



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
On June 28, 2004_____

Date of Meeting: February 9, 2004

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, Tucson, Arizona, at 5:06 p.m., on Monday, February 9, 2004, 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
Carol W. West
Kathleen Dunbar
Shirley C. Scott
Steve Leal
Fred Ronstadt
Robert E. Walkup
Kathleen S. Detrick

Council Member Ward 1
Council Member Ward 2
Council Member Ward 3
Council Member Ward 4
Council Member Ward 5
Vice Mayor Ward 6
Mayor
City Clerk

Absent/Excused:

None

Staff Members Present:

James Keene
Mike Letcher
Ernie Duarte
Richard Miranda
John Leavitt

City Manager
Deputy City Manager
Development Services Director
Tucson Police Chief
Assistant Tucson Police Chief

Michael House

City Attorney

Suzanne Mesich
Pablo Garcia
Ceci Sotomayor
Karen Valenti

City Clerk's Office
City Clerk's Office
Recording Secretary
Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Pastor Joel Hutchinson, New Life Wesleyan Christian Center, after which the pledge of allegiance was lead by Boy Scout Troop 320.

Presentation

Mayor Walkup, assisted by Norma Lopez, presented certificates to twelve students with the international student programs office at the University of Arizona.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 61, dated February 9, 2004, would be received into and made a part of the record. He also announced that this was the time for mayor and council members to report on current events and asked if there were any reports.

A. Valentine Tea

Council Member West announced that ward two would be hosting a "Valentine Tea" on Thursday, February 12, 2004 at 2:30 p.m. at 7575 E. Speedway. The Sahuaro High School chorus would perform at 3:15 p.m. All persons in the community were welcome to attend.

B. Landfill Tour

Council Member West said that on Saturday, February 21, 2004 at 8:30 a.m. at 7575 E. Speedway, the famous landfill tour would once again take place. She asked that anyone interested in coming call her office at 791-4687. She stated that in the past there was a waiting list, but this time there still was room for this tour.

C. "Heart of Downtown Award"

Mayor Walkup said that he would be presenting the "Heart of Downtown Award" to a distinguished University of Arizona English professor, Chris Carol, on Friday, February 13, 2004 at 11 a.m. The ceremony would be held at the Tucson Museum of Art courtyard. The "Heart of Downtown Award" was established for individuals, groups, organizations or businesses that provide exceptional contributions to the improvement of downtown. Mayor Walkup stated that it was his great pleasure to honor Chris Carol and everyone was invited to attend.

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

Mayor Walkup announced that city manager's communication number 62, dated February 9, 2004, would be received into and made a part of the record. He asked for the city manager's report.

A. Tucson Gem and Mineral Show Fireworks Celebration

James Keene, city manager, invited the community to this year's special fireworks display over A-Mountain, celebrating 50 years of the Tucson Gem and Mineral Show. The event would begin at 9:30 p.m. on Wednesday, February 11, 2004. A gala reception would also be held at the grand lobby of the Tucson Convention Center. The reception would include a preview showing of the guests and purpose treaty in celebration of its 150th anniversary. For information, call 471-0499.

B. Proposals for the Multi-unit Housing Project

Mr. Keene stated that on Wednesday, February 11, 2004, the requests for proposals for the multi-unit housing project west of the Tucson Museum of Art next to the Tucson water building would be released. The site that borders the historical El Presidio neighborhood and the Tucson water building has been slated for residential development dating back to the adoption of the "La Entrada" area redevelopment plan of 1982. The representative will be asking interested companies or individuals to submit proposals to the site to develop multi story housing that includes a mix of unit sizes and compatible with the neighborhood. Interested parties may obtain a copy by calling 790-4123 or checking out the city's web site.

C. Golf Southwest Magazine Article

Mr. Keene announced that Mike Hays, deputy parks director for golf operations, was previewed in the February 2004 issue of the Golf Southwest Magazine. Mr. Hays spoke glowingly about the city of Tucson, the municipal golf courses and the mayor and council's support for the golf courses. He stated that is was nice to see our deputy director in a magazine like that.

5. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 60, dated February 9, 2004, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) New License(s)

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| (1) MONKEY BOX
100 N. Stone #102
Applicant: Rachel A. Yaseen
City #120-03, located in Ward 6
Series 12
Action must be taken by: February 20, 2004 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
| (2) GUZANO ROJO'S
811 N. Euclid
Applicant: Randy D. Nations
City #002-04, located in Ward 6
Series 12
Public Opinion: Protests Filed | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |

Person Transfer

- | | | |
|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| (3) | EMBASSY SUITES HOTEL
5335 E. Broadway Blvd.
Applicant: Randal G. Dix
City #003-04, located in Ward 6
Series 6
Action must be taken by: February 26, 2004 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
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Person/Location Transfer(s)

- | | | |
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| (4) | NOTHING BUT NOODLES
3225 N. Swan Road #105
Applicant: Donald T. Klump
City #119-03, located in Ward 2
Series 7
Action must be taken by: February 14, 2004 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance |
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| (5) | ROOSTER INN
5122 S. Nogales Hwy.
Applicant: Carlton Van Gorder
City #004-04, located in Ward 5
Series 6
Action must be taken by: February 26, 2004 | <u>Staff Recommendation</u>

Police: DENIED
DSD: In Compliance
Bus. License: In Compliance |
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Special Event(s)

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|-----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| (1) | YOUTH WORKS COMMUNITY
BASED HIGH SCHOOL
Grande Ave between
St. Mary's & Speedway
Applicant: Margaret McKenna
City #T001-04, located in Ward 1
Date of Event: February 21, 2004
February 22, 2004 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (2) | OUR MOTHER OF SORROWS CHURCH
1800 S. Kolb Road
Applicant: Kenneth C. Mecum
City #T002-04, located in Ward 4
Date of Event: February 21, 2004
(School/Parish Fundraiser)
PUBLIC OPINION: PROTEST FILED | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (3) | TÉ DE FESTIVIDADES MEXICANAS
3700 S. La Cholla Blvd.
Applicant: Mercedes M. Guerrero
City #T003-04, located in Ward 1
Date of Event: February 15, 2004 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance
Parks & Rec: In Compliance |

See page 5.

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| (4) | THE CARFENDER BARTENDER
"YOUTH ON THEIR OWN" CHARITY
BENEFIT FOR UA LAW SCHOOL
288 N. Church
Applicant: Megan G. Nielsen
City #T005-04, located in Ward 1
Date of Event: February 27, 2004 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |
| (5) | BORDERLANDS THEATER
40 W. Broadway Blvd.
Applicant: Charles B. Goldsmith
City #T010-04, located in Ward 6
Date of Event: February 19, 2004 | <u>Staff Recommendation</u>

Police: In Compliance
DSD: In Compliance |

It was moved by Council Member Leal, seconded by Council member Scott, and carried by a voice vote of 7 to 0, to forward liquor license applications 5b(1), Monkey Box; 5b(3) Embassy Suites Hotel; 5b(4) Nothing But Noodles; 5c(1), Youth Works Community Based High School; 5c(3), Comité de Festividades Mexicanas; 5c(4), The Carfender Bartender "Youth on their Own" Charity Benefit for U of A Law School; and 5c(5), Borderlands Theater, to the state department of liquor licenses and control with a recommendation for approval.

5. LIQUOR LICENSE APPLICATIONS (b) (5)

(b) Person/Location Transfer(s)

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|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|
| (5) | ROOSTER INN
5122 S. Nogales Highway
Applicant: Carlton Van Gorder
City #004-04, located in Ward 5
Series 6
Action must be taken by: February 26, 2004 | <u>Staff Recommendation</u>

Police: Denied
DSD: In Compliance
Bus. License: In Compliance |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|

Kathleen S. Detrick, city clerk, announced that the person/location transfer for Rooster Inn, 5122 S. Nogales Highway carried a recommendation for denial from the Tucson police department. Protests had been filed and the applicant and a representative from the police department was present. The restaurant is located in ward five.

Mayor Walkup called on Council Member Leal.

Council Member Leal said that before he invited the applicant up, he would like to invite the representative from the police department to address the mayor and council and explain their recommendation.

Officer Jeannie Nagore, Tucson police department, said that the Tucson police department was recommending denial on Mr. Van Gorder's application for a transfer of a liquor license. Mr. Van Gorder was applying for a series 6, a bar liquor license. The recommendation for denial was based on false information on the original application. On January 29, 2004, she spoke with Mr. Quiroz, manager for the Rooster Inn. Mr. Quiroz completed, signed and notarized the application questionnaire.

Upon review of the questionnaire, Officer Nagore noted that Mr. Quiroz had checked the "no" box for questions 15 and 16, which pertained to previous arrests and conviction history of the applicant. A criminal history check was made on the applicant and Mr. Quiroz. The background check revealed conflicting information. Officer Nagore said that Mr. Quiroz had been arrested and convicted for a criminal violation. Arizona Revised Statute 4-203A states that a spirituous liquor license shall be issued only after satisfactory showing of the capability, qualifications, and reliability of the applicant. Based on the false information provided by the applicant, the Tucson police department was recommending a denial on this application.

Council Member Leal called on the applicant or their representative.

Luis Ochoa, Quarles & Brady, attorney representing the applicant, thanked the mayor and council for the opportunity to speak. Mr. Ochoa said that this matter was not as black and white as it appeared to be on paper. That was why he took the time to appear before the council. Mr. Ochoa said that Mr. Van Gorder owns two bars in town, Bojangles and the Rooster Inn. The Rooster Inn currently has a valid existing series 6 liquor license in place. The reason Mr. Van Gorder was seeking the person/location transfer was that he loaned money to the buyer of this license, the one he was seeking to transfer to this location. That buyer purchased it from the owner of El Suavesito – somebody by the name of Mr. Moreno, Mr. Ochoa thought. He said that part of the loan transaction was that if Mr. Van Gorder's bar owner did not repay the loan, then Mr. Van Gorder would in essence foreclose on the liquor license. That was what happened. Mr. Van Gorder became the owner of the liquor license as a result of the loan that went bad. Mr. Van Gorder was attempting to protect his investment by taking the liquor license, activating it at the Rooster location, and then deactivating the series 6 that was already there.

Mr. Ochoa said that was not disclosed in the Tucson police department report, and maybe the officer would have no idea that was the intent. He said that as far as Tucson police department's recommendation of denial, Mr. Quiroz was the bar manager of both establishments, the Rooster Inn and Bojangles. He had no prior history, other than a citation for serving an underage patron in the bar. Mr. Quiroz was cited because he was the manager on duty that night. The doorman checked ID's and there were two Mexican nationals who went into the bar with fake ID's. There was a Tucson police department officer doing his work that night and realized that one of the patrons looked young. The officer confronted one of them, who admitted he was underage. The doorman was cited and Mr. Quiroz was cited because he was the manager on duty.

Mr. Ochoa said that was the history on this, and other than that, the bar manager had no criminal history. He has been the manager of these two locations for the last five years. As far as checking "no" on boxes 15 and 16 of the application, Mr. Quiroz inadvertently checked those boxes. When he was notified by the Tucson police department officer that they had found this violation on the criminal background check, Mr. Quiroz supplemented the questionnaire within hours, offering an explanation of the circumstances and nature of the underlying violations. Mr. Ochoa said he did not think the punishment of denying the transfer fit the crime.

Regarding the neighborhood association protest, Mr. Ochoa said they had just received the protest letter two hours earlier, and they did not have lot of time to even read

it. But the nature of it was that the association did not want another active liquor license in Council Member Leal's ward. Mr. Ochoa said that Mr. Van Gorder did not intend to activate the license and that he would deactivate if this transfer went through. Mr. Ochoa said that obviously, this concern was to the future applicant, whoever the owner of that license may be. He felt that at that time, the council could address the issue of whether or not it should approve the activation of that license. He said it was not like there was going to be another series #6 operating in Council Member Leal's ward. He said that Mr. Van Gorder did not intend to activate it if this transfer went through. The reason he had to activate this one was that time had run out to activate this license – the one that he was seeking to transfer to this location. If he didn't do it, he would lose the license and it would revert back to the state.

Mr. Ochoa said it was as simple as that, and there was no intent to deceive anybody. He appreciated the time and offered to answer any questions. He said Mr. Quiroz was there in the event that the mayor and council had any questions.

Council Member Leal referred to the last application they looked at, a series 12 on Euclid, and said that as Council Member Ronstadt explained, it was a much different type of license than what would happen at the location in question here. He said the council takes very seriously the potential consequences authorizing and empowering someone to have this kind of authority to conduct this kind of business in the community. The mayor and council were not dismissive of omissions on applications that someone checked off – even if they thought there were extenuating circumstances for what they were cited with or not. It was still the fact that it was a record they were in denial about. Council Member Leal said it was a telling thing when a person chose to ignore facts about their own circumstances. It was indicator to the council that they were then capable of ignoring other facts in the future, about things that have to do with how business ought to be conducted with a significant license like this.

Council Member Leal said that those were things he was compelled to think about. He did not have the luxury, nor did the council, to bring to bear other kinds of extenuating circumstances that had to do with this other individual's business circumstances. Council Member Leal said he was left to follow the police department's recommendation and the posture of the mayor and council towards this issue, and made a motion for denial to be forwarded to the state liquor board.

It was moved by Council Member Leal, seconded by Council Member West, that in liquor license application 5b(5), Rooster Inn, the council forward a recommendation of denial to the state liquor board.

Mayor Walkup asked if there was further discussion and hearing none, called for the vote.

The motion was carried by a voice vote of 7 to 0.

6. CONSENT AGENDA – ITEMS A THROUGH H

Mayor Walkup announced that 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 items by letter and title only.

- * A. INTERGOVERNMENTAL AGREEMENT: WITH UNIVERSITY OF ARIZONA WATER RESOURCES RESEARCH CENTER TO ENHANCE WATER EDUCATION VIA PROJECT WET
- (1) Report from City Manager FEB9-04-68 CITY-WIDE
 - (2) Resolution No. 19763 relating to water; authorizing the execution of an Intergovernmental Agreement with the University of Arizona's Water Resources Research Center to enhance water education via Project WET; and declaring an emergency.
- B. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY FOR SHARING LAW ENFORCEMENT INFORMATION
- (1) Report from City Manager FEB9-04-69 CITY-WIDE
 - (2) Resolution No. 19772 relating to police; approving and authorizing execution of an Intergovernmental Agreement with Pima County for Sharing Law Enforcement Information; and declaring an emergency.
- C. AGREEMENT: WITH ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD FOR ASSIGNMENT OF AN OFFICER TO THE BOARD
- (1) Report from City Manager FEB9-04-70 CITY-WIDE
 - (2) Resolution No. 19773 relating to the Police Department; approving and authorizing execution of an agreement with the Arizona Peace Officer Standards and Training Board (AZ POST); and declaring an emergency.
- D. ASSURANCE AGREEMENT: (S03-007) SILVERBELL TRAILS, LOTS 1 TO 42 AND COMMON AREAS "A", "B", "C", "D" AND "E"
- (1) Report from City Manager FEB9-04-72 W1
 - (2) Resolution No. 19776 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S03-007 of a Final Plat for the Silverbell Trails Subdivision, Lots 1 to 42 and Common Areas "A" – "E"; and declaring an emergency.
- E. FINAL PLAT: (S03-007) SILVERBELL TRAILS, LOTS 1 TO 42 AND COMMON AREAS "A", "B", "C", "D" AND "E"
- (1) Report from City Manager FEB9-04-66 W1
 - (2) The City Manager recommends that, after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.

* See page 10.

F. ASSURANCE AGREEMENT: (S03-009) RANCHO PARAISO, LOTS 1 TO 183 AND COMMON AREAS "A-1" – "A-6" AND "B-1" – "B-2"

- (1) Report from City Manager FEB9-04-71 W4
- (2) Resolution No. 19775 relating to planning: authorizing the Mayor to execute an Assurance Agreement securing the completion of improvements required in connection with the approval in Case No. S03-009 of a Final Plat for the Rancho Paraiso Subdivision, Lots 1 to 183 and Common Areas "A-1" – "A-6" and "B-1" – "B-2"; and declaring an emergency.

G. FINAL PLAT: (S03-009) RANCHO PARAISO, LOTS 1 TO 183 AND COMMON AREAS "A-1" – "A-6" AND "B-1" – "B-2"

- (1) Report from City Manager FEB9-04-67 W4
- (2) The City Manager recommends that, after the approval of the assurance agreement, the Mayor and Council approve the final plat as presented. The applicant is advised that building/occupancy permits are subject to the availability of water/sewer capacity at the time of actual application.

* H. BOARDS, COMMISSIONS AND COMMITTEES: ELIMINATION OF THE BUDGET ADVISORY COMMITTEE AND THE PERFORMING ARTS CENTER ADVISORY BOARD

- (1) Report from City Manager FEB9-04-59 CITY-WIDE
- (2) Resolution No. 19774 relating to Boards, Committees, and Commissions; eliminating the Performing Arts Center Advisory Board and the Budget Advisory Committee; repealing Resolution Nos. 15975 and 15763; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ronstadt, seconded by Council Member Leal, that consent agenda items B through G, with the exception of item A and H, be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: None

* See page 11.

Consent agenda items B through G, with the exception of items A and H, were declared passed and adopted by a roll call vote of 7 to 0.

6. CONSENT AGENDA – ITEM A

- (A) INTERGOVERNMENTAL AGREEMENT: WITH UNIVERSITY OF ARIZONA WATER RESOURCES RESEARCH CENTER TO ENHANCE WATER EDUCATION VIA PROJECT WET

Resolution No. 19763

Relating to water: authorizing the execution of an Inter-governmental Agreement with the University of Arizona's Water Resources Research Center to enhance water education via Project WET; and declaring an emergency.

This item was removed at the request of Council Member Dunbar.

Mayor Walkup recognized Council Member Dunbar.

Council Member Dunbar explained that she wanted this item removed because she was not in support of this item. She explained that this intergovernmental agreement between the University of Arizona and Tucson water department was a water education program for teachers. Her concern was on the number of similar existing programs. She stated that she would like a detailed explanation of how many agreements and water education programs were currently existing. She reminded the council that at the study session today, they were just talking about the budget and raising water rates. Council Member Dunbar said that she had a lot of questions and concerns and it was in her good judgement to vote against this item.

Vice Mayor Ronstadt advised that he would be making the motion, but agreed with Council Member Dunbar that there should be a demand on accountability on similar programs. He believed programs like these were incredibly important. Vice Mayor Ronstadt stated that this was a conservation program and believed those similar programs had effected about 60,000 students a year by training 180 teachers over a three-year period. This resulted in Tucson having the lowest per capita use of water in the state. Vice Mayor Ronstadt said that because we have been diligent with our conservation message, getting kids involved was very important. He said he supported this program since we live in the middle of the desert and monitoring conservation was a year around life style, not just a summer program. He asked the city manager to make sure that we were getting the best value out of these dollars and that we had some accountability. He would like to see the results brought back to mayor and council.

Council Member West wanted to echo what Vice Mayor Ronstadt stated. She said she was once a part of Arizona Southern Water Resources and they have been promoting the same kind of program with teachers for a long time. She believed that this was one of the reasons we have the lowest per capita water consumption in the area. Council Member West agreed that being mindful of how our dollars were being spent was important, but helping the students to be water aware would conserve even more. She stated that we were going to have to conserve more and this was the time we should be doing these programs because we don't know what's around the bend. Council Member West said she would support the motion.

Council Member Ibarra asked the city manager to provide the mayor and council with the Tucson water adopted conservation education budget. He said this was a small component of the overall budget. Council Member Ibarra also wanted to see how many dollar amounts and where the dollars were going. He also recalled that a lot of TV commercials concerning conservation were paid by the budget of the \$15,000. He said he wanted a breakdown of that also.

Mayor Walkup asked if there was any other discussion and there was none. He asked for a roll call on the motion.

Upon roll call, the results were:

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

Nay: Council Member Dunbar

Absent/excused: None

Resolution 19763 was declared passed and adopted by a roll call vote of 6 to 1.

6. Consent Agenda – Item H

H. BOARDS, COMMISSIONS AND COMMITTEES: ELIMINATION OF THE BUDGET ADVISORY COMMITTEE AND THE PERFORMING ARTS CENTER ADVISORY BOARD

Resolution No. 19774

Relating to Boards, Committees, and Commissions: eliminating the Performing Arts Center Advisory Board and the Budget Advisory committee; repealing Resolution Nos. 15975 and 1763; and declaring an emergency.

This item was removed at the request of Council Member Scott.

Mayor Walkup recognized Council Member Scott.

Council Member Scott said that she was having trouble supporting a motion that would abolish a Citizens' Budget Advisory Committee, so she would not support this motion. She wished that we could reinvigorate a citizens' committee that would help with budget deliberations. She believed that would be very appropriate and justified. Council Member Scott said that she was aware that this particular committee cancelled all future meetings because, in their estimation, they did not have enough work to do that was meaningful. She was sympathetic to that and concurred with their thought. She repeated that she could not support abolishing this committee at this time.

It was moved by Council Member Ibarra, seconded by Council Member Dunbar, that item H on the consent agenda be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any other discussion and asked for a roll call on the motion.

Upon roll call, the results were:

Aye: Council Members Ibarra, West and Dunbar;
Vice Mayor Ronstadt and Mayor Walkup

Nay: Council Member Scott and Leal

Absent/excused: None

Resolution 19774 was declared passed and adopted by a roll call vote of 5 to 2.

For the purpose of the emergency clause and that purpose only, Mayor Walkup called for a second roll call on the motion to pass and adopt resolution 19774.

Upon roll call, the results were:

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

Nay: None

Absent/excused: None

Resolution 19774 was declared passed and adopted by a roll call vote of 7-0.

RECESS: 5:49 p.m.

Mayor Walkup announced that the council would stand at recess and reconvene at 6:00 p.m.

RECONVENE: 6:00 p.m.

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

Present:

José J. Ibarra
Carol W. West
Kathleen Dunbar
Shirley C. Scott
Steve Leal
Fred Ronstadt
Robert E. Walkup

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

Absent/Excused:

None

7. CALL TO THE AUDIENCE

Mayor Walkup announced that 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. He advised that there would also be a call to the audience at the end of the meeting. He asked if anyone wished to address the council.

A. City Manager Forms of Government

Robert Reus, said that last week there was a disagreement over what the directors duties were opposed to the city manager. He stated that in his opinion this was a city board of directors, a city manager form of government regardless of what the *Tucson Charter* called the council. He called this a board of directors.

Mr. Reus referred to a section of the *Tucson Charter*. He said this was what he has been saying for the last several years. On page 17, chapter 7 – “powers of mayor and council, section (1) and (2) – passage of ordinances”. “To make and pass all ordinances, resolutions and orders not repugnant to the Constitution of the United States, or to the Constitution and the laws of the State of Arizona, or to the provisions of this *Tucson Charter*, necessary for municipal government and the management of the affairs of the city, for the execution of powers vested in the city, for carrying into effect the provisions of this *Tucson Charter*.” He considered this enabling enough to exercise their directors’ duties.

He said in case that was not absolutely 100 percent perfectly clear, he referred to chapter 10 of the *Tucson Charter* – “powers and duties of officers other than mayor and members of the council, Section 1 – city manager. ‘Subject to the control of the mayor and council, the manager shall have the general supervision and direction of the administrative operation of the city government; he shall supervise and direct the official conduct of all appointive city officers except the auditor, attorney, treasurer, health officer, clerk and magistrate; he shall supervise the performance of all contracts made by any person for work done on behalf of the city. He believes the key work is control, subject to the control of the mayor and council. Mr. Reus said that phrase gave mayor and council director’s authority. He said that the writer of the *Tucson Charter* may have tried or have wanted to create a real city council. When it came to passing ordinances, putting together a budget and dealing with constituents, they were a city council, but when it came to supervising the city manager, they became directors and they put on their director’s cap. The biggest deficiency he has seen in the last three years was the mayor and council’s lack of direction of the city manager. He said that this was a city manager board of director’s form of government. He said he is asking for fact and discretion.

B. Rio Nuevo Project

Michael Toney, said staff should have copies for a proposal of the Rio Nuevo project with some gold art forms as shown in his pictures and of the other picture of the wing coming out. He said it was the full size and not too big, but he felt it was necessary to get a qualitative look at the project in general. Mr. Toney spoke of the formula that he put together from the University of Arizona’s nonlinear optics that showed

a natural broadening. He said the formula shown would only be accurate to a wavelength of 1-centimeter radius. He further explained the detailed specifics of his equation.

Michael Toney continued to explain his research on how archeology would reflect ancient astronomy in reconstruction of Rio Nuevo. He spoke of equasor computers. He said it would be interesting to talk to people from the University of Arizona that were familiar in that field to see what they felt the prospects would be. He said we could get very rich in Arizona by putting our energy into that. He said all the fields listed in this presentation had a coupling of mathematics and physics involved.

He mentioned that he needed to do some checking with J. T. Fey from the planning department because he knew where old burial areas and structures were located.

8. TUCSON CODE: AMENDING (CHAPTER 27) RELATING TO ADOPTION OF INCREASE IN SANTA RITA BEL AIR ISOLATED WATER SYSTEM FEE.

Mayor Walkup announced that city manager's communication number 64, dated February 9, 2004, would be received into and made a part of the record. He asked that the city clerk to read ordinance 9935 by number and title only.

Ordinance No. 9935

Relating to water: authorizing the adoption of a fee update to increase the Santa Rita Bel Air Isolated Water System fee by amending Chapter 27, Article II, Section 27-36(b) of the Tucson Code; and declaring an emergency.

It was moved by Council Member Scott, seconded by Council Member West, that ordinance 9935 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

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

Nay: None

Absent/Excused: None

Ordinance 9935 was declared passed and adopted by a roll call vote of 7 to 0.

9. ZONING: (C9-03-20) BRAKE MAX – SWAN ROAD, C-1 TO C-2, CITY MANAGER'S REPORT

Mayor Walkup announced that city manager's communication number 65, dated February 9, 2004, would be received into and made a part of the record. This was a request to rezone property located within an existing shopping center on the northwest

corner of Camp Lowell Drive and Swan Road. The zoning examiner and the city manager recommended approval subject to certain conditions. He asked if the applicant or a representative was present and if so, were they aware of and amenable to the standard conditions recommended by the city manager.

Pat Griffin, representing Swan Partners, said they accepted the conditions and the city manager's recommendation and also accepted the conditions in the zoning examiners report.

Council Member West said that before she made a motion, she wanted to make a few comments. When she was reading the zoning examiners report, she was not sure if she was reading about Brake Max or Chevron. She agreed this was about Brake Max and not about Chevron signage and lighting. That was an issue of the past. Council Member West commented that the neighbors were concerned about the enforcement of the C2, should this business leave this site. She understood that there would be an opportunity separate from the city in adopting such an agreement; though she did not believe any agreement had been adopted today. She said there was a letter as part of the record from Janet Marcus, who was the president of the neighborhood. Saturday, she saw Mrs. Marcus and she told her that she planned to support this rezoning. Mrs. Marcus said that the neighborhood still opposed the rezoning because they felt that this shopping center was C1. Council Member West then moved the request for rezoning as requested by the zoning examiner.

It was moved by Council Member West, seconded by Council Member Ibarra, that in zoning case C9-03-20, staff be directed to prepare an ordinance rezoning the subject property from C-1 to C-2, subject to the standard conditions recommended by the city manager.

Mayor Walkup asked if there was any discussion.

Council Member West pointed out that in light of Chevron, she urged staff to make sure that Brake Max cooperated with the signage and lights. She said that went without saying, and she was sure that being an honorable businessman, Mr. Garshardo would do that. The other concern Council Member West had was that the Swan Corporate Center protested on behalf of it's offices and she later found out the that was not necessarily the case of everybody in that corporate center. She believed that somebody should chastise the Swan Corporate Center for protesting without talking with everyone in their center. She believed that action was very misleading for everyone on the council. She hoped that her colleagues would support the rezoning.

Council Member Leal looked at the plans and met with the representatives of the applicant and appreciated the details that they put into the aesthetics of the architecture. He appreciated the limitations of hours that they chose to submit to. He said he was concerned about the seven automotive bays and the potential for the sound of the air impact wrenches to come out of those bays. Council Member Leal said that directly across from those bays there was a large flat concrete wall of the supermarket, and he was worried about the sound reflecting off that wall and going into the neighborhood. He said that if this business should move in the future, and this was laid out to be an automotive shop, the next automotive shop may choose not to limit its hours to the hours that the current applicant has. His said that the property next door was vacant and

believed that it probably would be built on and be residential. Council Member Leal believed that the neighborhood was fortunate to have a man who owned the business that was attentive and thoughtful, but still did not believe that there was a way to mitigate the sound. He asked that in the future, staff add that as one of the variables that they think about when they think about rezoning and proximity to neighborhoods.

Mayor Walkup asked if there were any further comments.

Council Member West asked if staff could respond to Council Member Leal's concern.

Pat Griffin, representing Swan Partners, said the sound mitigation was a significant part of their implication. He said that the sound was directed due north and the property owner to the west. He mentioned a letter was written to the city consenting or approving this rezoning. He stated there would be a 12-foot wall right on the edge of the property that would block the bulk of the sound and a six to ten-foot wall on the boundary of the western property. Mr. Griffin said that the zoning ordinance itself limits the hours of operation, so if someone tries to operate that business on expanded hours, they would have to come back to mayor and council and get a modification or amendment to the zoning ordinance. He said this issue was discussed directly with Council Member Leal and they understood his concerns. He explained that they had tried to do their best and respected his concerns and understood that Council Member Leal had been working in this area for awhile.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members West, Dunbar, Scott; Vice Mayor Ronstadt and Mayor Walkup

Nay: Council Members Ibarra, and Leal

Absent/Excused None

The motion carried by a voice vote of 5 to 2.

10. APPOINTMENTS TO BOARDS, COMMISSIONS AND COMMITTEES

Mayor Walkup announced that city manager's communication number 63, dated February 9, 2004, would be received into and made a part of the record. He asked for a motion to approve the appointments in the report.

It was moved by Council Member West, seconded by Council Member Leal, and carried by a voice vote of 7 to 0, to appoint Raquel Ramirez to the Pima County/Tucson Women's Commission.

Mayor Walkup asked if there were any personal appointments by any member of the council. There were none.

11. ADJOURNMENT: 6:23 p.m.

Mayor Walkup announced that the council would stand adjourned. Due to the President's Day holiday, there would be no meeting on Monday, February 16, 2004. The next regularly scheduled meeting of the mayor and council will be held on Monday, February 23, 2004, at 5:00 p.m., in the Mayor and Council Chambers in City Hall, 255 W. 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 9th day of February, 2004, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:SM:PG:DD:ccs
Pr agnst tp:rp