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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
on February 27, 2007

Date of Meeting: January 17, 2007

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 5:30 p.m. on Tuesday, January 17, 2007 all members having been notified of the time and place thereof.

### 1. ROLL CALL

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

Present:

José J. Ibarra	Council Member Ward 1 (departed at 7:13 p.m.)
Carol W. West	Vice Mayor, Council Member Ward 2
Karin Uhlich	Council Member Ward 3
Shirley C. Scott	Council Member Ward 4
Steve Leal	Council Member Ward 5
Nina J. Trasoff	Council Member Ward 6
Robert E. Walkup	Mayor

Absent/Excused: None

Staff Members Present:

Mike Hein	City Manager
Michael Rankin	City Attorney
Kathleen S. Detrick	City Clerk

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

The invocation was given by Sat Bir Kaur Khalsa of the Tucson Human Relations Commission, after which the pledge of allegiance was presented by the entire assembly.

Presentations:

- a. Mayor Walkup proclaimed January 15, 2007 as “Martin Luther King, Jr. Day.” Sat Bir Kaur Khalsa of the Human Relations Commission accepted the proclamation.
- b. Mayor Walkup presented certificates to the Catalina Foothills Falcon Marching Band in honor of the first Tucson high school band to be invited to perform in the Macy’s Thanksgiving Day Parade. Renee Shane-Boyd, Band Director, accepted the awards.
- c. Mayor Walkup presented a certificate to Maku Wood, a member of the Catalina Foothills Falcon Marching Band, in recognition of receiving the Bob Hope Band Scholarship Award.
- d. Mayor Walkup proclaimed January 15 through 19, 2007 as “Homes for Arizonans Week.” Jack Siry, Deputy Director for the Community Services Department, accepted the proclamation.

Kathleen S. Detrick, City Clerk, announced Susie Rogers would be assisting with anyone in the audience needing Spanish language translation for items listed on the agenda.

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

Mayor Walkup announced City Manager’s communication number 22 dated January 17, 2007 would be received into and made a part of the record. He also announced this was the time scheduled to allow members of the Council to report on current events and asked if there were any reports.

- a. Mayor Walkup congratulated Council Member Scott for being chosen as a Southern Arizona Home Builders Association (SAHBA) co-elected representative of the year, along with Representative Jonathon Paton.
- b. Mayor Walkup announced that he would be giving the State of the City Address on Friday, January 26 at the Tucson Convention Center in the Grand Ballroom. The Tucson Metropolitan Chamber of Commerce and the Great Tucson Leadership would be hosting this event.

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

Mayor Walkup announced City Manager's communication number 23, dated January 17, 2007, would be received into and made a part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

No report given.

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

Mayor Walkup announced City Manager's communication number 24, dated January 17, 2007, would be received into and made a part of the record. He asked the City Clerk to read the Liquor License Agenda.

New License(s)

1. My Brother's Place, Ward 6  
135 E. Congress St.  
Applicant: Ernest Dale Krull  
Series 12, City 123-06  
Action must be taken by: January 20, 2007  
Tucson Police Department and Revenue have indicated the applicant is not in compliance with City requirements.  
Considered Separately.
2. Rio Cafe, Ward 6  
2526 E. Grant Rd.  
Applicant: Richard Leland Epling  
Series 12, City 124-06  
Action must be taken by: January 28, 2007  
Staff has indicated the applicant is in compliance with city requirements.
3. Big L Market, Ward 5  
1353 S. 4th Ave.  
Applicant: David John Gutierrez  
Series 10, City 125-06  
Action must be taken by: January 29, 2007  
Tucson Police Department and Revenue have indicated the applicant is not in compliance with City requirements.  
Public Opinion: Written Argument Opposed Filed  
Considered Separately.

4. The French Quarter, Ward 6  
3146 E. Grant Rd.  
Applicant: Gayane Terzian  
Series 12, City 126-06  
Action must be taken by: January 29, 2007  
Staff has indicated the applicant is in compliance with city requirements.

c. Special Event

1. Santa Cruz Parish, Ward 5  
1220 S. 6th Ave.  
Applicant: William M. Sneyd  
City T89-06  
Date of Event: February 17, 2007 - February 18, 2007  
(52nd Fiesta de La Familia)  
Staff has indicated the applicant is in compliance with city requirements.

d. Agent Change

NOTE: There are no agent changes scheduled for this meeting.

It was moved by Council Member Ibarra duly seconded, and carried by a voice vote of 7 to 0, to forward liquor license applications 5b2 and 5b4 and 5c1 to the Arizona State Liquor Board with a recommendation for approval.

## 5. LIQUOR LICENSE APPLICATIONS

b. New License

1. My Brother's Place, Ward 6  
135 E. Congress St.  
Applicant: Ernest Dale Krull  
Series 12, City 123-06  
Action must be taken by: January 20, 2007  
Tucson Police Department has indicated the applicant is not in compliance with city requirements.

Kathleen S. Detrick, City Clerk, announced Item 5b1, was a request for a new license. Tucson Police Department had indicated the applicant was not in compliance with City requirements. A representative from the Tucson Police Department was present, and the applicant was also present. This liquor license application is located in Ward 6.

Council Member Trasoff asked if the applicant or representative was present and asked them to come forward.

Thomas Aguilera, representing the applicant, said this was a personal qualifications issue. He had one indulgence of the City Attorney. He said he thought what they were doing was dealing with a person qualifications issue in front of the Council. He added perhaps it was not the right time to make such a finding, but that was all he would be addressing.

Michael Rankin, City Attorney, replied it was Series 12.

Mr. Aguilera said then since it was a Series 12, and it was a new applicant, therefore it was a location issue as well. Mr. Aguilera said he would not focus on the location issue, as there were no protests from the community and no indications from anyone that there was a location issue.

Mr. Aguilera said there was a memorandum from the Tucson Police Department, which they just received and his applicant was apprised of it. The report from TPD noted an incident at the Raz, which was another restaurant owned by his client. His clients were going for a new Series 12, for My Brother's Place, located on Congress. The two owners were at the meeting.

Mr. Aguilera stated if person qualifications were what they were dealing with, and they knew from Council Member Trasoff's office that she would be recommending denial, he thought it was appropriate to come to the meeting and witness the hearing. At the same time, the applicants were also there to speak about their backgrounds. Mr. Aguilera said he could stand up there and tell the Council the good doctor was a great surgeon and a good family man, all those great things, and that he was a good businessman; however, that would come better from the applicant. He said he could sit there and tell the Council that Mr. Krull was a great restaurateur with a lot of restaurant experience from as far back as he was twelve years old; but again, that background would come better from the applicant.

Mr. Aguilera asked the applicants to come forward to present their personal qualifications, which he felt would overcome what he felt was a blip on the screen that happened at Raz one recent night. He said this was not indicative of the pattern on how the applicants ran their business at Raz.

Council Member Trasoff asked the applicants if one of them wished to speak. She added that in her own mind, it was not a question of a personal issue with any person, or even questioning them as individuals. It was really the record of another establishment operated by them and problems that had happened as recently as last week.

Dr. Amram Dahukey, said he was a physician-surgeon in Tucson for the past twenty-seven years. He has also been involved in other businesses, including restaurants and real estate development. The buildings have been primarily medical offices. He thanked the Council for the opportunity to speak. They have been involved in establishing a very high-class restaurant that was modeled on the European models.

Their application was for a restaurant downtown. It would have classical music during the day and dual piano at night, along with financial information on wide-screen.

Dr. Dahukey said they did have a blip at their other restaurant, but they were in the process of investigating, and repercussions on the staff would be made as soon as they determined who and what.

Dr. Dahukey stated they did enjoy employing a lot of people in Tucson. They felt they were part of the business community and wanted to proceed and continue to be a part of the business community. He asked for the Council's indulgence, and to give them a chance to prove that they were for real. They were not just a fly-by. They had the community's security and safety in mind all the time. He added that as an aside, he was now in the process of leasing space to Mother's Against Drunk Drivers (MADD), so he would be the last person to even be thinking of underage drinking or any other incidents that might have happened.

Council Member Trasoff called the representative from the Tucson Police Department to speak about the investigation and to explain why they recommended "Not in Compliance."

Sergeant Jim Stoutmeyer, Tucson Police Department Vice Unit, said part of his job was liquor licensing. He was there in reference to the application for My Brother's Place, City 123-06, from Ernest Krull. He asked to read the memo from the Tucson Police Department into the record.

"While researching the application submitted by Mr. Ernest Krull for My Brother's Place (license number 12103796) to be located at 135 E. Congress St., the following violations were noted:

- Mr. Krull is the licensee for Raz Restaurant, 1929 E. Grant Rd. (license #12103694). On September 9, 2006 a Raz Restaurant employee was found to have consumed spirituous liquor while performing in an employee capacity, in violation of A. R. S. 4-244.13 (reference Tucson Police case #0609090103). The State of Arizona Department of Liquor Licenses and Control issued a warning letter to Mr. Krull on November 28, 2006 regarding this incident and reminded Mr. Krull of his responsibility to ensure that all liquor laws and regulations are complied with by Mr. Krull and his employees.
- Tucson Police received a complaint on January 6, 2007 at Raz Restaurant regarding a check welfare on a twenty-year old female who had been drinking and was passing out (Tucson Police case #0701060023.) Upon further investigation, Tucson Police officers and a sergeant determined that three females under the age of twenty-one had been drinking at Raz Restaurant. It was also determined that one of the females had been passing out inside of the business.

The Tucson Police sergeant located the two other females in the restaurant's internal kitchen area, along with a male employee who was off-duty. At least one of the females admitted that restaurant employees had served her alcohol without asking for her identification. These Title 4 violations occurred on two separate occasions within months of each other.

Based on this information the Tucson Police Department has determined that Mr. Krull has not demonstrated the "capability, qualifications and reliability" called for in A. R. S. 4-203 with regard to his current liquor license and that his request for an additional liquor license for "My Brother's Place" is determined to be "Not in Compliance."

Council Member Trasoff told her colleagues on the Council she felt like she was between a rock in a hard place. She wanted to encourage the business, especially a new business downtown; but said there was no way she could recommend in favor of the application, given the most recent and quite egregious incident cited by the Police Department. She asked the applicants if they would be willing to withdraw their application so they would not have their time run out on January 20, to give them time to work things out with the Police Department. She said she did not know if things could be worked out, as this was still being investigated and she knew the issue had not been resolved. Again, she asked the applicants if they would be willing to withdraw their application, otherwise she would have to recommend to her colleagues that they not recommend it for approval.

Mr. Aguilera said that was an interesting question and asked for a few seconds with his clients.

Mr. Aguilera said in light of Sgt. Stoutmeyer's report, it was a personal qualifications issue from somebody the Council did not want to hear from tonight. In that light, he thought the process should continue so that they could continue to interface with Sergeant Stoutmeyer on those issues or with the City in any way they could, as they proceed to continue with the liquor license application. He said they would not withdraw their application; they wanted to continue with the process.

It was moved by Council Member Trasoff, duly seconded, and carried by a voice vote of 7 to 0, that liquor license application 5b1, My Brother's Place, be forwarded to the Arizona State Liquor Board with a recommendation for denial.

## 5. LIQUOR LICENSE APPLICATIONS

### b. New License

3. Big L Market, Ward 5  
1353 S. 4th Ave.  
Applicant: David John Gutierrez  
Series 10, City 125-06  
Action must be taken by: January 29, 2007  
Tucson Police Department and Revenue have indicated the applicant is not in compliance with City requirements.  
Public Opinion: Written Argument Opposed Filed

Kathleen S. Detrick, City Clerk, announced the final item to be considered on the liquor license applications was Item 5b3. This was an application for a new license for Big L Market. Tucson Police Department had indicated the applicant was not in compliance with City requirements and there were still outstanding issues with the Finance Department. Ms. Detrick also indicated they had received a written request from the applicant to continue this item for one week, which was allowable under the timeline. This liquor license application is located in Ward 5.

Council Member Leal acknowledged receiving the written request from the applicant, David Gutierrez, asking for a continuation until January 23, 2007. On the face of it, he said it seemed to be a simple request, and normally he would be inclined to be charitable to such a request. However, as he looked at the documents in front of the Council, he was inclined to not reach that conclusion.

Council Member Leal stated the requirement was to show that by granting the liquor license, the applicant would create convenience for the adjacent community in terms of access to alcohol. This would mean that right now there was a lack of convenience, which would then be satisfied by this new business. He added it was important to state at this point there were forty-two other liquor licenses within a mile: eight bars, nine liquor stores, eleven beer and wine licenses, etc. Convenience was therefore really not a problem.

Council Member Leal stated that over the years the Fire Department has told him about a term called “man-down”, which was how often paramedics come to pick up someone who is out of it and take them to the emergency room. The pay phone at the Quick Mart close to the location had more “man-down” calls than the three other telephone booths anywhere else in the City, combined.

Council Member Leal continued they had a letter written by the Santa Rita Neighborhood, represented by Oscar Rendon, explaining what a dilemma it was in the area and how hard they have worked to try to improve things. Council Member Leal added there were back taxes that were owed. There were also things that were not filled out right on the application regarding criminal history, and they were not insignificant:



selling tobacco to minors, urinating in public, and two charges for soliciting prostitution on different occasions. He hoped everyone understood why one week would not matter. It was for those reasons he felt compelled, and said it was more than appropriate, to forward a recommendation of denial.

It was moved by Council Member Leal, duly seconded, that liquor license application 5b3, Big L Market, be forwarded to the Arizona State Liquor Board with a recommendation for denial

Ms. Detrick asked if the applicant or representative was present before proceeding with the roll call vote.

Patrick Lopez, attorney from Mesch, Clark and Rothchild, said he was representing Ly Soung, the current owner of the Big L Market. There was a contract to sell it to the applicant, which was currently in the works. He said it was not actually an application for a new license. The Big L Market currently had a liquor license with Ly Soung. He believed it was an application to transfer the license to the buyer, David Gutierrez. He said John Rothchild from his office called the City Clerk's Office to request a continuance of the hearing to the next meeting. He said Mr. Rothchild had "Operation Deep Freeze" responsibilities and he asked him to come to the meeting to make the request.

Mr. Lopez said he understood all the comments that were made, but urged the Council to continue the hearing to the meeting of January 23, primarily because there were some things that needed to be clarified in the record that the Council had before them. For example, he mentioned the tax issue and said Mr. Gutierrez had a cashier's check in his hand and was late in getting that payment made before the meeting. He had the check and was going to make the payment immediately the next day. Then he would have the documentation and everything else he needed to make sure the record the Council had before them was complete.

Mr. Lopez also said there was a necessity based upon the report that was given to the Council at the meeting by the Tucson Police Department to amend the application for the transfer of the license, so the Council could have a complete record before them on the application. It was for those reasons they were requesting the continuance of the hearing for one week, so that no matter what happened at the meeting, there would at least be a complete and full record for the Council's review.

Council Member Leal advised Mr. Lopez that on a new license, the issue was convenience. He asked for clarification that what they were requesting was not a new license, but instead a person to person transfer.

Mr. Lopez replied it was his understanding this was a person to person transfer. He asked to explain what the circumstances were.

Council Member Leal said he could only deal with what the application said, and the application said it was a “New License, Series 10.” It did not say “Person to Person Transfer.”

Mr. Lopez said in that case, there was a dire need for the amendment of the application, because this was a sale of the business from his client to Mr. Gutierrez. It was a transfer of the license from the Big L Market that was owned by his client now, to the buyer.

Council Member Leal replied that in that case, they were confronted with an additional irony in this case. For a person to person transfer, the criteria for judging ‘yes’ or ‘no’ was not convenience. It was suitability and fitness of character. He said either doorway the applicant wanted to go through was fairly perilous. He was primarily concerned that there was an error in the application; that the new series 10 was really not what was asked for, but they wanted a person to person, and right now they were operating without a license at all. He asked the City Attorney for clarification under the new circumstances.

Michael Rankin, City Attorney, replied what might be contributing to the confusion was that there were only a certain series of licenses that were transferable. For example, referring to the discussion of the prior liquor license application, an important issue was that a series 12 was a non-transferable license. Therefore, any application would be a new application. He thought this was the same issue they were running into now. The application in front of the Council was a new license, so both prongs of the test would be at play: capability, qualification, and reliability, as well as the location.

Council Member Leal said the applicant would not just have to satisfy one issue; he would have to satisfy both at the same time. He told the applicant that was irrespective of whether or not all the issues in terms of criminal history would somehow be done away with. There was still the fundamental issue of concentration and saturation that came with the forty-two other licenses within a mile. His recommendation would be ‘no’, to forward the recommendation of a denial. Delaying the item would not change in a week.

Mr. Lopez said he appreciated Council Member Leal’s comments. He said the Big L Market owned by his client, adding that the representative for Mr. Gutierrez was there as well, had a liquor license to operate the Big L Market. They were just trying to work out the necessities to get the business sold. If the business was not sold, it would still be operated by his client.

Ms. Detrick announced the representative from the Tucson Police Department was there to read their report into the record.

Sergeant Jim Stoutmeyer, Tucson Police Department Vice Unit, read the following report into the record.

“While researching the application submitted by Mr. David Gutierrez for the Big L Market to be located at 1353 S. 4<sup>th</sup> Avenue, the following inconsistencies were found:

- Mr. Gutierrez submitted an Arizona Department of Liquor Licenses and Control Liquor License questionnaire with a notarized signature from October 30, 2006 and an additional addendum dated December 30, 2006. Both forms ask questions pertaining to criminal history. Question #15 specifically states, “Have you EVER been detained, cited, arrested, indicted or summoned into court for violation of ANY law or ordinance (regardless of the disposition even if dismissed or expunged)?” Mr. Gutierrez indicated “yes” regarding this question and submitted a hand written sheet explaining why he had answered yes. While researching this application, the Tucson Police Department located a Tucson Police report (#0601210321) from Lamp Post Liquor, located at 1820 N. Oracle Road, listing Mr. Gutierrez as an arrestee. Upon further investigation into the case, Tucson Police learned that Mr. Gutierrez had been cited for A. R. S. 13-3622 (Furnishing Tobacco to a Minor), which was a petty offense. Mr. Gutierrez did not mention this incident in either of his completed questionnaires.
- Mr. Gutierrez was recontacted on December 16, 2006 by telephone at his business. Mr. Gutierrez was asked if there was any information that was not included in his application packet regarding police contact and Mr. Gutierrez stated there was not. Mr. Gutierrez was asked if there had been any police contact since he submitted his completed application and he again stated there had not been any contact. Mr. Gutierrez did not mention his involvement in an investigation at his business nor his citation from January 21, 2006.
- Tucson Police Department contacted the Tucson City Court on January 4, 2007 to determine the disposition of Mr. Gutierrez’s case. It was determined that Mr. Gutierrez plead guilty to the charge on February 1, 2006.
- While speaking to Mr. Gutierrez, Tucson Police Department inquired about the criminal history he listed on the questionnaire. Mr. Gutierrez did not list the specific nature of the charges. Mr. Gutierrez advised that he had been arrested for urinating in public on one occasion and on two separate occasions for soliciting prostitution. Mr. Gutierrez stated he plead guilty to those three charges.”

Sergeant Stoutmeyer continued that the Tucson Police Department was offering a “Not in Compliance” recommendation on this application as based on the information provided.

Council Member Leal stated under the circumstances and given the information provided, he would leave his initial motion on the table to forward a recommendation for denial to the Arizona State Liquor Board.

Mr. Rankin said it was mentioned that the applicant and his representative were also present. He stated the Council heard from the representative of the current property owner, but the applicant had not been given the opportunity to speak. He asked if they wanted that opportunity.

No one came forward.

Hearing no one, Mayor Walkup asked for a voice vote on the motion.

The motion to forward liquor license application 5b3, Big L Market, to the Arizona State Liquor Board with a recommendation for denial was passed by a voice vote of 7 to 0.

**14. LICENSE RENEWAL: REQUESTING COX COMMUNICATIONS TO PROVIDE A FORMAL RENEWAL PROPOSAL TO THE CITY OF TUCSON**

(Note: This item taken was out of order.)

Mayor Walkup announced City Manager's Communication number 36, dated January 17, 2007, will be received into and made part of the record. He asked the City Clerk to read Resolution 20562 by number and title only.

Resolution No. 20562 relating to Cable Communications; adopting the findings by City staff of cable-related needs and interests; requesting Cox Communications to provide a formal request for a license renewal proposal to the City of Tucson; authorizing the City Manager to provide Cox Communications any required notices regarding past performance; and declaring an emergency.

Kathleen S. Detrick, City Clerk, stated there was a correction to the resolution to be read into the record. A final sentence had been added to the end of Section II of Resolution 20562 "Pursuant to the motion made at the end of Executive Session on January 17, 2007, the Request for Proposal may be suspended to provide for consideration of a written settlement proposal."

It was moved by Council Member Trasoff, duly seconded, to pass and adopt Resolution 20562, as amended.

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

Upon roll call, the results were:

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

Nay: Council Members Ibarra and Leal

Resolution 20562 was declared passed and adopted by a roll call vote of 5 to 2.

Kathleen S. Detrick, City Clerk, requested a second roll call vote for the sole purpose of the Emergency Clause.

Upon roll call, the results were:

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

Nay: None

Resolution 20562 was declared passed and adopted by a roll call vote of 7 to 0, with the Emergency Clause.

**8. ZONING: (C9-06-10) LLDN – VALENCIA ROAD, R-2 TO C-1 AND C-2, CITY MANAGER’S REPORT**

(Note: This item taken was out of order.)

Kathleen S. Detrick, City Clerk, stated that this item included a Zoning Examiner’s Report.

Mayor Walkup announced City Manager’s communication number 27, dated January 17, 2007 would be received into and made a part of the record. He also announced this was a request to rezone property located at the southwest corner of Valencia Road and Nogales Highway. The Zoning Examiner recommended approval of C-1 and C-2 zoning. Developmental Services recommended approval subject to certain conditions. Mayor Walkup asked if the applicant or representative was present and if they were aware of and agreeable to the proposed requirements.

Mr. William Podolsky, applicant, stated he was in agreement with the conditions of rezoning.

It was moved by Council Member Ibarra, duly seconded, to authorize the request for rezoning as recommended by the Zoning Examiner.

The motion to authorize the request for rezoning as recommended by the Zoning Examiner was declared passed and adopted by a voice vote of 7 to 0.

**12. WATER: NOTICE OF INTENTION TO INCREASE THE WATER SYSTEM EQUITY FEE, AND SCHEDULING A PUBLIC HEARING FOR MARCH 20, 2007**

(Note: This item taken out of order.)

Mayor Walkup announced City Manager's Communication number 33, dated January 17, 2007, would be received into and made part of the record. He asked the City Clerk to read Resolution 20560 by number and title only.

Resolution No. 20560 relating to water; authorizing the adoption of a notice of intention to implement a water system equity fee; and declaring an emergency.

It was moved by Council Member Scott, duly seconded to pass and adopt Resolution 20560 and direct staff to file the report with the proposed fee schedule in the City Clerk's Office, and set March 20, 2007, for the public hearing regarding the proposed fee increase.

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

Upon roll call, the results were:

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

Nay: Council Member Ibarra

Resolution 20560 was declared passed and adopted by a roll call vote of 6 to 1.

**13. WATER: NOTICE OF INTENTION TO ESTABLISH A CAP WATER RESOURCE FEE, AND SCHEDULING A PUBLIC HEARING FOR MARCH 20, 2007**

(Note: This item was taken out of order)

Mayor Walkup announced City Manager's Communication number 34, dated January 17, 2007, would be received into and made part of the record. He asked the City Clerk to read Resolution 20561 by number and title only.

Resolution No. 20561 relating to water; authorizing the adoption of a notice of intention to implement a Central Arizona Project ("CAP") Water Resource fee; and declaring an emergency.

It was moved by Vice Mayor West, duly seconded, to pass and adopt Resolution 20561 and direct staff to file the CAP Water Resource Fee Report, which includes the proposed fees schedule, with the City Clerk as the report supporting the new fee; and establish March 20, 2007, as the date for a public hearing on the proposed fee.

Mayor Walkup asked if there was further discussion.

Council Member Leal stated they had received correspondence on this item from the Chamber of Commerce and Board of Realtors and that Southern Arizona Home Builders Association (SAHBA) had participated in the process. Mr. Leal said he was concerned with some of the questions that have arisen and asked if one or two representatives could explain the issues that compelled them to write the letters to the Council.

Lori Lustig, representative of SAHBA and a member of the Citizen's Water Advisory Committee (CWAC), spoke about the fee study. She stated SAHBA never objected to the interest calculated on current CAP water allocations. It was her understanding that there were other interest components to this fee; one was explained by Mr. Modeer, Tucson Water Director, as something being required by the federal government as part of the reallocation. Another portion of interest had been calculated on back payments from 1994 to 2006, that were supposedly additional allocations to what was required for the current citizen rate. At the time those payments were made, they were not financed and no interest was incurred as a result of purchasing allocation rights. Ms. Lustig did not believe the Arizona Revised Statutes governing impact fees allowed for the creation of interest whether for cost recovery or any other purpose. Ms. Lustig asked the Council to reject the fee and maybe consider in the future that the interest component and fee, as a whole needed more work.

Council Member Leal stated that it was important to secure water now and in the future, and to embark together with the community to pursue meaningful impact fees and get together to have a comfort level and to make sure they are doing it right. Mr. Leal stated he would like time for himself to understand the third part that Ms. Lustig raised about past interest from 1994.

Council Member Leal offered a friendly amendment to continue this item to allow for further discussion.

Vice Mayor West stated that she would not accept that. She read the second paragraph on page two of the communication into the record. She stated that in 1994, the utility began making semi-annual CAP capital payments to the Central Arizona Water Conservation District (CAWCD) for each acre foot of CAP allocation right. Each acre-foot of allocation provides the utility with the right to order one-acre foot of Colorado River water each calendar year. By June 30, 2007, Tucson Water will have incurred nearly sixty five million dollars in direct water right CAP capital payments for its existing acre foot allocation. The cost of the 11,606.3-acre foot CAP allocation resulting from water rights on hand to meet the demands of future water customers with the applied interest is approximately eight million dollars. She stated that if there were people that still needed assistance with that item, they had until March 20, 2007. She said that when Ms. Lustig made that motion in the Citizen's Water Advisory Committee (CWAC), it went down two to nine. Ms. West asked Mr. Modeer about the interest payment from 1994 and how it figured there.

David Modeer, Tucson Water Director, said they had adhered to standard business practices in terms of financing any allocation or utilization of money over time. It had been Mayor and Council's policy that they cover full cost in any fee they did. In coordination with the Attorney's office, they calculated the cost of money for financing the eleven thousand plus acre-feet of water that was set aside or unused, which will be covered in use for future growth in the system and calculated interest rate identical to what CAP had for utilization of those funds over that period of time to capture that cost.

Mr. Modeer stated that Ms. Lustig was correct that in 1994, there was little interest imputed on the fee that was paid to CAP. But, over time interest had been included in the capital cost because CAP was required to make payments back to the Federal Government that included the time interest cost of money. There was some interest in that component for the capital charge to CAP. When they pay that capital charge to CAP, part of that interest goes back to the Federal Government, into what was called the Lower Basin Fund. The calculated interest from 1994, for that 11,666 acre-feet, was similar to what would have been gained in interest had they not invested money in buying CAP water. In terms of a business transaction, it was appropriate and they had worked with the City Attorney's office and it had been determined that it was entirely legal and in accordance with state requirements for the impositions of such fees.

Vice Mayor West said if there were concerns they would be addressed at the public hearing being held in two months. Ms. West called for the question.

Council Member Leal stated that members of the subcommittee had the benefit and the luxury to discuss an issue and have a different comfort level around an issue with much impact and many complexities. Others had not been on the subcommittee and even though there may be a hearing in the future, whatever facilitates them to getting up to speed was in the public's interest. Mr. Leal asked Ms. Lustig if they were talking past each other or if there was a significant difference in what she had explained and the response Mr. Modeer gave to Council Member West.

Ms. Lustig stated that Mr. Modeer touched on the fee study on page three of the communication; it referred to interest allocation on the eleven thousand-acre feet, as well as the eight thousand-acre feet. She said she wished the chairman of CWAC, Mr. Boyle were there, he agreed that the eight-thousand acre feet was appropriate to be charged interest because that was required by the Federal Government to be paid back. Her understanding after speaking with staff, was that the eleven thousand acre-feet was paid in cash, up front, with no interest. She suggested that the state impact fee statute said that if there had been interest that could have been recovered and to do the cost recovered calculation that was part of business practice, might have been appropriate under other settings or other circumstances. She suggested that it was not appropriate under the impact fee law for development fees. In that capacity, that portion of the fee was inappropriate to be charged as it was.

Vice Mayor West stated that the only motion on the agenda was to set the public hearing and if there was a need for further discussion, it should be scheduled for a Study



Session. She stated engaging in a public hearing at this time, was not the reason for this meeting, the reason was to set a public hearing date. She said that the public hearing date was the only issue that they should be addressing and if others on the Council had concerns on this, there would not be a problem with discussing this at a Study Session. Vice Mayor West stated holding up the public hearing during the rate making process, meant it delayed the process and cost the city money.

Mayor Walkup announced they were done with audience participation and if the Council had concerns they needed to take action to clarify.

Vice Mayor West amended the motion to include an additional Study Session discussion prior to the Public Hearing on March 20, 2007.

Council Member Uhlich stated she agreed with Vice Mayor West because there was two months to further explore this item. She also wanted to assure people that her office was in close communication with the chair of the CWAC, Mr. Boyle, who was the Ward 3 appointee. Prior to the meeting, it was reconfirmed that Mr. Boyle was in support of Agenda Items twelve and thirteen. Given the fact that there was ample time, if they shifted the time table to two weeks or a month and it could cost one million dollars, any delay could cost the city funds. There was a price tag potentially attached to any support, where if they proceed, they would have two full months before the public hearing to resolve that issue. Ms. Uhlich said taking action at that time to delay, would cost the City money they should rightfully collect, as a result of cost of acquiring the water.

Council Member Scott stated there were three major organizations within this community that raised serious questions about understanding and not understanding as Council Member Leal pointed out.

Substitute motion by Council Member Scott, to delay this item for more discussion. There was no second to the motion.

Council Member Ibarra stated that this issue had been dealt with for many minutes in the Study Session. Many people, including the Council discussed and asked questions, which was the purpose of the item to be on Study Session. Council Member Ibarra stated the Council needed to vote on the item.

Mayor Walkup asked if there was further discussion.

Council Member Leal stated they did not receive an explanation from a SAHBA Representative during Study Session, which made a difference. Mr. Leal asked Council Member Scott to reiterate her substitute motion.

Council Member Scott reiterated her substitute motion and it was duly seconded.

Mayor Walkup stated that the point was any extended delay to amplify the Item, would cost the City money. He said that it was appropriate to have concerns and that needed to be addressed quickly.

Council Member Ibarra stated that he would be voting “no” on this item and to the substitute motion, and stated that the Council needed to vote on the item.

Council Member Trasoff stated the amendment Vice Mayor West made gave plenty of time setting the public hearing for March 20, 2007, which was two months away. In Study Session, staff could incorporate responses to the issues Ms. Lustig raised, within the timeline that had already been established. Ms. Trasoff asked that the substitute motion be withdrawn.

Mayor Walkup asked if there was further discussion. Hearing none, he asked for a roll call vote on the substitute motion.

Upon roll call, the results were:

Aye: Council Members Scott, Leal and Mayor Walkup

Nay: Council Members Ibarra, Uhlich, and Trasoff;  
Vice Mayor West

Substitute motion failed by a roll call vote of 3 to 4.

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

Upon roll call, the results were:

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

Nay: Council Members Ibarra and Scott

The motion to pass and adopt Resolution 20561 and direct staff to file the CAP Water Resource Fee Report, which included the proposed fees schedule, with the City Clerk as the report supporting the new fee and establish March 20, 2007, as the date for a public hearing on the proposed fee and to return this item to Study Session prior to the hearing was declared passed and adopted by a roll call vote of 5 to 2.

Kathleen S. Detrick, City Clerk, asked for a second roll call vote for the sole purpose to include the Emergency Clause.

Upon roll call, the results were:

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

Nay: None

Resolution 20561 was declared passed and adopted by a roll call vote of 7 to 0 with the Emergency Clause.

(Council Member Ibarra departed at 7:13 p.m.)

**6. CALL TO THE AUDIENCE**

(Note: This item was taken out of order)

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for any items scheduled for a public hearing. Speakers would be limited to three-minute presentations.

- a. Michael Toney spoke about the planned Rosemont mine and Cable 12.
- b. Russ Dove spoke about voter fraud and Cox Cable Corporation.

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

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

**A. PUBLIC IMPROVEMENTS: HARRISON ROAD, OLD SPANISH TRAIL TO GOLF LINKS ROAD DISTRICT PAVING IMPROVEMENT**

- 1. Report from City Manager JAN17-07-25 WARD 4
- 2. Resolution No. 20545 Resolution fixing the time when Mayor and Council of the City of Tucson will hear and pass upon the assessments and proceedings theretofore had and taken for the improvement know as the “Harrison Road, Old Spanish Trail to Golf Links Road District Paving Improvement” in the City of Tucson, Arizona.

Kathleen S. Detrick, City Clerk, announced that as noted in Study Session, the materials for Item A would be corrected to show this item was in Ward 4 not Ward 2.

**B. INTERGOVERNMENTAL AGREEMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY FOR IMPLEMENTATION OF APPROVED SIDEWALK PROJECTS**

- 1. Report from City Manager JAN17-07-20 CITY-WIDE

2. Resolution No. 20557 relating to Intergovernmental Agreements; approving and authorizing execution of Intergovernmental Agreements (IGAs) between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for implementation of approved RTA Projects in the Environmental and Economic Vitality Element – Sidewalks Category; and declaring an emergency
- C. INTERGOVERNMENTAL AGREEMENT: WITH THE REGIONAL TRANSPORTATION AUTHORITY FOR IMPLEMENTATION OF APPROVED TRANSIT PROJECTS
1. Report from City Manager JAN17-07-31 CITY-WIDE AND OUTSIDE CITY
  2. Resolution No. 20558 relating to Intergovernmental Agreements; approving and authorizing execution of Intergovernmental Agreements (IGAs) between the City of Tucson and the Regional Transportation Authority of Pima County (RTA) for implementation of approved RTA Projects in the Transit Element; and declaring an emergency.
- D. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR MAINTENANCE OF CERTAIN ROADWAYS
1. Report from City Manager JAN17-07-30 CITY-WIDE
  2. Resolution No. 20559 relating to Intergovernmental Agreements; approving and authorizing execution of an Intergovernmental Agreement between the City of Tucson and Pima County for the allocation of maintenance responsibilities of certain roadway segments along the boundaries between the City and County; and declaring an emergency.
- E. GRANT APPLICATION: TO THE PASCUA YAQUI TRIBE IN SUPPORT OF THE TUCSON PIMA ARTS COUNCIL'S FAMILY ARTS FESTIVAL
1. Report from City Manager JAN17-07-32 CITY-WIDE
  2. Resolution No. 20556 relating to finance; authorizing and approving Grant Application to the Pascua Yaqui Tribe in support of the Tucson Pima Arts Council's Family Arts Festival; and declaring an emergency.
- F. APPROVAL OF MINUTES
1. Report from City Manager JAN17-07-35 CITY-WIDE
  2. Approval of minutes for the regular meetings of the Mayor and Council, held on November 28, 2006, December 5, 2006 and December 12, 2006.

It was moved by Vice Mayor West, duly seconded, that Consent Agenda Items A through F, be passed and adopted and the proper action taken.

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

Upon roll call, the results were:

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

Nay: None

Absent/ Excused: Council Member Ibarra

Consent Agenda Items A through F were declared passed and adopted by a roll call vote of 6 to 0.

**8. ZONING: (C9-06-10) LLDN – VALENCIA ROAD, R-2 TO C-1 AND C-2, CITY MANAGER’S REPORT**

(Note: This item was taken out of order and considered after Item 14.)

**9. ZONING: (C9-04-21) WESTERN FINANCIAL – CRAYCROFT ROAD, ORDINANCE ADOPTION**

Mayor Walkup announced City Manager’s Communication number 26, dated January 17, 2007, would be received into and made part of the record. He asked the City Clerk to read Ordinance 10368 by number and title only.

Ordinance No. 10368 relating to zoning: amending zoning district boundaries in the area located at the northeast corner of Craycroft Road and Lester Street in Case C9-04-21, Western Financial – Craycroft Road, R-2 to O-1; and setting an effective date.

It was moved by Council Member Trasoff, duly seconded, to pass and adopt Ordinance 10368.

Mayor Walkup asked if there was further discussion.

Council Member Trasoff said that according to records dated August 2004, the neighbors of Lester Street submitted a protest petition demanding there not be any ingress or egress on Lester Street. She believed that one of the conditions mandated that the only exit would be off Craycroft Road and that there would be no entry into the neighborhood. Ms. Trasoff asked if that was correct.

Ernie Duarte, Developmental Services Director, stated Council Member Trasoff was correct. Condition number six of Ordinance 10368 specifically stated there would be no access to the site from Lester Street.

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

Upon roll call, the results were:

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

Nay: None

Absent/ Excused: Council Member Ibarra

Ordinance 10368 was declared passed and adopted by a roll call vote of 6 to 0.

**10. ZONING: (C9-05-28) DESCO SOUTHWEST – GRANT ROAD, ORDINANCE ADOPTION**

Mayor Walkup announced City Manager's Communication number 28, dated January 17, 2007, would be received into and made part of the record. He asked the City Clerk to read Ordinance 10369 by number and title only.

Ordinance No. 10369 relating to zoning: amending zoning district boundaries in the area located on the north side of Grant Road, approximately one-half mile west of Wilmot Road in Case C9-05-28, DESCO Southwest - Grant Road, R-1 to O-3, and setting an effective date.

It was moved by Vice Mayor West, duly seconded to pass and adopt Ordinance 10369.

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

Upon roll call, the results were:

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

Nay: None

Absent/ Excused: Council Member Ibarra

Ordinance 10369 was declared passed and adopted by a roll call vote of 6 to 0.

**11. ZONING: (C9-05-19) OT DRAGOON – PIMA STREET, R-1 TO R-3, ORDINANCE ADOPTION**

Mayor Walkup announced City Manager's Communication number 29, dated January 17, 2007, will be received into and made part of the record. He asked the City Clerk to read Resolution 10370 by number and title only.

Ordinance No. 10370 relating to zoning: amending zoning district boundaries in the area located on the north side of Pima Street at the alignment of Alamo Avenue in Case C9-05-19, OT Dragoon – Pima Street, R-1 to R-3, and setting an effective date.

It was moved by Vice Mayor West, duly seconded to pass and adopt Ordinance 10370.

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

Upon roll call, the results were:

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

Nay: None

Absent/ Excused: Council Member Ibarra

Ordinance 10370 was declared passed and adopted by a roll call vote of 6 to 0.

**12. WATER: NOTICE OF INTENTION TO INCREASE THE WATER SYSTEM EQUITY FEE, AND SCHEDULING A PUBLIC HEARING FOR MARCH 20, 2007**

(Note: This item was taken out of order and considered after item 8.)

**13. WATER: NOTICE OF INTENTION TO ESTABLISH A CAP WATER RESOURCE FEE, AND SCHEDULING A PUBLIC HEARING FOR MARCH 20, 2007**

(Note: This item was taken out of order and considered after item 12.)

**14. LICENSE RENEWAL: REQUESTING COX COMMUNICATIONS TO PROVIDE A FORMAL RENEWAL PROPOSAL TO THE CITY OF TUCSON**

(Note: This item was taken out of order and considered after item 5.)

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

Mayor Walkup announced City Manager's communication number 21, dated January 17, 2007, would be received into and made a part of the record. He asked for a motion to approve the appointments in the report.

Kathleen S. Detrick, City Clerk, stated there was a request by Mayor Walkup for the Council to confirm the appointment of Mr. Joe Ladenburg to the Tucson Fire and Police Public Safety Personnel Retirement Systems Boards. Ms. Detrick stated in addition to there were three appointments to the Citizen Transportation Advisory Committee: Caroline Tompkins, Gayle E. Bowen, and James J. Hunt.

It was moved by Council Member Uhlich, duly seconded to approve the appointments read into the record by the City Clerk.

Council Member Leal requested in the future when names come forward, that there be background information as to who the people are.

Ms. Detrick, stated the resumes were received and it must have been inadvertent that Council Member Leal had not received them.

The motion was declared passed and adopted by a voice vote of 6 to 0 (Council Member Ibarra absent/excused).

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

There were none.

**16. ADJOURNMENT: 7:28 p.m.**

Mayor Walkup announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, January 23, 2007, at 5:30 p.m. in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

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MAYOR

ATTEST:

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CITY CLERK



CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 17<sup>th</sup> day of January 2007, and do hereby certify that it is an accurate transcription.

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DEPUTY CITY CLERK

KSD: cdj/jmg