

**AGENDA FOR THE
REGULAR COUNCIL MEETING OF
MONDAY, JANUARY 12, 2009, AT 2:00 P.M.
CITY ADMINISTRATION BUILDING
COUNCIL CHAMBERS – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

ITEM-1: ROLL CALL.

ITEM-10: INVOCATION.

ITEM-20: PLEDGE OF ALLEGIANCE.

NON-AGENDA PUBLIC COMMENT

Non-agenda public comment is taken on Tuesday pursuant to San Diego Municipal Code Section 22.0101.5.

**MAYOR, COUNCIL, INDEPENDENT BUDGET ANALYST, CITY ATTORNEY
COMMENT**

UPDATES ON PENDING LEGISLATION (MAYOR’S OFFICE)

REQUESTS FOR CONTINUANCE

The Council will consider requests for continuance.

=== LEGISLATIVE SCHEDULE ===

Adoption Agenda, Discussion, Other Legislative Items

- ITEM-200: Community Planning Groups Indemnification Ordinance.
CITY COUNCIL'S RECOMMENDATION: Adopt the ordinance which was introduced on 11/24/2008, Item 200, Version B.

Noticed Hearings, Discussion

- ITEM-201: Verizon Murphy Canyon. Appeal of the Planning Commission's July 10, 2008, decision to approve an existing 55-foot high monopole (with antennas reaching 65-feet tall) with conditions requiring that the monopole be retrofitted as a faux palm tree or "monopalm" stealth wireless facility. This structure supports wireless communication antennas and is located at 9323 Chesapeake Drive (Kearny Mesa Community Plan Area. District 6.)
STAFF'S RECOMMENDATION: Take the actions.

CLOSED SESSION NOTICES, DISCLOSURE, AND PUBLIC COMMENT

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Information Item - No Action Required - The City Council shall:

1) Consider any oral report from the City Attorney or City negotiators; 2) Accept testimony from any member of the public wishing to address the City Council on any item appearing on the Closed Session Agenda; 3) Allow for questions and discussion by Council Members, limited to the facts as disclosed by the City Attorney or City negotiators and the basis or justification for consideration of the matter in Closed Session; 4) Refer matters discussed to Closed Session.

NON-DOCKET ITEMS**ADJOURNMENT IN HONOR OF APPROPRIATE PARTIES****ADJOURNMENT**

=== EXPANDED CITY COUNCIL AGENDA ===

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS

ORDINANCES TO BE INTRODUCED:

ITEM-200: Community Planning Groups Indemnification Ordinance.

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

(Continued from the meeting of December 9, 2008, Item 50, at the request of the City Attorney, for further review.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced on 11/24/2008, Item 200, Version B. (Council voted 6-1. Councilmember Madaffer voted nay. Councilmember Maienschein not present):

(O-2009-22 Cor. Copy 9) Version B

Declaring by the Council of the City of San Diego as follows:

Except as hereinafter provided, the Office of the City Attorney shall represent and defend, and the City of San Diego shall indemnify, the Community Planners Committee (CPC) established by Council Policy 600-9, and any community planning group established pursuant to Council Policy 600-24, both entities hereafter referred to as "group," and the duly elected or appointed members thereof against any claim or action against such group, member, or former member, if all of the following circumstances exist:

- A. The person is a duly-elected or appointed member of a group recognized and operating in accordance with Council Policy 600-9 or Council Policy 600-24; and the person has attended prior to participating in the activity which gave rise to the claim or action against the group or member, or, in the case of newly-elected or appointed members, will attend within 12 months of being elected or appointed, a community planners' training course conducted by the City of San Diego; and
- B. The alleged act or omission occurred or was authorized during a lawful meeting of the group or subcommittee thereof;

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-200: (Continued)

- C. The alleged act or omission was within the reasonable scope of duties of a committee as described in Council Policies 600-5, 600-6, 600-9 and 600-24, and was not in violation of any of those Council Policies, or any provision of the bylaws adopted by the group and approved and/or adopted by the appropriately-designated City officials or City entities;
- D. The member or group has made a request in writing to the City Attorney for defense and indemnification no later than ten (10) working days of having been served or notified of such legal papers; and
- E. The member or group has performed its duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances.

Non-members, duly-appointed by planning groups as members of subcommittees, may satisfy the requirements for indemnification under this ordinance, provided they satisfy any and all requirements of Section 1 above, with the exception of group membership requirements of Subsection A. The training requirements for non-member subcommittee members shall be enumerated within the Council Policy 600-24 Administrative Guidelines;

Upon the request of a member, former member, or group, the City of San Diego shall defend and indemnify each and every member and/or group through and until final adjudication in the court, tribunal, or administrative body of proper jurisdiction for any and all claims, actions, litigation and/or lawsuits arising from the member's or group's official capacity and duties, regardless of whether the claim, action, litigation and/or lawsuit may plead and/or allege claims including, but not limited to, actual fraud, corruption, direct economic interest, malice, actual malice, and/or bad faith.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-200: (Continued)

- A. In the event that actual fraud, corruption, direct economic interest, actual malice, and/or bad faith is/are alleged in any pleading and/or document in the claim, action, litigation, and/or lawsuit, the City Council may in writing reserve a right of reimbursement from the member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for actual fraud, corruption, direct economic interest, actual malice, and/or bad faith has been made.
- B. In the event that a claim, action, litigation, and/or lawsuit arises from the member's or group's intentional violation of group bylaws or policies and either Council Policy 600-24, the Council Policy's Administrative Guidelines, or other City rules regarding planning groups, the City Council may in writing reserve a right of reimbursement from said member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for the intentional violation has been made.
- C. In the event that a member and/or group demonstrates a pattern and practice of refusal to cooperate with the City Attorney in the defense of the claim, action, litigation, and/or lawsuit, the City Attorney may, with written approval from the City Council, withdraw from defending and/or indemnifying the member and/or group.

In the event that the Office of the City Attorney determines that a member or a group is not entitled to or should not receive a defense and indemnification under this ordinance, the Office shall promptly advise the City Council and the member or group;

Nothing in this Ordinance shall relieve the City Attorney or any attorney employed with the Office of the City Attorney from his or her obligations under the California Rules of Professional Conduct;

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-200: (Continued)

Representation and indemnification shall not be provided by the City of San Diego in any administrative or judicial proceeding initiated by a group or its members against the City of San Diego, its agencies or representatives or any other party or organization nor shall representation and indemnification be provided to a group or its members against damages to any person or organization which are alleged to have resulted from the initiation of any administrative or judicial proceeding by a group or its members. This Section shall not limit a recognized group's rights, as an interested party, to appeal a land use decision as enumerated in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code, regarding the City's decision-making process;

The provisions of this ordinance apply only to members of groups established and recognized by the City Council pursuant to Council Policy 600-9 and Council Policy 600-24, or duly-appointed members of subcommittees of recognized groups, provided they satisfy the requirements of this ordinance and the Council Policy 600-24 Administrative Guidelines;

In no event shall representation or indemnification be provided against a judgment for punitive damages;

This ordinance does not constitute an admission or a waiver of the position of the City of San Diego that groups and the members thereof are not officers, employees or servants of the City of San Diego.

ADOPTION AGENDA, DISCUSSION, HEARINGS

NOTICED HEARINGS:

ITEM-201: Verizon Murphy Canyon. Appeal of the Planning Commission's July 10, 2008, decision to approve an existing 55-foot high monopole (with antennas reaching 65-feet tall) with conditions requiring that the monopole be retrofitted as a faux palm tree or "monopalm" stealth wireless facility. This structure supports wireless communication antennas and is located at 9323 Chesapeake Drive (Kearny Mesa Community Plan Area. District 6.)

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

Matter of the appeal by John Bitterly, the Planning Consortium, Inc., agent for Verizon Wireless of the Planning Commission's decision of July 10, 2008, in approving an application for a Planned Development Permit (PDP) and a Conditional Use Permit (CUP) for an existing 55-foot high monopole that was previously permitted with CUP No. 96-0172, approved by the Planning Commission on May 30, 1996. The facility is located at 9323 Chesapeake Drive, in the Kearny Mesa Community Plan Area.

The Planning Commission approved this project, with conditions requiring that Verizon Wireless retrofit the pole to resemble a "monopalm" stealth wireless facility.

(See Report to Planning Commission No. PC-08-067/Conditional Use Permit No. 379109/Planned Development Permit No. 542264/Project No. 112854.)

(Continued from the meeting of October 20, 2008, Item 202, at the request of the applicant, for further review.)

NOTE: Hearing open. No testimony taken on October 20, 2008.

STAFF'S RECOMMENDATION:

Take the following actions:

Subitem-A:

Granting or denying the appeal and granting or denying Conditional Use Permit (CUP) No. 379109, with appropriate findings to support Council action;

Directing the City Attorney to prepare the appropriate resolutions according to Section 40 of the City Charter.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-201: (Continued)

Subitem-B

Granting or denying the appeal and granting or denying Planned Development Permit (PDP) No. 542264, with appropriate findings to support Council action;

Directing the City Attorney to prepare the appropriate resolutions according to Section 40 of the City Charter.

OTHER RECOMMENDATIONS:

Planning Commission on July 10, 2008, voted 4-1-2, to approve with conditions to retrofit the existing monopole as a faux palm tree, or “monopalm.”

Ayes: Naslund, Ontai, Otsuji, Golba

Nay: Schultz

Not present: Griswold, Smiley

The Kearny Mesa Planning Group has recommended approval of this project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

Appeal of the decision of the Planning Commission approving an existing 65 feet tall monopole supporting wireless communication antennas at 9323 Chesapeake Drive within the Kearny Mesa Community Planning area.

STAFF RECOMMENDATION:

DENY the appeal and **DENY** Conditional Use Permit No. 379109 and Planned Development Permit No. 542264.

EXECUTIVE SUMMARY:

Verizon Wireless was issued a Conditional Use Permit in 1996 to construct and operate a monopole with communication antennas.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-201: (Continued)

STAFF SUPPORTING INFORMATION: (Continued)

The approval was issued for a period of 10 years. After the 10 years, Verizon was required to apply for a new permit, subject to the current regulations in effect. Verizon is proposing no changes to the existing 65 feet tall monopole antenna structure, however the facility no longer complies with the Communication Antenna Regulations of the Land Development Code, Section 141.0405.

This project requires the processing of both a Conditional Use Permit (CUP), because this is a “Major Telecommunications Facility,” and a Planned Development Permit (PDP), because a portion of the structure encroaches into the side setback. Staff cannot make the findings for either the CUP or the PDP and is recommending denial of this project.

Verizon has numerous monopole communication antenna facilities throughout the City. While these facilities are important linkages as part of Verizon’s existing network, time limits were imposed on the CUP’s associated with these facilities, because of improvements to the technology. Today new technology exists to better integrate these facilities into the community by utilizing architecture, landscape material, and other applications. Approval of the monopole as-is would set a precedent for Verizon and other telecommunication providers that these outdated facilities are acceptable to San Diego.

If Verizon submitted a project that complied with today’s regulations (LDC 141.0420) and was not in the setback, the facility could be approved as a Process 1, Limited Use, staff-level decision.

The Planning Commission first heard this project June 5, 2008. The Commission continued the item for one month in order to give Verizon an opportunity to comply with the regulations. At the July 10, 2008, hearing, Verizon proposed no changes to the design. As a last attempt to bring the project into compliance, Planning Commission approved the project by adding conditions that the monopole and antennas be retrofitted to resemble a “monopalm” (faux palm tree). Staff would support a monopalm, however strongly recommends that a pole specifically designed as a monopalm be installed, as opposed to retrofitting the existing pole. Existing *retrofitted* monopoles actually have *more* of a visual impact than an originally manufactured monopole.

Verizon decided not to accept the Planning Commission’s conditional approval and has appealed that decision to the City Council.

ADOPTION AGENDA, DISCUSSION, HEARINGS (Continued)

NOTICED HEARINGS: (Continued)

ITEM-201: (Continued)

STAFF SUPPORTING INFORMATION: (Continued)

FISCAL CONSIDERATIONS:

Verizon Wireless is the financially responsible party for this project and is paying for costs associated with processing this application. If the project is denied, the City's Neighborhood Code Compliance Division of the Development Services Department would take code enforcement action because the original CUP has expired. The code enforcement action would be funded by the general fund.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

The Planning Commission first heard this item June 5, 2008. The project was continued to July 10, 2008, and conditionally approved.

KEY STAKEHOLDERS:

Verizon Wireless

Broughton/Anderson/AH

Staff: Alexander Hempton – (619) 446-5349

NOTE: This item is not subject to the Mayor's veto.

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