

**CITY COUNCIL OF THE CITY OF SAN DIEGO  
SUPPLEMENTAL DOCKET NUMBER 1  
FOR THE REGULAR MEETING OF  
TUESDAY, DECEMBER 4, 2007  
CITY ADMINISTRATION BUILDING  
COUNCIL CHAMBERS – 12<sup>TH</sup> FLOOR  
202 “C” STREET  
SAN DIEGO, CA 92101**

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ADOPTION AGENDA, DISCUSSION, HEARINGS

SPECIAL HEARINGS:

**NOTE: This item may be taken in the morning session if time permits.**

ITEM-S500: Addition of Independent Budget Analyst Staff Member.

[?View referenced exhibit back-up material.](#)

(See memorandums from Council President Peters and Independent Budget Analyst Tevlin dated 11/27/2007.)

**COUNCIL PRESIDENT PETERS’ RECOMMENDATION:**

Hold the first public hearing of the ordinance:

(O-2008-77)

Authorizing the City Auditor and Comptroller to add 1.0 position to Office of the Independent Budget Analyst (Dept. 030) and to transfer, appropriate, and expend \$50,000 from the FY 2008 appropriated reserve to Office of the Independent Budget Analyst (Dept. 030) for an additional position;

Amending Ordinance No. O-19652 (New Series) entitled "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" by increasing Office of the Independent Budget Analyst (Dept. 030) by 1.0 position and \$50,000 for salary and fringe for the balance of FY 2008, and non-personnel costs for office space and equipment.

Staff: Betsy Kinsley – (619) 236-6687  
Catherine M. Bradley – Chief Deputy City Attorney

**NOTE:** Today’s action is the first public hearing. See the docket of Tuesday, January 8, 2008, for the second public hearing and the introduction and adoption of the Ordinance.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS  
RESOLUTIONS:

**NOTE: This item may be taken in the morning session if time permits.**

ITEM-S501: Appropriating \$800,000 from the General Fund Appropriated Reserve. (Otay Mesa Community Area. District 8.)

[?View referenced exhibit back-up material.](#)

(See the Independent Budget Analyst Report No. 07-116 and memorandum from William Anderson dated 11/27/2007.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-484)

Authorizing the City Auditor and Comptroller to transfer \$800,000 of appropriations from the General Fund Appropriated Reserve (Dept. 602/Fund 100) to the City Planning and Community Investment Department (Dept. 065/Fund 100) for the completion of the Otay Mesa Community Plan Update;

Authorizing the Mayor, or his designee, to negotiate and execute, for and on behalf of the City, all documents, including contracts, subcontracts, agreements, extensions, and/or renewals necessary, so long as consistent and in compliance with all San Diego Administrative Regulations, City Council Policies, the San Diego Municipal Code, the City Charter (including City Attorney approval) and applicable law, for the completion of the Otay Mesa Community Plan Update, contingent upon the City Auditor and Comptroller first certifying that funds are available.

**STAFF SUPPORTING INFORMATION:**

The Otay Mesa Community Plan Update is a high priority for the Mayor and the City. The City embarked on the update in 2001, but due to resource and staff constraints, work did not progress in a timely manner. In the spring of 2004, a coalition of developers provided technical resources and consultants to the City Planning & Community Investment Department in order to accelerate work on the update. The coalition members included Pardee Homes, D.R. Horton Homes, Centex Homes, Integral Communities, Sunroad Enterprises, McMillin Land Development, and Brown Field Technology Park, LLC, who were interested in pursuing land use changes that involved plan amendments which would not otherwise be considered while an update was in process. The City agreed to accept resources and accelerate the process, but did not commit to recommend favorably on coalition proposals. Without the funding commitment from the coalition, diminished City resources would not have advanced the update as far as its current status.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)RESOLUTIONS: (Continued)

ITEM-S501: (Continued)

**STAFF SUPPORTING INFORMATION: (Continued)**

The Otay Mesa Community Plan Update has reached a critical junction in the public process, and the City is now in a position to fund the remaining work needed to complete the process. City Planning & Community Investment anticipates the continued use of consultants to complete the community plan update process, which includes continuing public outreach, completing the technical studies, drafting the policy document, completing the EIR, preparing a Public Facilities Financing Plan, and creating a zoning implementation program. The appropriation of the requested funding would allow staff to coordinate with the Purchasing Department on the process of hiring any consultants needed to complete the update process, and then continuing with the update process.

Without the funding commitment, the update process may not be completed in a timely fashion due to diminished City resources. The technical studies associated with the EIR and the update process may become dated without the timely completion of the update, thus requiring new or updated studies should staff resources and/or funding for the update be found at a later time.

FISCAL CONSIDERATIONS:

The \$800,000 allocation from the Appropriated Reserve is requested because the Otay Mesa Update has reached a critical junction in the public process, and because funding is needed to complete the process in a timely fashion. Based on the scopes of work submitted by the consultants previously under contract with the coalition, staff has determined that the \$800,000 appropriation will allow the update process to be completed. There may be an opportunity for some of the technical studies to be funded through the Public Facilities Financing Plan, but this decision will be coordinated with Facilities Financing staff upon completion of the studies, the final costs, and reimbursement determination.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION and PUBLIC OUTREACH EFFORTS:

Public outreach and participation have been integral components throughout the update process, including more than 40 public workshops, planning group meetings, Planning Commission workshops, and Roundtables. Outreach will continue to interested property owners and stakeholders, and includes continued discussions on alternative land uses, workshops, the draft policy when released, and on issues related to the update at the monthly meetings of the Otay Mesa Community Planning Group.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S501: (Continued)

**STAFF SUPPORTING INFORMATION: (Continued)**

KEY STAKEHOLDERS and PROJECTED IMPACTS:

The projected impact of the funding appropriation would be that the update process would continue and the momentum and work to date would not be lost. Key stakeholders in the update process include the Otay Mesa Community Planning Group, the Otay Mesa Chamber of Commerce, SANDAG, Caltrans, adjacent jurisdictions, and all other interested property owners in the Otay Mesa community planning area.

Wright/Anderson

Aud. Cert. 2800413.

Staff: Theresa Millette - (619) 235-5206  
Rachel Lipsky - Deputy City Attorney

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS

**NOTE: This item may be taken in the morning session if time permits.**

ITEM-S502: Payment of Court Ordered Legal Fees for SDCERS v. Aguirre (No. GIC 841845), People v. Grissom (No. GIC 850246), and Torres v. City (No. GIC 852293).

[?View referenced exhibit back-up material.](#)

(See memorandum from Council President Peters dated 11/29/2007.)

**COUNCIL PRESIDENT PETERS' RECOMMENDATION:**

Take the following actions:

Payment of court ordered legal fees for Plaintiff Ron L. Saathoff in the amount of \$287,947.65 to Coughlin, Semmer and Lipman for their work in SDCERS v. Aguirre (No. GIC 841845), People v. Grissom (No. GIC 850246), and Torres v. City (No. GIC 852293);

Payment of court ordered legal fees for Plaintiff Sharon K. Wilkinson in the amount of \$107,802.50 to Damiani Law Group for their work in SDCERS v. Aguirre (No. GIC 841845), People v. Grissom (No. GIC 850246), and Torres v. City (No. GIC 852293);

Payment of court ordered legal fees for Plaintiff Terri A. Webster in the amount of \$179,860.81 to Frank T. Vecchione for his work in SDCERS v. Aguirre (No. GIC 841845), People v. Grissom (No. GIC 850246), and Torres v. City (No. GIC 852293);

Payment of court ordered legal fees for Plaintiff Cathy Lexin in the amount of \$179,014.63 to Gibson, Dunn & Cruthcher for their work in SDCERS v. Aguirre (No. GIC 841845), People v. Grissom (No. GIC 850246), and Torres v. City (No. GIC 852293);

Payment of court ordered legal fees for Plaintiff Mary Vattimo in the amount of \$76,853.38 to Hahn and Adema for their work in SDCERS v. Aguirre (No. GIC 841845) and Torres v. City (No. GIC 852293);

Payment of court ordered legal fees for Plaintiff John A. Torres in the amount of \$780,647.35 to Sheppard, Mullin, Richter & Hampton for their work in SDCERS v. Aguirre (No. GIC 841845), People v. Grissom (No. GIC 850246), and Torres v. City (No. GIC 852293);

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ITEM-S502: (Continued)

Payment of court ordered legal fees for Plaintiff Bruce Herring in the amount of \$38,076.90 to Schwartz, Semerdjian, Haile, Ballard & Cauley LLP, for their work in People v. Grissom (No. GIC 850246) and Torres v. City (No. GIC 852293);

Authorize the City Auditor and Comptroller to transfer \$2,219,500.18 from Dept. 602, General Fund Appropriated Reserves, to Dept. 601, Citywide Expenditures, General Fund, Fund 100, for payment of above and future court ordered legal fees;

Authorize the City Auditor and Comptroller to allocate legal fee expenditures across all funds using the allocation;

Directing the City Attorney to prepare the appropriate resolutions and/or ordinances in accordance with Charter Section 40.

Aud. Cert. 2800426.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS  
RESOLUTIONS:

**NOTE: This item may be taken in the morning session if time permits.**

ITEM-S503: Continuing Provisions of Legal Services for Former and Current City Officials and Staff Related to SEC, District Attorney, and U.S. Attorneys Investigations.

[?View referenced exhibit back-up material.](#)

**CITY ATTORNEY'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-489)

Authorizing an additional amount not to exceed \$425,000 to pay attorney's fees for the representation of past and present City employees related to their participation in interviews and proceedings, including compliance with subpoenas, and in responding to the Securities and Exchange Commission (SEC) report, related to investigations by the SEC, United States Attorneys' Office, and the San Diego District Attorney's Office.

Authorizing the City Auditor and Comptroller to allocate and expend \$425,000 across all funds using an allocation based upon full-time equivalent salaries and authorizing the City Auditor and Comptroller to appropriate and expend \$314,075 from the Public Liability Fund to cover the General Fund portion of the costs, to pay the above described attorney's fees provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Declaring that newly-represented employees or former employees must make use of legal counsel already familiar with and engaged to assist other City clients on the financial disclosures investigation matters, and that, in the event this requirement is not satisfactory to the employee or former employee, that individual shall be required to request a separate authorization for their retention of legal counsel;

Suspending the authorization for the above attorney's fees, if criminal charges are brought against any past or present City employee, and that the City shall reserve its right to terminate the payment of fees and seek reimbursement of fees paid in the event that criminal charges are brought against any past or present employee, or if a conviction is obtained.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S503: (Continued)

**SUPPORTING INFORMATION:** (Continued)

Requested action relates to additional funding for representation of employees and former employees for the ongoing SEC/US Attorney/District Attorney investigations.

In February of 2004, the SEC and USAO informed the City that they were undertaking investigations into certain financial disclosure practices by the City. Additionally, the District Attorney's Office has initiated its own investigation into the propriety of acts relating to the granting of pension benefits. Also, several City employees have been interviewed and subpoenaed in connection with the investigation and litigation of SDCERS v. Aguirre, et al., SDSC, Case No. GIC 841845.

These investigations remain ongoing, with each agency requesting and/or issuing subpoenas requiring City employees to appear for interview and/or testimony. For the past 6 months, City employees also were responding to the SEC report. In order to facilitate the conduct of necessary interviews and testimony, and yet provide necessary advice to affected City employees, the City Council, acting pursuant to the discretion provided by Government Code Section 995.8, has determined that it is in the best interests of the City to provide independent representation to employees.

The total cost allotted for the representation thus far was \$3,125,000, apportioned among a number of represented individuals pursuant to ongoing contracts, and appropriated as a result of seven requests: \$250,000 (AC 2401177, dated June 17, 2004); \$75,000 (AC 2500664, dated November 14, 2004); \$150,000 (AC 2500688, dated on January 25, 2005); \$200,000 (AC 2500802, dated on March 7, 2005); \$350,000 (AC 2501122, on June 28, 2005); \$500,000 (AC 2600236, dated October 11, 2005); \$450,000 (AC 2600542, dated January 18, 2006); \$250,000 (AC 2600902, dated June 13, 2006); \$750,000 (AC 2700396, dated November 21, 2006) and \$150,000 (AC 2800040, dated July 19, 2007).

Over 30 current and former City employees have requested and/or retained outside legal counsel, and have submitted bills to be reviewed and processed by the City Attorney's Office. These totals do not include elected officials, the former Mayor, Council, and their staff.

Several firms have submitted invoices on behalf of their clients. As of October 31, 2007, the following firms had incurred the largest expenses:



ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S503: (Continued)

SUPPORTING INFORMATION: (Continued)

- **Shartsis Friese** - More than \$950,000 for clients including former City Manager Lamont Ewell and former Assistant City Attorney Les Girard;
- **Wertz McDade Wallace Moot & Brower** - More than \$242,000 for client Ed Ryan;
- **DLA Piper Rudnick** - More than \$350,000 on behalf of three clients, including two Deputy City Attorneys; and
- **McKenna Long & Aldridge** - More than \$400,000 on behalf of clients including former City Manager Michael Uberuaga.

It is recommended that the City Attorney continue to execute and monitor the contracts on behalf of the City for the representation of individual current and former City employees. It is also recommended that each employee be permitted to retain only one law firm for representation. To pay outstanding invoices of approximately \$300,000 for outside counsel obligations and \$125,000 for future billings.

FISCAL CONSIDERATIONS:

The Council is being asked to authorize the expenditure of \$425,000 across all funds using an allocation based upon full-time equivalent salaries including \$314,075 from the Public Liability Fund to cover the General Fund portion of the costs.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

As described above, there have been numerous Council actions approving outside counsel fees for counsel retained related to the ongoing Securities Exchange Commission, United States Attorneys Office and District Attorneys Office investigations into City finances, and the litigation of SDCERS v. Aguirre, et al.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Various law firms including the firms of Shartsis Friese; Wertz McDade Wallace Moot & Brower; DLA, Piper Rudnick and McKenna Long & Aldridge.

McGrath

Aud. Cert. 2800425.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

**NOTE: This item may be taken in the morning session if time permits.**

ITEM-S504: Funding of Outside Counsel Fees in the Matter related to the People of the State of California and the City of San Diego v. Sunroad Centrum, L.P. (Dist. 6)

[?View referenced exhibit back-up material.](#)

**CITY ATTORNEY'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-203)

Authorizing the expenditure of an amount not to exceed \$850,000 for paying attorney's fees for Latham and Watkins, provided that the City Auditor and Comptroller first furnish one or more certificates certifying that the funds necessary for expenditures are, or will be, on deposit with the City Treasurer.

Authorizing the City Auditor and Comptroller to allocate and expend \$850,000 from the Public Liability Fund.

**SUPPORTING INFORMATION:**

The Law Firm of Latham & Watkins has been retained to defend the City in the case of People of State of California and City of San Diego v. Sunroad, SDSC Case No. GIC877054, and provide legal advisory services to the Mayor's Office. The appropriation and allocation of \$850,000 to fund payment of attorneys' fees is requested.

FISCAL CONSIDERATIONS: N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This item was considered in closed session on July 31, 2007. The motion passed 5-2 with motion by Council President Peters and seconded by Councilmember Atkins with Councilmember Maienschein absent. Councilmember's Madaffer and Hueso opposed the recommendation.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Law Firm of Latham & Watkins, Chris Garrett, lead attorney.

Fitzgerald

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-S504: (Continued)

Aud. Cert. 2800310.

**NOTE:** The Auditor's Certificate was not requested prior to Closed Session. The vote taken in Open Session shall be the official vote.