-47, Human Resources Director Duties; setting an effective date and declaring an emergency.

d. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY FOR THE TRANSFER OF PIMA COUNTY WIRELESS INTERGRATED NETWORK (PCWIN) SUPPORT EQUIPMENT

1. Report from City Manager DEC08-15-445 CITY WIDE
2. Resolution No. 22503 relating to Intergovernmental Agreements (IGA); approving and authorizing the execution of Amendment No. 1 to IGA between the City of Tucson (City) and Pima County for the transfer of equipment and property in furtherance of the Pima County Wireless Integrated Network (PCWIN); and declaring an emergency.

e. PARKS AND RECREATION: FACILITY DEVELOPMENT AND USE AGREEMENT WITH THE SAHUARO BAJA FASTPITCH LEAGUE

1. Report from City Manager DEC08-15-444 WARD 2
2. Resolution No. 22504 relating to Parks & Recreation; authorizing and approving a Facility Development Agreement between the City of Tucson and Sahuaro Baja Fastpitch League, an Arizona non-profit corporation, for replacement scoreboards at Jesse Owens Park fields 5 and 6, 400 S. Sarnoff Road; and declaring an emergency.

(This item was considered separately at the request of Council Member Cunningham.)

f. FINAL PLAT: (S15-023) THE VISTAS AT RINCON KNOLLS, LOTS 161 THROUGH 349

1. Report from City Manager DEC08-15-446 WARD 4

2. Staff recommends that they Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.

g. TUCSON CODE: AMENDING (CHAPTER 20) PARKING FINES

1. Report from City Manager DEC08-15-447 CITY WIDE
2. Ordinance No. 11324 relating to Transportation and Parking; providing fine collection authority to Park Tucson Administrator; altering parking fines by amending Tucson Code Chapter 20, Article VII, Stopping, Standing and Parking, Sections 20-203, 20-210, 20-221, 20-225, 20-246, and 20-271; and declaring an emergency.

Michael Rankin, City Attorney, read an amendment to the Ordinance adding an additional section that reads: “Sections 1 through 6 of this ordinance are effective on and after December 14, 2015.”

It was moved by Council Member Romero, duly seconded, and passed by a voice vote of 7 to 0, that Consent Agenda Items a through g, with the exception of e, which was considered separately, be passed and adopted and the proper action taken.

7. CONSENT AGENDA – ITEM E

e. PARKS AND RECREATION: FACILITY DEVELOPMENT AND USE AGREEMENT WITH THE SAHUARO BAJA FASTPITCH LEAGUE

1. Report from City Manager DEC08-15-444 WARD 2
2. Resolution No. 22504 relating to Parks & Recreation; authorizing and approving a Facility Development Agreement between the City of Tucson and Sahuaro Baja Fastpitch League, an Arizona non-profit corporation, for replacement scoreboards at Jesse Owens Park fields 5 and 6, 400 S. Sarnoff Road; and declaring an emergency.

Council Member Cunningham thanked everyone involved in painting the new scoreboard, stating it was one of several different things that have been done at Jesse Owens Park. He said over the past three years, dugouts have been repaired, improvements made to the parent area of the softball fields, added a scoreboard, leveled out the outfields, repaired fences and irrigation lines, and finally, the pool was opened. He thanked the Parks and Recreation Department for making these things happen.

It was moved by Council Member Cunningham, duly seconded, and passed by a voice vote of 7 to 0, that Consent Agenda Item e be passed and adopted and the proper action taken.

8. PUBLIC HEARING: DESIGNATING THE “CASCADE LAUNDRY” SIGN AS A HISTORIC LANDMARK SIGN

Mayor Rothschild announced City Manager's communication number 448, dated December 8, 2015, was received into and made part of the record. He said this was the time and place legally advertised for a public hearing on a request by Robert Kuhlmann, of Sign Magic, Inc., to designate the “Cascade Laundry” sign as a Historic Landmark Sign.

Mayor Rothschild said the public hearing was scheduled to last for no more than one hour and speakers were limited to five-minute presentations. He asked if a representative from Sign Magic, Inc., was present and said he could speak after speakers who turned in a speaker's card.

Mark Mayer spoke on behalf of Scenic Arizona in opposition to the Cascade Laundry sign being proposed. He said it was taller and larger than allowed by current standards. He said he did not feel that it was of such an exceptional nature as to warrant the special status it would be accorded as an historic landmark sign. He said the sign was 3.5 times larger than the current code allows for a sign. He stated he did not feel it met the standards to be included as a historical sign.

Kathy McLaughlin, Citizen Sign Code Committee Member, spoke in opposition of the Resolution. She said she did not feel that the sign met any of the criteria to be designated as a historic sign.

Carlos Lozano, representing Sign Magic, Inc. and Sherwin Williams, spoke in support of the Resolution. He spoke on the history of the sign and of the businesses on that site.

Mayor Rothschild asked Mr. Lozano if his clients were prepared to comply with the conditions of the sign.

Mr. Lozano replied they were.

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

Mayor Rothschild asked the City Clerk to read Resolution No. 22505 by number and title only.

Resolution No. 22505 relating to Historic Landmark Signs: approving Historic Landmark Sign Designation for the "Cascade Laundry" Sign under case T15SA00276; and setting an effective date.

Council Member Kozachik stated that on November 12, 2015, the Tucson/Pima County Historical Commission Plans Review Sub-Committee voted 4 to 0 to support the

recommended design. He said the recommended conditions included going back to the sub-committee with their final design.

It was moved by Council Member Kozachik, duly seconded, to pass and adopt Resolution No. 22505.

Council Member Cunningham said he would like to see the height of the sign be reduced.

Vice Mayor Uhlich said she was concerned about the undermining of the Historic Landmark Sign Ordinance. She asked what criterion was laid out in the Ordinance to identify what constituted a landmark sign and how the Cascade sign fit into the process.

Jim Mazzocco, Planning and Development Services Interim Director, stated there were nine criterion and certain standards that all signs had to go through. He said the first versions of the signs did not meet any of the criteria and it was not until November 12th where the criteria were reviewed with the Historic Review Plans Committee. He stated it was determined at that time that the sign met the criteria.

Vice Mayor Uhlich confirmed that a lot had to do with the age of the sign and sustaining the original historic integrity or shapes.

Mr. Mazzocco said there were two types of signs; 1) the Hotel Congress type of sign that was left as is and 2) the "Diving Girl" type of sign where the main concepts of the sign were intact but also had some modern features to it. He said the second was the type of sign they were dealing with.

Vice Mayor Uhlich asked if in staff's view the request was not opening the door to undermining the Historic Landmark Sign Ordinance.

Mr. Mazzocco stated he did not believe so and there would be reuse of the signs in a modern kind of setting but still have historic elements from a prior time.

Council Member Fimbres read part of the documents that the Mayor and Council was given regarding the sign, and wanted to know if the information was still correct and part of the motion.

Mr. Mazzocco replied he was correct and it would go back to the Historic Plans Review Subcommittee for the final look of the sign and ensure it was in compliance with the Ordinance.

Council Member Romero asked about the height of the sign and had it been discussed.

Mr. Mazzocco said it had to remain at the original height of thirty-four and a half feet.

Resolution 22505 was passed and adopted by a roll call vote of 7 to 0.

9. PUBLIC HEARING: (C8-13-03) AMENDING (CHAPTER 23B) THE UNIFIED DEVELOPMENT CODE RELATING TO URBAN AGRICULTURE

Mayor Rothschild announced City Manager's communication number 458, dated December 8, 2015, was received into and made part of the record. He said this was the time and place legally advertised for a public hearing on proposed Text Amendments to the *Unified Development Code* relating to Urban Agriculture. He said the public hearing was to last for no more than one hour and speakers were limited to five-minute presentations

The following people spoke in support of amending the *Unified Development Code* relating to Urban Agriculture:

Merrill Eisenberg	Kylie Rogers	Nick Henry
Michael McDonald	Laurie Clark	Megan Kimble
Eric Kolsrud	Dennis Mizer	Emily Soderberg
Tres English	Rob Kulakofsky	Jane Evans
Chester F. Phillips	Mac Hudson	Josefina Cardenas

The following people spoke in opposition of amending the *Unified Development Code* relating to Urban Agriculture:

Bonnie Poulos	Colette Altaffer	Bill Dupont
Kristine Yarter	Beryl Baker	

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

Mayor Rothschild asked the City Clerk to read Resolution 11328 by number and title only.

Ordinance No. 11328 relating to Planning and Zoning; amending the Tucson Code, Chapter 23B, Unified Development Code, Sections 3.3, 4.7, 4.8, 4.9, 6.6, 7.4, 7.6, 11.3, 11.4, and Chapter 4, Animals and Fowl, Article II, Sections 4-56 and 4-59; and setting an effective date.

It was moved by Council Member Fimbres, duly seconded, to pass and adopt Ordinance 11328.

Council Member Romero requested to add a friendly amendment to the motion. She wanted to include that a "Spiritual" aspect be added to the Ordinance. She congratulated the staff and volunteers for following through on a great, progressive way in moving the City forward.

Vice Mayor Uhlich thanked everyone who came forward in support and those who had concerns of the Ordinance. She said she was going to support the Ordinance as it was a step in the right direction.

Council Member Kozachik thanked staff and stakeholders for working through the process. He said he had a couple of concerns. First, was the sunset date stating staff had recommended a one year date and the Planning Commission moved it back to two years. Second, was a function of, since Halloween, there had been a couple of issues regarding wildlife coming into midtown neighborhoods. He stated the Arizona Game and Fish, on many occasions, suggested that people minimize the food opportunities available to wild life and they would move elsewhere.

Council Member Kozachik said many of the issues raised by the Ward 6 residents had to do with code form. He stated the City was too deep into the process to make any changes. He said he supported the Ordinance but issued a challenge to the urban farmers to bring him something they grew that had a taste and he would support it even more.

Council Member Cunningham commented that those citizens that did compost to do it within a fenced area to help with some of the issues with wildlife. He said the Ordinance was a move in the right direction and he supported it.

Ordinance 11328 was passed and adopted by a roll call vote of 7 to 0.

RECESS: 8:02 p.m.

RECONVENE: 8:03 p.m.

Mayor Rothschild called the meeting back to order. All members were present as they were at the start of the meeting.

10. PUBLIC HEARING: ZONING (C9-15-06) BANNER-UNIVERSITY MEDICAL CENTER PAD, R-1, R-2, NR-2, AND C-1 TO PAD-28, CITY MANAGER'S REPORT, ORDINANCE ADOPTION

(NOTE: Council Member Fimbres departed at 7:14 p.m. and returned at 7:18 p.m.)

Mayor Rothschild announced City Manager's communication number 449, dated December 8, 2015, was received into and made part of the record. He said this was the time and place legally advertised for a public hearing on a request to rezone 33 acres located west of Campbell Avenue, one-half mile north of Speedway Boulevard. He said the public hearing was to last for no more than one hour and speakers were limited to five-minute presentations.

Kathy Bolinger, Banner Health Executive Vice President, made a short opening statement regarding Banner-University Medical Center and spoke about their partnership with the City of Tucson and surrounding neighborhoods. She thanked all those that were involved in the process.

Mayor Rothschild stated Vice Mayor Uhlich recused herself from participating in the discussion due to a conflict of interest.

The following people spoke in support of the proposed zoning;

Allison Hughes	Steve Prendergast	Bruce Vaughn
Joan Daniels	Ted Maxwell	Alice Roe
Steve Christy	J. Lisa Jones	Walter Richter
Suzanne Trappman		

The following people spoke in opposition to the proposed zoning request:

Debra Huffman	Annette Everlove	Beryl Baker
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It was moved by Council Member Fimbres, duly seconded, and carried by a voice vote of 6 to 0 (Vice Mayor Uhlich recused due to a conflict of interest), to close the public.

Mayor Rothschild asked the City Clerk to read Ordinance 11325 by number and title only.

Ordinance No. 11325 relating to Zoning: amending zoning district boundaries located on the west side of Campbell Avenue approximately one-half mile north of Speedway Boulevard in case C9-15-06, Banner-University Medical Center Planned Area Development (PAD-28), R-1, R-2, NR-2, C-1 to PAD-28; and setting an effective date.

Council Member Kozachik invited two speakers to address concerns about traffic infrastructure and how impact fees might affect that.

Vince Catalano, Kimley-Horn and Associates, Inc., addressed the traffic concerns for the proposal, stating that the mixed use development at Speedway and Campbell was taken into consideration when the traffic impact study was done. All of the traffic issues for that area were looked at comprehensively. He said there were a significant amount of impact fees being paid by Banner moving forward that would go towards the transportation needs for that area.

Linus Kafka, Zoning Examiner, added that some of the considerations were the alternative circulation that was proposed that would improve circulation for the area. He said assumptions were inflated based on a 20 year period of the development. He said he was asking for a recommendation of approval.

Council Member Kozachik added the Speedway/Campbell project was on hold due to a health issue with one of the principals. He asked if Kimley-Horn considered it as a fully built out project when the traffic analysis was done.

Mr. Catalano responded that Speedway/Campbell was looked at just for the dual lefts, which was where the deficiency were now and which was why it was at a level service “D” at this time. He said it was more of a regional issue.

Council Member Kozachik asked the City Attorney, when the two projects were at full built out, how they could be assured that the City was not left holding the bag for traffic and mitigation costs while impact fees were being paid on both during the phase of construction.

Michael Rankin, City Attorney, said the Mayor and Council had the ability to program impact fees through the approval of the IIP and the Impact Fee Program for infrastructure improvement projects within the various benefit districts. He stated any impact fees generated by this project and the Speedway/Campbell project would be assignable by the Mayor and Council to infrastructure, including roadway infrastructure improvement projects, within that same benefit district.

Council Member Kozachik stated he did not think any person sitting at the dais that evening had the expertise to say how those dollars should be directed, but wondered how to keep the conversation alive so that something not related to the two projects was done with the money.

Mr. Rankin stated he did not think the current Mayor and Council could commit a future council in terms of those impact fee dollars, but added they might want to include, for the record, as a part of their action, that some sort of periodic review of the programming of future funding for the traffic improvements that may be required in order to address the traffic deficiencies either as they exist today or as they may grow in connection with these projects.

It was moved by Council Member Kozachik, duly seconded, to approve the request as recommended by the Zoning Examiner and pass and adopt Ordinance 11325, with added comments made by Mr. Rankin regarding impact fee dollars.

Council Member Cunningham asked if the 480 feet of left turns was eastbound or westbound on Campbell.

Mr. Catalano responded eastbound to north.

Council Member Cunningham said that because he had been to Ms. Everlove’s home, he knew the growth pattern for the City would come from the northwest. He said this was a long term project and no one really knew how much infill needed to take place east of the project. He stated the traffic pattern and traffic issues would be ever changing. He commented that Elm would be considerably impacted, but as far as the traffic mitigation, northwest should be looked at. He added he was in support of the Ordinance.

Council Member Romero added she thought this was a good project for the City. She wanted to know about the flight patterns and how the conversations went regarding that.

Kip Edwards, Banner Health Vice President of Development and Construction, stated there was an existing, designated flight pattern for helicopters that directed them to the medical center from the south. He said Banner had agreed to maintain and honor those flight patterns and there would also be constant reporting that was part of the PAD. He said on occasion they did have deviations from the flight pattern and kept a good count of those instances. He said the report was sent to the CCRC quarterly and any issues were explained.

The motion to pass and adopt Ordinance 11325, as recommended by the Zoning Examiner was passed by a roll vote of 6 to 0 (Vice Mayor Uhlich recused due to a conflict of interest).

(NOTE: Council Member Kozachik departed at 8:00 p.m. and returned at 8:02 p.m.)

11. PUBLIC HEARING: DESERT WILLOW ANNEXATION DISTRICT

Mayor Rothschild announced City Manager's communication number 450, dated December 8, 2015, was received into and made part of the record. He said this was the time and place legally advertised for a public hearing for the proposed Desert Willow Annexation District. He said the public hearing was scheduled to last for no more than one hour and speakers were limited to five-minute presentations.

Scott Rummell spoke in opposition of the Desert Willow Annexation saying that what was being annexed was a lot of flood plain area. He asked that the proposal be sent back to staff to be redefined. He said he was concerned with the density and issues that the annexation would cause with traffic, light pollution, etc.

Mayor Rothschild addressed Mr. Rummell's concerns stating that the property had already been re-zoned by the County. He added the analysis could be found online and showed the financial effects of the neighborhood and how it would be handled between the City and Pulte Homes. He said the costs would be borne by Pulte for the re-development.

Mike Czechowski, Annexation Project Manager, added that the annexation was dependent on the original County zoning. The City's zoning would match that and there were no plans to change any zoning. He said the land was owned by Pima County and private owners. He stated the majority of the area was in a flood zone and was unbuildable, and Pulte would only be building 49 homes. He commented there were approximately 11 acres on the northeast corner of Tanque Verde and Houghton that was privately owned and there were no plans for development at this time.

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

Council Member Cunningham added that in the permitting process, all of the issues with the wash would be addressed.

It was moved by Council Member Cunningham, duly seconded, and carried by a voice vote of 7 to 0, to proceed with the Desert Willow Annexation District.

12. CITY MAGISTRATES: APPOINTMENT OF CITY MAGISTRATE AND FIXING COMPENSATION

Mayor Rothschild announced City Manager's communication number 451, dated December 8, 2015, was received into and made part of the record. He asked the City Clerk to read Ordinance 11326 by number and title only.

Ordinance No. 11326 relating to City Magistrates; appointing Antonio F. Riojas as presiding City Magistrate of the City of Tucson; fixing compensation; and declaring an emergency.

It was moved by Council Member Fimbres, duly seconded, and passed by a roll call vote of 7 to 0, to pass and adopt Ordinance 11326 naming Antonio F. Riojas as City Magistrate.

13. TUCSON CODE: AMENDING (CHAPTERS 11, 16, 21 AND 25) RELATING TO REGULATION OF PARKS, SIDEWALKS, AND OTHER PUBLIC PROPERTY

Mayor Rothschild announced City Manager's communication number 460, dated December 8, 2015, was received into and made part of the record. He asked the City Clerk to read Ordinance 11331, Option 1 and Option 2, by number and title only.

Option 1

Ordinance No. 11331 relating to Parks, Streets and Sidewalks and other public property; amending Chapters 11, 16, 21 and 25 of the Tucson Code to resolve inconsistencies and amend certain code provisions relating to regulation of Parks, Sidewalks and other public property; by repealing Article IX of Chapter 11 (Crimes on Library Grounds) and amending Sections 11-33.1; 11-36.2; 16-35; 21-2; 21-3; 21-4; 21-5; 21-8; and 25-51 of the Tucson Code.

Option 2

Ordinance No. 11331 relating to Parks, Streets and Sidewalks and other public property; amending Chapters 11, 16, 21 and 25 of the Tucson Code to resolve inconsistencies and amend certain code provisions relating to regulation of Parks, Sidewalks and other public property; by repealing Article IX of Chapter 11 (Crimes on Library Grounds) and amending Sections 11-33.1; 11-36.2; 16-35; 21-2; 21-3; 21-4; 21-5; 21-8; and 25-51 of the Tucson Code.

It was moved by Council Member Scott, duly seconded, to pass and adopt Ordinance 11331, Option 1.

Council Member Romero asked for an explanation of the differences between Option 1 and Option 2.

Michael Rankin, City Attorney, explained that Option 1 included amendments relating to the regulations that applied to the permit requirements for the distribution of food, beverages, or other items in parks. He said Option 2 did not include those amendments. He stated the amendments in question, with respect to the permit requirements for the distribution of food and beverages in parks, specified that such permits would be issued without charge, and were required for feedings and events that were designed or attracted ten (10) or more people, was valid for ten (10) days, and could be automatically renewed for a period of up to sixty days without the requirement to re-apply.

Mr. Rankin said it removed the exception currently listed in the *Code* for food that was pre-packaged, non-perishable and applied to all distribution of all foods distributed to the public in parks.

Council Member Romero asked if both options had the four cubic feet rule.

Mr. Rankin stated both options, with respect to the size limits of items that could be placed on sidewalks, used the four cubic foot limit, as opposed to earlier discussions of two or three cubic feet.

Vice Mayor Uhlich said if no items were to be placed on public sidewalks between the hours of 7:00 a.m. and 10:00 p.m. in City parks, that was a huge change from previous discussions and they only received the information on Monday morning.

Mr. Rankin responded that was correct, it was a change that was in both options, which was why he spent considerable time discussing it at the study session earlier that day.

Vice Mayor Uhlich added prior to the delivery of these materials, none of the task force members or their offices had any knowledge or even contemplated that there would be no items allowed on any sidewalks between hours of 7:00 a.m. and 10:00 p.m.

Mr. Rankin stated he did not know what they expected, and they knew that staff was still looking the issue of the placement of items on the sidewalks. He stated that he had discussed earlier that the Ordinance as it currently read prohibited items on the sidewalk that obstruct the sidewalk, and it was through enforcement practices that created exceptions to that. He said Vice Mayor Uhlich was correct; that the specific change she was referring to was not viewed at the forums that had been held.

Vice Mayor Uhlich stated it had taken her a while to absorb the information partly because of the late delivery of materials. She said she focused in on the three cubic feet vs. four cubic feet when her staff alerted her that it was not about three or four, it was zero which suddenly appeared it was staff's best effort to be responsive.

Vice Mayor Uhlich offered a substitute motion that they adopt and move forward on code changes that were discussed at the last study session, without any controversy,

those which cleaned up and clarified an offered consistency throughout without adding restrictions on packaged foods for distribution and without imposing the “draconian” new provision which would not allow for the placement of any items on sidewalks between hours of 7:00 a.m. and 10:00 p.m.

Vice Mayor Uhlich added she believed the correct motion was to amend the *Code* Sections 11-33.1; 11-36.2; 16-35; 21-2; 21-3 subsection 7; 21-8, and 25-51; without the added provisions placed into the draft ordinances.

Mr. Rankin wanted to be very precise on the motion so that he understood what Vice Mayor Uhlich was proposing. He said on the permit requirements on perishable items was the intent of the motion to not include any changes to the permit requirements or just to continue to include that exception.

Vice Mayor Uhlich responded that she thought, at the last meeting, what was discussed, in regards to the distribution of food, was to allow for the clarification and other issues, but not to further restrict, at this time, without some dialogue with the faith community and other partners who were engaged. She said she knew Council Member Fimbres was leading a very constructive dialogue and did not want to change those provisions at this time, nor ban any objects on sidewalks between the hours of hours of 7:00 a.m. and 10:00 p.m., but to allow for further consideration in the process that Council Member Fimbres was leading.

Mr. Rankin stated that he thought the motion to capture what Vice Mayor Uhlich was talking about was to approve Option 2 of the Ordinance, which was why two options were provided. He said no direction was given at the last study session on a decision about the changes to the feeding permits. He stated Option 2 addressed the issue of not including a time limit with respect to the placement of any objects on the sidewalks. He said he wanted to be clear on the intent of the motion that it was to include the other changes in 25-51 about the placement of objects on the sidewalk, but with four cubic feet as opposed to earlier discussions on three cubic feet or without any discussion of size.

Vice Mayor Uhlich’s stated that these were not insignificant changes and suggested that before making any changes, she wanted to run it by the Department of Justice (DOJ) stating that the reasons were she did not want to end up in court, or lose HUD funding. She said there was a lot at stake and there was no reason they should be doing that. So, at this point, she said she would go with Option 2, without any changes to 25-51. She stated that was her substitute motion.

Mayor Rothschild asked if there was a second to the motion. There was not, so the substitute motion died for lack of a second. He stated the original motion was back on the table.

Mayor Rothschild asked if the Ordinance, as he understood it, meant there could not be any objects on sidewalks between the hours of 7:00 a.m. and 10:00 p.m., and if that was where the question of size came in.

Mr. Rankin responded he was correct.

Vice Mayor Uhlich asked what health or safety issues were addressed by the restriction on the placement of items if it was made clear that sidewalks must always allow for free passage of individuals in the public.

Mr. Rankin responded that there were a lot of sidewalks in the downtown area that were more than 5 feet wide because they were designed to carry a capacity of people that needed more than five feet to go back and forth. He said it preserved the full free, unobstructed use of the sidewalks and kept control over the accumulation of items on sidewalks that was observed and experienced over many months in the downtown area. He said by having the director extend the park hours, and keep the parks open until 10:00 p.m., there was a place at all times, day or night, for people to be with their belongings.

Vice Mayor Uhlich offered another substitute motioned to adopt Option 2 of the Ordinance. The motion died for lack of a second.

A friendly amendment was made by Council Member Cunningham to the original motion to include that no permits are required on Thanksgiving, Christmas, or Easter.

Council Member Scott, the motion maker, stated if that was legal, she accepted the amendment.

A second friendly amendment was made by Council Member Cunningham to increase the size limit to six (6) cubic feet and stated his reasons why.

Council Member Scott said she thought because of the consensus of the people involved in the process, the four cubic feet should stand.

Council Member Fimbres asked about pending litigation against the City and how the proposal played into that.

Mr. Rankin said that the litigation that remained pending for the City was with the 9th Circuit Court of Appeals and awaiting a decision. He said on the City's appeal from Judge Bury's injunction relating to the City's 3B policy, Judge Bury indicated the City remained free to enforce reasonable time, place manner restrictions within its codes. He commented that the types of restrictions being proposed within Option 1 and Option 2 were content neutral time, place manner restrictions regulating the use of public property. He stated they were waiting to see if there is new direction from the 9th Circuit Court of Appeals, and would come back to the Mayor and City Council with any adjustments that need to be made. He said the amendments were framed so that they can be enforced even in the light of the prior injunction.

Council Member Fimbres asked that when the court's decision came out, would staff come back to the Mayor and Council for review and discussion.

Mr. Rankin stated that as soon as they get word from the court, Mayor and Council would know.

Council Member Fimbres stated that there was a committee currently working on homelessness issues and there would be some recommendations and direction. He suspected those changes would need to be looked at with the Ordinance. He asked if there should be a clause in the Ordinance to review in a year.

Mr. Rankin stated that they could absolutely give direction to review the Ordinance in a year, or at any time.

Council Member Romero reiterated that Ordinances were not going to be the answer to the issue of homelessness in the community, or anywhere in the world. She said the recommendations and ordinance changes helped alleviate the concerns downtown merchants had with the extra congregation of part of the homelessness community within the downtown area.

Council Member Romero said some of the concerns with respect to feedings, was being done by many faith groups and churches in certain areas that had always done that in the past. She said she echoed the concerns Vice Mayor Uhlich had with the DOJ and federal funding because the government was now prohibiting ordinances that might potentially violate the Constitution and rights of the people.

Mr. Rankin said that the DOJ did not review Ordinances, nor did they strike them down. He said the DOJ submitted a position statement in litigation going on in one of the Circuit Courts coming out of the Boise case stating the position of the Department and administration with respect to those particular codes and citing to the earlier 9th Circuit Court of Appeals decision in the Jones case out of Los Angeles. He said there was not a mechanism to go to the DOJ and ask for their thoughts. However, the City had the benefit of the position paper and had used it to help frame the options put forth to the Mayor and Council.

Mr. Rankin commented that during the prior Study Session there was discussion regarding the new question and note on the COC funding and application. He said there was one additional question added to this year's application, which was a two point question relating to describing the efforts the City had taken to avoid the criminalization of the homeless. He said it was explained to the Mayor and Council that Housing and Community Development (HCD) would be able to respond to that question.

Mr. Rankin stated that was something the City needed to keep an eye on for funding and if the City saw that other jurisdictions were being denied to access that funding, he would come back to the Mayor and Council with that information.

Council Member Romero said that the Council offices did not have the time to coordinate an effort as big as this and the responsibility usually fell on HCD. She said she felt there needed to be more of a coordinated effort between the City and other

entities going forward to put together a much more comprehensive process and protocol for the homelessness situations in the community.

Council Member Fimbres thanked staff for their efforts, Martha Durkin, Assistant City Manager, Sally Stang, HCD Director, and Carla Avalos from the Mayor's Office. He also thanked Mr. Rankin stating to Mrs. Romero there had been a coordinated effort. He stated that Vice Mayor Uhlich and he were authoring a memorandum that would be coming out shortly. He stated homelessness was not a crime and they all need to work on it and have a balance with the businesses in the downtown community.

Vice Mayor Uhlich asked if staff was certain if we were to request our congressional delegation to have the DOJ review the Ordinance prior to enactment why would they not do that. She reiterated she did not want to end up in court, or lose HUD funding. She said she strongly believed that was a possibility, otherwise she would approve the motion. She asked if they could request review prior to enactment.

Mr. Rankin responded that they could always request the DOJ to look at something, but it was not a role they served in terms of evaluating local ordinances. He said they might choose to weigh in on a case, which the City did not want to have this issue become a case. He stated, from his experience, it was not something the DOJ would even do.

Council Member Cunningham suggested not declaring an emergency and make the request.

Mr. Rankin said there was not an emergency clause included in either option.

A friendly amendment was made by Council member Kozachik to adopt Option 1, include the permits piece, and set aside the size limit until the City received a determination from the 9th Circuit Court of Appeals.

Council Member Scott stated that waiting for another court to come to a conclusion was postponing the Mayor and Council's responsibility to move forward and give tools to staff that would allow them to be able to do something that was in their purview and a part of their job. She said she believed it had been vetted, talked about and the consensus was for four cubic feet. She commented if that was not enough they could come back at a future meeting for further consideration.

The friendly amendment was not accepted by Council Member Scott, the motion maker.

A substitute motion was made by Council Member Kozachik, duly seconded, to adopt Option 1 with the permits piece and leave out the size limit.

Council Member Scott asked if the determination that was being awaited from the 9th Circuit Court would address the issue of having any belongings at any cubic foot level.

Mr. Rankin explained that the issue was not in front of the 9th Circuit Court of Appeals.

Vice Mayor Uhlich clarified that it was the DOJ that she wanted to hear from.

Council Member Scott stated Vice Mayor Uhlich was suggesting one thing, but said the City Attorney, who dealt with these situations on a legal side, already said that would not happen. She said she did not think the DOJ was going to look at the City of Tucson's sidewalk ordinance and cubic feet.

Vice Mayor Uhlich said, given the fact that HUD was now predicating whether or not award federal funds, a mechanism must be in place to assess what constituted criminalizing homelessness and what did not, because someone in HUD was deciding on every single continuum of care NOFA application. She said she appreciated Council Member Kozachik's substitute motion because it was not worth it to put that at risk and felt the ordinance could be reviewed by the DOJ.

Vice Mayor Uhlich asked if bottled water was considered a beverage in Option 1 that could not be distributed without a permit.

Mr. Rankin stated it captured beverages without an exception for pre-packaged non-perishables and would only be if it was offered to the public of more than 10.

Vice Mayor Uhlich asked for a reminder of the enforcement mechanism and what the repercussions were if somebody, who did not know, brought water and more than 25 people came. She asked what the fine was and if it was a civil or a criminal fine. She also asked for people with other elements, were they all civil and all fines that were levied.

Mr. Rankin responded that it without a permit; it was a civil infraction, under Chapter 21, with a fine of \$100. In response to her second question, he said he had to double check because quite frankly the City had not cited people for engaging in activity without the permit; they usually received a notice.

Vice Mayor Uhlich stated she wished the item could be continued because she was concerned about the process.

Mayor Rothschild asked for confirmation that bottled water was considered pre-packaged, non-perishable which was exempt.

Mr. Rankin responded he was correct and it was except under the current code. He said part of the amendments to the permit requirements took that exception away.

Mayor Rothschild said his understanding of the substitute motion was that during the day, you could keep your belongings with you wherever you were and during the evening their belongings could be placed on the sidewalks so long as there was a five foot clearance.

Mr. Rankin confirmed there had to be a five foot clearance and had to be within the three feet of the furthest area of the sidewalk, so if it was nine feet, they had to be within the three feet from the park.

Mayor Rothschild asked if the substitute amendment was passed, and there was 12 feet of sidewalk, then they could have more stuff on the sidewalk because there were no restrictions other than keeping the five feet clearance.

Mr. Rankin stated, the substitute motion as he heard it, would take out the size limit of individual items.

Mayor Rothschild said that was correct except for that it did not take out the ingress and egress.

Council Member Romero asked how the Ordinance would be reviewed, was it at the police officer's discretion.

Mr. Rankin responded that it would be the police officers enforcing the provisions and if the City ran into issues, it would come back to the Mayor and Council. He pointed out that if the Ordinance was amended or revised in such a way that there was no size limit on the exception, pods could be placed on the sidewalk that would be there at night and moved into parks during the day.

Mayor Rothschild stated he was concerned that if there are not any kind of restrictions, the City was back to square one.

The substitute motion to adopt Option 1 with the permits piece and leave out the size limit failed by a roll call vote of 1 to 6 (Council Members Romero, Cunningham, Scott and Fimbres, Vice Mayor Uhlich and Mayor Rothschild dissenting).

A substitute motion was made by Vice Mayor Uhlich to continue the item to the meeting of December 15, 2015. The motion died due to a lack of a second.

Mr. Rankin stated before going to the original motion, he asked if the intent of the motion was to exempt the distribution of bottled water.

Council Member Scott confirmed that was correct.

Ordinance 11331, Option 1, with amendments, was passed by a roll call vote of 5 to 2 (Vice Mayor Uhlich and Council Member Kozachik dissenting).

14. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Rothschild announced City Manager's communication number 459, dated December 8, 2015, was received into and made part of the record.

It was moved by Council Member Fimbres, duly seconded, and passed by a voice vote of 7 to 0, to appoint Luis Manjarrez to the Metropolitan Education Commission (MEC), David Marhefka to the Design Review Board (DRB), Martin Dressner and Gary Ochoa to the Veterans' Affairs Committee (VAC), and Camila Martins-Bekat to the Economic and Workforce Development Selection Committee (EWDSC).

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

Council Member Cunningham announced his personal appointment of Shannon McBride-Olson and the reappointment of Quentin Bryson to the Planning Commission.

15. ADJOURNMENT

- a. The next regularly scheduled meeting of the Mayor and Council will be held on Tuesday, December 15, 2015, at 5:30 p.m. in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

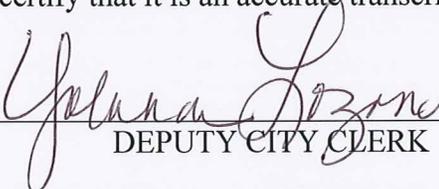
MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 8th day of December, 2015, and do hereby certify that it is an accurate transcription.



DEPUTY CITY CLERK

RWR:drl:yl