



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on November 21, 2017.

Date of Meeting: March 21, 2017

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 5:32 p.m., on Tuesday, March 21, 2017, 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
Paul Cunningham
Karin Uhlich
Shirley C. Scott
Richard G. Fimbres
Steve Kozachik
Jonathan Rothschild

Vice Mayor, Council Member Ward 1
Council Member Ward 2
Council Member Ward 3
Council Member Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor

Absent/Excused:

None

Staff Members Present:

Michael J. Ortega
Roger W. Randolph
Dave Deibel

City Manager
City Clerk
Deputy City Attorney

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Rabbi Yehuda Ceitlin, Chabad of Tucson, after which the Pledge of Allegiance was presented by the entire assembly.

Presentations:

- a. Students from the Joint Technological Education District (JTED) Project Search gave a presentation of the Gettysburg Address.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Rothschild announced City Manager’s communication number 75, dated March 21, 2017, 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 Vice Mayor Romero and Council Members Cunningham and Fimbres. 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 76, dated March 21, 2017, 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. 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 85, dated March 21, 2017, 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. Black Bear Diner, Ward 6
6095 E. Broadway Blvd.
Applicant: Andrea Dahlman Lewkowitz
Series 12, City 9-17
Action must be taken by: March 26, 2017

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)

Location Transfer(s)

2. The Blind Tiger Restaurant & Bar, Ward 6
628 N. 4th Ave.
Applicant: Michael Conrad Kramkowski
Series 6, City 7-17
Action must be taken by: March 17, 2017

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

Public Opinion: Written Arguments Opposed Filed

This item was considered separately.

NOTE: State law provides that for a location transfer, Mayor and Council may consider whether the public convenience requires and that the best interest of the community will be substantially served by the issuance of a license at that location. (A.R.S. Section 4-203; Rule R19-1-102)

c. Special Event(s)

1. Tucson Celtic Festival Association, Ward 3
3054 N. 1st Ave.
Applicant: Erin Renee Haugen
City T20-17
Date of Event: April 8, 2017
(Tartan Day Scottish Festival)

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

2. St. Joseph Parish, Ward 6
215 S. Craycroft Rd.
Applicant: Mathias Peter Wirtz
City T22-17
Date of Event: May 5, 2017 - May 6, 2017
(Social Event)

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

3. Tucson Botanical Gardens, Ward 6
2150 N. Alvernon Way
Applicant: Mary Ann Confrey
City T26-17
Date of Event: April 28, 2017
(Frida Friday Fundraiser)

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

4. Tucson Botanical Gardens, Ward 6
2150 N. Alvernon Way
Applicant: Mary Ann Confrey
City T27-17
Date of Event: May 26, 2017
(Frida Friday Fundraiser)

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

5. El Grupo Youth Cycling, Ward 1
610 N. 9th Ave.
Applicant: Daniela Natale Diamente
City T28-17
Date of Event: April 15, 2017
(Fundraiser)

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

6. Living Streets Alliance, Ward 6
311 E. 7th St.
Applicant: Kylie Walzak
City T29-17
Date of Event: April 9, 2017
(Fundraiser)

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

7. Clean Energy Corporation, Ward 6
146 E. Broadway Blvd.
Applicant: Valerie A. Rauluk
City T30-17
Date of Event: April 6, 2017
(CEAC Dinner)

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

8. St. Mark's Presbyterian Church, Ward 6
3809 E. 3rd St.
Applicant: Alicia Diane Durbin
City T32-17
Date of Event: April 7, 2017
(Fundraiser)

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

9. Cystic Fibrosis Foundation, Ward 6
134 S. 5th Ave.
Applicant: MeMe Aguila
City T33-17
Date of Event: April 4, 2017
(Fundraiser)

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

d. Agent Change/Acquisition of Control/Restructure

1. Lucky J Market, Ward 3
1285 E. Prince Rd.
Applicant: Jitendra Jayantibhai Patel
Series 9, City AC1-17
Action must be taken by: March 27, 2017

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

2. Louis Market, Ward 5
4009 S. 12th Ave.
Applicant: Gang Sheng Li
Series 9, City AC2-17
Action must be taken by: March 31, 2017

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 Cunningham, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license applications 5b1, 5c1 through 5c9, 5d1 and 5d2 to the Arizona State Liquor Board with a recommendation for approval.

5. LIQUOR LICENSE APPLICATIONS

b. Location Transfer(s)

- 2. The Blind Tiger Restaurant & Bar, Ward 6
628 N. 4th Ave.
Applicant: Michael Conrad Kramkowski
Series 6, City 7-17
Action must be taken by: March 17, 2017

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

Public Opinion: Written Arguments Opposed Filed

Council Member Kozachik wanted to clarify that the principle use at the location was a restaurant and not a bar and the applicant agreed to work with the surrounding residents.

It was moved by Council Member Kozachik, duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license applications 5b2 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:

- | | | |
|-----------------|----------------|--------------|
| Robert Reus | Dan Linhart | Mitzi Cowell |
| Mark Spear | Jim Parks | Clark Knobel |
| Susan Kinkade | Sheldon Gutman | Karen Wilson |
| Marello Mottolo | Jeff Seligman | |

Mayor Rothschild directed staff to have the Tucson Department of Transportation contact Mr. Reus to evaluate his situation.

Mayor Rothschild asked staff to get with Mr. Seligman to address his concerns with law enforcement activities.

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

7. CONSENT AGENDA – ITEMS A THROUGH O

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 MAR21-17-77 CITY WIDE
2. Mayor and Council Regular Meeting Minutes of October 5, 2016
3. Mayor and Council Study Session Legal Action Report and Minutes of October 5, 2016

b. ELECTIONS: CALLING THE 2017 PRIMARY AND GENERAL ELECTIONS AS VOTE BY MAIL ELECTIONS

1. Report from City Manager MAR21-17-78 CITY WIDE
2. Ordinance No. 11433 relating to Elections; pursuant to the provisions of Tucson Charter Chapter IV, Section 1(20) and Chapter XVI, Section 6; Tucson Code Section 12-38; and Arizona Revised Statutes Section 16-409, calling the August 29, 2017 City primary election and the November 7, 2017 City general election, and giving notice that these elections, and any special elections occurring on either of those dates, will be conducted as mail ballot elections supplemented by on-site voting locations in each Ward; and declaring an emergency.

c. TUCSON CODE: AMENDING (CHAPTER 16) THE "NEIGHBORHOOD PRESERVATION ORDINANCE," RELATING TO UNRULY GATHERINGS

1. Report from City Manager MAR21-17-83 CITY WIDE
2. Ordinance No. 11445 Relating to Neighborhood Preservation; Amending Chapter 16 of the Tucson Code, the "Neighborhood Preservation Ordinance"; amending regulation of Unruly Gatherings to increase penalties; by amending Section 16-32 of the Tucson Code; and declaring an emergency.

(This item was considered separately at the request of Vice Mayor Romero.)

d. TUCSON CODE: AMENDING (CHAPTER 20) PROHIBITING THE USE OF HANDHELD MOBILE TELEPHONES OR PORTABLE ELECTRONIC DEVICES WHILE DRIVING

1. Report from City Manager MAR21-17-79 CITY WIDE

2. Ordinance No. 11442 relating to Distracted Driving; prohibiting the use of handheld mobile telephones or portable electronic devices by repealing and replacing Chapter 20, motor vehicles and traffic, Article V, Section 20-160 relating to the use of handheld wireless communication devices while driving; classifying violation as a secondary offense; and setting an effective date.

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

- e. TUCSON CODE: AMENDING (CHAPTER 11) PROHIBITION OF HATE CRIMES AND INSTITUTIONAL VANDALISM
 1. Report from City Manager MAR21-17-80 CITY WIDE
 2. Ordinance No. 11443 relating to Hate Crimes; amending the Tucson Code, Section 11-30 relating to the prohibition of hate crimes and institutional vandalism; and declaring an emergency.
- f. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY ONE STOP FOR THE WORKFORCE INNOVATIONS OPPORTUNITIES ACT PROGRAM
 1. Report from City Manager MAR21-17-84 CITY WIDE
 2. Resolution No. 22717 relating to Intergovernmental Agreements (IGA) and Housing and Community Development; approving, and authorizing execution of an IGA between Pima County One Stop and the City of Tucson (City) for operation of the Workforce Innovations Opportunities Act (WIOA) Program; and declaring an emergency.
- g. INDUSTRIAL DEVELOPMENT AUTHORITY: APPROVAL OF ISSUANCE OF MULTIFAMILY HOUSING REVENUE BONDS FOR CATALINA VILLAGE ASSISTED LIVING APARTMENTS
 1. Report from City Manager MAR21-17-81 WARD 6
 2. Resolution No. 22722 a Resolution of the Mayor and Council of the City of Tucson, Arizona approving the issuance of the Industrial Development Authority of the City of Tucson, Arizona authorizing the issuance of its Multifamily Housing Revenue Bonds (Catalina Village Assisted Living Apartments Project), Series 2017 A and the Industrial Development Authority of the City of Tucson, Arizona authorizing the issuance of its Multifamily Housing Revenue Bonds (Catalina Village Assisted Living Apartments Project), Taxable Series 2017 B in an aggregate principal amount not to exceed \$7,000,000, (individually and collectively the "bonds"); and declaring an emergency.

- h. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY FOR FURNISHING OF TALL POTS
 - 1. Report from City Manager MAR21-17-86 CITY WIDE
 - 2. Resolution No. 22720 relating to Intergovernmental Agreements (IGA) and Transportation; approving amendment No. 3 to the IGA between Pima County and the City of Tucson (City) for furnishing of tall pots; and declaring an emergency.

- i. TRANSPORTATION: APPROVING THE TITLE VI FARE EQUITY ANALYSIS FOR PROMOTIONAL FARES
 - 1. Report from City Manager MAR21-17-87 CITY WIDE AND OUTSIDE CITY
 - 2. Resolution No. 22718 relating to Transportation and Public Transit; approving the Title VI Service Equity Analysis for promotional fares; and declaring an emergency.

- j. TRANSPORTATION: AUTHORITY TO ACQUIRE RIGHT OF WAY FOR THE EL PASO AND SOUTHWESTERN GREENWAY PROJECT
 - 1. Report from City Manager MAR21-17-88 WARD 1
 - 2. Resolution No. 22719 relating to Transportation; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain real property needed as rights of way for construction of the El Paso and Southwestern Greenway Project - St. Mary's Road to Congress Street; and declaring an emergency.

- k. INTERGOVERNMENTAL AGREEMENT: WITH THE TOWN OF ORO VALLEY RELATING TO DELIVERY OF CENTRAL ARIZONA PROJECT WATER
 - 1. Report from City Manager MAR21-17-89 OUTSIDE CITY
 - 2. Resolution No. 22721 relating to Intergovernmental Agreements; approving and authorizing execution of an Intergovernmental Agreement between the Town of Oro Valley and the City of Tucson relating to the delivery of Central Arizona Project Water and the cancellation of any remaining terms of the 2004 Water Service Intergovernmental Agreement; and declaring an emergency.

1. EXECUTIVE DEFERRED COMPENSATION PLAN AND TRUST: AMENDING EMPLOYMENT AGREEMENTS OF THE CITY'S EXECUTIVE OFFICIALS (CONTINUED FROM THE MEETING OF MARCH 7, 2017)
 1. Report from City Manager MAR21-17-90 CITY WIDE
 2. Ordinance No. 11440 authorizing and approving the City of Tucson Executive Deferred Compensation Plan and Trust and declaring an emergency.
 3. Ordinance No. 11441 relating to the Employment Agreements with the City Manager, the City Clerk and the City Attorney; authorizing and approving Amendment No. 2 to the Employment Agreement with the City Manager; authorizing and approving Amendment No. 1 to the Employment Agreement with the City Attorney; authorizing and approving Amendment No.1 to the Employment Agreement with the City Clerk; and declaring an emergency.

- m. PARKS AND RECREATION: AUTHORIZING AND APPROVING A FACILITY DEVELOPMENT AND USE AGREEMENT WITH RINCON LITTLE LEAGUE FOR THE DESIGN AND CONSTRUCTION OF A TWO-CELL BATTING CAGE AT PURPLE HEART PARK
 1. Report from City Manager MAR21-17-93 WARD 4
 2. Resolution No. 22724 relating to Parks & Recreation; authorizing and approving a Facility Development and Use Agreement between the City of Tucson and Rincon Little League for the design and construction of a two-cell batting cage at Purple Heart Park; and declaring an emergency.

- n. MAYOR AND COUNCIL: AMENDING THE 2017 MAYOR AND COUNCIL MEETING SCHEDULE
 1. Report from City Manager MAR21-17-94 CITY WIDE
 2. Ordinance No. 11444 relating to Administration; amending the Mayor and Council's 2017 meeting schedule to schedule a new regular meeting for Monday May 22, 2017, for the purpose of canvassing the May 16, 2017 Special Election, should the results be ready and quorum of the Mayor and Council be available; and declaring an emergency.

- o. PARKS AND RECREATION: AMENDED AND RESTATED LEASE AGREEMENT BETWEEN THE CITY OF TUCSON AND THE ARIZONA BOARD OF REGENTS FOR USE OF HI CORBETT FIELD FOR UNIVERSITY OF ARIZONA BASEBALL
 1. Report from City Manager MAR21-17-95 WARD 6 AND CITY WIDE

2. Resolution No. 22725 relating to Real Property and Parks and Recreation; authorizing and approving the amended and restated lease agreement between the City of Tucson (City) and the Arizona Board of Regents for use of Hi Corbett Field for University of Arizona Baseball; and declaring an emergency.

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

Roger W. Randolph, City Clerk, announced the City Attorney had a correction to read into the record.

Dave Deibel, Deputy City Attorney, stated staff was in contact with the University of Arizona (UofA) and they were in agreement to add into the lease agreement that the City of Tucson's Waste and Recycling Services would be used as opposed to other vendor services. He said that correction would be taken care of prior to executing the agreement.

It was moved by Council Member Uhlich, duly seconded, and passed by a roll call vote of 7 to 0, that Consent Agenda Items a – o, with the exception of Items c, d and o, which were considered separately, be passed and adopted and the proper action taken.

7. CONSENT AGENDA – ITEM O

o. PARKS AND RECREATION: AMENDED AND RESTATED LEASE AGREEMENT BETWEEN THE CITY OF TUCSON AND THE ARIZONA BOARD OF REGENTS FOR USE OF HI CORBETT FIELD FOR UNIVERSITY OF ARIZONA BASEBALL

1. Report from City Manager MAR21-17-95 WARD 6 AND CITY WIDE
2. Resolution No. 22725 relating to Real Property and Parks and Recreation; authorizing and approving the amended and restated lease agreement between the City of Tucson (City) and the Arizona Board of Regents for use of Hi Corbett Field for University of Arizona Baseball; and declaring an emergency.

Mayor Rothschild announced Council Member Kozachik recused himself due to conflict of interest.

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

Council Member Cunningham asked the City Attorney if the Arizona Board of Regents were amendable to all the other discussions that occurred in the afternoon's Study Session.

Dave Deibel, Deputy City Attorney, replied staff would endeavor to get those into the agreement.

Consent Agenda Item o was passed and adopted and the proper action taken by a roll call vote of 6 to 0 (Council Member Kozachik recused due to conflict of interest).

7. CONSENT AGENDA – ITEM C

c. TUCSON CODE: AMENDING (CHAPTER 16) THE "NEIGHBORHOOD PRESERVATION ORDINANCE," RELATING TO UNRULY GATHERINGS

1. Report from City Manager MAR21-17-83 CITY WIDE
2. Ordinance No. 11445 Relating to Neighborhood Preservation; Amending Chapter 16 of the Tucson Code, the "Neighborhood Preservation Ordinance"; amending regulation of Unruly Gatherings to increase penalties; by amending Section 16-32 of the Tucson Code; and declaring an emergency.

Roger W. Randolph, City Clerk, announced the next item to be considered separately was Item c at the request of Vice Mayor Romero.

Vice Mayor Romero requested if those who worked on the modification of the Ordinance could go through the process and protocol as to the suggested changes.

Dave Deibel, Deputy City Attorney, requested that the question be repeated and/or clarified.

Vice Mayor Romero asked if he could talk about process that was used in terms of including public conversation and the thought behind the additional charges added to this Ordinance.

Mr. Deibel stated the information was taken from the study sessions held. He said they also contacted the University of Arizona (UofA) to work in conjunction with them because they were the ones that enforced the Red Tags along with the City. He said, in terms of the fines, they were basically taken from direction of the Mayor and Council.

Vice Mayor Romero asked if there were any neighborhoods, groups, or students that were part of the conversation as these changes were being put together.

Mr. Deibel replied the City Attorney's Office did not participate in a public process when this was done.

Vice Mayor Romero inquired if any of the offices involved had any conversations in this regard.

Council Member Kozachik stated his office had heard from area neighborhoods, and there were about forty-two neighborhood associations in Ward 6. He said probably a dozen of them surrounded the UofA campus and he heard from them at the beginning of every semester that this was a huge issue. He said that it was a waste of Tucson Police resources and every weekend during the athletic seasons, to go out and bust parties.

Council Member Kozachik referenced back to one of the changes being made that was a violation classified as a second offense. He said going forward, allowing the City to recover up to a thousand dollars of police costs was absolutely appropriate.

Council Member Fimbres stated his office had met with several groups, along with UofA Staff, Tucson Police Department and several of the people in fraternities on the south side of Broadway, to try and settle this issue. One area of concern was the mini dorms, which had issues steaming from incidents where lewd, destructive behavior had been appraised by constituents. He advised that if people could behave, the City did not have to go to this extreme.

Vice Mayor Romero asked if the UofA had a protocol in engaging students on proper behavior and how to behave in neighborhoods where they live.

Council Member Kozachik said the UofA Dean of Students gets involved when there is a criminal charge.

Vice Mayor Romero inquired if there were any potential consequences to the students.

Council Member Kozachik answered UofA had a Code of Conduct, which was fairly lame, but they did not get involved until there was criminal involvement.

Council Member Fimbres stated there was an orientation the UofA conducted for students who choose to live off campus and that there was a web site with the information as well.

Vice Mayor Romero stated she has been feeling uncomfortable about the red tag ordinance for quite some time and had expressed them before. She said she was concerned how the ordinance was written whereby a gathering of five or more individuals was being classified as an unruly gathering and how it presented cultural issues. She said she understood Ward 1 was not as central and close to the UofA as other wards but the amount was punitive. She stated she wanted to know the thought process in adding the additional charges to the red tag ordinance.

Council Member Uhlich said Ward 3 was adjacent to the UofA and had heard extensively from neighbors about the disruptions and the loss of quality of life that a pattern of unruly gatherings could cause for people. She said they lose the peaceful enjoyment of their home if there were repetitive unruly gatherings. She said the question was raised as to how an unruly gathering was defined including whether there was

specificity with the regard to the noise level associated. She said she apologized for not raising this sooner and asked for the definition of an unruly gathering.

Mr. Deibel replied that an unruly gathering was defined very similar to the disorderly conduct standard in state statute. He said typically a police officer shows up on the scene, and if they cannot hear the disruptive level when they approach the gathering, they may make contact and inform them that their address has been associated with a call. He said in his experience, the police officer did not site them unless there was an unreasonable amount of noise for the area which differed for a townhouse to an apartment, to a residential single family community. He stated there was a hearing process available to the person(s) being cited and it was a civil citation and not criminal.

Council Member Uhlich noted that the fine levels for an unruly gathering far exceeded the fine levels for an accident caused by holding a hand held device. She said she recalled from an earlier Study Session the council had discussed the fine levels should be significant if a driver was distracted by the use of a hand held device and caused an accident, it should be a secondary offense, which was not reflected in the current fine levels. She said these issues needed to be treated in context and if parties are being treated at this level, and the secondary fines are not near this, it was offensive to people who lost loved ones because of someone being distracted by a hand held device.

Council Member Cunningham asked how many students were met with and involved in this process.

Council Member Kozachik answered over a course of four years, hundreds of students were met with on site as well as landlords, the Dean of Students at the UofA, the Tucson Police Department (TPD) and the Ward 6 office. He stated this had been an on-going process to get to this stage adding the fines began lower than what they were now and that the City Council decided they were not sufficient enough to get people's attention.

Council Member Cunningham wondered if the Interfraternity Council (IFC), the Panhellenic Council (PC) or the Associated Students of the University of Arizona (ASUA) had a place at the table as a stake holder.

Council Member Kozachik replied ASUA dealt with the Dean of Students on a regular basis. He informed the Mayor and Council that the UofA was also going to institute a Red Tag Policy.

Council Member Cunningham said he was in agreement of where the City was trying to go and on cost recovery. He suggested giving the ASUA a seat at the table within the next two weeks.

Discussion continued regarding both sides of the issue.

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

Vice Mayor Romero asked how the UofA partnered with the City to address the issue. She stated she was glad the Dean of Students had considered passing a red tag ordinance; but wanted to see additional help from the UofA and actively participate. She said she understood that subsequent unruly gatherings were what the City was trying to nail down with the higher fines. She asked if there was a time frame attached to the second unruly gathering.

Mayor Rothschild replied the sole amendment being made was if there was a second offense made within the hundred and eighty days and said there was a limitation of one thousand dollars on what could be recovered.

Vice Mayor Romero asked if the possibility of a hearing was written into the ordinance.

Mr. Deibel replied there was. He said upon every citation the defendant had the option of having a hearing. He said this was an amendment mostly to the penalty section, but what it did was increase the minimum fine up to one thousand dollars and allowed for the recovery of response cost up to a thousand dollars.

Vice Mayor Romero asked if there it was the officer's discretion as to what to consider as an unruly gathering.

Mr. Deibel responded absolutely.

Mayor Rothschild said the ordinance read the fines would not exceed a thousand dollars.

Council Member Uhlich asked if the Ordinance was modeled after the City of Phoenix and ASU and if it was an exact mirror of their model.

Mr. Deibel said it was comparable to City of Phoenix and ASU's model.

Vice Mayor Romero said she appreciated Council Member Kozachik offering the students the opportunity to have conversations with him and the neighborhood. She said she understood the quality of life issues of the neighborhoods surrounding the UofA and wanted to make sure conversations were held and the case was clear on the process that was put into this amendment.

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

7. CONSENT AGENDA – ITEM D

d. TUCSON CODE: AMENDING (CHAPTER 20) PROHIBITING THE USE OF HANDHELD MOBILE TELEPHONES OR PORTABLE ELECTRONIC DEVICES WHILE DRIVING

1. Report from City Manager MAR21-17-79 CITY WIDE
2. Ordinance No. 11442 relating to Distracted Driving; prohibiting the use of handheld mobile telephones or portable electronic devices by repealing and replacing Chapter 20, motor vehicles and traffic, Article V, Section 20-160 relating to the use of handheld wireless communication devices while driving; classifying violation as a secondary offense; and setting an effective date.

Mayor Rothschild announced the next item to be considered separately was Item d at the request of Council Member Cunningham.

Council Member Cunningham explained his vision of the Ordinance and why he felt it should be made a primary offense if you get caught using a handheld device while driving. He said he would vote for a secondary offense, but asked the Mayor and Council to consider making it a primary offense.

It was moved by Council Member Cunningham, duly seconded, to approve the Ordinance and changing it from a secondary offense to a primary offense.

Vice Mayor Romero stated they had a very thorough discussion during the Study Session in regards to factual evidence from Lawyers Associations in California and American Civil Liberties Union showing how making this a primary offense would affect people of color. She said it was not hearsay, but actual research. She stated she did not see why this type of information was of no value to some of her colleagues. She said she felt if there was a way to have it stay secondary and with time, one year after the City could gather their own research, adjustments could be made.

Vice Mayor Romero suggested that if a violation occurred during a traffic accident, the civil penalty should be higher than two hundred fifty dollars. She continued saying that the higher penalty affected minorities and those people of color.

Council Member Uhlich stated during the Study Session, they indeed had a very robust conversation and she was persuaded by the points made at the table plus the benefits of Council Member Fimbres' experience as the Director of State Highway Safety who pointed them in the right direction as well.

Council Member Uhlich asked what were the maximum fines possible for both accident and non-accident incidents. She said obviously they wanted to perhaps have a gradation but the civil penalty were very low when they had asked for them to be very

high, particularly with regards to accident involved behavior. She said the intent of that was not to address people when the accident occurred; it was to dissuade the behavior with a severe penalty. She commented that some people still did not wear their seat belts, but knew if they were engaged in poor driving and got pulled over, that could be an additional violation, and so the point of higher fines was to send that message very clearly.

Mayor Rothschild asked what the maximum fines were for a misdemeanor like this.

Dave Deibel, Deputy City Attorney, responded the maximum fine was twenty-five hundred dollars. He said the fine placed in the Ordinance was a two hundred fifty dollar fine if the citation involved an accident and fifty dollars for a non-accident.

Council Member Uhlich said, depending on what happened with the motion on the floor, she wanted to propose increasing the penalty involving an accident to twenty-five hundred dollars and the non-accident to five hundred dollars.

Council Member Cunningham agreed the penalty fees should be changed whether it was a secondary or primary offense.

Mayor Rothschild reiterated Council Member Uhlich's statement on increasing the fees. He clarified the motion was to keep the offense secondary but increase the fines from fifty dollars to five hundred dollars and two hundred fifty dollars to two thousand five hundred dollars.

Council Member Uhlich agreed to the reiteration and added that the Ordinance also needed to be reviewed with the community in six months.

Council Member Kozachik clarified the fine amounts.

Council Member Uhlich stated the first accident involving hand-held devices was immediately twenty-five hundred dollars and the other fine levels had to do with non-accident related offenses. She stated that she was proposing the change as a friendly amendment, which was duly seconded.

Michael Ortega, City Manager, suggested for clarify, that under Section (D)(2), the section that actually showed the penalty amounts, a zero be added to each amount, simply multiplying them by ten. He said the first fine, instead of fifty dollars was five hundred dollars, the second instead of one hundred dollars was a thousand dollars and the third violation was two thousand dollars. He said in Section 3, it was the same in that instead of two hundred fifty dollars, it was two thousand, five hundred dollars.

Mayor Rothschild clarified the friendly amendment to the motion was to add a zero to each of the penalties, keep it as a secondary offense, and review it in six months.

Council Member Fimbres asked what Oro Valley's fine structure was. He said they were the only ones that had such an Ordinance and fee structure in place and added that not even the State had a hands free ordinance in place.

Mr. Deibel replied staff tried to keep the amounts consistent with the other jurisdictions in Pima County so that there was some consistency of enforcement and penalties across the board. He said he assumed Oro Valley's Ordinance was similar to the one the City was proposing.

Council Member Fimbres stated the State had a secondary seatbelt law in place and did not have a handheld device ordinance in place. He asked if the City was in violation with the State, and could they be challenged on the issue by the Attorney General.

Mr. Deibel replied the State currently did not prohibit the use of handheld devices while driving. He said if the State were ever to move in that direction they could very well pre-empt the City from doing that but currently they did not.

Council Member Fimbres asked if the State had not enacted a law, when other cities had or made seat belt usage a primary offence.

Mr. Deibel said those were very good questions but he was not sure and did not have an answer.

Mayor Rothschild reiterated the motion was still for a secondary offense.

Council Member Fimbres said he believed the suggested fines were too high and that an educational component to go along with an enforcement component was needed to change a driver's behavior. He suggested implementing the ordinance for a year, studying the evidence, making sure the officers were enforcing the law and then bringing it back for review. He asked about driver's who ate food while driving, read the newspaper, put on their makeup, etc.

Council Member Uhlich commented those people should also be sought out. She said it was different to not wear a seat belt and put your own life at risk, and there was not a person in the City who did not know that they could kill somebody by using a hand held device and given the consequences she did not think the fines were too excessive.

Mayor Rothschild said he supported the motion as a secondary offense with a review in six months. He said he believed there was an opportunity not to fine people who were displaying distracted driving. He stated if someone caused an accident, the fine should be available, whether the courts choose to use it or not. He said there was an argument for a primary offense after the six month implementation period.

Mayor Rothschild stated during earlier conversations, there was talk of an educational period.

Vice Mayor Romero stated she agreed with the violation amounts in order to send a message to drivers. She said she also understood the spirit of putting together a preventative measure.

Mr. Deibel said he wanted to clarify that the maximum offense for a criminal violation was twenty-five hundred dollars and the civil violation maximum was five hundred dollars plus any surcharges the courts added.

Vice Mayor Romero asked if the five hundred dollars was for non-accident violations.

Mr. Deibel replied it would be on both and as long as it was a civil infraction the maximum penalty was five hundred dollars.

Mayor Rothschild asked if the officer had the choice if it was a civil or criminal violation.

Mr. Deibel answered that under the *Tucson City Code*, any violation of the *Code* could also be charged as a class one misdemeanor.

Mayor Rothschild addressed the City Manager saying to make sure the Police Chief kept good statistics and officers were properly instructed on what their options were since the issue would be reviewed in six months.

Council Member Cunningham voiced his belief that this law should be a primary offense and not a secondary offense.

Vice Mayor Romero stated that there was research that showed that a primary offense did not help the fact that people would still use their handheld devices.

Council Member Scott asked for clarification on where they were on the actual fines since it has been revised. She asked if the top fine under this ordinance was still five hundred dollars or did it stair-stepped, or was it five hundred dollars across the board.

Mr. Deibel replied it would still need to be modified so that wherever you land on the third violation it was still equal to or less than five hundred dollars.

Council Member Scott asked if the recommendation was for the Council to continue the item and wait another two weeks or could they stair-step it in a logical way.

Mayor Rothschild commented that the Mayor and Council could keep it and add the zeros to the original fine amount. He said it was a question of whether it was a criminal offense or not.

Mr. Deibel (Response is inaudible.)

Council Member Scott expressed her concerns on what actions had or had not taken place during this discussion.

Mr. Deibel said the first offense could be placed at one hundred, two hundred, or even five hundred dollars.

Council Member Uhlich asked if these were state limitations on traffic violations.

Mr. Deibel clarified it was a limitation in the *City Code*.

Council Member Uhlich questioned that the Mayor and Council had just passed civil penalties related to unruly gatherings up to twenty-five hundred dollars, and stated she was confused by the direction being given by the Deputy City Attorney.

Mr. Deibel explained that the item in question was for civil traffic violations and the maximum fines for civil traffic violations were one thousand dollars.

Council Member Uhlich stated she understood and said that under traffic violations, five hundred dollars was the maximum and under a civil penalty it was one thousand dollars.

Council Member Scott asked if the ordinance should be delayed before enforcement could occur for thirty to forty-five days in order for an educational measure to occur.

Mr. Deibel replied they could insert a delayed effective date.

Council Member Scott said she wanted to hear from her colleagues about delaying the enforcement of the ordinance for thirty days. She asked for clarification of what the fines would be for the maximum civil traffic penalty.

Council Member Uhlich agreed to integrate an educational component. She clarified the amounts of the fines as two hundred fifty dollars for first non-accident violation, five hundred dollars for the second violation and five hundred dollars on any accident. She also stated the Mayor and Council would be back in six months to review researched gathered on the ordinance.

Mr. Ortega pointed out that the way the Ordinance was currently crafted; it did not become effective until May 1, 2017. He said they could immediately or even begin

on April 1st to start the educational process. He stated if the Mayor and Council chose to delay the Ordinance, it would be beyond May 1, 2017.

Mayor Rothschild asked the Deputy City Attorney if it was legal to say that the City could craft a criminal offense when an accident occurred and a determination was made that the accident was caused due to driving with a handheld device that was a criminal offense.

Mr. Deibel responded affirmatively. He said if that was what the Mayor and Council wished to do, that type of offense should be placed in the *City Code*, Chapter 11, Criminal Code.

Mr. Ortega suggested that the Mayor and Council leave it in the civil traffic area and in the six month review it can be discussed at that point changed it if necessary to a criminal offense. He said staff would be happy to do whatever the Council wished.

Council Member Uhlich stated her motion on the floor she felt that was where they would end up in six months; that it be a primary offense if it involved an accident. She said she wanted to take some kind of action on the issue that evening and the public education was key.

Council Member Romero asked for a point of clarification from Council Member Uhlich about the fine amount for the first offense.

Council Member Uhlich verified the amount as two hundred fifty dollars if there was no accident, five hundred dollars for the second violation and any other violation thereafter.

Mr. Deibel clarified the fine for an accident on the first offense was five hundred dollars.

Council Member Cunningham asked for an explanation on the voting process. He wanted to know that if he voted on the item as a secondary offense and it passed, could he then make another motion to make it a primary offense.

Roger W. Randolph, City Clerk, replied that once the vote was taken on the substitute motion making it a secondary offense that ended the process that evening. If Council Member Cunningham wanted to make it a primary offense, it would have to be brought back for reconsideration at a future meeting.

The substitute motion made by Council Member Uhlich, duly seconded and passed by a roll call of 5 to 2 (Council Members Fimbres and Kozachik dissenting), to keep the violation as a secondary offense, return in six months for review, add an educational component for the public, and increase the penalties to two hundred fifty dollars for a first offense with no accident, five hundred dollars for a second offense and thereafter with no accident, and five hundred dollars for all offenses involving an accident.

8. PUBLIC HEARING: AMENDING AND RESTATING THE INTERGOVERNMENTAL AGREEMENT WITH PIMA COUNTY FOR FUNDING OF ROADWAY IMPROVEMENTS; REQUESTING PIMA COUNTY BOARD OF SUPERVISORS AMEND ITS BOND ORDINANCE TO ADJUST THE IMPLEMENTATION AND SCOPE FOR FUNDING OF ROADWAY IMPROVEMENTS – BROADWAY BOULEVARD: EUCLID AVENUE TO COUNTRY CLUB ROAD

Mayor Rothschild announced City Manager's communication number 91, dated March 21, 2017, was received into and made part of the record. He said this was the time and place legally advertised for a public hearing requesting the Pima County Board of Supervisors to amend Bond Ordinance 1997-80, which adopted the improvement of Broadway Boulevard- Euclid to Campbell as one of the projects to be funded, which will thereby extend the scope of the project easterly to Country Club Road, in conformance with the Broadway; Euclid to Country Club Roadway Improvement Project included in the Regional Transportation Plan.

Mayor Rothschild said the public hearing was scheduled to last for no more than one hour and speakers were limited to five-minute presentations.

Comments were made by:

Bob Cook
Camille Kushner
Mary Terry Schiltz

Jose D. Garcia
Les Pierce

Greg Clark
Margot Garcia

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

Mayor Rothschild asked the City Clerk to Read Resolution 22723 by number and title only

Resolution No. 22723 relating to Transportation and Intergovernmental Agreements: request to Pima County Board of Supervisors for Amendment to Pima County Bond Ordinance No. 1997-80; approval of the Amended and Restated Intergovernmental Agreement (IGA) between Pima County (County) and the City of Tucson (City) for Funding of Roadway Improvements - Broadway Boulevard: Euclid Avenue to Country Club Road; petitioning the County Board of Supervisors to Establish Expanded Project Area as County Highway; and declaring an emergency.

It was moved by Council Member Scott, duly seconded, to pass and adopt Resolution 22723.

Council Member Cunningham discussed his concerns with the Project. He said he was all for the Project moving forward but not before the East Broadway Project was complete.

Council Member Cunningham offered a friendly amendment to the motion to finish the project on East Broadway Project before beginning this project.

The amendment was not accepted by the motion maker.

Council Member Fimbres asked for an explanation in detail if this section of Broadway between Euclid to Country Club was declared a county highway. He also asked what the County's role would be.

Priscilla Lane, Department of Transportation Administrator, answered by declaring it a County Highway it allowed County Bond Funding to be spent on the project, it did not change how the roadway was managed, nor did it change how it was maintained. She said it was still a City roadway and would be maintained as a City arterial. She stated the only thing that changed was that the County would then be allowed, because it would be declared a county highway, to expend their bond funding on this stretch.

Council Member Fimbres asked what other City transportation projects were amended under County Bond Ordinance 1997-80.

Ms. Lane replied at minimum the Houghton Project, 22nd Street Project, 12th Avenue Project, Valencia Road Project, Golf Links Project, Speedway Boulevard Project, River Road Project, Wetmore Project and the Catalina Highway Project. She said many of these were partly in the city and partly in the county, but as time went by since 1997 there had been many changes and those were usually because the project got to a point in design that it needed a change.

Council Member Fimbres asked Ms. Lane to explain the process for review by the County Bond Advisory Committee and the Board of Supervisors in detail. He also inquired about the time frame for approval for the project.

Ms. Lane stated the County Bond Advisory Committee already approved the change to match the Regional Transportation Authority's (RTA's) project limits. She said the next step was to go to the Board of Supervisors for their approval.

Council Member Kozachik verified with staff on the directional route of Euclid to Country Club in that it went east to west. He said he wanted to put on the record the monies for this project could have been better spent. He said he did not think this project was achieving what the community asked for through the citizen task force project.

Resolution No. 22723 was declared passed and adopted by a roll call vote of 5 to 2 (Council Members Cunningham and Kozachik dissenting).

9. ZONING: (C9-16-08) VCA VALLEY ANIMAL HOSPITAL, R-2 TO P, CITY MANAGER'S REPORT

Mayor Rothschild announced City Manager's communication number 82, dated March 21, 2017, was received into and made part of the record. He said this is a request by The Planning Center, on behalf of the property owner, to rezone approximately 0.2 acres from R-2 to P zoning. The rezoning site is located at 4984 East 22nd Street. The preliminary development plan proposes employee and customer parking for a proposed expansion to the Valley Animal Hospital. He said the Zoning Examiner and staff recommend approval of P zoning.

It was moved by Council Member Scott, duly seconded, and passed by a roll call vote of 7 to 0, to approve the request as recommended by the Zoning Examiner.

10. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Rothschild announced City Manager's communication number 92, dated March 21, 2017, 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 Scott, duly seconded, and carried by a voice vote of 7 to 0, to approve the appointment(s) of Jerry D. Mejia to the Environmental Services Advisory Committee (ESAC), Zaira Livier Serrato to the City Magistrates Merit Selection Commission (CMMSC), Lester Craig to the Veterans' Affairs Committee (VAC), Michala Watson Krug and Meghan Elsbeth Hamer to the Pima County/Tucson Women's Commission (PCTWC).

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

Vice Mayor Romero announced her personal appointments of Debi Chess Mabie and Suzette Jimenez to the Civil Service Commission (CSC).

11. ADJOURNMENT: 7:57 p.m.

Mayor Rothschild announced the next regularly scheduled meeting of the Mayor and Council would be held on Wednesday April 5, 2017, 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 21st day of March 2017, and do hereby certify that it is an accurate transcription.


DEPUTY CITY CLERK

RWR:rg:ec