

ORG. 206
(0-2008-17) 7/30

ORDINANCE NUMBER O- 19652 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 30 2007

AN ORDINANCE ADOPTING THE ANNUAL BUDGET FOR
THE FISCAL YEAR 2008 AND APPROPRIATING THE
NECESSARY MONEY TO OPERATE THE CITY OF
SAN DIEGO FOR SAID FISCAL YEAR

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

SECTION 1. The budget for the expense of conducting the affairs of the City of San Diego for the fiscal year commencing July 1, 2007, and ending June 30, 2008, heretofore prepared and submitted to this Council by the Mayor and amended through the Mayor's Revision submitted May 16, 2007, by recommendations from the Office of the Independent Budget Analyst, and by changes from the City Council and the Mayor's veto, all of which was approved by Council on June 20, 2007, and on file in the Office of the City Clerk as Resolution No. R-302734 is hereby adopted as the Annual Budget for said fiscal year.

SECTION 2. There is hereby appropriated for expenditure out of the funds of said City for municipal purposes the amounts set forth in Attachment 1 and in the approved Capital Improvement Program Budget, which defines the legal levels at which the City Auditor and Comptroller shall control operational and capital project spending.

I. GENERAL FUND

(A) The Mayor and City Auditor and Comptroller are hereby authorized to transfer to an appropriate account from the departmental appropriations as set forth in Attachment 1 an amount sufficient to assure that, in the event there is a shortfall in projected revenues, there are sufficient revenues to cover the remaining appropriations; provided that in the case that projected revenue estimates are met, the funds set aside may be returned to their respective appropriation accounts.

(B) The City Auditor and Comptroller is authorized and directed to deposit the \$3.3 million budgeted amount as well as any revenues in excess of expenditures at fiscal year end to a General Fund Unappropriated/Unallocated Reserve.

(C) The City Auditor and Comptroller is to appropriate and expend interest earnings generated from the issuance of Tax and Revenue Anticipation Notes for the purpose of funding expenditures related to their issuance.

(D) The provisions in the Library Ordinance, Municipal Code Section 22.0228, restricting funding are hereby waived.

(E) The City Auditor and Comptroller is authorized and directed, upon approval of the Mayor, to transfer appropriations for costs avoided in one department by a mutual agreement to incur them in another department.

(F) The City Auditor and Comptroller is authorized, upon the direction of the Mayor, to increase revenue and expenditure appropriations for the purpose of implementing Council approved economic development and business incentive programs that include the Business and Industry Incentive Program (Council Policy 900-12), the Housing Impact Fee Waiver-Enterprise Zones Program, the Small Business Enhancement Program, and the Storefront Improvement Program (Council Policy 900-17) and the Community Parking District Policy (Council Policy 100-18).

(G) The City Auditor and Comptroller is authorized, upon the direction of the Mayor, to increase revenue and expenditure appropriations for the purpose of paying unanticipated Property Tax Administration fees to the County of San Diego.

0-19652

II. SPECIAL REVENUE FUNDS

(A) Community Development Block Grant Funds

(1) Community Development Block Grant Funds are appropriated for the purposes established by the grant provisions as approved and authorized by Council. All authorized but incomplete program activities and unexpended monies related thereto remaining in the Community Development Block Grant Funds on June 30, 2008 shall be carried forward to future years for the purpose of completing said authorized activities.

(2) The City Auditor and Comptroller is authorized, upon the direction of the respective Council District, to allocate the Council District's reserves or reallocate appropriations from budgeted projects later determined ineligible to new or existing CDBG eligible projects.

(3) The City Auditor and Comptroller is authorized and directed, upon the direction of the Mayor, to transfer a maximum of \$100,000 per capital project from fund reserves or excess program income to projects for eligible costs, such as engineering, in excess of approved appropriations.

(B) Transient Occupancy Tax Fund (10220)

(1) The provisions of Council Policy 100-03 (Transient Occupancy Tax), for specific activities funded by this ordinance, are deemed and declared to be complied with, by the adoption of this Ordinance. Notwithstanding the foregoing, the Council hereby waives certain provisions of Council Policy 100-03, Attachment A (see Attachment 2) for the entities set forth below:

San Diego Convention & Visitors Bureau	B-1
San Diego Film Commission	B-1
San Diego International Sports Council	B-3
San Diego North Convention & Visitors Bureau	B-3
San Diego Regional Economic Development Corporation	B-3

Horton Plaza Theatres Foundation

B-1, B-2, and B-4

Nothing contained in this paragraph shall be deemed to constitute a waiver of the ban prohibiting the use of TOT funds for the purchase of alcoholic beverages.

(2) The Mayor or his designee is hereby authorized to execute appropriate agreements for the conduct of activities associated with the allocations authorized by Council for Fiscal Year 2008. It is the intent of the Council that the Transient Occupancy Tax Fund appropriations be expended in accordance with the Council Policy 100-03.

(C) Environmental Growth Funds (10505, 105051, 105052)

(1) It is the intent of the Council that the Environmental Growth Fund appropriations are to be expended for those purposes described in City Charter Section 103.1a. The provisions in the San Diego Municipal Code Section 63.30, as amended by Ordinance 19159 are hereby waived.

(2) Any monies deposited in the Environmental Growth Fund in excess of estimated revenue as described in Section 103.1a of the City Charter and any carryover monies from the previous fiscal year are hereby appropriated for the purpose for which the Environmental Growth Fund was created and may be expended only by Council resolution. The Council may, from time-to-time, for purposes of augmenting specified programs, elect to allocate additional monies to the Environmental Growth Fund from sources other than those enumerated in Section 103.1a of the Charter. In that event, those additional monies shall not be subject to any fractional allocation but shall be used solely and exclusively for the program purpose designated by Council.

III. DEBT SERVICE FUNDS

General Obligation Bond Interest and Redemption Fund (21640)

There is hereby appropriated the current year's proceeds from the tax levy as required to pay debt service on the issuance of \$25.5 million aggregate principal amount of General Obligation

bonds authorized in an election held on June 5, 1990 by a favorable vote of more than two-thirds of all the voters voting on the proposition.

IV. CAPITAL PROJECTS FUNDS

(A) Any additions to or deletions from the Capital Improvements Program, as may be required, shall be made by Council resolution provided funding is available for such action. The City Auditor and Comptroller, at the direction of the Mayor, is authorized and directed to add maintenance projects funded elsewhere which are determined to be of a capital nature to the Capital Improvements Program.

(B) The City Auditor and Comptroller is authorized and directed upon the direction of the Mayor, to transfer unexpended balances in completed current year Capital Improvements Program projects to the appropriate Capital Improvements Program Unallocated Reserve, Annual Allocation or Fund Balances.

(C) The City Auditor and Comptroller is authorized and directed, upon the direction of the Mayor, to transfer and appropriate a maximum of \$200,000 per project not to exceed 10% of the project budget from appropriate Unallocated Reserves, Annual Allocations, earned interest or Unappropriated Fund Balances to Capital Improvements Program projects to reimburse eligible costs in excess of approved appropriations at project completion.

(D) The City Auditor and Comptroller is authorized to make cash advances from the appropriate revenue source funds for the purpose of funding incidental and engineering costs of projects included in the long-range Capital Improvements Program Budget. Such advances shall be reimbursed to the respective Fund upon appropriation. In addition, the City Auditor and Comptroller is authorized and directed to advance funds as required for grant funded projects based

on earned grant revenue receivable. Advances will be returned upon the payment of the grant receivable.

(E) The City Auditor and Comptroller is authorized and directed, upon the direction of the Mayor, to reallocate revenue sources between Capital Improvements Program projects, in accordance with the restrictions placed on various revenues where the net reallocation does not result in a net increase to any of the revenue sources or project budgets.

(F) Facilities Benefit Assessment Funds and Development Impact Fee Funds (79001-79016), (79501-79535), 39051-39095)

(1) The City Auditor and Comptroller is authorized, upon the direction of the Mayor, to modify individual Capital Improvements Program project budgets in accordance with Council-approved Community Public Facilities Financing Plans.

(2) The City Auditor and Comptroller is authorized, upon the direction of the Mayor, to reallocate DIF funded appropriations between Council-approved projects in order to expedite the use of DIF funds in accordance with AB1600 requirements.

(3) The City Auditor and Comptroller is authorized, upon the direction of the Mayor, to appropriate and transfer monies from DIF funds to the Redevelopment Agency of the City of San Diego (Agency) for reimbursable capital project expenditures as authorized by City Council resolution RR-300013 dated December 7, 2004 and the Redevelopment Agency resolution R-03862. The transfers will be limited to availability of funds within DIF funds and to projects identified in the Centre City Public Facilities Financing Plan.

(4) The City Auditor and Comptroller is authorized, upon the direction of the Mayor, to appropriate in the FBA and DIF funds a sufficient and necessary amount to reimburse the administrative costs incurred by other City funds.

(G) TransNet Funds (30300-30303, 30306)

(1) The TransNet Funds (30300-30303, 30306) are hereby appropriated for the purposes authorized by Proposition A - San Diego Transportation Improvement Program Ordinance and Expenditure Plan; the Regional Transportation Improvement Program (RTIP) and the Annual Budget Document.

(2) The City Auditor and Comptroller may reallocate funding among the projects contained in the RTIP and the Capital Improvements Program Budget, upon the request of the responsible department director and upon the approval of the Mayor, provided that such reallocation does not increase the total TransNet appropriations. The City Auditor and Comptroller may, upon the direction of the Mayor, appropriate and reallocate Gas Tax and AB 2928 Funds for Council approved TransNet Funded projects in order to reduce the use of debt and maximize the use of cash in both funds. The Mayor is authorized as the Council designee to direct the San Diego Association of Governments (SANDAG) to amend the RTIP for such reallocations.

(3) Any monies deposited in the TransNet funds in excess of estimated revenue and any carryover monies from the previous fiscal year are hereby appropriated for the purpose for which said Funds were created and may be appropriated and expended by the City Auditor and Comptroller, upon the direction of the Mayor, provided that such an increase is part of the RTIP.

(H) Infrastructure Improvement Fund (10529)

(1) Any carryover monies from the previous fiscal year in the Infrastructure Improvement Fund (10529) are hereby appropriated for the purpose for which said fund was created.

(2) Funds from the Infrastructure Improvement Fund may be transferred and appropriated to the General Fund upon the direction of the Mayor for purposes identified by the Mayor for the

Mayor's Infrastructure Improvement Fund or by the Council Districts for the individual Council District's Infrastructure Improvement Funds.

(3) The City Auditor and Comptroller is authorized to add and establish CIP projects as identified by the Mayor and City Council that are not currently in the Capital Improvements Program. The City Auditor and Comptroller is authorized, upon the direction of the Mayor to return any Infrastructure Improvement Funds deemed to be surplus in a project

V. ENTERPRISE FUNDS

(A) All Enterprise Funds are hereby appropriated for the purpose of providing for the operation, maintenance and development of their respective purposes.

(B) Reserve Funds are hereby appropriated to provide funds for the purpose for which the Fund was created. The City Auditor and Comptroller is hereby authorized to return to the source Fund monies deposited in Reserve Funds in excess of amounts required.

(C) The City Auditor and Comptroller may reallocate appropriations in the Capital Improvement Program, changing the total appropriation for any given project contained in the Council-approved Capital Improvements Program to cover costs related to a redistribution of program wide contracts for Construction Management.

(D) The City Auditor and Comptroller may reallocate appropriations and associated encumbrances from any Council approved budgeted project in the Capital Improvement Program to the Fund's annual operating budget for costs associated with extended environmental monitoring for re-vegetation. Such reallocation shall decrease the total appropriation and encumbrance for the project and increase the appropriation and encumbrance in the annual operating budget by an equal amount provided that the reallocation is no greater than 5% of the capital project budget.

VI. INTERNAL SERVICE FUNDS

(A) The City Auditor and Comptroller is hereby authorized, upon the direction of the Mayor, to distribute surplus retained earnings or excess contributions from various internal service funds back to appropriate contributing funds or between employee benefit-related internal service funds.

(B) Equipment Operating Fund #50030 and Equipment Replacement Fund #50031

The City Auditor and Comptroller is hereby authorized and directed, upon the direction of the Mayor, to redistribute contributions among the Equipment Operating and Equipment Replacement internal service funds or to advance funds between these internal service funds.

VII. TRUST AND AGENCY FUNDS

These funds are established to account for assets held by the City as an agent for individuals, private organizations, other governments and/or funds; for example, federal and state income taxes withheld from employees, 401(k) and deferred compensation plans, parking citation revenues, and employee benefit plans. The City Auditor and Comptroller is authorized and directed to establish the appropriate agency funds and to deposit and disburse funds in accordance with the respective agency relationships.

SECTION 3. The Mayor is hereby authorized to execute appropriate initial and continuing contracts and agreements for the conduct of activities associated with the allocations authorized by Council and in accordance with provisions of grant agreements.

SECTION 4. The City Auditor and Comptroller is authorized, upon direction of the Mayor, to release excess rate stabilization funds and debt service stabilization funds to the appropriate unallocated reserve or fund balance.

SECTION 5. The City Auditor and Comptroller is authorized and directed, upon the direction of the Mayor, to make inter-fund loans, including interest at the City's pooled rate of return, between funds to cover cash needs. These loans may, if appropriate, extend beyond the current fiscal year.

SECTION 6. All interest earnings generated by any fund which has been established pursuant to a legal or contractual requirement, externally imposed restriction, or by enabling legislation (including, but not limited to, the Appropriation Ordinance) shall remain in said fund solely for the purpose the fund was intended.

SECTION 7. All Funds, established by Council in previous fiscal years or during the current fiscal year, are appropriated for the purposes established by applicable laws and/or in accordance with provisions of agreements authorized by Council and for projects contained in the Council-approved Capital Improvements Program or authorized by Council resolution. The City Auditor and Comptroller is authorized and directed to expend monies within the funds for services provided by those funds. The City Auditor and Comptroller is authorized and directed, upon approval of the Mayor, to return any surplus monies to the contributing funds.

SECTION 8. The City Auditor and Comptroller is authorized and directed, upon the direction of the Mayor, to transfer current and/or prior years' surplus monies within the Flexible Benefit/Management Benefit Programs reimbursement funds after fiscal year end. Any remaining surplus monies (excluding flexible spending accounts) in the reimbursement funds may be transferred by the City Auditor and Comptroller, upon the direction of the Mayor, to the Risk Management Administration Fund (50061) to be expended, up to the full forfeited amount, for programs which benefit City employees.

The City Auditor and Comptroller is authorized and directed, upon the direction of the Mayor, to transfer surplus/reserves within other employee benefit funds or to reallocate these monies to other fringe benefit funds.

SECTION 9. The City Auditor and Comptroller is authorized and directed, upon the direction of the Mayor, to make appropriate inter-fund transfers in accordance with the Annual Budget Document and estimated sources of revenue.

The City Auditor and Comptroller may, upon the direction of the Mayor, transfer funds to related City entities in accordance with the Annual Budget Document and appropriate funding source rules and regulations.

SECTION 10. The City Auditor and Comptroller is authorized and directed to appropriate and expend donations in accordance with Council Policy 100-02 (City Receipt of Donations).

SECTION 11. All revenues generated consistent with the Public Trust pursuant to Section 6306 of the Public Resources Code in relation to operation of Mission Bay Park and Ocean Beach Park in excess of expenditures for operations, maintenance and capital improvements during the fiscal year are hereby placed in a special fund to be used exclusively for past and future operations, maintenance and capital improvements and for past, current, and future expenditures uncompensated by past, current and future revenues derived from Mission Bay Park and Ocean Beach Park as required by agreements with the State of California. Excess revenues are hereby appropriated for said purposes and may be expended only by Council resolution or in accordance with projects contained in the Council-approved Capital Improvements Program.

All revenues generated by sovereign trust lands granted by the State of California to the City of San Diego pursuant to section 6306 of the Public Resources Code are hereby appropriated for purposes consistent with the public trust.

SECTION 12. All other revenues which are not appropriated by any other section of this ordinance, and which are in excess of budgeted revenue as determined by the Mayor, are hereby transferred by the City Auditor and Comptroller to legally established reserve fund(s) or account(s). However, in no event shall the total appropriations of all tax revenues as defined by Article XIII B of the California State Constitution made pursuant to this ordinance exceed the City's legal limit.

The total appropriation is \$2,915,517,597 a portion of which will be derived from proceeds of taxes as defined within Article XIII B of the State Constitution.

It is the intent of this ordinance to comply with Article XIII B of the California State Constitution.

SECTION 13. The City Auditor and Comptroller is authorized and directed, upon direction of the Mayor, to modify budgets in accordance with the Fiscal Year 2008 Tax Rate Ordinance as approved by Council. Further, the Financial Management Department is directed to modify the Annual Budget Document in accordance with the Tax Rate Ordinance.

SECTION 14. The City Auditor and Comptroller is authorized and directed to close obsolete or inactive funds; residual balances of such funds shall be returned to their source or, if to the General Fund, to a General Fund Unappropriated/Unallocated Reserve. The City Auditor and Comptroller shall periodically report fund closures to the City Council and recommend the appropriation of any residual balances.

SECTION 15. Effective July 1, 2007, the Auditor & Comptroller is directed to withhold payment of fees, costs and expenses associated with any case/claim filed by the City Attorney in which the authorization to file such case or claim has not been pre-approved by the City Council. This includes but is not limited to such fees, costs and expenses for outside legal fees, expert witnesses/testimony, and investigative expenses.

When submitting requests for payment to the Auditor & Comptroller, the City Attorney shall provide the following information in addition to the invoice prior to payment by the Auditor & Comptroller:

1. The letter of engagement for the services being provided by outside legal counsel or contract or purchase order for other related services, and
2. A memorandum signed by a representative of the City Attorney's Office indicating a) that these services have been approved by the City Council, b) the resolution or ordinance number, and/or the Statute of Limitations date for the matter requiring filing prior to City Council approval; or
3. A memorandum signed by a representative of the City Attorney's Office indicating that these services are unrelated to any ongoing pending action authorized/ approved by the City Council.

In litigation invoking situations 2 and 3 above, the Auditor & Comptroller is directed to present a report to the City Council (in the form of a 1472) for review and approval in those instances where an invoice is submitted for payment and prior City Council authorization has not been received.

This provision does not apply to payroll expenditures for City Attorney Staff nor does it restrict the City Attorney from filing a claim against a defendant if the City Attorney is subject to a statute of limitation deadline and cannot seek City Council approval prior to the expiration of such statute of limitation. Under this situation, the City Attorney shall minimize expenditures and notify outside counsel, if appropriate, that City Council approval is necessary to proceed and shall seek City Council approval within 30 days from the date of filing. Should City Council approval not be

secured, the action will be dismissed without prejudice. This provision also does not apply to costs incurred by the City Attorney in defending the City against claims filed against it.

SECTION 16. It is the express intent of the City Council that, notwithstanding anything to the contrary herein, any economic benefit, savings, or effect of this ordinance shall not be used, directly or indirectly, to fund, support in any way, or ratify any employment or retirement benefit determined to be illegal by a court of law.

SECTION 17. The powers of the Council not delegated to the Mayor, Chief Financial Officer, Director of Financial Management and City Auditor and Comptroller, as specifically set forth herein, are reserved to the Council in accordance with the terms of the Charter.

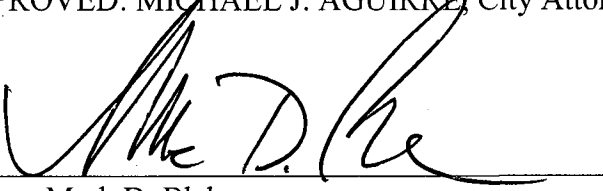
SECTION 18. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

SECTION 19. This ordinance is declared to take effect and be in force immediately upon its passage after two (2) public hearings pursuant to the authority contained in Sections 71, 275, and 295 of the Charter of the City of San Diego.

SECTION 20. The Mayor shall have no veto power over this ordinance pursuant to Section 280(a)(4) of the Charter of the City of San Diego.

APPROVED: MICHAEL J. AGUIRRE, City Attorney¹

By



Mark D. Blake
Chief Deputy City Attorney

MDB:jdf
08/03/2007
Or.Dept:Mayor
O-2008-17

¹ Notwithstanding the execution of this Ordinance, the City Attorney has advised the Mayor and City Council that Section 15 of this Ordinance is illegal, void and of no effect under the Charter. The opinion of the City Attorney is attached hereto as Attachment 3. The execution of this document does not alter or modify or withdraw said opinion, and the same remains in full force and effect.

ATTACHMENT 1
Fiscal Year 2008 Operating and Capital Improvement Program Appropriations

OPERATING APPROPRIATIONS	Salaries & Wages	Fringe & Non- Personnel	FY2008 Appropriation
General Fund			
Business and Support Services	\$ 1,471,987	\$ 911,104	\$ 2,383,091
City Attorney	\$ 22,999,174	\$ 13,912,000	\$ 36,911,174
City Auditor and Comptroller	\$ 6,584,643	\$ 4,926,447	\$ 11,511,090
City Clerk	\$ 2,307,240	\$ 2,101,021	\$ 4,408,261
City Council District 1	\$ 563,464	\$ 426,536	\$ 990,000
City Council District 2	\$ 521,297	\$ 468,703	\$ 990,000
City Council District 3	\$ 606,134	\$ 383,866	\$ 990,000
City Council District 4	\$ 577,803	\$ 412,197	\$ 990,000
City Council District 5	\$ 527,744	\$ 462,256	\$ 990,000
City Council District 6	\$ 502,348	\$ 487,652	\$ 990,000
City Council District 7	\$ 560,330	\$ 429,670	\$ 990,000
City Council District 8	\$ 585,960	\$ 404,040	\$ 990,000
City Planning and Community Investment	\$ 6,567,581	\$ 10,148,754	\$ 16,716,335
City Treasurer	\$ 6,694,943	\$ 7,746,973	\$ 14,441,916
Citywide Program Expenditures	\$ -	\$ 47,811,862	\$ 47,811,862
Community and Legislative Services	\$ 2,141,232	\$ 2,239,301	\$ 4,380,533
Council Administration	\$ 910,215	\$ 939,256	\$ 1,849,471
Customer Services	\$ 1,116,590	\$ 1,406,542	\$ 2,523,132
Debt Management	\$ 1,557,979	\$ 1,172,422	\$ 2,730,401
Development Services	\$ 3,737,234	\$ 2,966,682	\$ 6,703,916
Engineering and Capital Projects	\$ 20,650,040	\$ 14,774,388	\$ 35,424,428
Environmental Services	\$ 8,886,415	\$ 31,906,939	\$ 40,793,354
Ethics Commission	\$ 656,647	\$ 364,459	\$ 1,021,106
Family Justice Center	\$ 297,387	\$ 239,971	\$ 537,358
Financial Management	\$ 2,123,633	\$ 1,994,144	\$ 4,117,777
General Services	\$ 23,685,627	\$ 84,363,834	\$ 108,049,461
Labor Relations	\$ 514,701	\$ 294,920	\$ 809,621
Land Use and Economic Development	\$ 455,009	\$ 243,990	\$ 698,999
Library	\$ 18,154,992	\$ 19,475,672	\$ 37,630,664
Mayor	\$ 387,053	\$ 240,838	\$ 627,891
Office of the Chief Financial Officer	\$ 438,140	\$ 629,209	\$ 1,067,349
Office of the Chief Information Officer	\$ -	\$ 29,063,056	\$ 29,063,056
Office of Ethics and Integrity	\$ 1,057,957	\$ 1,342,580	\$ 2,400,537
Office of Homeland Security	\$ 789,074	\$ 992,168	\$ 1,781,242
Office of the Independent Budget Analyst	\$ 878,404	\$ 437,930	\$ 1,316,334
Park and Recreation	\$ 32,261,847	\$ 55,258,294	\$ 87,520,141
Personnel	\$ 3,896,810	\$ 2,723,192	\$ 6,620,002
Police	\$ 214,753,888	\$ 177,582,807	\$ 392,336,695
Public Safety	\$ 684,905	\$ 2,368,281	\$ 3,053,186
Public Works	\$ 559,004	\$ 295,526	\$ 854,530
Purchasing and Contracting	\$ 3,261,160	\$ 2,352,339	\$ 5,613,499
Real Estate Assets	\$ 2,430,323	\$ 1,831,139	\$ 4,261,462

OPERATING APPROPRIATIONS

	Salaries & Wages	Fringe & Non- Personnel	FY2008 Appropriation
General Fund (continued)			
San Diego Fire-Rescue	\$ 101,615,800	\$ 78,327,298	\$ 179,943,098
Special Events	\$ 219,174	\$ 278,806	\$ 497,980
General Fund Total	\$ 499,191,888	\$ 607,139,064	\$ 1,106,330,952
Debt Service and Tax Funds			
Bond Interest and Redemption	\$ -	\$ 2,328,947	\$ 2,328,947
Tax Anticipation Notes	\$ -	\$ 5,109,000	\$ 5,109,000
Zoological Exhibits	\$ -	\$ 8,423,463	\$ 8,423,463
Debt Service and Tax Funds Total	\$ -	\$ 15,861,410	\$ 15,861,410
Special Revenue Funds			
City Redevelopment Administration	\$ 2,009,699	\$ 1,651,997	\$ 3,661,696
Community Development Block Grant	\$ -	\$ 202,856	\$ 202,856
Convention Center Complex	\$ -	\$ 14,295,070	\$ 14,295,070
Energy Conservation Program	\$ 724,350	\$ 1,520,634	\$ 2,244,984
Environmental Growth - 1/3	\$ -	\$ 5,068,068	\$ 5,068,068
Environmental Growth - 2/3	\$ -	\$ 9,333,907	\$ 9,333,907
Facilities Financing	\$ 1,071,044	\$ 1,616,083	\$ 2,687,127
Fire/Emergency Medical Services Transport Program	\$ 4,013,043	\$ 2,654,925	\$ 6,667,968
Fire and Lifeguard Facilities	\$ -	\$ 1,667,420	\$ 1,667,420
Gas Tax	\$ -	\$ 24,358,245	\$ 24,358,245
Library Grant Funds	\$ 408,745	\$ 322,628	\$ 731,373
Los Peñasquitos Canyon Preserve	\$ 110,652	\$ 116,043	\$ 226,695
Municipal Parking Garages	\$ 167,067	\$ 2,659,103	\$ 2,826,170
New Convention Facility	\$ 50,000	\$ 4,289,198	\$ 4,339,198
Office of the Chief Information Officer	\$ 6,245,681	\$ 8,891,639	\$ 15,137,320
PETCO Park	\$ 55,609	\$ 17,398,552	\$ 17,454,161
Police Decentralization	\$ -	\$ 9,096,768	\$ 9,096,768
Public Art	\$ -	\$ 30,000	\$ 30,000
QUALCOMM Stadium	\$ 2,380,206	\$ 15,361,373	\$ 17,741,579
Seized and Forfeited Assets	\$ -	\$ 1,521,105	\$ 1,521,105
Solid Waste Local Enforcement Agency	\$ 408,512	\$ 523,417	\$ 931,929
Special Promotional Programs	\$ 486,197	\$ 77,067,651	\$ 77,553,848
Storm Drain	\$ -	\$ 6,046,746	\$ 6,046,746
TransNet	\$ -	\$ 16,255,048	\$ 16,255,048
Trolley Extension Reserve	\$ -	\$ 4,110,150	\$ 4,110,150
Undergrounding Utility Program	\$ 659,722	\$ 880,880	\$ 1,540,602
Unlicensed Driver Vehicle Impound	\$ 797,904	\$ 530,000	\$ 1,327,904
Special Revenue Funds Total	\$ 19,588,431	\$ 227,469,506	\$ 247,057,937
Enterprise Funds			
Airports	\$ 1,051,500	\$ 1,812,804	\$ 2,864,304
Development Services	\$ 25,647,672	\$ 27,400,214	\$ 53,047,886
Golf Course	\$ 4,111,583	\$ 8,735,409	\$ 12,846,992
Recycling	\$ 7,368,036	\$ 16,637,726	\$ 24,005,762
Refuse Disposal	\$ 8,662,908	\$ 25,169,581	\$ 33,832,489
Sewer	\$ 59,837,143	\$ 309,930,439	\$ 369,767,582

OPERATING APPROPRIATIONS	Salaries & Wages	Fringe & Non-Personnel	FY2008 Appropriation
Enterprise Funds (continued)			
Water	\$ 50,268,860	\$ 310,110,417	\$ 360,379,277
Enterprise Funds Total	\$ 156,947,702	\$ 699,796,590	\$ 856,744,292
Internal Service Funds			
Central Stores	\$ 853,838	\$ 22,975,463	\$ 23,829,301
Balboa Park/Mission Bay Improvements	\$ -	\$ 6,949,448	\$ 6,949,448
Engineering and Capital Projects - Water/Wastewater	\$ 11,516,458	\$ 13,971,407	\$ 25,487,865
Enterprise Resource Planning (ERP)	\$ -	\$ 4,342,500	\$ 4,342,500
Equipment Division	\$ 13,484,599	\$ 67,888,062	\$ 81,372,661
Publishing Services	\$ 1,092,181	\$ 3,101,642	\$ 4,193,823
Risk Management	\$ 4,765,050	\$ 4,308,884	\$ 9,073,934
Internal Service Funds Total	\$ 31,712,126	\$ 123,537,406	\$ 155,249,532
Other Service Funds			
City Employees' Retirement System	\$ 4,939,275	\$ 37,260,936	\$ 42,200,211
Open Space Park Facilities	\$ -	\$ 437,025	\$ 437,025
Other Service Funds	\$ 4,939,275	\$ 37,697,961	\$ 42,637,236
TOTAL OPERATING APPROPRIATIONS	\$ 712,379,422	\$ 1,711,501,937	\$ 2,423,881,359

CAPITAL IMPROVEMENTS PROGRAM APPROPRIATIONS

	FY2008 Appropriation
City Planning and Community Investment	
39-207.0 North Park/University Avenue - Streetscape Improvements	\$ 30,000
39-217.0 Annual Allocation - Removal of Architectural Barriers - CDBG Funded	\$ 1,703,949
39-803.0 Annual Allocation - Downtown Parking Projects	\$ 1,500,000
City Planning and Community Investment Total	\$ 3,233,949
Development Services	
58-001.0 Annual Allocation - New Development	\$ 150,000
Development Services Total	\$ 150,000
Engineering and Capital Projects	
12-152.0 Famosa Slough Salt Marsh Restoration	\$ 26,000
13-501.0 Talbot Street Slope	\$ 250,000
37-028.0 Undergrounding of City Utilities	\$ 58,605,247
37-200.0 Consultant Services/Right-Of-Way Projects	\$ 20,000
39-233.0 Reo Drive Streetscape	\$ 650,000
52-293.0 Street Lights - Citywide	\$ 300,000
52-338.0 Beach Access Reconstruction	\$ 30,000
52-372.0 Genesee Avenue - Widen Interstate 5 Crossing	\$ 3,200,000
52-378.0 East San Rafael Street Deceleration Lane	\$ 160,000
52-392.0 Carroll Canyon Road - Sorrento Valley Road to Scranton Road	\$ 4,500,000
52-409.0 43rd Street and Logan/National Avenue Intersection	\$ 500,000
52-411.0 Carmel Mountain Road - Neighborhood 10 Boundary to Del Mar Mesa Road	\$ 900,000
52-417.0 Eastgate Mall - Miramar Road to San Diego Gas and Electric (SDG&E) Easement	\$ 100,000
52-455.0 State Route 163 and Friars Road	\$ 4,000,000

CAPITAL IMPROVEMENTS PROGRAM APPROPRIATIONS**FY2008
Appropriation****Engineering and Capital Projects (continued)**

52-466.0 Carmel Valley Road - Via Albutura to Camino Del Sur	\$ 5,825,333
52-479.0 El Camino Real - San Dieguito Road to Via de la Valle	\$ 300,000
52-492.0 Del Sol Boulevard - Central	\$ 2,000,000
52-517.0 Carmel Valley Road - 300 Feet East of Portofino Drive to Del Mar	\$ 1,500,000
52-519.0 Bridge Rails - Citywide	\$ 500,000
52-555.0 Georgia Street Bridge/University Avenue Separation Replacement	\$ 200,000
52-588.0 Streamview Drive Improvement - 54th Street to College Avenue	\$ 100,000
52-640.0 Palm Avenue/Interstate 805 Interchange	\$ 7,704,000
52-642.0 Old Otay Mesa Road - Westerly	\$ 850,000
52-643.0 West Mission Bay Drive Bridge over San Diego River	\$ 650,000
52-653.0 Camino del Sur - Carmel Mountain Road to 1,600 Feet North of Park Village Road	\$ 5,999,000
52-664.0 Debt Service for TransNet Bond Funded Projects	\$ 2,350,340
52-676.0 Mira Sorrento Place - Scranton Road to Vista Sorrento Parkway	\$ 60,000
52-679.0 Miramar Road - Interstate 805 Easterly Ramps to 300 Feet East of Eastgate Mall	\$ 2,200,000
52-683.0 Debt Service for TransNet Commercial Paper Funded Projects	\$ 2,653,574
52-697.0 State Route 905	\$ 1,046,500
52-699.0 Euclid Avenue Improvements - Home Avenue to Thorn Street	\$ 70,000
52-712.0 Del Mar Mesa Road - Carmel Country Road to Carmel Mountain Road	\$ 1,059,986
52-715.0 Sidewalks - Citywide	\$ 350,000
52-723.0 Little McGonigle Ranch Road - Del Mar Mesa Road to State Route 56	\$ 2,532,500
52-731.0 Del Mar Heights Road - Westerly of Old Carmel Valley Road	\$ 1,300,000
52-733.0 Carmel Valley Road - Four/Six lanes southerly of Street A	\$ 4,413,000
52-743.0 Euclid Avenue Corridor Improvements	\$ 75,000
52-745.0 Clairemont Mesa Boulevard/SR-163 Improvements	\$ 2,500,000
52-747.0 Carmel Valley Road - Street A to Neighborhood Parkway	\$ 2,932,346
52-767.0 El Camino Real Widening	\$ 100,000
52-768.0 Genesee Avenue - Northbound Dual Left Turn Lanes at Eastgate Mall	\$ 1,006,250
52-770.0 Village Loop Road - Carmel Valley Road East to Property Line	\$ 1,000,000
52-771.0 State Route 56/Interstate 15 Interchange Improvements	\$ 580,000
52-773.0 Cherokee Street Improvements	\$ 30,000
52-774.0 34th and 35th at Madison Avenue - Curb, Gutter and Sidewalk (CD3 Sidewalk Study)	\$ 60,000
52-775.0 Old Otay Mesa Road Sidewalk	\$ 200,000
52-776.0 La Jolla Museum Traffic Circle	\$ 150,000
52-777.0 Potomac Street Improvements	\$ 380,000
52-778.0 Fence Along Channel from 62nd to 65th	\$ 75,000
52-779.0 Skyline at Cardiff Improvements	\$ 25,000
52-780.0 La Jolla Mesa Drive Sidewalk	\$ 115,000
52-781.0 San Diego River Path Study: Fashion Valley Rd to Qualcomm Stadium to Princess Vi	\$ 75,000
52-782.0 South 38th Street Improvements	\$ 100,000
53-050.0 North Torrey Pines Road Bridge over Los Penasquitos Creek	\$ 112,000
53-061.0 Laurel Street (Cabrillo) Bridge over Highway 163 - Structural Retrofit	\$ 276,000
54-012.0 Shoal Creek Pedestrian Bridge	\$ 50,000
58-007.0 Overhead/Other City Costs for Streets Projects	\$ 75,000
58-203.0 Taylor Street - Bikeway	\$ 250,000
58-204.0 Minor Bicycle Facilities	\$ 15,000
59-021.0 Transportation Grant Matches	\$ 3,296,086
59-023.0 Five Year Planning	\$ 600,000

CAPITAL IMPROVEMENTS PROGRAM APPROPRIATIONS**FY2008
Appropriation****Engineering and Capital Projects (continued)**

61-001.0 Traffic Control/Calming Measures	\$	600,000
68-001.0 Traffic Signals - Cooperative Projects	\$	200,000
68-006.0 Guard Rails	\$	300,000
68-010.0 Traffic Signals - Citywide	\$	400,000
68-011.0 Traffic Signals - Modifications/Modernization	\$	850,000
68-017.0 School Traffic Safety Improvements	\$	200,000
68-020.0 Pacific Highlands Ranch Traffic Signals	\$	1,000,000
Engineering and Capital Projects Total	\$	134,533,162

Environmental Services

32-010.0 Unclassified Disposal/Burn Site Closures	\$	55,000
32-011.0 Arizona Landfill - Closure	\$	55,000
32-017.0 Annual Allocation - Groundwater Monitoring Network	\$	230,000
32-018.0 South Chollas Landfill - Gas Upgrades	\$	37,000
32-022.0 Arizona Landfill Gas Utilization	\$	250,000
32-024.0 South Miramar Landfill Slopes	\$	1,500,000
33-084.0 Underground Hazardous Materials Storage Tanks	\$	916,000
37-004.0 Annual Allocation - Minor Landfill Requirements	\$	230,000
37-041.0 Citywide Energy Improvements	\$	450,000
37-056.0 West Miramar Refuse Disposal Facility - Phase II	\$	250,000
37-254.0 Future Waste Management Disposal and Processing Facilities	\$	1,850,000
Environmental Services Total	\$	5,823,000

General Services

13-005.0 Annual Allocation - Emergency Drainage Projects	\$	4,777,099
37-064.0 Annual Allocation - ADA Improvements	\$	12,293,675
37-068.0 Annual Allocation - City Facilities Improvements	\$	5,300,000
59-001.0 Resurfacing of City Streets	\$	19,500,000
59-002.0 Sidewalks - Replacement and Reconstruction	\$	2,000,000
63-002.0 Traffic Signals - Replace Obsolete Controllers	\$	150,000
General Services Total	\$	44,020,774

Metropolitan Wastewater

40-930.0 Otay Mesa Trunk Sewer	\$	922,300
40-933.0 Annual Allocation - MWWD Trunk Sewers	\$	8,048,600
41-926.0 Annual Allocation - Metropolitan System Pump Stations	\$	6,330,895
41-927.0 Annual Allocation - Pump Stations 64, 65, Penasquitos and East Mission Gorge	\$	1,763,600
41-929.0 Pump Station Upgrades	\$	2,664,979
41-936.0 Pump Station 64 Electrical System Upgrades	\$	239,200
41-942.0 NCWRP Sludge Pump Station Upgrade	\$	20,800
41-944.0 NCWRP Effluent Pump Station Upgrade	\$	81,120
42-913.0 Annual Allocation - Metro Biosolids Center	\$	1,340,000
42-926.0 Annual Allocation - North City Water Reclamation Plant	\$	928,600
42-930.0 SBWRP Demineralization Facility Phases 1&2	\$	114,400
44-001.0 Annual Allocation - Sewer Main Replacements	\$	11,353,331
45-915.0 Pump Station 2 Onsite Standby Power	\$	4,501,481
45-932.0 Annual Allocation - South Bay Water Reclamation Plant	\$	151,424

CAPITAL IMPROVEMENTS PROGRAM APPROPRIATIONS**FY2008
Appropriation****Metropolitan Wastewater (continued)**

45-940.0 Wet Weather Storage Facility - Phase 1	\$	632,640
45-943.0 Point Loma - Grit Processing Improvements	\$	243,600
45-956.0 Annual Allocation - Metro Operations Center	\$	191,887
45-961.0 South Metro Sewer Rehabilitation, Phase 3B	\$	157,506
45-964.0 North City Raw Sludge / Point Loma Cathodic Protection	\$	16,300
45-965.0 Environmental Monitoring and Tech Services Lab Boat Dock	\$	2,324,253
45-966.0 Metro Facilities Control System Upgrade	\$	5,132,583
45-975.0 Annual Allocation - Developer Projects	\$	560,800
45-981.0 MBC Standby Centrifuge Feed Facilities	\$	250,120
45-982.0 MBC Centrate Collection Upgrades	\$	532,200
45-984.0 MBC Biosolids Storage Silos	\$	1,553,760
45-988.0 MBC Wastewater Forcemain Extension	\$	193,560
45-989.0 MBC Odor Control Facility Upgrades	\$	610,680
46-050.0 Annual Allocation - Pipeline Rehabilitation	\$	28,258,400
46-106.0 Annual Allocation - Sewer Pump Station Restorations	\$	2,699,822
46-119.0 Annual Allocation - Point Loma Treatment Plant/Related Facilities	\$	1,489,085
46-169.0 East Mission Gorge Force Main Rehabilitations	\$	418,080
46-193.0 Annual Allocation - CIP Contingencies	\$	2,729,944
46-194.0 Annual Allocation - Trunk Sewer Rehabilitations	\$	8,927,881
46-195.6 East Point Loma Trunk Sewer	\$	100,000
46-195.8 Miramar Road Trunk Sewer	\$	534,466
46-197.9 Lake Murray Trunk Sewer - In Canyon	\$	100,000
46-205.0 Harbor Drive Trunk Sewer Replacement	\$	108,160
46-206.0 Annual Allocation - Accelerated Projects	\$	20,000
46-502.0 Annual Allocation - Clean Water Program Pooled Contingencies	\$	688,499
46-505.0 Annual Allocation - Unscheduled Projects	\$	2,121,600
46-602.6 Pump Station 79	\$	1,622,400
Metropolitan Wastewater Total	\$	100,678,956

Office of the Chief Information Officer

37-508.0 Public Safety Communications Project	\$	3,324,548
92-000.0 Enterprise Resource Planning	\$	16,300,000
Office of the Chief Information Officer Total	\$	19,624,548

Park and Recreation

20-010.0 Annual Allocation - Resource-Based Open Space Parks	\$	265,000
20-013.0 Park and Recreation Grant Match Funding	\$	446,955
20-100.3 Old Mission Dam Preservation	\$	250,000
22-960.0 Fiesta Island Infrastructure Improvements	\$	38,921
22-965.0 Mission Bay Improvements (Ordinance no. 0-19113)	\$	2,500,000
25-008.0 Balboa Park Golf Course: Concrete Step and Hand Railing Replacement	\$	100,000
25-015.0 Mission Bay Golf Course and Practice Center - Existing Building Improvements	\$	250,000
25-016.0 Mission Bay Golf Course and Practice Center - New Practice Area Upgrade	\$	200,000
25-019.0 Balboa Park Golf Course - Irrigation System - Upgrades	\$	1,800,000
25-020.0 Torrey Pines Golf Course - Irrigation & Fence Upgrades	\$	250,000
29-424.0 Beyer Boulevard Local Staging Area and Trail	\$	66,000
29-482.0 Carmel Valley Neighborhood Park - Neighborhood #8	\$	1,250,000

CAPITAL IMPROVEMENTS PROGRAM APPROPRIATIONS

FY2008
Appropriation

Park and Recreation (continued)

29-541.0 Pacific Breezes Community Park (Ocean View Hills Community Park)	\$ 8,112,000
29-547.0 Torrey Highlands Neighborhood Park	\$ 1,403,605
29-548.0 Torrey Highlands Trail System	\$ 199,278
29-611.0 Rancho Encantada Bicycle, Pedestrian, and Equestrian Trail System	\$ 110,000
29-666.0 San Diego River Park Master Plan	\$ 507,000
29-680.0 Windansea Improvements	\$ 350,000
29-688.0 Del Sur Neighborhood Park North (Black Mountain Neighborhood Park North)	\$ 925,000
29-692.0 Annual Allocation - Public Roads Supporting Park Access	\$ 250,000
29-738.0 Hourglass Field Community Park - Field House	\$ 1,523,455
29-756.0 Camino Ruiz Neighborhood Park - Development	\$ 157,000
29-757.0 Mira Mesa Community Park - Expansion (Carroll Neighborhood Park - Development)	\$ 7,244,000
29-865.0 Home Avenue Neighborhood Park - Development	\$ 250,000
29-893.0 Memorial Community Park - Miscellaneous Pool Improvements	\$ 72,037
29-909.0 Regional Park Improvements	\$ 200,000
29-910.0 Open Space Improvements	\$ 230,000
29-913.0 Coastal Bluff Erosion and Access	\$ 150,000
29-918.0 Hourglass Field House Parking Areas	\$ 400,000
29-942.0 Otay Valley Regional Park-Beyer Way Equestrian & Regional Staging Area & Trail	\$ 200,000
29-943.0 Mission Trails Regional Park Resource Mgmt Plan	\$ 148,000
29-944.0 Florida Canyon Drainage and Trail Improvements and Exotic Plant Removal	\$ 357,000
39-010.0 Talmadge Streetscape and Lighting Improvements	\$ 90,000
39-011.0 Switzer Canyon/30th Street Bridge Enhancement Program	\$ 5,000
39-209.0 El Cajon Boulevard Commercial Revitalization - Interstate 805 to 54th Street	\$ 70,000
52-533.0 Mission Beach - Boardwalk Widening	\$ 100,000
52-719.0 Mission Beach Bulkhead Preservation	\$ 200,000
Park and Recreation Total	\$ 30,670,251

Real Estate Assets

31-001.0 Annual Allocation - Montgomery Field	\$ 300,000
31-300.0 Brown Field - Airfield Electrical and Lighting System	\$ 1,500,000
34-200.0 Annual Allocation - QUALCOMM Stadium Improvements	\$ 750,000
Real Estate Assets Total	\$ 2,550,000

San Diego Fire-Rescue

33-086.0 Otay Mesa and Otay Mesa/Nestor Fire Station	\$ 750,000
33-105.0 Fire Station 47 - Pacific Highlands Ranch	\$ 4,026,346
San Diego Fire-Rescue Total	\$ 4,776,346

Water

70-942.0 Annual Allocation - CIP Contingencies-Reclaimed Water Distribution System/RWDS	\$ 606,882
70-949.0 Annual Allocation - Reclaimed Water Extension	\$ 520,000
70-954.0 North City Reclamation System	\$ 2,179,968
70-957.0 Harbor Drive Pipeline	\$ 155,288
73-024.0 Annual Allocation - Freeway Relocation	\$ 3,103,469
73-083.0 Annual Allocation - Water Main Replacements	\$ 31,168,800
73-261.3 Alvarado Water Treatment Plant -Upgrade and Expansion	\$ 13,206,565
73-263.0 Annual Allocation - Water Pump Station Rehabilitations	\$ 433,327

CAPITAL IMPROVEMENTS PROGRAM APPROPRIATIONS**FY2008
Appropriation****Water (continued)**

73-277.0 Annual Allocation - Standpipe and Reservoir Rehabilitations	\$ 468,000
73-284.0 Miramar Water Treatment Plant - Upgrade and Expansion	\$ 44,579,553
73-285.0 Otay Water Treatment Plant - Upgrade and Expansion	\$ 19,242,349
73-286.0 Otay Second Pipeline Improvements	\$ 7,547,401
73-310.0 Annual Allocation - Corrosion Control	\$ 62,333
73-314.0 San Diego 17 Flow Control Facility and Pump Station	\$ 1,188,144
73-317.0 Barrett Reservoir Outlet Tower Upgrade	\$ 107,640
73-331.0 Annual Allocation - CIP Contingencies	\$ 5,616,076
73-333.0 Annual Allocation - Air Valve Adjustments and Relocations	\$ 623,999
73-342.0 Rancho Penasquitos Pump Station	\$ 5,831,808
73-347.1 Program Management	\$ 4,160,000
73-361.0 Annual Allocation - Meter Boxes	\$ 520,000
73-900.0 Annual Allocation - Pressure Reduction Facility Upgrades	\$ 52,000
74-925.0 Annual Allocation - Dams and Reservoirs	\$ 260,000
75-931.0 Water Department Security Upgrades	\$ 3,941,650
Water Total	\$ 145,575,252

TOTAL CAPITAL IMPROVEMENTS PROGRAM APPROPRIATIONS	\$ 491,636,238
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TOTAL COMBINED APPROPRIATIONS	\$ 2,915,517,597
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ATTACHMENT 2
Excerpt from Council Policy 100-03: Transient Occupancy Tax
Attachment A: General Requirements and Conditions
Section B: Funding

1. Expenses must be both incurred and paid by an organization before the City will release funding to the organization, except as otherwise may be provided.
2. Expenses must be incurred during the City's fiscal year (July 1 - June 30) for which the program is funded, except as otherwise may be provided.
3. City funds may not be used for alcoholic beverages. In addition, City funds may not be used for travel, meals, lodging, or entertainment expenses, except as otherwise may be provided. Waivers to this provision will be considered for expenditures within the Economic Development Program categories. Organizations receiving waivers may use City funds for travel, meals, or lodging within the following parameters:
 - a. Travel – when use of public air carrier transport is required in order to perform the contractual scope of services to the City, City funds may be applied toward the equivalent of coach airfare only. City funds may not be applied toward any upgrades.
 - b. Meals – when provision of meals is required in order to perform the contractual scope of services to the City, City funds may be applied toward a maximum of \$50 per day per person for meals (excluding sales tax and a maximum 15% gratuity, which are also eligible expenses). This daily maximum is further limited by meal, as follows: \$10, \$15, and \$25 are the maximum City funds that can be applied toward breakfast, lunch, and dinner, respectively, per person. If alcoholic beverages are consumed with meals, they may not be paid for with City funds. In the event that meals are provided to individuals who are not members of the funded organization within the scope of a business development meeting, documentation containing the purpose of the meeting, the benefit to the City, and a list of attendees must be provided to the City in order for City funding to be utilized.
 - c. Lodging – when out-of-town lodging is required in order to perform the contractual scope of services to the City, City funds may be applied toward the equivalent of the cost of a standard room in a business class hotel, or toward the conference rates of the host hotel when attending a conference.
 - d. Sponsorships – the City acknowledges the business requirement of event sponsorships by promotional organizations in order to market San Diego as a convention destination in a highly competitive market, and to attract businesses to the region. The primary objective of a funded organization's participation in such events is to gain exposure for San Diego and secure access to important decision makers representing prominent convention groups and businesses. Financial sponsorship of such events is an acceptable application of City funds. If alcoholic

beverages are consumed during event sponsorships, they may not be paid for with City funds.

4. City funds will be used only to assist an organization in its annual operating program or in its sponsorship of special events. City funding will not be used for capital or equipment outlay, for the purchase of awards, trophies, gifts, or uniforms, nor for the buildup of reserves.

ATTACHMENT 3

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
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Michael J. Aguirre
CITY ATTORNEY

MEMORANDUM OF LAW

DATE: July 20, 2007
TO: Honorable Mayor and City Council Members
FROM: City Attorney
SUBJECT: Legality of Proposal to Require the City Attorney to Obtain City Council Approval Before Filing Cases

INTRODUCTION

On Monday, July 23, 2007, the City Council will consider the Fiscal Year 2008 Appropriation Ordinance (Item 205). The item includes a recommendation that the City Council adopt the FY 2008 Appropriation Ordinance, with certain changes considered at the Budget and Finance Committee's meeting on July 11, 2007. In particular:

- 3) Incorporate language of the July 10, 2007, Council President Peters' and Councilmember Hueso's memorandum regarding litigation expenses, deleting the title. (Councilmembers Atkins, Peters, and Madaffer voted yea. Councilmembers Frye and Falconer voted nay.)

The language in the July 10, 2007 memorandum seeks to limit the City Attorney's authority to file cases by requiring pre-approval by the Council, except in limited situations. It also would require the City Attorney to dismiss actions not approved by the Council. (See, July 10, 2007 memorandum from Councilmembers Peters and Hueso).

The proposed language is flawed in several ways. First, the Council may not limit the City Attorney's authority, obligations, and duties as set forth in state law and Charter section 40. Second, the Appropriation Ordinance is intended as a vehicle to enact the budget and should not contain policy matters. Third, the proposed language infringes on the City Attorney's ability to protect the public interest. Therefore, if this proposal is adopted, it will have no legal force or effect.

0-19652

The proposal attempts to usurp the people's right to have an independent City Attorney that will make decisions that are in the people's best interests and without interference by the legislative body. The people elected the City Attorney to prosecute cases, not the City Council. Further, the people have decided the duties of the City Attorney as reflected in the Charter. Any attempt to undermine the role of the City Attorney undermines the will of the people.

QUESTION PRESENTED

May the Council include in the Appropriation Ordinance a section to require that the City Attorney seek Council approval prior to filing any action and dismiss a legal action not approved by the Council?

SHORT ANSWER

No. The Council may not limit the City Attorney's statutory and Charter authority to file cases. State law provides that a City Attorney may file a civil action for a violation of the California False Claims Act. Any action by the City Council to limit that authority would be contrary to state law. Under Charter section 40, the City Attorney is the chief legal advisor to the City. The Charter imposes no limitations on the authority of the City Attorney to file actions on behalf of the City, including any requirement to obtain Council approval prior to filing any action. Further, the Council has no authority to direct that the City Attorney dismiss any action.

ANALYSIS

I. The Proposal is Preempted by State Law.

The California False Claims Act (Cal. Gov't Code §§ 12650-12656) [CFCA] is designed to prevent fraud on the public treasury and ultimately to protect the public fisc. *State v. Altus Finance*, 36 Cal. 4th 1284, 1296-1297 (2005). It provides that any person who knowingly submits a false claim to the State of California, or to a political subdivision, may be liable in a court action for treble damages and civil penalties. *State ex rel. Harris v. PricewaterhouseCoopers, LLC*, 39 Cal. 4th 1220, 1223 (2006) (*PwC*); §§ 12651, 12652. For purposes of the CFCA, a political subdivision includes "any city, city and county, county, tax or assessment district, or other legally authorized local government entity with jurisdictional boundaries." *Id.* at 1227; § 12650(b)(3).

In *PwC*, the Supreme Court considered who may prosecute actions under the CFCA:

The CFCA specifies in detail who may bring and prosecute actions under that statute, depending on whether state or political subdivision funds are involved. If *state* funds are involved, the *Attorney General* may bring the action. (Gov. Code, § 12652, subd. (a)(1).) If *political subdivision* funds are involved, the action may be brought by the political subdivision's 'prosecuting authority' (*id.*, § 12652, subd. (b)(1)), i.e., 'the *county counsel, city attorney, or other local government official* charged with investigating, filing, and conducting

civil legal proceedings on behalf of, or in the name of, *[the] particular political subdivision*' (*id.*, § 12650, subd. (b)(4), italics added). Where both state and political subdivision funds are involved, each of these officials may intervene, on *behalf of the public entity he or she represents*, in an action initiated by the other. (*Id.*, § 12652, subds. (a), (b).)

The City Council does not have a role in deciding whether to file a claim under the CFCA. The California Supreme Court has implied that local prosecuting authorities may "unilaterally" initiate actions under the California False Claim Act. *Wells v. One2One Learning Foundation*, 39 Cal. 4th 1164, 1183 (2006). As a practical matter, it is also in a defrauded city's best interest to have its prosecuting authority file the action as expeditiously as possible - doing so would allow the city to foreclose participation by a qui tam plaintiff, who would reduce the city's potential recovery. In light of the Act's purpose to protect the public fisc and the incentives the Act provides to public and private plaintiffs, a city should not be able to prevent its own "prosecuting authority" from initiating a similar lawsuit on its behalf, especially when that prosecuting attorney is elected by the public.

II. The City Council May Not Limit the City Attorney's Authority, Obligations, and Duties as Set Forth in Charter Section 40.

A city council possesses no authority after a charter is adopted by the voters to thereafter pass any law which would limit, alter, or amend any of the provisions of the city charter. *Harder v. Denton*, 9 Cal. App. 2d 607 (1935). Under section 40 of the City Charter, the City Attorney is the "chief legal advisor of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers." Further, section 40 provides that the City Attorney shall "perform all services incident to the legal department; . . . to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; . . . to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law." Accordingly, the plain language of Charter section 40 grants the City Attorney the authority to prosecute actions to protect the public interest. Moreover, "[T]he city council cannot relieve a charter officer of the city from the duties devolving upon him by the charter." *Scott v. Common Council of the City of San Bernardino*, 44 Cal. App. 4th 684, 695 (1996).

The Charter does not, in any respect, require that the City Attorney obtain City Council approval prior to filing a claim or defending the City in any action. However, the City Council may require that the City Attorney file certain actions in certain circumstances. First, the City Attorney is required "upon the order of the Council" to sue for injunction relief to ". . . restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption." Second, the City Attorney is required "upon the order of the Council" to seek a court order "to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance." Thus, while the City Attorney has unfettered authority under

Charter section 40 to prosecute actions in the name of the City, the two provisions above are the only instances in which the Council has the authority to direct the City Attorney.

The legislative history of Charter section 40 confirms the independence of the City Attorney from the City Council. As discussed in an April 26, 2005 report by the City Attorney:

The duty of the City Attorney is to give legal advice to every department and official of city government on municipal matters. He must also act as the representative of various departments before the courts. He should occupy an independent position so that his opinions would not be influenced by any appointive power. For this reason he should be elected by the people. If elected, the city attorney is in the position of complete independence (sic) and may exercise such check upon the actions of the legislative and executive branches of the local government as the law and his conscience dictate.

“Report on the Role of the City Attorney as Independent Representative of the People and City of San Diego,”
<http://www.sandiego.gov/cityattorney/pdf/role050426.pdf> at p. 6.

In drafting the reform charter of 1931, the board of freeholders decided to create an elected City Attorney in order to insulate that position from the influences of “appointed” power. In so doing, the express intent of the charter changes was to repose in the City’s chief legal representative the power and obligation to prosecute legal claims on behalf of the citizens. As the Court of Appeal in *Scott v. Common Council* stated: “[T]he legislative body cannot act in excess of its authority by first eliminating mandatory government functions, such as the investigative function of the city attorney in this case.” *Id.* at 697. Accordingly, the intent of Charter section 40 is to give the City Attorney independence from the City Council before prosecuting or initiating cases on behalf of the City.

III. The Purpose of the Appropriation Ordinance is to Enact the Budget, Not to Give Policy Direction.

The purpose of the Appropriation Ordinance is to provide spending authority for City operation for Fiscal Year 2008 and to enact the City Budget. This is what differentiates the Appropriation Ordinance from other City legislation. Under Charter section 71, “the Council shall prepare an appropriation ordinance using [the Budget] as a basis.” Under the Strong Mayor form of government, the Budget is proposed by the Mayor [Charter Section 265(b)(15)] and ultimately approved by the Council after a formal negotiation process with the Mayor [Charter Section 290(b)(2)(C)]. At the conclusion of that process, the Appropriation Ordinance becomes the “controlling document for preparation of the Annual Appropriation Ordinance for the ensuing fiscal year.”

The Appropriation Ordinance is an improper vehicle for enunciating policy. The Mayor expressly has no veto power over the Appropriation Ordinance making any policy matters attached to the Appropriation Ordinance particularly suspect. In fact, at the same time the Council will consider adoption of the proposed Appropriation Ordinance, the Council will also consider adoption of a Statement of Budgetary Principles. It is notable that such document includes a principle that the Appropriation Ordinance shall not be used to establish policy directions. Accordingly, the Charter does not permit the Council to add policies in the Appropriation Ordinance and thereby deprive the Mayor of his right to veto such policies.

Moreover, the Appropriation Ordinance is intended to last only one fiscal year. If the Council desires to adopt policies, it should do so by other means. Otherwise, the policy would expire unless readopted each year. Further, the Appropriation Ordinance has strict timelines for adoption. In particular, it has to be adopted during July of each year. By placing last minute, extraneous policies in the Appropriation Ordinance, the Council is under pressure to make hasty decisions. Similarly, a Councilmember may feel undue pressure to accept policy changes so that the Appropriation Ordinance is adopted and to ensure programs are timely funded. The matter of limiting the City Attorney's authority should be more fully discussed, debated, and analyzed. It should not be raised only days before the Council must adopt the Appropriation Ordinance.

IV. The City Council May Not Infringe on the City Attorney's Duty to Protect the Public Interest.

The proposed language limits the ability of the City Attorney to protect the public interest. While the proposal attempts to provide an exception for cases in which the City Attorney faces a statute of limitation deadline, there are other situations where the public interest requires that the City Attorney move expeditiously without Council approval. The proposal ignores cases where the health and safety of citizens or other vital interests of the City are at risk and demand immediate redress. The City Attorney must have the authority to act promptly and use all appropriate resources in matters affecting the public health and safety.

The proposed language also requires the City Attorney to dismiss "without prejudice" any action not approved by the City Council. The City Attorney is obligated to dismiss such action whether or not there is a vital public interest at stake, including serious health and safety risks. Under the proposal, the Council would usurp the unique legal determinations that are vested in the elected City Attorney. Under the proposal, there would be no options to conduct the litigation with City staff, or seek alternative means of pursuing the action. This provision of the proposed language clearly violates Charter section 40 and is void.

The independence of the City Attorney also ensures that politically sensitive cases may be pursued without first obtaining the approval of the Council. Such cases could be avoided though Council inaction and the requirement to minimize expenditures pending approval would limit potential legal strategies and compromise the outcome if the case is approved. If this proposal had been in place last year, the City Attorney would not have had the authority to file the case against Sunroad for violating Federal Aviation Administrative regulations by

Honorable Mayor and
City Council Members

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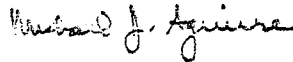
July 20, 2007

constructing a building that was a public safety hazard. Delays in prosecuting this case would have significantly impaired the litigation strategy of the City.

CONCLUSION

The proposal to require that the City Attorney obtain Council approval is flawed in several ways. First, the proposal is preempted by state law. The California Supreme Court has implied that local prosecuting authorities may "unilaterally" initiate actions under the California False Claim Act. Second, it is clear that the Council may not limit the City Attorney's authority, obligations, and duties as set forth in Charter section 40. The Charter imposes no limitations on the authority of the City Attorney to file actions on behalf of the City, including any requirement to obtain Council approval prior to filing any action. Third, the Appropriation Ordinance is intended as a vehicle to enact the budget and should not contain policy matters. Finally, the proposed language infringes on the City Attorney's ability to protect the public interest. For all the above reasons, if this proposal is adopted, it will have no legal force or effect.

MICHAEL J. AGUIRRE, City Attorney



By

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