

Minutes Formal City Council Meeting October 4, 2007

Minutes of the Formal Council Meeting of Thursday, October 4, 2007, held at 7:30 p.m. in the Harry E. Mitchell Government Center, Municipal Building, City Council Chambers, 31 E. Fifth Street, Tempe, Arizona.

COUNCIL PRESENT:

Mayor Hugh Hallman
Vice Mayor Hut Hutson
Councilmember P Ben Arredondo
Councilmember Barbara J. Carter
Councilmember Shana Ellis
Councilmember Mark W. Mitchell
Councilmember Onnie Shekerjian

Mayor Hallman called the meeting to order.

1. Councilmember Ellis gave the invocation.
2. Boy Scout Troop #565 led the audience in the **Pledge of Allegiance**.
3. **MINUTES**

A. Approval of Council Meeting Minutes

Motion by Vice Mayor Hutson to approve the following **COUNCIL MEETING MINUTES**.
Second by Councilmember Carter. Motion passed unanimously on a voice vote.

1. Council's Executive Session – September 19 & 20, 2007
2. Council's Formal Meeting – September 20, 2007 [20071004clrkck01.pdf](#)
3. Council's Finance, Economy & Veterans Affairs Committee – September 18, 2007
[20071004feva01.pdf](#)
4. Council's Neighborhood Quality of Life, Public Safety and Parks & Recreation
Committee – September 11, 2007 [20071004nqlpspr01.pdf](#)

B. Acceptance of Board & Commission Meeting Minutes

Motion by Vice Mayor Hutson to accept the following **COMMITTEE & BOARD MEETING MINUTES**. Second by Councilmember Shekerjian. Motion passed unanimously on a voice vote.

5. Ad-hoc Rental Task Force – May 22, 2007 [20071004RHTF01.pdf](#)

6. Aviation Commission – August 14, 2007 [20071004tavco01.pdf](#)
7. Committee for Youth, Families and Community – June 18, 2007 [20071004cyfc01.pdf](#)
8. Double Butte Cemetery Advisory Committee – July 18, 2007 [20071004prsw01.pdf](#)
9. Neighborhood Advisory Commission – August 1, 2007 [20071004nac01.pdf](#)
10. Parks & Recreation Board – June 20, 2007 [20071004prtd01.pdf](#)
11. Tempe Sports Authority – June 13 & July 18, 2007 [20071004tsa01.pdf](#)
[20071004tsa02.pdf](#)

4. REPORTS AND ANNOUNCEMENTS

A. Mayor's Announcements

- Mayor Hallman read a proclamation and declared October 7 through 13, 2007, as **Fire Prevention Week** and was joined by Fire Chief Cliff Jones. Fire Chief Jones stated that the four most common causes of fire in this community are men, women, boys and girls. Fire is preventable and it is up to everyone to do their part. Mayor Hallman urged everyone to have a thoroughly understood home escape plan.
- Mayor Hallman introduced representatives from Tempe's Sister City in New Zealand, Lower Hutt. Lower Hutt became the City's third sister city in 1981, with a very successful 25-year program. The first students were exchanged in 1983. The educator exchange program began in 1991 and to date there have been more than 80 successful exchanges. He introduced Jan O'Malley, Tempe Sister City liaison for New Zealand Educator Exchange Core Team who presented the awards for this year's participants. Awards were presented to **Catherine Nash (NZ) and Jennifer Zamenski (Tempe) and Christine Walkerdine (NZ) and Dr. Darlene Wedington-Clark (Tempe).**
- Mayor Hallman read his recommended selections for current **Board and Commission vacancies** as follows:

Disability Concerns Commission Aaron Edgell	Term Expires 6-30-10 (1) Replaces Sally Clements
 Cyndi Newburn	 Terms Expire 6-30-08 (U) Replaces Thalia Gonzalez
Double Butte Cemetery Committee Sandi Hutson	Term Expires 8-31-10 (1) Reappointment
 John Bonavitacola Patricia Tolson-Gonzalez	 Terms Expire 8-31-10 (1) Replaces Marian Hoyt Replaces Mary Pickett
Golf Committee Ron Cosner Cheshire Star	Terms Expire 8-31-10 (1) Replaces Andrew Davis Replaces Fletcher Zimpfer
 Alex Walsh	 Term Expires 8-31-10 (*) Reappointment

Historical Museum Advisory Board

Jean Berry

Terms Expire 7-31-10 (*)

Reappointment

Dan Killoren
Robert McKinley

Terms Expires 7-31-10 (1)

Replaces Victor Linoff

Replaces Narcisa Espinoza

**Neighborhood Advisory
Commission**

Bill Weigle

Term Expires 12-31-08 (U)

Replaces Margaret Stout – zip 85281

Parks & Recreation Board

Jesus Carreon

Terms Expire 8-31-10 (1)

Replaces Sharon Doyle

Ed Roberts
Angela Thornton

Terms Expire 8-31-10 (*)

Reappointment

Reappointment

B. Manager's Announcements

- Interim City Manager Jeff Kulaga announced that the City of Tempe earned five awards at the **27th Annual Valley Forward Association Environmental Excellence Awards** where outstanding contributions to the physical environment are recognized. These awards recognize and promote innovations in livable communities, conserving natural resources and sustaining our unique natural desert environment.
 - **“Play Like a River” art piece** by Thomas Strich at the North Tempe Multi-Gen Center earned an Award of Merit in the “Art in Public Places” category.
 - In Transportation, the City earned two awards: Award of Merit in the Buildings and Structures – Industrial & Public Works category for **East Valley Bus Operations & Maintenance Facility**, and The Crescordia for highest honors in the Environmental Education/Communication category for the **Green Building Expo**.
 - The City also earned an award of Merit in the Environmental Technologies Category for **Phase II Habitat Project** built in partnerships with the US Army Corps of Engineers.
 - **Tempe Marketplace** earned a Crescordia Award.

5. AGENDA

All items in these minutes identified with an asterisk (*) **are public hearing items**. All items listed on the agenda are approved with one council action. Items scheduled for Introduction/First Public Hearing will be heard but not adopted at this meeting. Items scheduled for Second Public Hearing/Final Adoption will be voted upon at this meeting.

Mayor Hallman announced consideration of the **AGENDA**.

Motion by Councilmember Arredondo to approve the Agenda as amended (Items #15 and 12A were removed for separate consideration). Second by Councilmember Mitchell. Motion passed on a roll call vote 7-0.

A. Miscellaneous Items

12. Approved **Contract #2005-279B**, an amendment to the Intergovernmental Agreement with the Arizona Department of Health Services for the Arizona Nutrition Network Local Incentive Grant Award for the Kid Zone Enrichment Program for the 2007-2008 Federal fiscal year.
COMMENTS: Grant in the amount of \$218,732.
DOCUMENT NAME: [20071004csjt01.pdf](#) **COMMUNITY SERVICE ADM (0701-01)**
- 12a. Approved request for the Mayor to appoint members to fill Board and Commission vacancies.

Vice Mayor Hutson declared a conflict of interest.

Motion by Councilmember Arredondo to approve Item #12a. Second by Councilmember Shekerjian. Motion passed on a roll call vote, 6-0, with Vice Mayor Hutson abstaining.

DOCUMENT NAME: [20071004boards.pdf](#) **BDS, COMMISSIONS, COMMITTEES ADM (0102-01)**

13. Approved **Contract #2007-172**, a Maintenance Agreement for The Pier at Town Lake Improvement District No. 180, City of Tempe Project No. 5103011.
DOCUMENT NAME: [20071004PWCH03.pdf](#) **IMPROVEMENT (ASSESSMENT) DISTRICTS (0805-80), IMPROVEMENT DISTRICT I.D. 180, PROJECT NO. 5103011**
14. Approved a revised City of Tempe Emergency Operations Plan as required by the Federal Emergency Management Agency.
DOCUMENT NAME: [20071004fddb01.pdf](#) **NATURAL & TECHNOLOGICAL DISASTER OPERATIONS PLAN (0603-01)**
- *15. Held a public hearing and **approved** an appeal of the August 14, 2007, Development Review Commission's decision to uphold the approval of a use permit for BODY ACCENTS TATTOO AND PIERCING STUDIO at 1524 North Scottsdale Road.
COMMENTS: Appeal (Darlene Justus/North Tempe Neighborhood Association, appellant) of the August 14, 2007, Development Review Commission's decision to uphold the Hearing Officer's decision of June 27, 2007, to approve the request by UNION PLAZA – BODY ACCENTS TATTOO AND PIERCING STUDIO

(PL070211/UPA07008) (Elizabeth Preston, applicant; Colliers International, property owner) located at 1524 North Scottsdale Road in the CSS, Commercial Shopping and Services District for:
ZUP07067 Use permit for a tattoo and body piercing studio.

APPELLANT'S PRESENTATION

Darlene Justus, Tempe, Appellant, read into the record a letter from the attorney representing the Body Accents Tattoo and Piercing Studio, Wendy Evelyn Giberti, Giberti & White, dated October 1, 2007. Ms. Justus showed a map of north Tempe and noted that the area of concern is a strip mall owned by the Chinese Knitting Company. She outlined the current businesses in the strip mall, including Smokin' Lingerie, Star Liquor, Pay Day Loan, and a bail bonds store. She further showed a location in Mesa where the applicant currently operates a store. The area on Scottsdale Road involves a "triangulation of businesses" which creates a place where people want to hang out. Is Tempe's appeal process flawed? A use permit and subsequent tenant improvement permits were granted while an appeal process was also permitted. Tenant improvements have been made on this site, and yet it has been appealed on time and with all the proper documentation. The City allows people to go forward even under appeal at their own risk and they continue to give them tenant improvement permits. She suggested shortening the appeal time to seven days and not actually issuing the use permit until the appeal time has passed and not giving tenant improvement permits while an appeal is ongoing. The use permit has been appealed because in 1995 this community appealed an Alley Cat Tattoo that was to go in at 1462 North Scottsdale Road. They were successful and it was appealed by the applicant and it was upheld and that business did not go forward at that time.

Mayor Hallman clarified that that case did not involve a use permit, but rather the zoning category did not at that time allow for a tattoo parlor at that location because it was a C-1 zoning. It could only go to a C-2 zoning. This is now a CSS, so where it says "use permit denied" it was never a use permit denial, it was a denial of an appeal regarding their desire to have the code interpreted to allow a tattoo parlor into a C-2 zoning category. The appeal of that interpretation was upheld, and the appeal, as a result, was denied.

Ms. Justus continued that this use permit is being appealed because of the issue of "clustering" businesses and the addition of a tattoo parlor to that same strip mall. There are other vacant suites in the mall, but she feels that is due to the nature of the other businesses. There are other cities in Arizona with ordinances concerning clustering. The neighbors are concerned because there is no oversight of a use permit. An applicant can be given a use permit with a list of stipulations, but unless someone complains, none of those stipulations is ever verified as happening. The State of Arizona has no health and safety standards for tattoo and body piercing. Channel 5 recently featured young people with infections from a Tempe tattoo parlor. She represents a neighborhood association and they cannot incorporate. She showed the use permit and read the stipulations concerning health and safety. In the past, Tempe does not verify those stipulations unless there is a problem. There are many ordinances concerning separation, but Tempe does not have any.

Mayor Hallman asked which Arizona cities have separation ordinances for tattoo parlors.

Ms. Justus responded that Peoria and Goodyear have separation ordinances.

Mayor Hallman clarified that she would promote creating a category of secondary effect businesses, none of which could locate near one another.

Ms. Justus responded that Peoria lists body piercing studios, massage establishments, tattoo studios, retail liquor stores, plasma centers, non-chartered financial institutions, and pawn shops. They must be 1,000 feet apart.

Mayor Hallman stated that the Development Services Department, because this subject has come up at the Council level already, is beginning the process of creating the appropriate separation ordinances that could create a category of secondary effects businesses. Secondly, we don't have is a separation requirement for some of these businesses from specific uses, for example, a separation requirement of tattoo parlors from residences, parks or schools. That does exist in other cities and staff is moving forward on this.

Lisa Collins verified that staff is working on that currently and is researching twelve other Valley cities.

Ms. Justus added that behind the strip mall is a neighborhood commercial area. There are homes all around the strip mall. Some cities have a zoning designated as "neighborhood commercial." Arizona does not have health and safety standards for tattoo parlors. She submitted an Alabama statute on body art practice and facilities. In Tempe's ordinance, tattoo and body piercing are addressed, but branding and scarification are not addressed.

Mayor Hallman added that the county typically applies review and licensing for medical establishments and similar kinds of uses. He is also puzzled that there are licenses for cutting hair and for massage, but no licenses for putting needles into peoples' bodies. The City could include that on the Council's legislative agenda for upcoming meetings. The Arizona legislature doesn't meet again until January of 2008.

Ms. Justus clarified that her concern is "clustering."

APPELEE PRESENTATION

Wendy Giberti, Giberti & White, Tempe, representing Elizabeth Preston and Body Accents Tattoo and Piercing Studio. She respects the neighborhood's position which is why they have met with the neighbors. Her clients have had a business in Mesa for fourteen years. They do not tattoo anyone under the age of seventeen, even though Arizona law permits tattooing of anyone fourteen years or older. They do not tattoo hands or face, and they do no piercing of any adult areas of the body. They are self-governing with respect to most of the health concerns raised. Arizona does have laws concerning biohazard materials. The neighborhood issues are greater issues than the use permit that has been issued. They are concerned about the use permit process, oversight of the use permit, what Arizona health standards should be, and what the City should do with respect to clustering. Those are commendable issues to be raised at future hearings, but this issue is whether or not her clients have met the burden of proof to continue forward with the use permit that they have received and, in particular, looking at the zoning code, do they meet the approval criteria? The hearing officer determined that they did, the Development Review Commission determined that they did, and in looking at the criteria, the only item at issue is #E.2.c. which is the contribution to the deterioration of the neighborhood. The issue is whether this business will contribute to the deterioration of the neighborhood. In support of that, the

secondary effects argument is made. Secondary effects deal with the clustering of adult businesses. Adult businesses are defined in various parts of the Arizona statutes, as well as in the zoning statutes.

Mayor Hallman asked if those studies are dependent upon Arizona's definition of adult businesses?

Ms. Giberti responded that she was referring to the studies that appellant attached, which was a New York study. That study doesn't provide any information with respect to Arizona because they do not rely on Arizona's definition.

Mayor Hallman stated that the study is about the kinds of businesses that give rise to secondary effects, notwithstanding Arizona's definition of adult businesses. He asked if it was her argument that people in New York are different than people in Tempe.

Ms. Giberti clarified that businesses in New York considered adult businesses, whatever their standard might be and whatever their studies indicate with respect to clustering and secondary effects, simply don't apply here because we have not decided to make those within that category of businesses that can be clustered.

Mayor Hallman added that the issue is whether that study is relevant in determining what kind of businesses have secondary effects when clustered, and what that study looked at. If tattoo parlors were one of the businesses that it looked at, then that would provide relevant information.

Ms. Giberti responded that in respect to that study, it would.

Mayor Hallman asked Ms. Giberti to provide some information about whether or not a tattoo parlor, when clustered with other businesses that are described in that study, might have an effect on the quality of life in the neighborhood. It matters about peoples' feelings and the secondary effects that result from whether a business is there at all.

Ms. Giberti agreed. As the law stands in Arizona, a tattoo parlor is not considered an adult business. There is no risk of a secondary effect with respect to this particular tattoo parlor. Her clients have established for fourteen years that they have had no parent complaints, no customer complaints, no criminal charges, and they have not had the police called to their establishment. They have made every attempt to accommodate whatever concern is heard from the neighbors. They have agreed to adjust their signage to satisfy the community.

Mayor Hallman asked under what standard the signage was adjusted.

Ms. Giberti responded that the question had been asked whether they would be willing to forego any neon signage and they agreed.

Mayor Hallman clarified that they would comply with the standards in the community. What standard would that be under?

Ms. Giberti responded it would be under the sign permit. Even by being entitled to have neon signage under that code, they would forego that. The hearing officer imposed twelve conditions to the approval of the use permit. Eight required affirmative action on the part of the applicant prior to the permit becoming effective and they have currently performed six of the eight. Mr. Preston has recently formed an association of Arizona tattoo parlors to lobby the legislature to have laws passed to deal with safe use and regulation of tattoo parlors.

Tom Preston, applicant, member of the Arizona Tattoo and Piercing Association. They are extremely concerned about the business. Their goal is to have bills passed to establish industry standards. He has worked with OSHA to establish clean room and biohazard regulations within the business. The Health Department is also helping. They will use the same autoclaves used by doctors with monthly service and testing. There will also be training for blood-borne pathogens. Biohazards are already addressed in the law, but it would be important to have someone monitor it within the industry.

Ms. Giberti added that before her client signed the lease on this property, there was no one in the property, there was graffiti, and it was rundown. As part of the build-out, they have replaced the front windows. She showed the interior of the site. It has been made handicapped accessible. They have installed new lighting in the back of the building, "no loitering" and "no smoking" signs have been posted, rules are in place for employees, and this particular business will not cater to minors. No tattoos or piercings are performed on anyone under seventeen, and individuals who are seventeen are required to be physically present with their parents with an original birth certificate. All identification must match. The typical charge is approximately \$150 per hour for their services. There are strict regulations on their own health standards. They do meet the approval criteria currently set forth in the zoning code, and at this point, the Hearing Officer and the Development Review Commission have determined that they meet the criteria.

Mayor Hallman added that Council does not have an obligation to follow their direction, however.

PUBLIC HEARING

Kriste Melcher, Tempe. She has been a realtor for fourteen years with a real estate degree from ASU. The tattoo parlors and the types of businesses that cluster with the tattoo parlors do have a secondary effect on the residential and commercial neighborhoods. Many anchor tenants will not lease space with tattoo parlors and other types of tenants in those developments. House values are affected. The City of Tempe has approved four tattoo parlors since May of 2007. Under the City's current standards, the appeal process is not effective. Her house is directly behind a commercial development and the tattoo parlor in her neighborhood will affect her property value. If a slumlord were doing something that was affecting property values, the City would step up. When a commercial development starts to decline, the City needs to step up. There is a business cycle and when there is a decline, there is a possibility of rejuvenation, and if the wrong types of businesses go in, more and more will continue to come in. There won't be a good anchor tenant.

Nancy Hickman, Tempe, owner of Hickman Plumbing in the subject plaza. Her business operated from her home for many years, and finally located to the plaza two years ago; it would be next door to the tattoo parlor. She appreciates the efforts of the applicant, but it is still clustering of that type of business. She would have to move her business out of Tempe where they have resided for thirty years. If the plaza is all about adult businesses, their business can't be located there.

Mayor Hallman asked if all of the businesses, except for the tattoo parlor, were there when they moved their business to the plaza.

Ms. Hickman responded that the bail bond business came after them.

Mayor Hallman added that Smokin' Lingerie has had a deleterious effect on the strip mall and has provided issues that need to be addressed. He asked what type of plumbing her company does.

Ms. Hickman responded that they do residential and commercial plumbing, repair and installation. They moved to that center to upgrade their business. She urged the City to consider what Scottsdale Road will soon look like.

Darlene Tussing, Tempe, representing the East Rio Neighborhood Association. She would like to know how many calls for service have been made to the Mesa location, not the tattoo parlor, but to the mall location, and what types of crimes have occurred at that mall. What types of calls for service have occurred with the mall on Scottsdale Road? If there is a larger clustering of secondary businesses in a strip mall, it may encourage more of that type of personnel. Even though this tattoo parlor may be the best business, it will be a draw. She has witnessed that the mall has a tendency to have groups of indigent people loitering in the back and around the liquor store at night. From her perception, this would encourage more of that type of problem. She would suggest looking at those statistics.

Julie Lind, Tempe. She acknowledges and appreciates that she lives in a City where she can participate in her neighborhood. She appreciates Council and staff and their hard work on these decisions. The approvals have not focused on the big picture of protecting residents and in the meetings with the applicants, the citizens have never argued morality, profitability and business practices. Their arguments don't address our neighborhood's big picture or the specific problem of clustering. The issue is perception of the neighborhood. If Council votes against this appeal, she asked Council to explain how the neighborhood can recover and revitalize into a place where beneficial businesses would feel comfortable to operate.

Jeff Melcher, Tempe. His primary concern is the clustering and the secondary effects on property values and those issues have been addressed. He has nothing against tattoo parlors, but every business clusters and piggy-backs off each other's business. That is something to look at in the future.

APPELLEE'S FINAL PRESENTATION

Ms. Giberti addressed the comment by Julie Lind that this wasn't particular to tattoo parlors. She stated that it is particular to tattoo parlors. We have spent all of our time talking about clustering and secondary effects, and we have necessarily made judgments in our own minds about what a tattoo parlor is, what it means to our neighborhoods, and what it means to our economy, and we have to concede that we are moving forward based on whatever those preconceived notions are. Many of those ideas are mistaken. This is not a "seedy" business, but is a nice business. They have moved into what was otherwise an empty and rundown business. Loitering is likely to decrease. They are running a business and would not encourage loitering. It will improve the economy of the area and whatever personal judgments there are, we must understand that we have not

seen any evidence tonight that those are well-founded. To simply say that we only want businesses that benefit us, who are “us”? That tattoo parlor might not benefit everyone in that neighborhood, but Starbucks doesn’t benefit everyone in the neighborhood either.

Mayor Hallman summarized that looking through the zoning code and the use permit, the question is whether or not #E.2.c. is met by her client. That would be the legal basis under which we would deny a use permit.

Ms. Giberti agreed.

Mayor Hallman asked Ms. Giberti to read provision #E.2.c.

Ms. Giberti read the provision# E.2.c., which states: “Contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict with the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City’s adopted plans, or General Plan.”

Mayor Hallman stated that the perception and view of what this business does is a determining factor in granting a use permit. He asked Ms. Giberti to describe her view as to harassment of her client.

Ms. Giberti stated that in the initial appeal request (July 11th) filed by Ms. Justus, seven items were listed as grounds for appeal. She considered the totality of the circumstances to approach harassment or interference with the business in that they were unfounded allegations. That appeal, however, does not offend her. At that time, anyone would agree Ms. Justus had a good faith basis for believing those things to be true. What offends her is that her client met with the group and they were given a better understanding of the business, including not marketing to youth, loitering, loud music, extended hours of operation, health and safety issues, needle re-use and sterilization techniques, serious body piercing, and complications.

Mayor Hallman noted that a person of seventeen would be considered “youth” and he asked if Ms. Giberti agreed that was a legitimate concern.

Ms. Giberti responded that Ms. Justus’ concern was not marketing to seventeen-year-olds, but marketing to persons younger than seventeen.

Mayor Hallman stated that he didn’t know that Ms. Justus had stated that and Ms. Giberti had said that what was offensive was that item. It looks like it qualifies.

Ms. Giberti responded that she disagreed.

Mayor Hallman clarified that it was the totality of what was in the July 11th letter. Ms. Giberti and her clients got to meet with her, address concerns, and then Ms. Justus went ahead and filed the letter dated August 28, 2007. He asked Ms. Giberti if it was her understanding that that was the same appeal, that there was concern raised by City staff that the July 11th letter was not appropriately received at the right location and Ms. Justus was then asked to refile it to make sure it was properly reflected in the record.

Ms. Giberti stated that she was not aware of that.

Mayor Hallman added that his understanding from staff is that the reason for her filing the August 28th letter was because City staff requested that she refile that letter because they couldn't locate the July 11th letter. She has filed two appeals because she was asked to refile the letter that had previously been filed. Now that Ms. Giberti knows that, would she agree that her client has not been harassed?

Ms. Giberti agreed.

Mayor Hallman asked if there were other elements of harassment.

Ms. Giberti responded that, perhaps, there were not. She then consulted with her client. Her client's primary concerns were the re-filing, or what they perceived to be the re-filing, of precisely the same letter, and the second concern is that they take offense to the characterization of their business as an adult business. She didn't think that rises to the standard for what would be considered harassment.

Mayor Hallman clarified that the entirety of their claim for damages against Ms. Justus based on Ms. Giberti's letter is that she would have referred to the business as an adult business.

Ms. Giberti disagreed.

Mayor Hallman clarified that his specific request was for her to detail what she characterized as harassment and/or continued harassment.

Ms. Giberti responded that her concern is to the extent that this use permit is approved, if it is, she would expect this would not be the last they would hear of the neighborhood association. They were making an effort to put out an olive branch and assure them that they would not be doing the things the neighborhood was concerned about.

Mayor Hallman added that if the appeal is denied, then there wouldn't be any continuing concern.

Ms. Giberti stated that at present, her clients don't have a cause of action against the neighborhood association unless or until they engage in some sort of interference with the business.

Mayor Hallman clarified that as of today, they are not. He asked if they considered an olive branch to be sending someone a letter that says, "...please be aware if you interfere with the Preston's business operations you will be civilly liable for any and all damages that result from that interference." The point she was making is that it's not what has happened in the past, but what might happen in the future if they are granted the use permit. He asked whether it was tortious interference of contractual expectancy or contractual relationship.

Ms. Giberti responded that it would be contractual expectancy until such time as they, perhaps, interfered with an actual client, in which case it would be tortious.

Mayor Hallman stated that under the Constitution someone has a right to appeal and petition their government, so that filing a letter like this to the City as an application with respect to an appeal process probably would deem to be protected as a petitioning of the government.

Ms. Giberti responded that she understood that and her only concern would be to the extent of trying to interfere with that process and/or interfere with their first amendment right to make certain statements within the confines of a hearing of this nature that wouldn't otherwise be protected.

Mayor Hallman added that the fact that the letter was filed even twice, is still a petition to the government and is likely protected under the first amendment.

Ms. Giberti agreed to the extent that the first amendment grants it additional protection in this proceeding than it would have otherwise.

Mayor Hallman asked for clarification that she didn't mean in terms such as legislators having immunity from saying things on the legislative floor, but under the Constitution a person has a right to air grievances to the government, and your concern is that Ms. Justus used the word "adult business" and Ms. Giberti found that offensive.

Ms. Giberti clarified that it is not an absolute immunity for anything they put in those documents.

Mayor Hallman clarified that she had already conceded that to date Ms. Justus has done nothing that would give rise to an action.

Ms. Giberti agreed.

Mayor Hallman stated that Ms. Giberti indicated that her clients will not be tattooing hands and faces of clients. Is that something her client would agree to put as a condition of the use permit?

Ms. Giberti agreed.

Mayor Hallman stated that stipulation #13 would be added that this business will not engage in the tattooing or piercing of hands or faces of customers or clients.

Ms. Giberti agreed.

Mayor Hallman added that Ms. Giberti also indicated that there would be no piercing of "adult areas of the body" and it would be necessary to make reference to our adult-oriented business statute, not for purposes of combining that, but it has a definition of those kinds of areas.

Andrew Ching clarified that the reference is to specified anatomical areas.

Mayor Hallman stated that Ms. Giberti's client would concede that the use permit would be conditioned that

there would be no piercing of “those specified anatomical areas” as delineated in the adult-oriented business code, both in the licensing provision and in the Zoning and Development Code.

Ms. Giberti agreed.

Mayor Hallman stated that in addition, Ms. Giberti stated her clients would concede that they would not be providing services to anyone under the age of seventeen, and he would suggest an additional stipulation that her clients will not knowingly serve clients under the age of seventeen and anyone age seventeen seeking service must be accompanied by a parent or guardian. Is that acceptable?

Ms. Giberti agreed.

Mayor Hallman stated that Ms. Giberti also stated her client is quite proud of the fact there have been no police calls. He would ask that they stipulate to a use permit that provides that it will continue during the period as long as there are no police calls for service in excess of those allowed for the renewal of a liquor license. It isn't fair if a call gets made on occasion, because every business can have a problem. He would specify no calls for service in excess of those allowed for renewal of a liquor license with respect to violent offenses.

Mr. Ching added that he wasn't sure whether or not the State standard is quantity of calls. He thought it might consider certain offenses.

Mayor Hallman clarified in excess of those that would allow a renewal of a liquor license. Ms. Giberti also conceded that her clients would not allow neon lighting in the front of their facility, so he would include a stipulation that they would light the facility according to the standard determined acceptable by the City's Development Services Department, including specifically no neon lighting. In addition, he would amend Hearing Officer conditions as follows:

- #1 - “Prior to the Use Permit becoming effective, the establishment must have and thereafter maintain written procedures on the proper handling and sterilization of equipment and demonstrate that all personnel are trained in the procedures.” It must be a continuing obligation.
- #3 - “Prior to the Use Permit becoming effective, the establishment must post and thereafter maintain and provide to customers upon request, written instructions on tattoo care.”
- #2 - “Prior to the Use Permit becoming effective and thereafter all practitioners must have training in blood-borne pathogens and cross-contamination.”

Councilmember Shekerjian asked that the language also includes piercing, not just tattooing.

Mayor Hallman outlined the following additional change to #3, as well as to #6 and #13:

- #3 - “Prior to the Use Permit becoming effective, the establishment must post and thereafter maintain and provide to customers upon request, written instructions on tattoo and piercing care.”
- #6 - “This use permit is not transferable. Should the business be sold, transferred or assigned, or if more than a 25 percent interest in such business be sold, transferred, or assigned, the new owners must process through the Hearing Officer for a new use permit..”
- #13 - “On the anniversary date of the issuance of the use permit, the applicant will provide a

certification under penalty of perjury to the City of Tempe that it is in compliance with the use permit and all of the conditions set forth therein.”

Ms. Giberti asked for clarification that on the first anniversary, would it be single certification, or on each anniversary thereafter.

Mayor Hallman clarified that on the anniversary, it would be on every anniversary.

Councilmember Shekerjian asked staff what the vote was by the Development Review Commission.

Ms. Collins responded it was a vote of 4-3, with 4 voting to deny the appeal and 3 voting to approve the appeal.

Councilmember Carter applauded what the Prestons did to enhance the facility. On June 27th, they were issued a use permit, and 14 days later the Neighborhood Association (NTNA) filed the appeal. A lot of work had been done and she asked if that was done in the 14-day period and when were they notified of the appeal?

Ms. Giberti responded that the majority of it was done during that time. Her clients did not understand there was an appeal process so they started immediately. They were notified of the appeal at the end of July.

Councilmember Carter clarified that from the date of the appeal, her clients didn't know until the end of July that there was an appeal.

Ms. Collins responded that she would have to check the exact dates. Generally, the notification is turned around quickly and they are contacted by phone to let them know an appeal has been received. They should have contacted them very soon thereafter.

Tom Preston clarified that the notification was not received within the 14 days. He did not receive a phone call or a letter until he went in to apply for his tenant improvement permit which was in the middle of July.

Mayor Hallman asked if they started their tenant improvements before they received the tenant improvement permit.

Mr. Preston responded that the improvements done did not require a tenant improvement permit.

APPELLANT RESPONSE

Ms. Justus stated that she read the letter into the record because she did feel she was being pushed by that letter to not come here and do this appeal. It really made her angry that it happened that way. It is the right of citizens to appeal things. It was a split vote and we really thought hard about it and voted to come to Council about this issue. She is concerned by this because she knows a lot of citizens don't have the fortitude to go forward after receiving threat of a lawsuit. There is no way they would ever, after a business is established, interfere. There are concerns that if there were things in the use permit that were not followed, the City is not proactive but reactive. Does that mean that we as citizens would not be able to file a complaint that something in the stipulations is not followed? This letter was more like a whip than an olive branch.

Mayor Hallman asked Ms. Justus to clarify that there were seven grounds listed in the appeal, and one was the clustering of another secondary effect business. Our code does not currently contemplate restricting clustering of businesses, although it is something this Council might give staff direction to move forward.

Ms. Justus stated that she felt there was enough precedence that that was what a use permit is for. If there is an adverse reason for putting a business there, that the use permit process would not allow that to happen. If there is an ordinance and it goes before a hearing officer who is just one person, they just look at the book and see what is required and they vote. She thought an appeal on opposing a use permit is because that is the reason we have a use permit.

Mayor Hallman asked Ms. Justus if she understood that the statutory grounds for Council to deny an appeal is set forth in State law and incorporated into our ordinances and we can only use those grounds to deny a use permit?

Ms. Justus agreed and added that Tempe does not have a clustering ordinance.

Mayor Hallman responded that he would like to see the City do that. In addition, we don't want to lose another good Tempe business, Hickman Plumbing, and he hoped Ms. Hickman knows Council recognizes the issues she is facing in that business. We need to find out what's going on with the bail bond business, but that's not within the code definitions of what we can deal with as a basis for denial.

Ms. Justus added that income from Hickman Plumbing does come to the City of Tempe in taxes.

Mayor Hallman responded that it's not a standard within the use permit code that allows Council to deny it. The next appeal point states, "We are working with the City of Tempe to create a revitalization district encompassing Scottsdale Road." We have been working on that together for some time, but again it raises the issue that that's not within the four statutory guidelines that Council can use for denying a use permit. Item #4 states, "A tattoo and body piercing business, clustered with other secondary effect businesses, will not enhance a Tempe Gateway commercial corridor or help with commercial revitalization." It's the clustering of those businesses that is the grounds for that appeal item. That causes the same kind of problem we are dealing with here. Item #5 states, "There are enough tattoo parlors in Tempe to accommodate the tattoo and body piercing needs of our neighborhood." That doesn't provide grounds either. Item #6 states, "Many cities and communities across America offer programs for young folks to have hand and face tattoos removed..." We have addressed that specific concern and we can't use other business' failures to agree to that as a ground. Item #7 says, "We have serious concerns regarding loitering, loud music, extended hours of operation, health and safety issues, needle reuse and sterilization..." Again, some of those are outside the scope of what we can deal with. It is agreed we would like to see some strict standards put in place by the State to regulate body piercing and tattooing. We have added five additional stipulations. Do you feel comfortable that we will get to a better result?

Ms. Justus added that with the stipulations, there has to be oversight.

Mayor Hallman clarified that her point would be that not only do we need to look at the appeals process, but we

need to make sure the conditions as part of this permit are triggered for review given that the applicant is now going to be supplying us with certification. We want to have an accountability process.

Councilmember Shekerjian stated that she understood that a use permit is the test we use to indicate whether or not one is appropriate, and that's the four items, significant increase in vehicular or pedestrian traffic, nuisance arising from emission of odor, dust, gas, noise, vibration, smoke, heat or glare, and we've talked about the contribution to the deterioration of the neighborhood or to the downgrading of property values which is in conflict to the goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans or General Plan. She understood that Ms. Justus outlined in her appeal some specific points. She asked if she specified that she felt that was the item that was not being met and, therefore, a use permit should not be granted?

Ms. Justus responded that when we look at a use permit, we look at where a specific business is going, and that is considered. Even in this case, we look where this business is going.

Councilmember Shekerjian asked Mr. Ching about the process. The hearing officer hears this, and the hearing officer then makes a determination based on these four items as to whether or not a use permit should be granted. Is that correct?

Mr. Ching agreed.

Councilmember Shekerjian continued that if an appeal is then put forth, it goes to the Development Review Commission and that group then listens to the appeal. That night there were seven commissioners present and they determined to deny the appeal on a split vote. The hearing officer's job was to look at the City's adopted plans or General Plan and determine whether or not, based on the goals, objectives and policies, it contributed to the deterioration of the neighborhood.

Mr. Ching responded that the hearing officer would apply the same standards.

Councilmember Shekerjian asked if it was an opinion based on those documents.

Mr. Ching responded that he was looking at the Minutes and he believed that to be the case.

Councilmember Shekerjian asked if that would be the same thing that would happen with the Development Review Commission.

Mr. Ching agreed that they would be applying the same standards.

Councilmember Shekerjian continued that now the appeal comes to Council and Council has to decide whether or not to grant this appeal or deny the appeal, based on those four items. Council has to decide whether or not this particular tattoo parlor would contribute to the deterioration of the neighborhood or to downgrading of property values in conflict with the goals, objectives and policies.

Mr. Ching agreed. Without being bound by the decisions of the other lower boards, Council legislatively applies those standards and exercises its discretion based on its opinions of the facts as they apply to these standards.

Councilmember Shekerjian added that she wanted to make sure what we are doing today and what the process has been. Council has to determine, based on the testimony heard tonight, whether or not this particular business contributes to the deterioration of the neighborhood or to the downgrading of property values. She understands the issue of the clustering effect. She knows Ms. Justus based much of her testimony on clustering effects, and that is important, but what we are dealing with today is basically item #c and deciding whether or not this contributes to the deterioration of the neighborhood or downgrading of property values. Clustering is important to our community as a whole, but the decision Council has to make tonight has to do with that one item and whether it is in conflict with goals, objectives or policies for rehabilitation, redevelopment or conservation as set forth in the City's adopted plans or General Plan. We need to deal with the clustering issue aggressively in this City. It is important for staff to hear that this is a direction we need to address.

Ms. Justus stated that when they were in front of the Development Review Commission, right before the vote, the Chair made a statement in reaction to a comment that while they understood that worrying over shrubs, etc., compared to other things might be quite trivial, some things come at the heart of the community. In this particular area, nothing better would go in there but a business like this. That statement was made by the Chair and they said that a Starbuck's type business would never go in there. At that same hearing, Mrs. Hickman talked to her landlord about the tattoo parlor and she was told that they can't get any better businesses in there. We have Playa del Norte with the condominiums coming in, a hotel coming in, and Tempe is a huge, vibrant area, and the applicant told us at the hearing that everything was taken up on Scottsdale Road except for this site. Why do they have the empty spaces? They have low rent and they are still empty. It is because of the negative effect. We aren't dealing with a clustering ordinance today, but we are talking about the negative effect of putting side-by-side businesses that deal with tattoos. They can say they are "mainstream" today. Why does other cities in the Valley have ordinances about tattoo parlors if they are so mainstream and there's no effect?

Councilmember Shekerjian added that she has the utmost respect for Ms. Justus and the fact that she would get up here, basically after being threatened with a lawsuit for standing up for what she believes is right. She is glad Ms. Justus came tonight and exercised her first amendment rights.

Mayor Hallman added that the center is in the shape it is now even though the tattoo parlor isn't there. It is primarily in that shape because a single business in that center is casting a light on that center and the landlord has made the determination to allow them to continue. We need to do more to make sure that if and to the extent they remain, that they are required to abide by the building codes and other codes we have in place. He knows that Ms. Justus has investigated the fact that the specific retailer has expanded substantially outside the bounds of the stipulations that had been put down for that business and we have not yet figured out a way to attend to that problem.

Ms. Justus added that she did go into that business the day before the initial hearing on this tattoo parlor to see what headway the City had made with that. The business has not changed and people know that. We who live in north Tempe know that we have the parks, the schools, the multi-generational center, bike paths, riding stables, the Lake, but people driving down Scottsdale Road see that commercial corridor and they think that

Dream Palace belongs to Tempe.

Councilmember Mitchell thanked all those who attended and spoke tonight.

Motion by Councilmember Mitchell to approve the appeal. Second by Councilmember Arredondo.

Mr. Ching clarified that the motion would need to specify a reversal of the Development Review Commission's decision.

Mayor Hallman asked if Councilmember Mitchell and Arredondo would accept the suggestion of the City Attorney and amend the motion to be the reversal of the Development Review Commission and uphold the appeal.

The motion was amended to approve the appeal and reverse the Development Review Commission decision.

Councilmember Arredondo stated that Council is saying that it has heard the neighborhood association and feels that Ms. Justus is correct and that this City values the neighbors and neighborhoods.

Mayor Hallman asked Mr. Ching that since it has been moved and seconded and comments have been made, is Council limited in its grounds for considering the items articulated by Ms. Justus' letter.

Mr. Ching responded that he would say no. Ms. Justus brought it to this body, outlining the concerns she had in the appeal. The decision to deny or to grant the use permit is still based on the use permit standards.

Councilmember Carter stated that she heard during testimony that either three or four other tattoo parlors have been approved since May. She wondered what the City's liability will be if Council upholds an appeal based on the use permit item #c since we have approved the other three or four under the current code.

Mr. Ching responded that to his knowledge, none of those actually rose to this Council for consideration. Also, to the extent this use permit, because of the types of standards that are applied give a broad discretion to either affirm or to reverse in this instance is a legislative act and would be tantamount to or akin to the granting or not granting of a rezoning, for instance, where the legislative body has broad discretion based on those standards. The courts have routinely held in that context that there is tremendous deference given to the pronouncement of this body.

Vice Mayor Hutson stated that it was said earlier that we have a university to the north, some very expensive condominiums, and millions of dollars worth of light, and if we don't start helping this neighborhood now, it will continue to deteriorate. He firmly believes that and believes the neighbors have justified their cause. He will be supporting the motion.

Mayor Hallman added for the record, given that the standard for appeal is our determination of the contribution to the deterioration to the neighborhood or the degrading of property values which is in conflict with the goals,

objectives or policies for rehabilitation, redevelopment or conservation as set forth in our City's adopted plans or General Plan, we have adopted a model to begin a revitalization of north Tempe. There are a host of other plans that this City has adopted that this Council has pushed forward for the revitalization of our community and a host of them come to mind that would require the support for this community. He suspected what we need to recognize is that while the applicant for the use permit may feel as if they are being held as an example, his own view would be, based on what he intends to do, that it is not about holding them up for an example. While it may be appropriate at some locations, in this instance given the location and its proximity to residences and the perception, it is not appropriate. While one may hope that a tattoo parlor eventually becomes viewed as mainstream, the perception is currently one of a negative appearance and that does have a deleterious effect on the neighborhood and the deterioration of the neighborhood. It would be his hope that the applicant would look for a location in which they could locate to provide services. They seem to be decent people, but that's not what this appeal is about. It is about the specific result of the business in this location. He does think we need to examine our appeals process and determine whether it is more appropriate to refuse tenant improvement permits and other permits until an appeals period has run, so that people better understand that they are at risk if they move forward. It would be his hope in this case that we look toward redevelopment staff.

Motion passed on a roll call vote, 7-0.

DOCUMENT NAME: [20071004dssd01.pdf](#) **PLANNED** **DEVELOPMENT**
(0406)

16. Approved **with conditions** a Condominium Plat by REGENCY CONDOS at 1100 East Lemon Street.

COMMENTS: (PL060087) (Roberta Barrett, MiraVista Holdings, owner / Manjula Vaz, Gammage & Burnham, applicant) located at 1100 East Lemon Street in the in the R-4, Multi-Family Residential General District, including the following:

SBD07036 – Condominium Plat for forty-four (44) units and three (3) tracts on 1.12 acres.

The following conditions were also approved:

1. The owner(s) shall provide a continuing care condition, covenant and restriction for all of the project's landscaping, required by Ordinance or located in any common area on site. The CC&R's shall be reviewed and in a form satisfactory to the Development Services Manager and City Attorney, prior to recordation of Condominium Plat.
2. The Condominium Plat shall be put into proper engineered format with appropriate signature blanks and recorded with the Maricopa County Recorder's Office through the City of Tempe's Development Services Department on or before October 4, 2008. Failure to record the plan within one year of Council approval shall make the plan null and void.
 - The owner(s) may participate in the City's Crime Free Multi-Housing Program. Contact the City of Tempe Police Department for further details.

DOCUMENT NAME: [20071004dsrl01.pdf](#) **PLANNED** **DEVELOPMENT**
(0406)

- *17. Held a public hearing and recommended the approval of a Series 12 Restaurant Liquor License for RT Southwest Franchise, LLC, dba Ruby Tuesday, 27 S. McClintock Drive.

COMMENTS: H. J. Lewkowicz, Agent
DOCUMENT NAME: [20071004LIQ1.pdf](#) LIQ LIC (0210-02)

- *18. Held a public hearing and recommended the approval of a Series 12 Restaurant Liquor License for Simply Burgers Tempe, LLC, dba Simply Burgers, 580 South College Avenue.

COMMENTS: Sanjay Matken, Agent.
DOCUMENT NAME: [20071004LIQ2.pdf](#) LIQ LIC (0210-02)

- *19. WITHDRAWN BY APPLICANT

- *20. Held a public hearing and recommended the approval of a Series 9 Liquor Store License for High-End Productions, LLC, dba Liquor Den, 1335 West University Drive.

COMMENTS: Bruce Spector, Agent.
DOCUMENT NAME: [20071004LIQ4.pdf](#) LIQ LIC (0210-02)

- *21. Held a public hearing and recommended the approval of a Series 6 Bar Liquor License for NVME, Inc., dba Six Shooters Sports Bar and Grill, 705 South Rural Road, #101.

COMMENTS: Dmitry Karpinsky, Agent.
DOCUMENT NAME: [20071004LIQ5.pdf](#) LIQ LIC (0210-02)

- *22. Held a public hearing and recommended the approval of a Series 12 Restaurant Liquor License for CR Tempe Marketplace, LLC, dba Cadillac Ranch, 2000 East Rio Salado Parkway, #F-7.

COMMENTS: H. J. Lewkowicz, Agent.
DOCUMENT NAME: [20071004LIQ6.pdf](#) LIQ LIC (0210-02)

B. Award of Bids/Contracts

23. Awarded **Contract #2007-173**, a one-year contract with two (2) one-year renewal options to Fluoresco Lighting for traffic sign cabinets and faces.

COMMENTS: (IFB #08-045) Total cost for this contract shall not exceed \$80,000 during the initial contract period.
DOCUMENT NAME: [20071004fsta04.pdf](#) PURCHASES (1004-01)

- 23a. Awarded **Contract #2007-179**, a one-year contract with two (2) one-year renewal options to The Advocacy Group for federal lobbyist and information services.

COMMENTS: (RFP #08-021) Total cost for this contract shall not exceed \$120,000 during the initial contract period.
DOCUMENT NAME: [20071004fslg10.pdf](#) PURCHASES (1004-01)

24. Approved **Contract #2007-174**, a professional design services contract with Wright Engineering Corporation, for an On-Call Electrical Engineering Contract.

COMMENTS: Professional design services contract in an amount not to exceed \$100,000, subject to execution of the final written contract.

DOCUMENT NAME: [20071004PWCH01.pdf](#) **ENGINEERING
ADMINISTRATION (0803-02), PROJECT NO. 6700002**

25. Approved **Contract #2007-175**, a professional design services contract with LSW Engineers Arizona, Inc., for the Municipal District Central Cooling Plant Upgrade.

COMMENTS: Professional design services contract in an amount not to exceed \$185,900, subject to execution of the final written contract.

DOCUMENT NAME: [20071004PWCH04.pdf](#) **CITY FACILITY MAINTENANCE
- UPGRADE (1001), PROJECT NO. 6702501**

26. Awarded **Contract #2007-176**, a Construction Manager at Risk Design Phase Services contract to McCarthy Building Companies, Inc., for the City Hall parking garage and retail building shell.

COMMENTS: A Construction Manager at Risk Design Phase Services contract for an amount not to exceed of \$107,720, subject to execution of the final written contract.

DOCUMENT NAME: [20071004PWCH05.pdf](#) **PARKING (0503-19) PROJECT
NO. 6702971**

27. Awarded **Contract #2007-177**, a Construction Manager at Risk (CMAR) Design Services and Construction Services contracts to Pierson Construction Corporation and approved **Contract #2007-178**, a construction change order contingency for sanitary sewer replacement on College Avenue and Curry Road.

COMMENTS: CMAR Design Services contract with Pierson Construction Corporation in an amount not to exceed \$33,854.58 and a CMAR Construction Services contract with Pierson Construction Corporation for a guaranteed maximum price of \$1,290,832.39, both subject to execution of the final written contract, plus a construction change order contingency of \$50,000.

DOCUMENT NAME: [20071004PWDR06.pdf](#) **WATERMAIN UPGRADES
(0810-04) PROJECT NO. 3204021**

28. Approved **Contract #2005-79L**, a construction Job Order with Sun Eagle Corporation and a construction change order contingency for the South Tempe Water Treatment Plant cathodic protection and coatings.

COMMENTS: Job Order in the amount of \$314,336.47, subject to execution of the final written contract, and a construction change order contingency of \$50,000.

DOCUMENT NAME: [20071004PWMV02.pdf](#) **SOUTH TEMPE WATER
TREATMENT PLANT (0812-02) PROJECT NO. 3200001**

29. Approved one-year contract renewals with Baker & Taylor and BWI for library books and non-print media.

COMMENTS: (T05-038-01 and T05-038-02) Total amount not to exceed \$600,000.

DOCUMENT NAME: [20071004fsts07.pdf](#) **PURCHASES (1004-01)**

30. Approved a one-year contract renewal with West Coast Equipment, Inc., for the purchase of street sweeper brooms.

COMMENTS: (T06-010RB-01) Total amount not to exceed \$100,000.

DOCUMENT NAME: [20071004fsta01.pdf](#) **PURCHASES (1004-01)**

31. Approved a one-year contract renewal with The Segal Company for employee benefits consultant services.

COMMENTS: (T05-053-01) Total amount not to exceed \$110,000.

DOCUMENT NAME: [20071004fsta02.pdf](#) **PURCHASES (1004-01)**

32. Approved the increase of the contract amount with IT Partners for consulting services and the purchase of Hewlett Packard mini computers and servers, related products, services, and accessories.

COMMENTS: (T05-079-01) Increase in the amount of \$650,000, from \$825,000 to \$1,475,000.

DOCUMENT NAME: [20071004fsts06.pdf](#) **PURCHASES (1004-01)**

33. Approved the increase of the contract amount with Trucks West of Phoenix for refuse vehicles to be used by the Public Works Department.

COMMENTS: (T07-112-01) Increase in the amount of \$1,394,000, from \$1,627,000 to \$3,021,000.

DOCUMENT NAME: [20071004fsta03.pdf](#) **PURCHASES (1004-01)**

34. Approved the increase of the contract amount with CPC Construction, Inc., for Minor Concrete 2005-2008.

COMMENTS: This contract increase of \$200,000 is to cover additional large scale projects that will improve right-of-way safety and traffic control concerns.

DOCUMENT NAME: [20071004PWCH07.pdf](#) **STREET UPGRADING-MAINT-CONSTRUCTION (0809-05), PROJECT NO. 5401412**

35. Approved the increase of the contract amount with Southwest Slurry Seal, Inc., for major street renovation.

COMMENTS: The contract increase of \$596,371 will allow additional arterials to be added to this year's schedule.

DOCUMENT NAME: [20071004PWCH08.pdf](#) **STREET UPGRADING-MAINT-CONSTRUCTION (0809-05), PROJECT NO. 5401641**

36. Approved the increase of the contract value with Scheidt & Bachmann USA, Inc., for additional components, parts, and taxes associated with Tempe's participation in a regional procurement of a bus fare collection system.

COMMENTS: (Agreement #117764) Increase shall not exceed \$508,106, from

\$1,820,528 to \$2,328,634.

DOCUMENT NAME: [20071004fslg11.pdf](#) PURCHASES (1004-01)

37. Approved the utilization of a Pima County contract with Peoria Pest Control for an additional one-year term for manhole treatment services.

COMMENTS: (11-03-P-137279-1105) Total amount not to exceed \$70,000.

DOCUMENT NAME: [20071004fst05.pdf](#) PURCHASES (1004-01)

38. Approved the utilization of a fifteen-month US Communities contract with Herman Miller, Inc., for the purchase of free standing and systems furniture, seating, filing equipment and related products and services.

COMMENTS: (RQ07-878957-20A-E) Total amount not to exceed \$500,000.

DOCUMENT NAME: [20071004fst08.pdf](#) PURCHASES (1004-01)

39. Approved the utilization of two-year State of Arizona contracts with Audio Video Resources and Technology Providers, Inc., for the purchase of audio and video products and services.

COMMENTS: (EPS060125-7 and EPS060125-8) Total amount not to exceed \$650,000.

DOCUMENT NAME: [20071004fst09.pdf](#) PURCHASES (1004-01)

C. Ordinances and Items for Introduction/First Hearing - These items will have two public hearings before final Council action.

- *40. Introduced and held the **first public hearing** to amend Chapter 14 of the Tempe City Code relating to Fire Prevention and Protection by amending Article II, Division 2, Section 14-41 relating to Fire Code Amendments. **The second public hearing is set for October 25, 2007.**

DOCUMENT NAME: [20071004cacc02.pdf](#) TCC CH 14 - FIRE PREVENTION & PROTECTION (0503-14) ORDINANCE NO. 2007.70

- *41. Introduced and held the **first public hearing** to amend Chapter 26A of the Tempe City Code relating to Procurement. **The second public hearing is set for October 25, 2007.**

DOCUMENT NAME: [20071004JH01.pdf](#) TCC CH 26A- PROCUREMENT (0503-41) ORDINANCE NO. 2007.72

D. Ordinances and Items for Second Hearing/Final Adoption

- *42. Held the **second public hearing** and approved ORDINANCE NO. 2007.59 repealing Chapter 17 of the Tempe City Code, relating to Massage Establishments and amending Chapter 16A, relating to License and Business Regulations by adding new Article VIII

entitled Massage Establishments.

DOCUMENT NAME: [20071004cacc01.pdf](#) TCC CH 17 – MASSAGE
THERAPISTS & ESTABLISHMENTS (0503-17)

- *43. Held the **second public hearing** and approved **with condition** a Code Text Amendment for DOWNTOWN SIGNAGE.

COMMENTS: (PL070362) (City of Tempe, applicant) for changes in the Zoning and Development Code pertaining to sign regulations in the downtown and other sign modifications, including the following:

ZOA07002 – (Ordinance No. 2007.63) Code Text Amendment for the Zoning and Development Code Part 4, Chapter 9, Signs.

The following condition was also approved:

1. One (1) year after the effective date of this ordinance, the Development Services Department will report back to the appropriate Council Sub-Committee on the results of the program and seek further direction.

DOCUMENT NAME: [20071004dsrl02.pdf](#) ZONING AND DEVELOPMENT
CODE (0414-04)

E. Resolutions

44. Approved RESOLUTION NO. 2007.84 authorizing negotiation of a development and disposition agreement with Cardinal Capital Management, Inc., for the development of City /Federal Transit Administration (FTA) owned and funded property at 2448 E Apache Blvd.

DOCUMENT NAME: [20071004cdls01.pdf](#) COMMUNITY
DEVELOPMENT/REDEVELOPMENT ADM (0403-01)

45. Approved RESOLUTION NO. 2007.85 authorizing negotiation of a development and disposition agreement with Barton Homes, Inc., for the development of City-owned property at 1443, 1444 and 1436 S. Rita Lane.

DOCUMENT NAME: [20071004cdls02.pdf](#) COMMUNITY
DEVELOPMENT/REDEVELOPMENT ADM (0403-01)

6. PUBLIC APPEARANCES

SCHEDULED PUBLIC APPEARANCE

- Kathryn Milun and Kirby Spitler, Tempe, re: Clean/Green/Solar Energy System for Tempe. Kathryn Milun stated that she represents Tomales Bay Institute and Kirby Spitler is an architect with Gensler, an international design firm, with which they are partnering to run a feasibility study and build a pilot of an innovative solar energy project. The project involves solar collectors in the appropriate areas of City right-of-way. Income would be generated by selling this green energy back into the grid to be managed by a public trust mandated to use all funds for the management, maintenance and growth of this solar energy system. When available, funds could also be

channeled into public education on sustainable energy practices. Because the project uses the common pool resources of solar energy, the public domain of right-of-way, and a public trust management system, it is referred to as a solar energy common. They have a seed grant from the Tomales Bay Institute and the Arizona Loadstar Foundation, and they intend to raise money for the feasibility study and initial infrastructure costs from environmental philanthropists and from corporations who can benefit from recent green energy tax incentives. With these costs paid, the project is economically viable to begin generating its own public trust managed income stream. It is important to note that the project will not need any tax dollars from the City, but only needs access to the appropriate right-of-way on which to place the collectors. Tomales Bay Institute would like to advertise successful solar energy comments on its website, showing other cities how to build clean green energy commons by working with local governments, corporations and urban land trusts. This solar energy common has multiple bottom lines. It must be mechanically and economically efficient, must be managed as a public trust, and its design must use public art to communicate its cherished place in a city investing in sustainable energy use. Today's residents would be proud of what a beautifully designed solar energy common would say about their city.

Mayor Hallman clarified that they were not asking for any specific approvals of specific projects, but for moral support toward their efforts to create a demonstration project and will come back when proposals are established and brought forward.

Councilmember Shekerjian felt this was a creative idea and is looking forward to future proposals.

UNSCHEDULED PUBLIC APPEARANCE

- **Senator Meg Burton-Cahill, Tempe**, stated that she wanted to speak on Item #2 on the Issue Review Session. There has been some consideration to look at the Tucson model of campaign finance and, as a citizen, she voiced her concern that it is a bad model. It is not a progressive model for campaign finance reform. She encouraged the City to look further into other models. San Diego, Los Angeles, and San Jose are working on progressive models. Portland enacted publicly financed campaigns when the race for the Mayor's seat exceeded \$1M. "Dialing for dollars" doesn't have anything to do with crafting sound public policy.

7. CURRENT EVENTS/COUNCIL ANNOUNCEMENTS/FUTURE AGENDA ITEMS

- Councilmember Ellis announced the Affordable Housing Forum on October 20th at the Tempe Public Library Program Room. The doors will open at 8:30 a.m., and the forum will run from 9 a.m. until noon. It is open to the public. Various providers of services will be speaking.
- Councilmember Arredondo recognized the Public Works street sweepers. They deserve recognition for the great job they do.
- Councilmember Mitchell read the Congressional Record of the Honorable Congressman Harry E. Mitchell given on September 9, 2007, in the U.S. House of Representatives regarding the opening of the Tempe Center for the Arts, outlining the features of the facility, and congratulating all who have worked hard on this project. He also announced the Way Out West Oktoberfest which begins on Friday at 5 p.m. and runs through Sunday.
- Mayor Hallman asked for consensus to refer the Clean/Green/Solar Energy System for Tempe to

Council's Transportation, Housing & Environment Committee. There was consensus.

Meeting adjourned at 9:40 p.m.

I, Jan Hort, the duly-appointed City Clerk of the City of Tempe, Maricopa County, Arizona, do hereby certify the above to be the minutes of the Formal City Council meeting of October 4, 2007, by the Tempe City Council, Tempe, Arizona.

Hugh Hallman, Mayor

ATTEST:

Jan Hort, City Clerk

Dated this _____ day of _____, 2007.