



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
on April 5, 2011

Date of Meeting: November 23, 2010

The Mayor and Council of the City of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda Street, Tucson, Arizona, at 5:35 p.m., on Tuesday, November 23, 2010, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Pro Tempore Scott 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
Shirley C. Scott	Vice Mayor, Council Member Ward 4
Richard G. Fimbres	Council Member Ward 5
Steve Kozachik	Council Member Ward 6

Absent/Excused:

Robert E. Walkup	Mayor
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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 Chewee Hughley, Church of our Faith-Fellowship, after which the Pledge of Allegiance was presented by the entire assembly.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Pro Tempore Scott announced City Manager’s communication number 517, dated November 23, 2010, was received into and made part of the record. She 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 thanked the Girl Scouts Troop 983 for their help in planting trees in the “A” Mountain community and invited the public to attend the 2nd Annual Tamale Contest in Ward 1.
- b. Council Member Cunningham asked constituents to remember all of the things they should be thankful for during this holiday season.
- c. Council Member Uhlich announced the Raging Sage Coffee Roasters was hosting an annual Thanksgiving Day buffet, in Roger Sliker’s memory, with the proceeds going to Peppi’s Hospice.
- d. Council Member Fimbres announced the following; the grand opening of Perfection Finishing Industries in Ward 5; over six hundred food boxes were assembled and distributed by labor union volunteers from the Tucson Firefighters, AFSCME Local 449, and CWA Local 7000; the passing of Art Chapa, Pima County lobbyist, attorney, and former member of the state Board of Regents; and the retirement of Abe Marquez, Ward 5 Council Aide since 1989.
- e. Council Member Kozachik announced the upcoming Imagine Greater Tucson workshop in Ward 6 and a Liquor License Hearing, sponsored by the Arizona Department of Liquor License and Control, usually held in Phoenix, was being held in Tucson.

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

Mayor Pro Tempore Scott announced City Manager’s communication number 518, dated November 23, 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.

Mike Letcher, City Manager, announced the City of Tucson was designated as the ninth best United States “digital city” for populations over two hundred fifty thousand; the tenth straight year the City received this award. The award had to do with the City’s website, its transparency and access by the community. He acknowledged all of the staff in the City’s Information Technologies department.

5. LIQUOR LICENSE APPLICATIONS

Mayor Pro Tempore Scott announced City Manager's communication number 519, dated November 23, 2010, was received into and made part of the record. She asked the City Clerk to read the Liquor License Agenda.

b. Liquor License Application(s)

New License(s)

1. QuikTrip #1487, Ward 4
10230 E. Golf Links Rd.
Applicant: Troy Charles DeVos
Series 10, City 100-10
Action must be taken by: December 5, 2010

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

2. Hub, Ward 6
266 E. Congress St.
Applicant: Thomas Robert Aguilera
Series 12, City 102-10
Action must be taken by: December 12, 2010

Tucson Police Department and Revenue Investigations have indicated the applicant is in compliance with city requirements.

Planning & Developments Services Department has indicated the applicant is not in compliance with city requirements.

3. The-U-Eatery & Bar, Ward 6
820 E. University Blvd.
Applicant: Ramiro James Scavo
Series 12, City 103-10
Action must be taken by: December 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(s)

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

c. Special Event(s)

1. St. Demetrios Greek Orthodox Church, Ward 3
1145 E. Fort Lowell Rd.
Applicant: Andrea H. Padinha
City T109-10
Date of Event: February 26, 2011
(Pre-Lent Dinner)

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

2. Most Holy Trinity Parish, Ward 1
1300 N. Greasewood Rd.
Applicant: Kenneth N. Moreland
City T111-10
Date of Event: December 12, 2010
(Christmas Party for Ladies Club)

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 Cunningham, duly seconded, and carried by a voice vote of 6 to 0 (Mayor Walkup absent/excused), to forward liquor license applications 5b1 through 5b3, 5c1 and 5c2, to the Arizona State Liquor Board with a recommendation for approval.

6. CALL TO THE AUDIENCE

Mayor Pro Tempore Scott 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 Pro Tempore Scott 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 the “call to the audience.”

- a. Shannon Cain gave the twelfth installment of her performance piece entitled, *“Tucson, the Novel: An Experiment in Literature and Civil Discourse.”*
- b. Mikki Niemi spoke about Thanksgiving being a time for giving and said he hoped everyone had a chance to give by volunteering time or making monetary

donations. He spoke in opposition to possible lay-offs and asked the Mayor and Council to look at other things to cut.

- c. Barbara LaWall spoke in support of the amendment to the *Land Use Code*, which addressed Medical Marijuana Dispensaries and Cultivation.
- d. Janet Marcus, Old Fort Lowell Neighborhood Association, spoke in support of the zoning regulations for Medical Marijuana Dispensaries stating they should be consistent with Pima County regulations.
- e. Donald Ijams, Neighborhood Support Network Coordinator, spoke in support of the zoning regulations for Medical Marijuana Dispensaries and said he hoped they were in line with Pima County's zoning regulations.
- f. Yolanda Herrera spoke about the negative impacts the Medical Marijuana Dispensaries had in the community and asked the Mayor and Council to adopt similar guidelines as those of Pima County.
- g. Ken Johnson spoke in support of our troops over seas, support for veterans, and events of the American Legion Post #7.
- h. Roy Tullgren, Gospel Rescue Mission, urged the Mayor and Council to establish good and wise land code restrictions regarding Medical Marijuana Dispensaries near and around schools and to be unified in adopting similar guidelines as those of Pima County and surrounding jurisdictions.
- i. Amy Bass, Compass Health Care, spoke about the Medical Marijuana law and encouraged the Mayor and Council to look at it proactively on the front side so that a lot of time was not spent in trying to clean up problems in the after mass.
- j. Rolande Baker spoke in support of the amendment to the *Land Use Code* regarding Medical Marijuana Dispensaries.
- k. Cameron Carter, Today's Health Care, spoke regarding the zoning ordinance for Medical Marijuana Dispensaries.
- l. Wilene Lampert, Southern Arizona Children's Advocacy Center, spoke in support of the proposed amendment to the *Land Use Code* that address the Medical Marijuana Dispensaries and Cultivation locations and urged the Mayor and Council to approve the Ordinance.
- m. Eric Shindler, Child and Family Resources President and Chief Executive Officer, spoke regarding the need to have uniform regulations regarding the Medical Marijuana Dispensaries and Cultivation locations.

- n. Joe Sweeney shared information regarding 287(g) and the recovery of the Thrifty block downtown.
- o. Kent Burbank, Pima County Attorney's Office Victim's Services Director, spoke regarding Medical Marijuana Dispensaries, and asked the Mayor and Council to take reasonable zoning into account to ensure the safety and well-being of neighborhoods and communities.
- p. Adriana (no last name given) spoke regarding public safety and was opposed to any budget cuts for police and fire.
- q. Jane Evans spoke in opposition to the proposed amendments to the *Land Use Code* regarding Medical Marijuana Dispensaries in low-income neighborhoods.
- r. Sean Hannley spoke in support of Medical Marijuana Dispensaries and Cultivation locations and said rules to govern this new industry were needed and not something that was based on fear.
- s. Jim Hannley spoke in support of Medical Marijuana Dispensaries and Cultivation locations and urged the Mayor and Council to adopt the most liberal ordinance possible.
- t. Cindy Loebis spoke in support of the fair and reasonable ordinance prepared by the City for Medical Marijuana Dispensaries and Cultivation locations.
- u. Michelle Graye spoke in support of Medical Marijuana. She stated the Arizona League of Cities and Towns put together a Model Zoning Bill that the Mayor and Council should look at and consider.
- v. Dennis Finneran spoke in support of Medical Marijuana Dispensaries and Cultivation locations and reasonable zoning requirements.
- w. Travis Sharon spoke in opposition to the City's zoning proposition and in support of the Model Zoning Bill stating the City's proposition was very stringent and difficult for Medical Marijuana Dispensaries to operate and the Model Zoning Bill gave them a little bit more freedom to build upon.
- x. Jon Gettle spoke in support of reasonable zoning requirements for Medical Marijuana Dispensaries and urged the Mayor and Council to consider the Model Zoning Bill.
- y. Kimberly Huslett spoke in support of Medical Marijuana Dispensaries. She asked the Mayor and Council to be reasonable and adopt the Model Zoning Bill.
- z. Michael Copeland spoke in support of Medical Marijuana Dispensaries and reasonable zoning laws.

- aa. Debra Smith spoke in support of Medical Marijuana Dispensaries.
- bb. Todd Searcy spoke in support of Medical Marijuana Dispensaries and asked the Mayor and Council to adopt the Model Zoning Bill.
- cc. Kit Misuraca spoke in support of Medical Marijuana Dispensaries and recommended that the City try and keep it local for the City's benefit.

It was moved by Council Member Uhlich, duly seconded, and carried by a voice vote of 6 to 0 (Mayor Walkup absent/excused), to discuss Item #10, Tucson Code: Amending (Chapter 23) the *Land Use Code*, Relating to Medical Marijuana Dispensaries and Medical Marijuana Offsite Cultivation Locations, after Item #7, Consent Agenda.

7. CONSENT AGENDA – ITEMS A THROUGH F

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

a. APPROVAL OF MINUTES

- 1. Report from City Manager NOV23-10-524 CITY WIDE
- 2. Mayor and Council Regular and Special Meeting Minutes of June 15, 2010

b. PARKS AND RECREATION: FACILITY DEVELOPMENT, MAINTENANCE, AND USE AGREEMENT WITH THE EL RIO SANTA CRUZ NEIGHBORHOOD HEALTH CENTER, INC.

- 1. Report from City Manager NOV23-10-521 WARD 5
- 2. Resolution No. 21654 relating to Parks and Recreation; authorizing and approving the Facility Development/Maintenance/Use Agreement between the City of Tucson and the El Rio Santa Cruz Neighborhood Health Center, Inc. for the design, construction and maintenance of the El Rio Santa Cruz Neighborhood Health Center to be located at 101 W. Irvington; and declaring an emergency.

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

c. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY FOR THE PANTANO RIVER PARK

- 1. Report from City Manager NOV23-10-522 WARD 4
- 2. Resolution No. 21655 relating to parks; Amendment Two requesting an extension of the Pantano River Park Project from Michael Perry Park to Sellarole Road and use of surplus Phase 1 funding for this purpose; and declaring an emergency.

- d. REAL PROPERTY: APPROVING A LEASE AGREEMENT WITH THE ARIZONA'S CHILDREN ASSOCIATION, DBA: SOUTHERN ARIZONA CENTER AGAINST SEXUAL ASSAULT, SU VOZ VALE, FOR SPACE LOCATED IN THE EL PUEBLO NEIGHBORHOOD CENTER
1. Report from City Manager NOV23-10-525 WARD 5
 2. Ordinance No. 10853 relating to real property; authorizing and approving the Lease Agreement between the City of Tucson and the Arizona's Children Association, dba: Southern Arizona Center Against Sexual Assault (SACASA) Su Voz Vale for space located in the campus of the El Pueblo Neighborhood Center at Old Nogales Highway and Irvington Road; and declaring an emergency.
- e. TUCSON CODE: AMENDING (CHAPTER 7) RELATING TO THE CURRENT PAWN SHOP ORDINANCE
1. Report from City Manager NOV23-10-527 CITY WIDE
 2. Ordinance No. 10854 relating to Pawnbrokers, Secondhand Dealers and Scrap Metal Dealers; making technical amendments to Tucson Code Sections 7-97 and 7-98; establishing an effective date; and declaring an emergency.
- f. TUCSON CODE: AMENDING (CHAPTER 11) RELATING TO THE SALE AND USE OF CONSUMER FIREWORKS
1. Report from City Manager NOV23-10-529 CITY WIDE
 2. Ordinance No. 10856 relating to Fire Protection and Prevention; prohibiting the use of any fireworks, and the sale of any fireworks other than permissible consumer fireworks as defined by State law, within the City; creating exceptions to the prohibition on use of fireworks for: (1) items defined to not be fireworks by State law; and (2) supervised public displays of fireworks authorized by City permit; providing that no person shall sell or allow the sale of permissible consumer fireworks: (1) to a person who is under (16) years of age; or (2) in conflict with State law; creating permit and signage requirements for persons desiring to sell permissible consumer fireworks to the public, and providing that those persons are subject to inspection to assure compliance with those requirements and with applicable rules relating to the storage or retail sale of permissible consumer fireworks; authorizing the Fire Chief or the Police Chief to enforce violations of this section designated as Civil Infractions; providing that except where specifically provided otherwise, any violation of the new Code section is a Civil Infraction; imposing strict liability for the costs of any emergency response that is dispatched as a result of: (1) the use of fireworks; or (2) any violation of the new Code section's provisions; amending Chapter 11 of the Tucson City Code by repealing current Sections 11-22 and 11-23 and adding a new Section 11-22; setting an effective date; and declaring an emergency.

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

g. RIO NUEVO: FIRST AMENDMENT TO THE INTERGOVERNMENTAL, DEVELOPMENT AND LEASE AGREEMENT WITH THE RIO NUEVO MULTIPURPOSE FACILITIES DISTRICT AND THE RIALTO THEATRE FOUNDATION

1. Report from City Manager NOV23-10-530 WARD 6
2. Resolution No. 21656 relating to the Rialto Theatre; authorizing and approving the execution of the First Amendment to the Intergovernmental, Development and Lease Agreement among the City of Tucson, the Rio Nuevo Multipurpose Facilities District, and the Rialto Theatre Foundation for the restoration, operation and management of the Rialto Theatre; and declaring an emergency.

It was moved by Council Member Uhlich, duly seconded, and passed by a roll call vote of 6 to 0 (Mayor Walkup absent/excused), that Consent Agenda Items a – g, with the exception of Items b and f, which were considered separately, be passed and adopted and the proper action taken.

7. CONSENT AGENDA – ITEM B

b. PARKS AND RECREATION: FACILITY DEVELOPMENT, MAINTENANCE, AND USE AGREEMENT WITH THE EL RIO SANTA CRUZ NEIGHBORHOOD HEALTH CENTER, INC.

1. Report from City Manager NOV23-10-521 WARD 5
2. Resolution No. 21654 relating to Parks and Recreation; authorizing and approving the Facility Development/Maintenance/Use Agreement between the City of Tucson and the El Rio Santa Cruz Neighborhood Health Center, Inc. for the design, construction and maintenance of the El Rio Santa Cruz Neighborhood Health Center to be located at 101 W. Irvington; and declaring an emergency.

Roger W. Randolph, City Clerk, announced the first item to be considered separately was Item b at the request of Council Member Fimbres.

Council Member Fimbres asked Kathy Burn, El Rio Community Health Center, to talk about the opening of the Center.

Kathy Burn, El Rio Santa Cruz Neighborhood Health Center Branch Manager, stated the grand opening was on December 2, 2010, with tours of the new facility. She thanked the City for everything they did to make this dream of the neighborhood a reality.

It was moved by Council Member Fimbres, duly seconded, and passed by a roll call vote of 6 to 0 (Mayor Walkup absent/excused), that Consent Agenda Item b be passed and adopted and the proper action taken.

7. CONSENT AGENDA – ITEM F

f. TUCSON CODE: AMENDING (CHAPTER 11) RELATING TO THE SALE AND USE OF CONSUMER FIREWORKS

1. Report from City Manager NOV23-10-529 CITY WIDE
2. Ordinance No. 10856 relating to Fire Protection and Prevention; prohibiting the use of any fireworks, and the sale of any fireworks other than permissible consumer fireworks as defined by State law, within the City; creating exceptions to the prohibition on use of fireworks for: (1) items defined to not be fireworks by State law; and (2) supervised public displays of fireworks authorized by City permit; providing that no person shall sell or allow the sale of permissible consumer fireworks: (1) to a person who is under (16) years of age; or (2) in conflict with State law; creating permit and signage requirements for persons desiring to sell permissible consumer fireworks to the public, and providing that those persons are subject to inspection to assure compliance with those requirements and with applicable rules relating to the storage or retail sale of permissible consumer fireworks; authorizing the Fire Chief or the Police Chief to enforce violations of this section designated as Civil Infractions; providing that except where specifically provided otherwise, any violation of the new Code section is a Civil Infraction; imposing strict liability for the costs of any emergency response that is dispatched as a result of: (1) the use of fireworks; or (2) any violation of the new Code section's provisions; amending Chapter 11 of the Tucson City Code by repealing current Sections 11-22 and 11-23 and adding a new Section 11-22; setting an effective date; and declaring an emergency.

Roger W. Randolph, City Clerk, announced that the final item to be considered separately was Item f, at the request of Council Member Uhlich.

Council Member Uhlich asked if this was an opportunity to begin to identify and segregate certain funding sources, new to the City, in support of public safety, regarding the sale and use of consumer fireworks.

Richard Miranda, Deputy City Manager, stated he spoke with Kelly Gottschalk, Finance Director, and there was a possibility to tack on a fee to a license for selling the fireworks. He said the tax issue had to go through a process by the City Attorney's office. He stated Ms. Gottschalk indicated she was more comfortable, in terms of counsel, that a licensing agreement, for selling the fireworks, was probably an easier process.

Council Member Uhlich stated she wanted to defer action on the item, if appropriate, to ensure they were maximizing the amounts of cost recovery. She asked if sales tax was applicable.

Michael Rankin, City Attorney, responded that sales tax was applicable. He said staff could come back on the issue of a dedicated revenue source, earmarking the sales tax generated by the sales, and address the fee issue associated with the permitting and inspections. He suggested that the Mayor and Council not delay action on the remainder of the Ordinance since the effective date of the State law was near.

Council Member Uhlich asked the Tucson Fire Department (TFD) for their input regarding the use of fireworks, specifically on holidays, by other jurisdictions and if that had been discussed.

Joe Gullotta, Tucson Fire Department Battalion Chief, stated TFD was following the lead of a lot of fire departments around the State. He said cities that had a complete ban on fireworks included Phoenix, Scottsdale, Tempe, Cave Creek, Goodyear, Chandler, Prescott, Payson, Sedona, Show Low, Peoria and Surprise. He said Gilbert was the only city listed that had a limited use for the 4th of July and New Year's Eve.

It was moved by Council Member Uhlich, duly seconded, to pass and adopt Consent Agenda Item f and directed staff to return to the Mayor and Council with the revenue information as requested.

Mayor Pro Tempore Scott asked if there was any discussion.

Council Member Kozachik stated he was confused on what some of the permitted uses for non-aerial devices, described as sparklers that sat on the ground. He asked Battalion Chief Gullotta to show the Mayor and Council what some of those fireworks were.

Battalion Chief Gullotta showed a video on the different fireworks in question and shared information regarding each one of them and what the affects were.

Consent Agenda Item f, with the directive to staff to return with revenue information, was passed and adopted by a roll call vote of 6 to 0 (Mayor Walkup absent/excused).

At this time, Mayor Pro Tempore Scott announced that a motion had been made and approved to discuss Item #10 out of order and discuss it after Item #7, due to the number of people who had expressed an interest.

10. TUCSON CODE: AMENDING (CHAPTER 23) THE LAND USE CODE; RELATING TO MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA OFFSITE CULTIVATION LOCATIONS (CONTINUED FROM THE MEETING OF NOVEMBER 9, 2010)

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

Mayor Pro Tempore Scott announced City Manager's communication number 526, dated November 23, 2010, was received into and made part of the record. She asked the City Clerk to read Ordinance 10850 by number and title only.

Ordinance No. 10850 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.

Mayor Pro Tempore asked if there was any discussion.

Council Member Uhlich stated she had some questions and a point of clarification. She said that there had been some comments made regarding receiving prior authorization by the Arizona or Pima County Health Department prior to permits being issued; the increase from one thousand to two thousand feet distance to any one drug treatment facility, the inclusion of industrial areas, and if the City was consistent or inconsistent with the State Statute regarding transport. She asked the City Attorney and the Chief of Police to comment and clarify those issues.

Michael Rankin, City Attorney, stated that the information was in the *Land Use Code (LUC)* that was before the Mayor and Council on pages 10 and 12 of the proposed Ordinance. He said compliance with the Arizona and Pima County Health Department codes was a requirement of the Ordinance. He stated that Council Member Uhlich was correct in that the distance to any drug treatment facilities was increased from one thousand to two thousand feet.

Roberto Villaseñor, Chief of Police, stated the City Attorney could respond regarding consistency or inconsistency with State Statutes. He said, in regards to the issue of allowance in industrial zones, it was unknown to the Tucson Police Department (TPD) and they would learn as they went along, as long as, TPD had control over the areas where cultivation and dispensary sites were located they would pay attention to those areas.

Council Member Uhlich asked if there were any adjustments TPD had suggested or wished for that were not included in the Ordinance.

Chief Villaseñor stated he felt the Ordinance was a good starting point and appreciated Mr. Rankin's opinions regarding the issue.

Mr. Rankin stated that what was before the Mayor and Council and proposed for consideration was consistent with what the voters approved in Proposition 203; the reference to delivery was in the context of the definition of what a dispensary was. He said the Proposition did not mandate that off-site delivery be allowed. He pointed out that, under the proposed Ordinance, off-site delivery was prohibited with the exception of caregivers.

Council Member Uhlich asked in terms of the Proposition language that said it was about allowing establishments to cultivate, dispense, transport, etc., was Mr. Rankin suggesting that the City was consistent because caregivers were being allowed to deliver, but other forms of transport were being prohibited.

Mr. Rankin responded affirmatively, stating the City was allowing caregivers to transport and provide medical marijuana to qualified patients, which he thought was consistent with Proposition 203. He said he also believed that the prohibition on the off-site deliveries beyond that was, in fact, a reasonable zoning restriction, which was expressly authorized under Proposition 203 and was a defensible position.

Council Member Uhlich asked how close the City was to the County's model and the Model Zoning Bill approved by the Arizona League of Cities and Towns.

Mr. Rankin responded that the Mayor and Council needed to be careful about the use of the word "model". He said he had been very involved in the League's development of the "model" ordinance. He had reviewed it, provided comments and input into its development. He said he also attended numerous meetings with other city attorneys and planners throughout the state. He commented he thought there was a healthy amount of variety from city to city, county and towns, in terms how they shaped their own individual ordinances based on their own zoning patterns and planning decisions within their city, town or county.

Mr. Rankin stated the City's Ordinance was very consistent with the League's ordinance. He said, for instance, the League's ordinance left blanks for each jurisdiction to fill in the distance requirements for the different uses that medical marijuana dispensaries are to be separated from. Also, he said, the "sample" ordinance put together by the group for the League did not dictate to the cities the process under which the zoning approvals could be achieved; whether on an individual case-by-case legislation decision as the County had chosen to do or whether by imposing the restrictions within the zoning themselves and approved administratively, which was what the City of Tucson and many others considered.

Council Member Uhlich asked about the Planning Commission's recommendation to adopt the Ordinance, review it in a year for any adjustments, and the effective date.

Ernie Duarte, Planning and Development Services Department Director, commented that the Planning Commission's recommendation was that the Ordinance be reviewed in one year, but did not mean that if issues arose, it could not be looked at sooner.

Council Member Fimbres asked about the process to locate dispensaries and cultivation facilities. He asked if that process was similar to the Liquor License process where neighborhoods had the opportunity to give their input.

Mr. Rankin stated it was not similar. He said this procedure was not comparable to the liquor license procedures which were regulatory licenses. He said medical marijuana dispensaries and cultivation facilities were zoning approvals and were very different and operated under different laws and procedures. He said, from that respect, the two could not be compared. Nonetheless, the County decided to set up a structure to which zoning approval would only occur through a legislative process that is decided, case-by-case, by the Board. He stated, based on the meetings he attended, some cities would follow that model.

Council Member Romero asked for clarification regarding the hours of operation. She gave an example of cancer patients not being able to meet those hours and also asked if a caregiver could be authorized to pick up their prescription. She also asked if the hours of operation were discussed during the Planning Commission's meeting.

Mr. Rankin stated that a caregiver could transport the medical marijuana to the qualifying patient associated with that caregiver. He said with respect to the hours of operation, that was one area where there would be a variance from city to city, town to town, in terms of what the hours of operation authorized under the zoning were. He stated it was within the Mayor and Council's purview to look at those hours and decide if they seemed to be the right fit.

Craig Gross, Planning and Development Services Department Deputy Director, stated that the hours of operation were discussed by the Planning Commission and their thought process was that they would be typical business hours of any other type of mercantile operation. He said, during their public hearing, supporters of the Medical Marijuana Dispensaries did not have any opposition to the hours of operation.

Council Member Kozachik commented on the hours of operation and stated that if action was taken, consideration should be given to 7:00 p.m. He asked Chief Villaseñor to talk about the size and square footage of the dispensaries and what TPD's experience was with crime in and around them.

Chief Villaseñor stated that was TPD's concern; they did not have experience in that area, but his best educated guess was that if you had larger and fewer cultivation sites, that was less area TPD needed to worry about. He said he was not aware of any provision that limited the number of sites just because of the change in the square footage of a cultivation area.

Chief Villaseñor said, looking at TPD's experience with indoor growing operations in homes, businesses, or buildings, it was quite common to have a plant per square foot. So, in a two thousand square foot home, there could be anywhere from fifteen hundred to two thousand plants times three or four growing cycles within a year, a cultivation site, of that size, could produce six thousand pounds in a year. He said, with that amount of marijuana, TPD felt that limiting the size of cultivation sites was a starting venture, a good idea, and could be revisited in a year's time or sooner if need be for any adjustments.

Mr. Rankin reiterated that increasing the square footage of a cultivation site did not necessarily result in fewer dispensaries and was a function of the number of pharmacies in the jurisdiction. He also stated that if the Ordinance had to be adjusted in the future, since this was a zoning ordinance, the fact of the matter was that the City was able to make it less restrictive if it became clear that was desirable. He said making it more restrictive was very difficult.

Council Member Kozachik asked about Section 1, #7 of the Ordinance. He wondered if the City was setting itself up for a Proposition 207 exposure, if the dispensaries were being encouraged into residential areas and why the City was not limiting the dispensaries to industrially zoned areas. He also asked about the whole issue of taxation.

Mr. Rankin stated he did not believe the City was being exposed to Proposition 207 liability. He said Proposition 207 created a claim for diminution of value by the property owner who was directly affected by the zoning ordinance not by the properties that might be affected by the use. He stated he was glad Council Member Kozachik mentioned Proposition 207, because they needed to get out in front of the issue and at least have a basic structure of zoning regulations in place prior to the effective date of the Proposition itself to avoid certain claims under Proposition 207. He said he supported the notion to revisit the issue in a year, if not sooner, to address the regulations, see how they were working and make adjustments as needed.

Mr. Rankin stated that the zoning for the dispensaries was in C-2 and C-3, where the medical marijuana would actually be sold. He commented that staff had concerns about C-1 because they were typically closer to residential. He said one of the issues of limiting it to industrial areas only, for the planners in particular, was that industrial zones were not well suited for a lot of foot traffic, in and out, the kind of activity you would expect to see with the actual dispensary location as opposed to an off-site cultivation location not engaged in direct sales to the public.

Mr. Rankin said he mentioned to the Mayor and Council in previous discussions regarding the item, and from what he read of the Model Cities Tax Code, the sales of medical marijuana through dispensaries were subject to sales tax. He said, he also mentioned that he was in the minority, in terms of that opinion from other city attorneys throughout the State and as of the day prior to the Mayor and Council meeting; he appeared to be a minority of one. He commented that, nonetheless, it did not mean that the opinion was wrong, but at the end of the day, it would not matter, because the issue of both State and City sales tax applied to Medical Marijuana would be resolved at the State level through a bill that was introduced, but had not yet been acted upon.

Council Member Cunningham commented on his views regarding the seriousness of the relationship between illegal marijuana and kids, and the use as Medical Marijuana. He said what was being discussed at the evening's meeting was not an issue of marijuana, but a zoning regulation in the *LUC*. He said the proposed Ordinance was a start and

something to work from. He said his only caveat was that the hours of operation needed to be extended to 7:00 p.m.

It was moved by Council Member Cunningham, duly seconded, and passed by a roll call vote of 6 to 0 (Mayor Walkup absent/excused), to pass and adopt Ordinance 10850, as amended to extend the hours of operation to 7:00 p.m.

Mr. Rankin stated, for the record, that the amendment would be on page nine of the Ordinance, Subsection 3.5.9.8 (A)(4) and would read, "The permitted hours of operation of a medical marijuana dispensary shall be from 9:00 a.m. to 7:00 p.m."

8. PUBLIC HEARING: TUCSON CODE - AMENDING (CHAPTER 3) SIGN CODE, REGULATING THE SCENIC CORRIDOR ZONE DISTRICT

Mayor Pro Tempore Scott announced City Manager's communication number 528, dated November 23, 2010, was received into and made part of the record. She also announced this was the time and place legally advertised for a public hearing on a proposed amendment to the *Tucson Sign Code*, regulating the Scenic Corridor Zone District.

Mayor Pro Tempore Scott said, before beginning the public hearing, staff wanted to make a brief presentation. She said the public hearing was scheduled to last for no more than one hour and speakers were limited to five minute presentations.

It was moved by Council Member Fimbres, duly seconded, to continue the item to the December 7, 2010, Mayor and Council meeting.

Mayor Pro Tempore Scott verified with the City Attorney and City Clerk that since the item was scheduled for a public hearing, was advertised as such, and there were people in the audience that were present specifically for the item, the Mayor and Council could not continue the item to the next meeting without holding the public hearing.

Discussion ensued.

Mr. Rankin clarified the issue of continuance stating that the Mayor and Council had a number of options; they could choose to continue the public hearing and action, not hold the hearing at the evening's meeting, or open the public hearing, listen to comments from those present, decide at that point to close the public hearing or continue it to a specific date. He said with either one of those scenarios, action on the item could be continued to a later date.

Vice Mayor Scott announced the public hearing was open.

James Carpentier, Arizona Sign Association, stated they were in support of the recommendations made by the Citizens Sign Code Committee (CSCC) and asked that the Mayor and Council approve the Ordinance.

Ed Verberg, Tucson Mountains Association President, spoke about the economic and aesthetic value of scenic highways.

Art Owens, Owner of Buddy's Grill, asked the Mayor and Council to address the issue, look at it again, not do the broad brush, but do the individual corridors.

Council Member Kozachik asked staff how the Mayor and Council would go about changing from a scenic corridor zone to a Houghton Road and a gateway.

Mr. Duarte responded that was an entirely different process. What was being discussed at the evening's meeting was proposed changes to the *Tucson Sign Code*. Going the other way, involved changing the designation of specific major streets and routes, amending the *Major Streets and Route Plan*, which was the *Land Use Plan*, going through the Planning Commission and ultimately to the *Land Use Code*.

Dan Brocius spoke in opposition to the over-arching nature of the proposed amendments of the scenic sign code. He said there was a problem with sign visibility on Houghton Road that needed to be addressed.

Richard Fink spoke in support of the amendments to the *Sign Code* and asked the Mayor and Council to respectfully think about the small business owners.

Mike Addis spoke about the businesses that would be affected by the Mayor and Council's decision regarding the amendments to the *Sign Code* Scenic Corridor Zone District and all the variances some of these businesses had to go through to get their signs.

Robert Medler, Tucson Chamber of Commerce, spoke in support of the changes to the *Sign Code* regulating the Scenic Corridor Zone District.

John O'Dowd spoke in opposition to the *Sign Code* amendments and stated his reasons why.

Jude Cook, Cook & Company Sign Makers, spoke in support of the amendments to the *Scenic Corridor Sign Code*.

Mark Jones spoke in support of the proposed changes to the *Sign Code* and commented on the process and hard work all those involved had put in.

Brad Richards spoke in support of the proposed changes and also stated he supported small businesses in Tucson. He asked the Mayor and Council to pass the Ordinance.

Lee Oler stated she was one of the citizens serving on the Citizens Sign Code Committee (CSCC) and spoke in opposition of the proposed changes to the *Sign Code*.

Mark Mayer, Scenic Arizona, spoke in opposition to the proposed amendments to the *Sign Code* Regulating the Scenic Corridor Zone District with the exception of Houghton Road.

Kathi McLaughlin spoke in opposition to the proposed amendments to the *Sign Code*, which were based on the inclusion of Houghton Road and now was being contemplated to take Houghton Road out of the equation.

Jim Hannley stated the citizens of Tucson were best served by a more restrictive code in the City's scenic areas. He spoke about the responsibilities of the CSCC and the Sign Code and Appeals Board (SCAAB). He implored the Mayor and Council to keep the scenic code in place and allow the SCAAB to hear individual cases so that everyone's interests were served.

Les Shipley spoke about his experience in applying for and the variance received to obtain a sign for his business. He said the process was very slow and expensive and was not necessary. He said he supported the proposed amendments.

Edward Shapiro spoke about his business and said he was in support of the proposed changes to the Scenic Corridor Zone District.

Mayor Pro Tempore Scott asked the City Attorney if there was any reason why the City could not separate one of the scenic corridors, mainly Houghton Road, from the rest in the *Sign Code* or was there any other type of remedy, such as a gateway.

Mr. Rankin responded that when the item came back to the Mayor and Council for consideration, that issue could be more specifically addressed. Currently, they needed to look at whether Houghton Road needed to be taken out of the designation as a scenic route. He said zoning regulations need to be applied uniformly throughout the same zone, throughout the City. He said, as far as another type of remedy, he had to talk with staff, but did not think so.

Further discussion and comments were made, regarding the scenic corridor and Houghton Road, by Council Members Romero, Uhlich, and Kozachik.

Mayor Pro Tempore Scott thanked everyone for their comments and stated that was the end of Item #8.

Roger W. Randolph, City Clerk, clarified that, before continuing, there was a motion on the table that had not been voted on which was to keep the public hearing open and continue it to the December 7, 2010, Mayor and Council Meeting.

Council Member Uhlich asked if perhaps the motion could be amended or a substitute motion made to include work on the amendments to recognize that adjustments were needed regarding the scenic routes. She asked staff what was helpful to them, at this point, in working with the CSCC and others to bring back a more viable proposal.

Mr. Duarte responded that reference was made earlier regarding a minority, as well as, a compromise position. He said Council Member Romero also commented on having the opportunity to see that. He stated that was something staff could work on in bringing sides together and bring information back to the next public hearing.

Mayor Pro Tempore Scott asked if it was appropriate to close the current public hearing and start fresh with a new round on the next venture.

Mr. Rankin replied it was the Mayor and Council's decision. He said one thing he did want to point out was the interest in seeing another version of the Ordinance. He said sign codes were zoning codes and were subject to the legislative process mandated under the statutes. Sign codes went through the CSCC, as zoning codes went through the Planning Commission. He said if the Mayor and Council were considering going with another ordinance, it had to go through the CSCC for their recommendation. He said they needed to be careful of the other proposal; if it was fundamentally different than what was currently being presented, they would be faced with having to go back through the public process again in order to bring it forward to the Mayor and Council.

Council Member Uhlich asked, if the Mayor and Council were specific in saying they wanted to take what was before them with some modifications that allowed for the variations along the scenic corridors and taking into account potential reasonable adjustments, did that mean they were starting from scratch.

Mr. Rankin replied it was not, but he just wanted to point that to the Mayor and Council what would happen if they wanted to see another version of the Ordinance.

Further discussion ensued in regards to closing the public hearing.

Mr. Rankin suggested that the Mayor and Council decide on the motion in terms of whether or not to keep the public hearing open. In order to keep it open, a specific date needed to be set so as not to re-advertise it and it could be announced. Mr. Rankin stated he did not think December 7, 2010 was the right date because of the number of issues that had come up and suggested an alternate date of December 14, 2010.

A substitute motion was made by Council Member Cunningham, duly seconded, and passed by a roll call vote of 6 to 0 (Mayor Walkup absent/excused), to leave the public hearing open and continue it to the December 14, 2010, Mayor and Council meeting and to hold a study session on December 7, 2010.

9. ZONING: (C9-09-05) P&H CONTRACTING - GLENN STREET, MH-1 TO I-1, ORDINANCE ADOPTION

Mayor Pro Tempore Scott announced City Manager's communication number 523, dated November 23, 2010, was received into and made part of the record. She asked the City Clerk to read Ordinance 10852 by number and title only.

Ordinance No. 10852 relating to zoning: amending zoning district boundaries in the area located on the north side of Glenn Street west of Fairview Avenue in Case C9-09-05, P&H Contracting - Glenn Street, MH-1 to I-1; and setting an effective date.

It was moved by Council Member Uhlich, duly seconded, and passed by a roll call vote of 6 to 0 (Mayor Walkup absent/excused), to pass and adopt Ordinance 10852.

10. TUCSON CODE: AMENDING (CHAPTER 23) THE *LAND USE CODE*; RELATING TO MEDICAL MARIJUANA DISPENSARIES AND MEDICAL MARIJUANA OFFSITE CULTIVATION LOCATIONS (CONTINUED FROM THE MEETING OF NOVEMBER 9, 2010)

(Note: This item was taken out of order and discussed after Item #7.)

11. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS

Mayor Pro Tempore Scott announced City Manager's communication number 520, dated November 23, 2010, was received into and made part of the record. There were no appointments in the report at this time.

Mayor Pro Tempore Scott asked if there were any personal appointments to be made. She announced her personal appointment of Bill Davidson to the Transit Task Force (TTF).

12. ADJOURNMENT – 9:11 p.m.

Mayor Pro Tempore Scott announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, December 7, 2010, at 5:30 p.m., in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 23rd day of November 2010, and do hereby certify that it is an accurate transcription.

DEPUTY CITY CLERK

RWR:yl:ccs