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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
on April 12, 2011.

Date of Meeting: October 26, 2010

The Mayor and Council of the City of Tucson met in regular session in the Tucson Convention Center, Meeting Rooms, 260 S. Church Avenue, Tucson, Arizona, at 5:48 p.m., on Tuesday, October 26, 2010, all members having been notified of the time and place thereof.

Roger W. Randolph, City Clerk, announced Council Member Uhlich was unable to be present for the evening's meeting, but would be participating by telephone. This was allowable under the Mayor and Council Rules and Regulations. He stated Council Member Uhlich could vote on all matters in the same way as those members physically present as long as she participated in the discussions. On the evening's agenda, all votes would be done by roll call rather than voice vote.

### 1. ROLL CALL

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

Present:

Regina Romero	Council Member Ward 1
Paul Cunningham	Council Member Ward 2
Karin Uhlich	Council Member Ward 3 (electronic attendance; departed at 8:45 p.m.)
Shirley C. Scott	Vice Mayor, Council Member Ward 4
Richard G. Fimbres	Council Member Ward 5
Steve Kozachik	Council Member Ward 6
Robert E. Walkup	Mayor

Absent/Excused:

None

Staff Members Present:

Mike Letcher	City Manager
Michael Rankin	City Attorney
Roger W. Randolph	City Clerk

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

The invocation was given by Reverend Ron Rude, Lutheran Campus Ministry, after which the Pledge of Allegiance was presented by the entire assembly.

Presentations:

- a. Vice Mayor Scott, assisted by Mayor Walkup, presented a plaque to the Tanque Verde Weedwackers, recognizing their volunteer work in removing buffelgrass in Ward 4. Sally Danielson accepted the plaque.
- b. Mayor Walkup presented an Extraordinary Citizen Certificate of Recognition to Father Raymond J. Ratzenberger.
- c. Mayor Walkup proclaimed October to be “Disability Awareness Month.” Willie H. Bond III, Commission on Disability Issues (CODI) Chair, accepted the proclamation.

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

Mayor Walkup announced City Manager’s communication number 481, dated October 26, 2010, was received into and made part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

- a. Council Member Romero invited the community to the “Dia de Los Muertos” celebration, reminded the public about the upcoming General Election, and also reported on the Midvale Park Festival.
- b. Council Member Cunningham reminded the public to vote, announced the following events: the grand opening of the Udall Soccer Fields C, D, and E, the Boys and Girls Club of Tucson benefit, and Ward 2 Halloween events. He also announced that Chris Burton Jacome was up for a Grammy Award for the Best Contemporary World Album.
- c. Council Member Uhlich thanked the Commission on Disability Issues (CODI) for their work.
- d. Council Member Fimbres thanked City staff who participated in the Ward 5 Townhall on the Proposition 400. He also reported on the grand opening of the El Pueblo Farmer’s Market and stressed upon safety concerns for Halloween.

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

Mayor Walkup announced City Manager’s communication number 482, dated October 26, 2010, was received into and made part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

No report was given.

**5. LIQUOR LICENSE APPLICATIONS**

Mayor Walkup announced City Manager’s communication number 483, dated October 26, 2010, was received into and made part of the record. He asked the City Clerk to read the Liquor License Agenda.

b. Liquor License Application(s)

New License(s)

- 1. Sam’s Club #6692, Ward 3  
4701 N. Stone Ave.  
Applicant: Clare Hollie Abel  
Series 9S, City 82-10  
Action must be taken by: November 12, 2010

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

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

Person Transfer

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

c. Special Event(s)

- 1. Our Lady of Lavang Parish, Ward 5  
800 S. Tucson Blvd.  
Applicant: Anton Trung Tran  
City T100-10  
Date of Event: February 5, 2011 - February 6, 2011  
(Vietnamese New Year Festival)

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

2. Kokopelli Winery, Ward 6  
534 N. 4th Ave.  
Applicant: Dennis Minchella  
City T104-10  
Date of Event: December 10, 2010 - December 12, 2010  
(Wine Festival)

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

3. Equine Voices Rescue & Sanctuary, Ward 6  
2200 E. Elm St.  
Applicant: Karen L. Pomroy  
City T105-10  
Date of Event: November 7, 2010  
(Fundraiser)

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

4. Holy Family Catholic Church, Ward 1  
338 W. University Blvd.  
Applicant: Sylvia A. Cordova  
City T106-10  
Date of Event: November 13, 2010 - November 14, 2010  
(Parish Fundraiser)

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

5. Downtown Tucson Partnership, Ward 1  
101 N. Stone Ave.  
Applicant: Brandi Renee Haga  
City T107-10  
Date of Event: November 20, 2010  
(Cycling Event)

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

d. Agent Change/Acquisition of Control

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

It was moved by Council Member Fimbres, duly seconded and passed by a roll call vote of 7 to 0, to forward liquor license applications 5b1 and 5c1 through 5c5 to the Arizona State Liquor Board with a recommendation for approval.

## 6. CALL TO THE AUDIENCE

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

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

- a. Michael Coiro, American Federation of State, County and Municipal Employees (AFSCME) Local 449 Executive Director, spoke in support of Proposition 400.
- b. Willie Blake, Jr., Western Hills Neighborhood spoke in support of Proposition 400.
- c. Michael Toney spoke about the Rio Nuevo Multipurpose Facilities District.
- d. Robert Reus spoke in opposition to Proposition 401.
- e. Thomas Palomares spoke about his concerns in working with City departments relating to the sign code, which affected the business community.

Vice Mayor Scott requested the City Manager to address and follow-up on Mr. Palomares’ sign code concerns.

- f. Jack Fitzgerald spoke about the problems faced by small businesses in Tucson. He also urged the public to get out and vote and to read up on Propositions 400 and 401.
- g. Ken Johnson invited the public to attend the Veterans Day Parade and spoke about volunteering at the Veteran’s Administration (VA).

Council Member Cunningham asked the City Manager to coordinate security with the Pima County Sheriff’s Department, the Arizona Rangers, and the Tucson Police Department for the Veteran’s Day Parade.

- h. Shannon Cain gave the tenth installment of her performance piece entitled, *“Tucson, the Novel: An Experiment in Literature and Civil Discourse.”*

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

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

a. APPROVAL OF MINUTES

1. Report from City Manager OCT26-10-487 CITY WIDE
2. Mayor and Council Regular Meeting Minutes of May 25, 2010

b. REAL PROPERTY: AMENDING A TEMPORARY REVOCABLE EASEMENT WITH THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT FOR A PORTION OF THE HERBERT AVENUE RIGHT OF WAY

1. Report from City Manager OCT26-10-490 WARD 6
2. Resolution No. 21643 relating to Real Property; authorizing the City Manager to amend the Temporary Revocable Easement (TRE) with the Rio Nuevo Multipurpose Facilities District, for a portion of the Herbert Avenue right of way abutting the Rialto Theater, to accept quarterly payments during the first year of the TRE, and declaring an emergency.

It was moved by Council Member Kozachik, duly seconded, and passed by a roll call vote of 7 to 0 that Consent Agenda Items a - b, be passed and adopted and the proper action taken.

**8. PUBLIC HEARING: TUCSON CONVENTION CENTER HOTEL PROJECT; PROPOSED FINANCING TERMS, INCLUDING RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT PROPOSAL; DIRECTION TO CITY MANAGER AND STAFF; AND NEXT STEPS FOR CONTINUED DOWNTOWN REVITALIZATION**

Mayor Walkup announced City Manager's communication number 489, dated October 26, 2010, was received into and made part of the record. He also announced this was the time and place legally advertised for a public hearing on the Tucson Convention Center Hotel Project to allow public comment and to allow the Mayor and Council to discuss, consider, and take action related to the Tucson Convention Center Hotel Project. He said the public hearing was scheduled to last for no more than one hour and speakers were limited to five-minute presentations. Mayor Walkup announced that staff would make a brief presentation prior to beginning the public hearing.

Michael Letcher, City Manager, stated the Mayor and Council recognized the significance of the proposed Tucson Convention Center Hotel, and also its responsibilities to protect City taxpayers. Mr. Letcher spoke about action the Mayor and

Council took on September 28, 2010, directing staff to negotiate an agreement with the Rio Nuevo Multipurpose District Board to cover four points that would: 1) satisfy the direction given by the Legislation; 2) result and reduce the Guaranteed Maximum Price (GMP) for the project; 3) reduce developer and design building fees; and 4) resolve issues relating to the use of local subcontractors, and acquire additional security from the hotel operators. He added those were conditions that had to be met before staff returned to the Mayor and Council with the recommendation to either move ahead or not on the hotel.

Mr. Letcher said the Mayor and Council would be briefed, at the evening's meeting, on all points listed by the City's Chief Financial Officer/Finance Director, Kelly Gottschalk, and the City Attorney, Michael Rankin,. He explained that it was still a work in progress and that an agreement had not been met.

Kelly Gottschalk, Chief Financial Officer/Finance Director, commented that, in September 2010, the City sent the Rio Nuevo Board two different term sheets outlining the structure of the transaction and the structure relationship between the City and Rio Nuevo, about what was successful for the City in proceeding forward with the next step, which was to negotiate the various legal and financing documents. She said part of that would also include the intention to commit the City's annual guarantee to back the bonds.

Ms. Gottschalk said on October 7, 2010, the Rio Nuevo Board approved a thirteen-part motion on the project in response to the City's term sheet. The motion approved by the Board was very different from the term sheet submitted to the District, and very different from the direction given by the Mayor and Council. Ms. Gottschalk said members of the Rio Nuevo Board negotiating team, as well as negotiators for the City, sat down to negotiate their terms in trying to bring them closer to the term sheet the City presented, and in trying to meet the goals of the Mayor and Council. On October 20, 2010, the Rio Nuevo Board approved a motion amending their October 7, 2010 motion.

Ms. Gottschalk said significant progress was made in moving the two positions closer together as a result of the negotiations, but there were still important areas that had not been addressed to the City's satisfaction. She stated the major areas of concern included: District participation in the event of a revenue shortfall; use of the Tucson Convention Center by the City for the term of the debt; distribution of net income; sharing of the cost of issuance if a financing transaction failed to close; and other technical issues.

Ms. Gottschalk said the amended motion was not sufficient to meet the City's goals of protecting the City's taxpayers and strengthening the financing transaction. She explained that after the amended motion was approved by the Board, she attempted to contact members of their negotiating team to clarify the items that remained outstanding, find out what their position was and if they thought there was room to negotiate. She said her questions were not directly answered. She said great progress had been made in the negotiations and she hoped, with further negotiations, that an acceptable agreement could be reached regarding the issues that were not addressed.

Michael Rankin, City Attorney, added there had been certain movements made with respect to other conditions identified by the Mayor and Council on September 28, 2010, specifically the proposed reductions to the GMP and associated developer fees. He said updated information was provided to the Mayor and Council as it became available to City staff, along with an assessment by the City's outside retained counsel.

Mr. Rankin summarized that the developer proposed a reduced GMP reduction of approximately \$7.5 million dollars, which was exclusive of scope reductions or value engineering, and as much as an additional \$3.7 million dollars in scope reductions, or value engineering where certain changes would in fact be made to the project. Mr. Rankin said the City's assessment was that the reductions were not adequate and that further reductions without scope changes, without compromising the project, were available and appropriate.

Mr. Rankin said Mr. Melvin Cohen, the City's legal counsel, was present and could answer specific questions, and provide more detail on the assessment, as well as address the local subcontractor issues. He suggested that the Mayor and Council ask questions after the public hearing, when the Mayor and Council could frame their questions and counsel would be prepared to respond. He said Ms. Gottschalk could also present a summary of the additional information from the operator, Starwood Share.

Ms. Gottschalk stated that Starwood was requested to provide a \$10 million dollar letter of credit or other security to the financing, with the goal of reducing the risk to the City's general fund. She said the City received the letter as requested from Starwood, but pointed out that the security from the operator was one piece of a very large complex operating agreement, and that agreement had to be negotiated in full. Ms. Gottschalk said, what needed to happen next, was that City staff needed to retain outside counsel with expertise in that area to assist with the negotiations and through that process, the City could decide if the \$10 million dollar letter of credit offered by Starwood, in conjunction with, all the other terms in the agreement, met the City's goals in the transactions.

Ms. Gottschalk said that without moving forward and having the authority to retain outside counsel, the City could not go any further on the item. She added that Starwood met the technical requirements that the City asked them to do.

Mr. Rankin wrapped up staff's comments, and pointed the Mayor and Council to the legal considerations provided in Communication which summarized the legal considerations in the Mayor and Council's deliberations. He said the underlying decision for the Mayor and Council and the City was whether to participate in the financing for the project, whether to back the bonds; and if so, what terms were acceptable.

Mike Cole spoke in opposition to the building of the proposed hotel in downtown Tucson.

Raj Kohli spoke in opposition to the proposed hotel in downtown Tucson.

Tony Traub, representing Garfield Traub Development, spoke in support of the proposed hotel in downtown Tucson and urged the Mayor and Council to go forward with the project.

Miguel Escalante spoke in opposition to the proposed Tucson Convention Center Hotel project.

Jaime Gutierrez, representing the University of Arizona, read a commentary from U of A's President Robert N. Shelton, in support of the proposed Tucson Convention Center Hotel project and the modern streetcar.

Mikki Niemi spoke in opposition to the proposed Tucson Convention Center Hotel project.

Jim Kuliesh, Alliance of Construction Trades (ACT) Executive Director, spoke in opposition to the proposed Tucson Convention Center Hotel project, because the bidding did not include local subcontractors.

Anne Gomez spoke about her concerns that the J. W. Marriott owed the City of Tucson five million dollars. She asked if this was in fact an uncollected debt and what it was for.

Stephen D. Moffett, Garfield Traub Development, Hospitality Division President spoke in support of the proposed hotel in downtown Tucson.

Robin Gomez spoke in opposition to the proposed Tucson Convention Center Hotel project. He asked the Council to give the public the pros and cons of the project, and why they considered it worth building.

Todd Scholer spoke in support of the proposed Tucson Convention Center Hotel project.

Michael Toney gave the Mayor and Council his suggestions for the proposed Tucson Convention Center Hotel project.

Gabriela Saucedo-Mercer spoke in opposition to the proposed Tucson Convention Center Hotel project.

Kevin Madden, Madden Media, spoke in support of the proposed downtown hotel and urged the Mayor and Council to step up and invest in the Tucson Convention Center Hotel Project to promote tourism.

Robert Reus spoke in opposition to the proposed Tucson Convention Center Hotel project.

David Pittman, Arizona Builders Alliance (ABA) Director, spoke in support of the Tucson Convention Center Hotel Project, stating construction of the hotel would provide a huge boost to Tucson's economy.

Robin West spoke in opposition to the proposed Tucson Convention Center Hotel project, and also spoke about failed projects proposed by the Rio Nuevo Board.

Mayor Walkup announced that the public hearing was held for one hour and asked for a motion to close the public hearing.

An unidentified speaker spoke about his opposition to closing the public hearing and several other speakers were speaking at once.

Vice Mayor Scott asked those in the audience to raise their hands if they turned in a speaker's card but did not get a chance to speak.

Mayor Walkup reminded the Council that there was another public hearing on the evening's agenda and said it was appropriate to close the public hearing and move on. He said if the Council wanted to continue with the public hearing, it was their decision.

Vice Mayor Scott asked that the public hearing continue in order to hear from everyone who had submitted a card.

William Lesch spoke in opposition to the proposed Tucson Convention Center Hotel project.

Pamela Powers spoke in opposition to the proposed Tucson Convention Center Hotel project.

Daphne Madison, representing Barrio Viejo, spoke in opposition to the proposed Tucson Convention Center Hotel project.

Barney Brenner spoke in opposition to the proposed Tucson Convention Center Hotel project.

Ron Michaels said he was involved in the hospitality industry outside of Tucson as a Management Consultant. He urged the Mayor and Council to examine other consultants who could invest their own money in the project, and not City tax dollars.

Steve Miesner spoke about his ideas to fund the proposed Tucson Convention Center Hotel project.

Ray Depa spoke about his ideas to stimulate downtown with the development of a new arena, instead of the proposed Tucson Convention Center Hotel project.

Stephen Hughes spoke in opposition to the proposed Tucson Convention Center Hotel project.

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

Mayor Walkup asked staff about the use of public backed bonds for a project, like a convention center hotel, versus using public financed backing for a hotel. He said he wanted to know what the financial logic was and why so many communities turned to city backed bonds versus public financing.

Ms. Gottschalk said that currently, in the financial markets, the private industry required a profit on investing their money that was much greater than what a public project required. She said the cost of borrowing was much lower, because the focus was not solely on profit, but on the positive impacts it brought to the community.

Mayor Walkup asked if it was possible for the private sector to borrow that amount of money. He said it was his understanding that they might have to put fifty-percent down now and the next thirty-percent would be at a higher rate. The closing amount would then be at an extraordinary rate. He asked if that was the situation the City was in.

Ms. Gottschalk responded affirmatively and said it became more difficult to do public transactions after the tax laws changed in 1986. She added that with the tightening of the credit markets experienced in the last few years, it was almost impossible to get that level of funding, unless there was a sizeable investment.

Mayor Walkup asked, if the project was postponed or terminated, could the situation improve in the future, or was it only the economic conditions the City currently faced.

Ms. Gottschalk stated the benefits in the market were threefold. She said the City, 1) was in a historically low interest rate environment on its own; 2) had access to Build America Bonds, which may or may not be extended after the first of the year; and 3) was in a very low construction cost market. She said if the hotel was delayed, Build America Bonds might not be extended, or extended at the current level, interest rates could go up, and as the economy recovered, all thoughts were that construction costs would increase. She said, as the City waits on the project, the assumption was that it could get more expensive.

Mayor Walkup asked if it was true that one way to lower the risks to the taxpayer was to lower the cost of the hotel. He referred to the report from Mesch, Clark & Rothschild, P.C., where it stated the results of the reduction could lead to \$16 to \$20 million dollars of potential opportunities. He asked if that was the essence of the report.

Melvin C. Cohen, Mesch, Clark & Rothchild, P.C., replied their recommendation was that there were substantial savings in the neighborhood of \$16 to \$20 million dollars. He added that he thought the response the City received \$7 million dollars was consistent and that showed there was money to be cut. He said there were still substantial fees, contingencies, even after the numbers that were cut.

Mayor Walkup summarized for the Council some of what he heard from the various presentations. He said there were several considerations before the Mayor and Council; one was the potential of postponing a decision until the next meeting on November 9, 2010, giving the Council further time to consider Mr. Cohen's potential \$16 to \$20 million dollars in reductions and to consider the public's input. Second, he said, was the possibility of terminating the Convention Center Hotel project. Mayor Walkup said a third possibility was the issuance, by the Mayor and Council, of an ultimatum to Garfield Traub to accept the conditions of Mr. Cohen's reduction in the GMP as a requirement to see a \$20 million dollar reduction.

Mayor Walkup said he was very concerned with Mr. Kuliesh's comments. He said one of the things the Mayor and Council could do was to ask for a significant change in the local expansion of contracts awarded to people within the City.

Mayor Walkup asked if there was any discussion.

Council Member Romero spoke about the creation of the Rio Nuevo Board by the State Legislature to move the hotel forward. She also spoke about her request for the City to hire counsel specializing in hotel development and commented that further reductions should be made by Garfield Traub to bring down the GMP and include more local subcontractors in their proposal. She said the City gave the Rio Nuevo Board the opportunity to make the right decision and fully back the project, but they were unwilling to do so. She commented that she could not move forward with the project.

It was moved by Council Member Romero, duly seconded, to direct the City Manager to reject the Rio Nuevo Multipurpose Facilities District (RNMFD) term sheet and proposal of October 7, 2010, amended on October 20, 2010, due to financial considerations, and that the City of Tucson (COT) not proceed with financing of the Convention Center Hotel Project. It was further moved to direct City staff and City consultants to terminate negotiations with Garfield Traub and to concentrate all negotiations on the intergovernmental agreement with the RNMFD on the projects already authorized and encourage an open dialogue on potential projects that both the RNMFD and the COT could afford to participate in.

Mayor Walkup asked if there was any further discussion.

Council Member Cunningham expressed his concern about the financial stability of the project.

Council Member Uhlich commented on the City's good faith attempt to meet the direction of the Legislature which was to immediately focus the District's attention and resources on "revenue generating projects" and on the hotel project. She said the Mayor and Council's inclination was to focus on public infrastructure, and it was their belief, which had been proven, that if the City invested in public infrastructure, then private sector investments would come. Council Member Uhlich also said the project was not meeting the common sense test with the benchmarks that had been set.

Vice Mayor Scott stated she did not believe the proposal met the standards the Mayor and Council thought made good financial sense. The additional concessions from the developer had not been met, and the financial data associated with the project had not convinced her that the building of the hotel was in the best economic interests of the City. She said she was troubled by the information received from the RNMGD in regards to the questions asked by the City and the lack of cooperation.

Council Member Fimbres expressed his concerns about the lack of cooperation with the local subcontractors, stating the project was to stimulate Tucson's economy and help growth.

Council Member Kozachik spoke about his concerns with the projected revenues and the City's risk profile.

Mayor Walkup asked Council Member Romero for clarification on her motion. He asked how the projects were structured and what the standards were for putting together future projects. He asked Council Member Romero if part of her motion could instruct staff to work on what could be done in the future to ensure jobs and growth.

Council Member Romero replied that an economic recovery plan was needed, and that the economy had changed. She stated decisions made before 2007-2008 were different from current decisions made in this economy. She said she did not think the Mayor and Council should make a decision on what should be done next, but suggested that the City Manager, City Attorney, and Financial Director look into an economic recovery plan.

Council Member Kozachik commented that Mayor Walkup's concerns were imbedded in Council Member Romero's motion.

Vice Mayor Scott pointed out that Senate Bill 1003, which gave notice to the Rio Nuevo Board as to what they could use their monies for. She said it stated monies could only be used for a hotel and convention center. She said the convention center was certainly a part of what the Senate Bill talked about.

Mayor Walkup said he supported the motion, because the City was in a period where things were happening in the downtown area, and the private sector was involved. However, he said, he still had some concerns about getting back to the main purpose of arts and culture, of the Rio Nuevo District and getting people back to work.

The motion to direct the City Manager to reject the Rio Nuevo Multipurpose Facilities District (RNMFD) term sheet and proposal of October 7, 2010, amended on October 20, 2010, due to financial considerations, and that the City of Tucson (COT) not proceed with financing of the Convention Center Hotel Project and direct City staff and City consultants to terminate negotiations with Garfield Traub and to concentrate all negotiations on the intergovernmental agreement with the RNMFD on the projects already authorized and encourage an open dialogue on potential projects that both the RNMFD and the COT could afford to participate in was passed by a roll call of 7 to 0.

RECESS: 8:45 p.m.

RECONVENE: 9:05 p.m.

(NOTE: Council Member Uhlich departed after the conclusion of Item 8. Council Member Kozachik returned at 9:12 p.m.)

**9. PUBLIC HEARING: TUCSON CODE - AMENDING (CHAPTER 23) THE *LAND USE CODE*; RELATING TO MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA OFFSITE CULTIVATION LOCATIONS**

Mayor Walkup announced City Manager's communication number 488, dated October 26, 2010, was received into and made part of the record. He also announced this was the time and place legally advertised for a public hearing on a request for a *Land Use Code* amendment to address medical marijuana dispensaries and cultivation locations as contemplated by Proposition 203, the *Arizona Medical Marijuana Act*. He said the public hearing was scheduled to last for no more than one hour and speakers were limited to five-minute presentations.

Roger W. Randolph, City Clerk, announced that staff wanted to make a brief presentation before beginning the public hearing.

Ernie Duarte, Planning and Development Services Department Director, reported that the item was a *Land Use Code* text amendment requested by the Mayor and Council on September 8, 2010, in response to Proposition 203, the *Arizona Medical Marijuana Act*, which would appear on the November 2, 2010, statewide ballot. He said the provisions of Proposition 203 allowed cities and counties to enact reasonable zoning regulations of medical marijuana dispensaries and cultivation locations. Medical marijuana dispensaries and medical marijuana cultivation locations were not currently a permitted use in the City and were not addressed by any regulations in the Tucson *Land Use Code*. He said the ordinance proposed allowance for the dispensing and cultivation of medical marijuana in the C-2 and C-3 commercial zones, and off site cultivation of medical marijuana in the I-1 and I-2 zones, when in compliance with specific performance criteria.

Mr. Duarte explained that the performance criteria proposed in the ordinance included a separation of two thousand feet from any other medical marijuana dispensaries

or cultivation locations, a two thousand foot separation from any licensed residential substance abuse diagnostic and treatment facility or other licensed drug or alcohol rehabilitation facility, and a one thousand foot separation from a public, private or charter school, licensed child care center, church, library, or public park. He said a medical marijuana dispensary would be allowed up to twenty five hundred square feet of gross floor area and a medical marijuana cultivation location would be allowed up to three thousand square feet of gross floor area. The use would also comply with all applicable health regulations; including those promulgated by the Arizona Department of Health Services and any other authorized regulatory agencies. Mr. Duarte added that the proposed amendment was reviewed by the City's Planning Commission.

Michael Rankin, City Attorney, added that the public hearing was not scheduled for the purpose of debating the merits or lack of merits of Proposition 203. Instead, it was just to take in public input on proposed zoning regulations that would go into place in the event that Proposition 203 passed and became law.

Amelia Cramer, Chief Deputy, Pima County Attorney's Office, said she was present on behalf of the Pima County Attorney, Barbara LaWall. Ms. Cramer referred to a letter Ms. LaWall submitted to Mayor and Council thanking them for considering adopting proactive zoning to be in effect at the time Proposition 203 takes effect, if passed by the voters on November 2, 2010. She said that Ms. LaWall supported the proposed restrictions, but suggested a few amendments.

Cassie Adams stated she was an attorney and a retained speaker, representing a group of professionals who had a strong track record of success with medical marijuana in California. She stated the groups she represented intended to apply for a license in Arizona. Ms. Adams asked the Mayor and Council to consider two amendments before voting, or continue their vote for two weeks to allow her time to meet with staff to respond to any questions they might have.

Bill Knowlton, representing Today's Healthcare, stated they were a well-established medical marijuana operator and owner in various jurisdictions outside of Arizona, looking to come to Arizona. He commended the City and staff for getting out in front of a very difficult issue and for setting a standard for regulating the medical marijuana zoning use. He said the draft ordinance before the Mayor and Council was near perfect, with two minor exceptions as noted by Ms. Adams. Mr. Knowlton urged the Council not to act on the item at the evening's meeting.

Sean Hannley stated he was involved in two different corporations, one of which would attempt to achieve one of the dispensary licenses should the bill pass. He spoke about concerns they had if the zoning restrictions were to pass with the three thousand square foot limit and the twenty five hundred square foot limit on dispensaries.

Deborah Van Sant spoke about her business, which was an independent pharmacy. She applauded the Mayor and Council for proactively preparing for Proposition 203, and encouraged them to mirror Pima County's zoning requirements.

Kent Burbank, Pima County Attorney's Office, Victim Services Division Director, spoke about their concerns with zoning issues and the safety of neighborhoods. He urged the Mayor and Council to think proactively about zoning restrictions.

Kimberly Haslett spoke in support of medical marijuana dispensaries but was concerned with the zoning restrictions.

Michelle Graye spoke about the zoning amendments on medical marijuana dispensaries.

Jon Gettel spoke about his concerns with rushing into adopting zoning regulations for medical marijuana dispensaries.

Roy Zarow spoke in support of medical marijuana dispensaries.

Shannon Barcato spoke in support of medical marijuana dispensaries.

Stephen Hughes, Green Thumb Herbal, spoke in support of medical marijuana.

It was moved by Vice Mayor Scott, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Uhlich absent/excused) to close the public hearing.

Mayor Walkup asked the City Clerk to read Ordinance 10848 by number and title only.

Ordinance No. 10848 relating to planning and zoning; limiting the use of land for registered nonprofit medical marijuana dispensaries and the growth and cultivation of medical marijuana, amending the Tucson Code, Chapter 23, Land Use Code, Sections 2.5.4, 2.5.5, 2.7.2, 2.7.3, 3.5.9, 5.3.12, and 6.3.10; and declaring an emergency.

It was moved by Council Member Cunningham, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Uhlich absent/excused) to continue Item 9 to the November 9, 2010, meeting.

**10. PUBLIC HEARING: ZONING (C9-01-19) CRETCHER DESIGNS LLC – OLD SPANISH TRAIL, SR TO C-1 ZONING (C-1 ORDINANCED BUT NOT EFFECTUATED), CHANGE OF CONDITIONS AND PRELIMINARY DEVELOPMENT PLAN, ORDINANCE ADOPTION**

Mayor Walkup announced City Manager's communication number 486, dated October 26, 2010, was received into and made part of the record. He also announced this was the time and place legally advertised for a public hearing on a request for a change of conditions and preliminary development plan for the property located at the northwest corner of Old Spanish Trail and Harrison Road. He asked if the applicant or representative was present and if they had any brief comments before beginning with the public hearing.

Dan Castro, Rick Engineering, introduced Brent Hazen of Hazen Enterprises, and said they were agreeable to the proposed conditions.

Brent Hazen, Hazen Enterprises, thanked Council Member Cunningham for his tireless support for the project. He also thanked staff and said he looked forward to working with the Planning and Development Services Department to move the project forward.

Mayor Walkup announced the public hearing was scheduled to last for no more than one hour and speakers were limited to five-minute presentations. He asked if there was anyone wishing to speak on the item. There was no one.

It was moved by Vice Mayor Scott, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Uhlich absent/excused) to close the public hearing.

Mayor Walkup asked the City Clerk to read Ordinance 10847 by number and title only.

Ordinance No. 10847 relating to zoning: Amending Ordinance No. 10459 by amending the rezoning conditions for the area located at the northwest corner of south Harrison Road and Old Spanish Trail in Case C9-01-19, Cretcher Designs LLC - Old Spanish Trail, SR to C-1 (C-1 previously ordinance but not effectuated); and declaring an emergency.

It was moved by Council Member Cunningham, duly seconded, and carried by a roll call vote of 6 to 0 (Council Member Uhlich absent/excused) to approve the request as recommended by staff and pass and adopt Ordinance 10847.

**11. ZONING (C9-08-19) MCGETRICK – ALVERNON WAY, R-3 TO O-3, CHANGE OF PRELIMINARY DEVELOPMENT PLAN AND REZONING CONDITIONS**

Mayor Walkup announced City Manager's communication number 485, dated October 26, 2010, was received into and made part of the record. He also announced this was a request for a change of preliminary development plan and rezoning conditions for the property located at the southeast corner of Alvernon Way and 2<sup>nd</sup> Street. He asked if the applicant or representative was present.

Chuck Shuiteman, Utopia Design Studios Architect, stated they agreed with all the staff recommendations on the zoning conditions.

Council Member Kozachik referred to a protest that had been filed. He asked the applicant to inform the Mayor and Council on what was included in the design plan to mitigate the sheet flow as the size of the parking lot was expanded.

Mr. Shuiteman said that currently it was an unpaved parking lot, which would give them the opportunity to pave, grade and incorporate all of the rainwater harvesting requirements.

It was moved by Council Member Kozachik, duly seconded, and passed by a roll call vote of 6 to 0 (Council Member Uhlich absent/excused) to approve the request as recommended by staff.

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

Mayor Walkup announced City Manager's communication number 484, dated October 26, 2010, was received into and made part of the record. He asked for a motion to approve the appointments in the report.

It was moved by Council Member Romero, duly seconded, and carried by a voice vote of 6 to 0 (Council Member Uhlich absent/excused), to approve the re-appointment of Norman Ross to the Veterans Affairs Committee in the Korean War Veterans Association, Edward W. Rhoads Chapter category.

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

**13. ADJOURNMENT: 10:04 p.m.**

Mayor Walkup announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, November 9, 2010, at 5:30 p.m., in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

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MAYOR

ATTEST:

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CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 26th day of October 2010 and do hereby certify that it is an accurate transcription.

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DEPUTY CITY CLERK

RWR:sac:ds