

**AGENDA FOR THE  
REGULAR COUNCIL MEETING OF  
MONDAY, MARCH 23, 2009, AT 2:00 P.M.  
CITY ADMINISTRATION BUILDING  
COUNCIL CHAMBERS – 12<sup>TH</sup> FLOOR  
202 “C” STREET  
SAN DIEGO, CA 92101**

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- 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: Providing for Defense and Indemnification of Community Planning Groups.  
CITY ATTORNEY'S RECOMMENDATION: Introduce the ordinance.
- ITEM-201: Cooperative Use Agreement with San Diego Gas & Electric for 2.20-Acre Portion of the Linda Vista Terrace Park. (Linda Vista Community Area. District 6.)  
STAFF'S RECOMMENDATION: Introduce the ordinance.  
**NOTE: 6 votes required pursuant to Section 99 of the City Charter.**
- ITEM-202: Montgomery Middle School 25-Year Lease and Joint Use Agreement with the San Diego Unified School District for Construction, Operation, Maintenance, and Lease of Turfed Fields. (Linda Vista Community Area. District 6.)  
STAFF'S RECOMMENDATION: Introduce the ordinance.  
**NOTE: 6 votes required pursuant to Section 99 of the City Charter.**
- ITEM-203: Grant Application to the State of California for the Montgomery Middle School Joint Use Improvements. (Linda Vista Community Area. District 6.)  
STAFF'S RECOMMENDATION: Adopt the resolution.

**CLOSED SESSION NOTICES, DISCLOSURE, AND PUBLIC COMMENT**

In accordance with the San Diego City Council Permanent Rule for Noticing and Conduct of Closed Session Meeting, adopted on February 28, 2005, this portion of the agenda is reserved for City Attorney comment, public comment, and City Council discussion of the content of the Closed Session Agenda. Public testimony on Closed Session items is taken in Open Session on Mondays, except when there is no Monday meeting. Public testimony on Closed Session items is always taken prior to the actual Closed Session. Closed Session may take place any time after public testimony, but is typically held on Tuesdays at 9:00 a.m. The Closed Session Agenda is separately available in the Office of the City Clerk and also posted at the same locations as the Open Session Agenda, including the City internet address.

**NOTE:** Members of the public wishing to address the City Council on any item on the Closed Session Agenda should reference the Closed Session item number from the Closed Session Docket on the speaker slip. Speakers may speak “in favor” or “in opposition” to the subject.

**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.

=== LEGISLATIVE SCHEDULE (Continued) ===

Public Notices

ITEM-250:           **Notice** of Pending Final Map Approval – 3736 Arnold Avenue.

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: Providing for Defense and Indemnification of Community Planning Groups.

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

**CITY ATTORNEY'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2009-96)

Introduction of an Ordinance providing for defense and indemnification of Community Planning Groups. This Ordinance requires the City of San Diego to provide defense and indemnity to the Community Planners Committee (CPC), the Community Planning Groups (CPG), their members and former members, for actions that occur within the scope of those groups' or individuals' participation in the planning process under Council Policies 600-5 and 600-9. The ordinance also sets a minimum of training or education before those covered will fall within its protections. Finally, the Ordinance sets out the time within which a member or group may request defense, and provides that the City Attorney's Office may not withdraw from said defense without the approval of the City Council.

**SUPPORTING INFORMATION:**

The present indemnification ordinance, Ordinance No. O-17086, was adopted by the Council on April 28, 1999. The present Ordinance provides that the City Attorney will defend and the City will indemnify community planning groups (CPG). In response to concerns from CPG members, the City Attorney's Office has revised the Ordinance to provide better protection for these volunteers. On November 24, 2008, the Council introduced an Ordinance that purported to accomplish this goal. On December 9, 2008, at the second reading, the City Attorney's Office requested a continuance to make a more thorough risk analysis of the proposed Ordinance. On January 12, 2009, the City Attorney's Office submitted a memorandum to the Council, identifying additional risks in that version of the Ordinance. The Council returned the Ordinance to the City Attorney's Office for revision, with direction to include former CPG members, require new CPG members to review the Community Orientation Workshop (COW) training manual, and require the City Attorney to seek Council approval before withdrawing from the defense of a CPG member or former member. This is a request for Council action to approve the revised version of the Defense and Indemnity Ordinance.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-200: (Continued)

**SUPPORTING INFORMATION:**

FISCAL CONSIDERATIONS: N/A

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE): N/A

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

The Council returned this matter to the City Attorney's Office on January 12, 2009.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The City Attorney's Office has been working closely with the CPC on these revisions. On January 27, 2009, the CPC voted 24-1-1 to support this version of the Ordinance.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Duly-elected and/or appointed members of the CPGs and members of the CPC.

Bellows/Jones

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-201: Cooperative Use Agreement with San Diego Gas & Electric for 2.20-Acre Portion of the Linda Vista Terrace Park. (Linda Vista Community Area. District 6.)

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

**STAFF'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2009-100)

Introduction of an Ordinance authorizing the Mayor to execute a Cooperative Use Agreement with San Diego Gas & Electric for the 2.20-acre portion of the Linda Vista Terrace Park.

**NOTE: 6 votes required pursuant to Section 99 of the City Charter.**

**STAFF SUPPORTING INFORMATION:**

Pursuant to the Site Development Permit and Substantial Conformance Review conditions for the development of Pacific Ridge Apartment Homes (formerly known as Uniti on the Hill), The Developer (Irvine Company) shall:

- 1) provide at the Developer's expense the design and construction of a .73-acre on-site park, and convey the land and the completed park to the City; and
- 2) acquire and develop at Developer's expense 2.20 acres of SDG&E property located adjacent to the on-site park at its western boundary (off-site park) for park and recreation purposes in conformance with the executed Cooperative Use Agreement; and convey the land and completed off-site park to the City;

The City and SDG&E are entering into this Cooperative Use Agreement in compliance with permit conditions for the development of Pacific Ridge Apartment Homes. The execution of this Agreement and the subsequent park development satisfies conditions Nos. 36 & 37 of Uniti on the Hill Project No. 93731 and Pacific Ridge Apartment Homes Substantial Conformance Review Project No. 158871. Two separate requested Council Actions are being processed as companion items in compliance with other permit conditions.



ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-201: (Continued)

**STAFF SUPPORTING INFORMATION:** (Continued)

See companion items titled Montgomery Middle School Joint Use Improvements and Montgomery Middle School Joint Use Agreement.

The California Public Utilities Commission (CPUC) must approve the sale of the land prior to signing documents associated with the closing, including the Cooperative Use Agreement. Therefore, the City shall sign the Agreement prior to SDG&E, pending CPUC approval.

**FISCAL CONSIDERATIONS:**

The total project cost for the park acquisition, design and construction will be paid by the Irvine Company (Developer). This facility will require an on-going maintenance and operational budget for personnel and non-personnel expense. The project has not been designed, therefore the annual cost estimate of \$19,800 (2.20 acres x \$9,000/acre) is based on the Park and Recreation Department's current cost to maintain similar facilities. Maintenance and operational costs for the project will be revised when the project is designed and requested in the Park and Recreation Department Operating Budget in the fiscal year in which it is completed.

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:**

Resolution No. PC-4229, Uniti on the Hill, March 8, 2007, Substantial Conformance Review, Uniti on the Hill, July 21, 2008.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

The Park Design process will be consistent with Council Policy 600-33 (Community Notification and Input for City-Wide Park Development Projects).

May 13, 2008 - Community Workshop conducted with the Linda Vista Recreation Council for park General Development Plan.

August 12, 2008 - Linda Vista Recreation Council recommended approval of the General Development Plan with the recommendation that a parking lot, restroom, tot lot and security improvements be included in the design.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-201: (Continued)

**STAFF SUPPORTING INFORMATION:** (Continued)

September 9, 2008 - Linda Vista Recreation Council reviewed revised GDP recommendation.

October 14, 2008 - Linda Vista Recreation Council unanimously approved the revised GDP.

February 19, 2009 - Park and Recreation Board approved the General Development Plan.

**KEY STAKEHOLDERS and PROJECTED IMPACTS (if applicable):**

Linda Vista residents that are within one mile of this proposed Neighborhood Park.

**EQUAL OPPORTUNITY CONTRACTING COMMITMENT:** Not Applicable.

Anderson/Koksuz

Staff: Deborah Sharpe - (619) 525-8261  
Jana Garmo - Deputy City Attorney

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-202: Montgomery Middle School 25-Year Lease and Joint Use Agreement with the San Diego Unified School District for Construction, Operation, Maintenance, and Lease of Turfed Fields. (Linda Vista Community Area. District 6.)

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

**STAFF'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2009-98)

Introduction of an Ordinance authorizing the Mayor, or his representative, to execute, for and on behalf of the City, a Twenty-Five Year Lease and Joint Use Agreement with the San Diego Unified School District (District) for construction, operation, maintenance, and lease of turf fields at Montgomery Middle School, under the terms and conditions set forth in the Agreement;

Declaring that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA), pursuant to CEQA Guidelines Section 15061(b)(3).

**NOTE: 6 votes required pursuant to Section 99 of the City Charter.**

**STAFF SUPPORTING INFORMATION:**

This Joint Use Agreement provides for the joint use of recreational facilities on approximately 4.0 acres at the Montgomery Middle School and Associated ADA Improvements to comply with all state and Federal Accessibility Guidelines and City Standards for a term of twenty-five years. Phase I recreational facilities will include a turf multi-purpose field, security lighting, decomposed granite running track, accessibility improvements, and miscellaneous landscaping. Phase II recreational facilities will include site furnishings, accent plantings, and enhanced gateway treatments.

The implementation of this Project is in compliance with permit condition #36 of Unit 1 on the Hill Project No. 93731 and Pacific Ridge Apartment Homes Development Substantial Conformance Review Project No. 158871.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

ORDINANCES TO BE INTRODUCED: (Continued)

ITEM-202: (Continued)

**STAFF SUPPORTING INFORMATION:** (Continued)

FISCAL CONSIDERATIONS:

Annual maintenance costs are estimated to be \$25,500 which will be requested in the Park and Recreation Department Operating Budget in Fiscal Year 2011. See companion item titled Montgomery Middle School Joint Use Improvements.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Resolution No. PC-4229, Uniti on the Hill, March 8, 2007, Substantial Conformance Review, Uniti on the Hill, July 21, 2008.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Approval recommended by the Linda Vista Recreation Council - February 10, 1998.  
Approval recommended by the Park and Recreation Board, Design Review Committee - March 1998.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Linda Vista residents that are within 1 mile of the Joint Use Facility and the San Diego Unified School District.

Anderson/Koksuz

Staff: Deborah Sharpe - (619) 525-8261  
Shannon M. Thomas - Deputy City Attorney

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS

RESOLUTIONS:

ITEM-203: Grant Application to the State of California for the Montgomery Middle School Joint Use Improvements. (Linda Vista Community Area. District 6.)

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

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-835)

Authorizing the Mayor, or his representative, to make application to the State of California for \$69,905 in Per Capita grant funds under the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, improvements to a facility used jointly by the school and the City at Montgomery Academy - Joint Use Improvements, CIP-29-954.0;

Authorizing the Mayor, or his representative, to take all necessary actions to secure grant funding from the State of California;

Authorizing the Comptroller to accept \$69,905 of 2002 Resources Bond Per Capita grant funding for the purpose of constructing the Joint Use Facilities at Montgomery Middle School;

Authorizing the Comptroller to establish a special interest-bearing fund for the grant;

Authorizing the Comptroller to accept \$502,000 of Developer Contribution funding for the purpose of constructing Joint Use Facilities at Montgomery Middle School;

Authorizing the Comptroller to establish a special interest-bearing fund for the Developer Contribution (Developer Contributions/Parks);

Authorizing a \$724,000 increase in the Fiscal Year 2009 Capital Improvements Program Budget for CIP-29-954.0, Montgomery Academy - Joint Use Improvements, \$45,000 from Fund No. 79503, Linda Vista Development Impact Fees, \$107,095 from Fund No. 18542, Community Development Block Grant 2006, \$69,905 from 2002 Resource Bond Capita grant fund, and \$502,000 from Developer Contributions/Parks Fund;

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

## RESOLUTIONS: (Continued)

## ITEM-203: (Continued)

Authorizing the transfer of \$107,095 from Dept. No. 4343, Org. No. 4307, Job Order No. 000001 to CIP-29-954.0, Montgomery Academy - Joint Use Improvements, within Fund No. 18542, Community Development Block Grant 2006;

Authorizing the Comptroller to appropriate and expend \$724,000 from CIP-29-954.0, Montgomery Academy - Joint Use Improvements, as follows: \$45,000 from Unallocated Linda Vista Development Impact Fees, Fund No. 79503, \$107,095 District 6 Community Development Block Grant, Fund No. 18542, \$69,905 from 2002 Resource Bond Capita grant fund, if grant funding is secured, and \$502,000 from Developer Contributions/Parks Fund, for the purpose of constructing the Joint Use Facilities;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves;

Declaring that this activity is categorically exempt from CEQA per State CEQA Guidelines 15301 (existing facilities).

**STAFF SUPPORTING INFORMATION:**

Under the Site Development Permit and Substantial Conformance Review [SCR] condition for the development of Pacific Ridge Apartment Homes (formerly known as Uniti on the Hill), it was intended that the Irvine Company and the City would enter into a reimbursement agreement for construction of the joint use improvements at the Montgomery Middle School, whereby the Irvine Company would contribute \$502,000 and the City would contribute \$452,000 towards the Phase I improvements. The permit conditions included the following requirements:

- 1) Developer shall enter into a park development agreement, acceptable to the Mayor, for the construction of the Montgomery Middle School Joint Use Improvements in accordance with the approved General Development Plan for the Montgomery Middle School Phase I Joint Use Improvements;
- 2) Upon execution of the park development agreement, the Montgomery Academy Phase I Joint Use Improvements shall be completed by June 30, 2010 (which was subsequently extended by both parties per letter agreement to January 30, 2011), and the Developer shall be entitled to cash reimbursement for an amount not to exceed that which is identified in the agreement. The Developer agrees to accept City funds as compensation for a portion of the costs, which exceed the Developer's obligation (\$502,000);

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-203: (Continued)

**STAFF SUPPORTING INFORMATION:** (Continued)

- 3) If a park development agreement has not been executed between the Developer and the City, and a joint use agreement has not been executed between the City and the San Diego Unified School District prior to February 28, 2009, (which was subsequently extended by both parties per letter agreement to May 28, 2009) the Developer shall be relieved of all obligation to construct the joint use improvements to the Montgomery Middle School and shall instead pay the \$502,000.

A joint use agreement has been negotiated and approved by the School Board. Over the past few months, the Developer and City have been actively negotiating a park development agreement in good faith to meet the permit conditions within the deadlines. However, the negotiations regarding the park development agreement have ceased because the Irvine Company determined that they could not meet City-mandated contract requirements in Municipal Code Chapter 2, Article 2, Division 35: Nondiscrimination in Contracting; therefore, pursuant to permit conditions, the Irvine Company shall be relieved of all obligation to construct the joint use improvements to the Montgomery Middle School and shall instead pay the \$502,000.

Therefore, consistent with the permit conditions and the SCR extended deadlines indicating the parties' intention that the Montgomery Middle School Phase I Joint Use Improvements would be constructed prior to January 30, 2011, the City's position is that the Irvine Company pay the developer contribution of \$502,000 upon expiration of the May 28, 2009, deadline in order for the project to be implemented as a City Contract through the Engineering & Capital Projects Department. Failure of the Developer to pay the \$502,000 at that time will jeopardize the feasibility of the project due to grant requirements for project completion by January 31, 2011.

Payment of the \$502,000 satisfies Conditions No. 36b, 36c, and 36d of Uniti on the Hill Project No. 93731 and Pacific Ridge Apartment Homes Development Substantial Conformance Review Project No. 158871. Separate agreements are being processed as companion items in compliance with other permit conditions. See companion items titled Linda Vista Terrace Park Cooperative Use Agreement and Montgomery Middle School Joint Use Agreement.

**FISCAL CONSIDERATIONS:**

This project is included in the Fiscal Year 2009 Capital Improvement Project Budget (CIP-29-954.0 Montgomery Middle School Joint Use Improvements). Funding in the amount of \$954,000 for Phase I is available and/or identified for this project as follows: \$107,095 from CDBG, \$275,000 from Linda Vista DIF, \$502,000 from Developer Contribution, \$69,905 from Prop 40 Bond Funds.

ADOPTION AGENDA, DISCUSSION, OTHER LEGISLATIVE ITEMS (Continued)

RESOLUTIONS: (Continued)

ITEM-203: (Continued)

**STAFF SUPPORTING INFORMATION:** (Continued)

In March 2002, California voters approved Proposition 40, the \$2.6 billion 2002 State Resources Bond "Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Act of 2002." On December 8, 2003, the Mayor and City Council approved Resolution R-298699, which included a distribution of the \$11,063,430 Per Capita / RZH Per Capita funds to each Council District, with a portion of the funding set aside for projects with citywide and regional impact. On February 20, 2004, the City entered into an umbrella contract with the State of California for the 2002 Resources Bond Act Per Capita / RZH Per Capita Grant Program.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Resolution No. PC-4229, Uniti on the Hill, March 8, 2007, Substantial Conformance Review, Uniti on the Hill, July 21, 2008.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Approval recommended by Linda Vista Recreation Council - February 10, 1998. Approval recommended by Park and Recreation Board, Design Review Committee - March 1998.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Linda Vista residents that are within ½ mile of this proposed Neighborhood Park.

EQUAL OPPORTUNITY CONTRACTING COMMITMENT: Not Applicable.

Anderson/Koksuz

Aud. Cert. 2900561.

Staff: Deborah Sharpe - (619) 525-8261  
Jana Garmo - Deputy City Attorney



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

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PUBLIC NOTICES:

Items are listed under Public Notice as a matter of public record only. These items do not require Council action and there is no public testimony.

ITEM-250: **Notice** of Pending Final Map Approval – 3736 Arnold Avenue.

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

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “3736 Arnold Avenue” (T.M. No. 116852/PTS No. 70815), located on Arnold Avenue, between Wightman Street and Landis Street, in the Mid-City Community Planned District within the Greater North Park Community Planned Area in Council District 3, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

NON-DOCKET ITEMS

ADJOURNMENT IN HONOR OF APPROPRIATE PARTIES

ADJOURNMENT