

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, FEBRUARY 12, 2002
AT 9:00 A.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Mayor Murphy at 10:13 a.m. The meeting was adjourned by Mayor Murphy at 11:25 a.m.

ATTENDANCE DURING THE MEETING:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Wear-present
- (3) Council Member Atkins-present
- (4) Council Member Stevens-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-present

Clerk-Fishkin (ek)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Fishkin called the roll:

- (M) Mayor Murphy-present

- (1) Council Member Peters-present
- (2) Council Member Wear-present
- (3) Council Member Atkins-present
- (4) Council Member Stevens-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-present

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Don Stillwell commented on religion and the First Amendment and that at the inception of the Constitution no single national denomination was to control the country.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A007-047.)

PUBLIC COMMENT-2:

Al Strohleim commented on the employment of a person of color by SeaWorld.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A048-081.)

PUBLIC COMMENT-3:

Stephanie Pacey commented on her feeling that the San Diego City Council should be kept up-to-date on court cases, i.e., the EPA.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A082-096.)

PUBLIC COMMENT-4:

Jarvis Ross commented on the dangers of the splash-down ride at SeaWorld and that the City Council should do what is morally right in this regard.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A097-130.)

PUBLIC COMMENT-5:

Noel Neudeck commented that the upgrades to the Natural History Museum do not comply with Code Section 4452.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A131-159.)

PUBLIC COMMENT-6: **REFERRED TO THE CITY MANAGER**

Comment by Beverly Walker that, in order to make for greater safety and accessibility on sidewalks, there is a need for more parking enforcement where cars are parking over the sidewalks.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Tape location: A160-214.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member Wear commented that the Fallbrook fire is a tragic reminder of the urgent need for a fire helicopter in San Diego County. Council Member Wear noted that he is working with County Supervisor Ron Roberts to provide funding for a helicopter to fight fires, that if a fire helicopter had been available we could have been on the scene in 15 or 20 minutes. He stated that we could have avoided damage to two fire trucks if we had worked to better coordinate some of the resources early in the process. Council Member Wear wanted once again to call for the helicopter as an important regional asset. He also thanked Mayor Murphy and Council Member Madaffer for participating in the groundbreaking ceremony in Point Loma for the new branch library. Council Member Wear further noted that today is Fat Tuesday and that his colleagues were invited to the Gaslamp District to partake in the festivities.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: A215-242.)

COUNCIL COMMENT-2:

Council Member Madaffer commented that the groundbreaking in Point Loma was an outstanding event. Council Member Madaffer also noted that they are moving ahead on one of Mayor Murphy's goals, wherein 20 trees were planted in the Rolando community, which is one of four tree-plantings.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: A243-264.)

COUNCIL COMMENT-3

Council Member Atkins commented that today is the kickoff of the Vietnamese

and Chinese New Year for the next 15 days. Council Member Atkins stated that she was at the Asian Business Center in City Heights, that it is the Year of the Horse, which symbolizes talent and hard work. Mayor Murphy commented that he was born in the Year of the Horse. Council Member Atkins said that this Saturday, February 16th, at the Urban Village, there will be a Vietnamese celebration. She invited people to come and get a flavor of the diversity of the City of San Diego, and particularly in City Heights.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: A297-321.)

CITY MANAGER COMMENT:

None.

CITY ATTORNEY COMMENT:

City Attorney Gwinn commented regarding a 13-year legal saga involving the Mt. Soledad cross, that the prior San Diego City Council created a bidding process allowing non-profit entities to submit sealed bids on the Mt. Soledad property. City Attorney Gwinn stated that the high bidder was the Mt. Soledad Memorial Association, allowing them to purchase the property. He noted that they are proceeding with improvements on the top of Mt. Soledad, which are costing close to \$1 million. The City of San Diego went to court almost two years ago, and Judge Gordon Thompson ruled that that procedure complied with state and federal law, and upheld the sale of that property. City Attorney Gwinn explained that the opponents appealed to the Ninth Circuit Court of Appeals, where he argued that case in front of a panel of the Ninth Circuit Court of Appeals, resulting in a favorable three-to-one unanimous decision. He stated that the opponents then sought en banc review, where they requested that 11 instead of 9 judges of the Ninth Circuit would hear the case; the Ninth Circuit agreed. There is a very complex constitutional issue that the Ninth Circuit appears to be interested in which has to do with the conflict between state and federal constitutional law and which pertains to the "establishment" clause in the federal

Constitution and the “no-preference” clause in the California Constitution. The City Council will continue to be briefed on this matter.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: A265-296.)

ITEM-330: Two actions related to Carmel Valley - FY 2002 Public Facilities Financing Plan and Facilities Benefit Assessment (FBA).

(See City Manager Report 02-010; Public Facilities Financing Plan and FBA, Fiscal Year 2002, December 2001 Draft. Carmel Valley Community Area. District-1.)

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2002-921) ADOPTED AS RESOLUTION R-296077

Designating an area of benefit in Carmel Valley and the boundaries thereof, confirming the description of Public Facilities Projects, the Community Financing Plan and Capital Improvement Program with respect to Public Facilities Projects, the method for apportioning the costs of the Public Facilities Projects among the parcels within the area of benefit and the amount of the Facilities Benefit Assessments charged to each such parcel, the basis and methodology for assessing and levying discretionary automatic annual increases in Facilities Benefit Assessments, and proceedings thereto, and ordering of the proposed Public Facilities Project in the matter of Carmel Valley Facilities Benefit Assessment Area.

Subitem-B: (R-2002-922) ADOPTED AS RESOLUTION R-296078

Declaring that the assessment fee schedule contained in the Carmel Valley Public Facilities Financing Plan, Fiscal Year 2002, as adopted and approved on January 22, 2002, by Resolution No. R-295966, is an appropriate and applicable development impact fee schedule [DIF] for all properties within the Carmel Valley Community;

Declaring that the Docket Supporting Information and the text contained in the Carmel Valley Public Facilities Financing Plan, Fiscal Year 2002, are incorporated by reference into this resolution as support and justification for satisfaction of findings required pursuant to California Government Code sections 66001(a) and 66001(b) for imposition of DIFs. Specifically, it is determined and found that this documentation:

1. Identifies the purpose of the DIF;
2. Identifies the use to which the DIF is to be put;
3. Demonstrates how there is a reasonable relationship between the DIF's use and the type of development project on which the DIF is imposed; and
4. Demonstrates how there is a reasonable relationship between the need for the public facility and the type of development project on which the DIF is imposed.

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 6/13/01, LU&H voted 5-0 to approve the City Manager's recommendation. (Councilmembers Peters, Wear, Atkins, Stevens and Maienschein voted yea.)

FILE LOCATION: STRT-FB-8-02 (33)

COUNCIL ACTION: (Tape location: A322-353.)

Hearing began at 10:39 a.m. and halted at 10:40 a.m.

MOTION BY PETERS TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, Wear-yea, Atkins-yea, Stevens-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

ITEM-331: Amendment to the Progress Guide and General Plan and Mid-City Communities Plan to Reclassify and Vacate a Portion of 40th Street.

Matter of approving, conditionally approving, modifying or denying amendments to the Progress Guide and General Plan and Mid-City Communities Plan which are required to implement the proposed street vacation and reclassification of 40th Street. The Transportation Element of the Mid-City Communities Plan would be modified to reflect a street vacation north of

Madison Avenue, and the reclassification of 40th Street between Adams and Monroe Avenues from a 2-lane collector street to a non-classified residential local street.

(Negative Declaration-41-0371. Normal Heights Community of the Mid-City Communities Plan area. District-3.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions in subitems A and B:

Subitem-A: (R-2002-1004) ADOPTED AS RESOLUTION R-296079

Adoption of a Resolution authorizing an amendment to the Progress Guide and General Plan and Mid-City Communities Plan to reclassify and closing to vehicular traffic a portion of 40th Street in the City of San Diego, California.

Subitem-B: (R-2002-1005) ADOPTED AS RESOLUTION R-296080

Adoption of a Resolution certifying that the information contained in Environmental Negative Declaration LDR No. 41-0371 has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code section 21000 et seq.) as amended, and the State guidelines thereto (California Code of Regulations section 15000 et seq.), that the declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the 40th Street Closure proposal;

That the Council finds, based upon the Initial Study and any comments received, that there is no substantial evidence that the project will have a significant effect on the environment and therefore the Negative Declaration is approved;

That the City Clerk is directed to file a Notice of Determination [NOD] with the Clerk of the Board of Supervisors for the County of San Diego regarding the above project.

OTHER RECOMMENDATIONS:

Planning Commission on November 15, 2001, voted 6 - 0 to recommend to the City Council approval of an amendment to the Progress Guide and General Plan and the Mid-City Communities Plan to allow for the closure of 40th Street to through traffic between Madison Avenue and the SR-15 freeway on-ramp and reclassify 40th Street from Adams Avenue to Monroe Avenue from a 2-lane collector to a non-classified residential local street; no opposition.

Ayes: Lettieri, Stryker, Anderson, Schultz, Brown, Butler
Not present: Garcia

The Normal Heights Community Planning Committee has recommended approval of the project.

SUPPORTING INFORMATION:

Amendments to the Progress Guide and General Plan and Mid-City Communities Plan are required to implement the proposed street closure (to vehicular traffic) [partial vacation] and reclassification of 40th Street. The Transportation Element of the Mid-City Communities Plan would be modified to reflect the street closure, north of Madison Avenue to vehicular traffic [partial vacation], and the reclassification of 40th Street between Adams and Monroe Avenues from a 2-lane collector street to a non-classified residential local street.

A noticed community meeting was held in October of 2000 to discuss the closure (to vehicular traffic) proposal and a petition was circulated and supported by two-thirds of the affected residents. On November 2, 2000, the Normal Heights Community Planning Committee voted to request the closure (to vehicular traffic) and associated amendments to the Progress Guide and General Plan and Mid-City Communities Plan. These amendments were initiated by the Planning Commission on January 25, 2001, and staff was directed to evaluate impacts on the community circulation system and possible reuse of the portion of 40th Street between the SR-15 freeway ramps and Madison Avenue closed to vehicular traffic. No other issues were identified by the Planning Commission.

A Traffic Impact Analysis was conducted and determined the closure of 40th Street between the freeway ramps and Madison Avenue to vehicular traffic would not result in a significant traffic impact on the adjacent street system. If approved, alternate uses such as additional parking for park users and area businesses and possible 39th Street park expansion would be studied and incorporated into a Capital Improvement Program.

On November 15, 2001, the reclassification and closure (to vehicular traffic) request came back to Planning Commission for their recommendation. The Planning Commission recommended that the City Council approve an amendment to the Progress Guide and General Plan and the Mid-City Communities Plan to allow for the closure of 40th Street between Madison Avenue and the SR-15 ramps to vehicular traffic [partial vacation], the reclassification of 40th Street between Adams Avenue and Monroe Avenue from a 2-lane collector street to a non-classified residential local street as well as certification of Negative Declaration LDR No. 41-0371. No other issues were identified by the Planning Commission.

FISCAL IMPACT:

This project is included as part of the City's work program established for the Normal Heights Community.

Ewell/Goldberg/LE

LEGAL DESCRIPTION:

The project seeks to reclassify 40th Street immediately south of the 40th Street/Interstate 15 ramps intersection (south of Adams Avenue) from a 2-lane collector street to a non-classified residential street and to close 40th Street at this point to through traffic. The project site is located within the Normal Heights Community of the Mid-City Communities Planning Area.

FILE LOCATION: LAND-Progress Guide and General Plan/Normal Heights,
Mid-City Communities Plan (09)

COUNCIL ACTION: (Tape location: A354-373.)

Hearing began at 10:41 a.m. and halted at 10:42 a.m.

MOTION BY ATKINS TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, Wear-yea, Atkins-yea, Stevens-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

ITEM-S500: Two actions related to the Medical Cannabis Voluntary Verification Card Program.

(See Medical Marijuana Task Force's 11/03/2001 memo.)

TODAY'S ACTIONS ARE:

Adopt the following resolution in Subitem A and introduce the ordinance in B:

Subitem-A: (R-2002-1035) ADOPTED AS RESOLUTION R-296081

Accepting the recommendations of the Medical Cannabis Task Force to enact a medical cannabis voluntary verification card program to be administered by an external contracting agency.

Subitem-B: (O-2002-87 Cor. Copy) INTRODUCED AS AMENDED,
TO BE ADOPTED MONDAY,
FEBRUARY 25, 2002

Introduction of an Ordinance amending Chapter 4, Article 2, of the San Diego Municipal Code by adding new Division 13, Sections 42.1301, 42.1302, 42.1303, 42.1304, 42.1305, 42.1306, 42.1307, 42.1308, 42.1309, 42.1310, and 42.1311 relating to the San Diego Medical Cannabis Voluntary Verification Card Program.

**PUBLIC SAFETY AND NEIGHBORHOOD SERVICES COMMITTEE'S
RECOMMENDATION:**

On 11/07/2001, PS&NS voted 4-1 to a) accept the recommendations of the Medical Marijuana Task Force adopting an ordinance enacting a medical cannabis voluntary verification card program to be administered by an external contracting agency; b) direct the City Attorney to draft appropriate ordinance language that is consistent with State law and includes appropriate penalties for the inappropriate transfer or misuse of the identification card; and c) forward the draft ordinance directly to the City Council. (Councilmembers Atkins, Stevens, Frye, and Inzunza voted yea. Councilmember Maienschein voted nay.)

SUPPORTING INFORMATION:

State law expressly permits the possession and use of cannabis "for medical purposes, where that medical need is deemed appropriate and has been recommended by a physician."

Unfortunately, the law does not specify the amount of marijuana that is medically necessary or legal for possession. In the absence of clarity, both patients and doctors have been reluctant to exercise their rights under the law. While county-wide law enforcement agencies have developed arrest and prosecution protocols, these internal policies are not widely disseminated. Since these

guidelines are neither codified nor binding on law enforcement personnel, they fail to serve as notice to well-intentioned citizens who wish to remain law-abiding while exercising their rights as patients.

The program proposed by the City's Medical Cannabis Task Force is designed to provide reasonable community standards and processes by which to implement this law. The program would create a process for certifying appropriate medical needs, issuing identification cards to qualifying patients, and providing a 24-hour certification process for law enforcement personnel to verify the validity of any individual ID card. Within the jurisdictional limits of the City, the card would allow the bearer to be in possession of up to one ounce of marijuana without being subject to arrest for possession of marijuana.

On November 7, 2001, the PS&NS Committee reviewed the recommendation of the Medical Cannabis Task Force and voted 4-1 to: direct the City Attorney to draft appropriate ordinance language to implement the program that was consistent with State law; include penalties for the inappropriate transfer or misuse of the identification card; and to forward this draft directly to the City Council.

Russell

FILE LOCATION: MEET

COUNCIL ACTION: (Tape location: A373-B333.)

MOTION BY ATKINS TO ADOPT THE RESOLUTION AND INTRODUCE THE ORDINANCE AND ACCEPT COUNCIL MEMBER INZUNZA'S AMENDMENT TO TAKE OUT THE "REASONABLE" LANGUAGE THAT MAYOR MURPHY MADE REFERENCE TO IN SECTION 42.1305 OF THE ORDINANCE, "OR MAY LAWFULLY POSSESS MORE MARIJUANA IF IT IS REASONABLE UNDER THE CIRCUMSTANCES," AND REPLACE IT WITH: "NOTHING IN THIS SECTION IS INTENDED TO REDUCE THE RIGHTS OF A PATIENT OR PRIMARY CAREGIVER OTHERWISE AUTHORIZED BY HEALTH AND SAFETY CODE SECTION 11362.5(b)," AS READ INTO THE RECORD VERBATIM BY CITY ATTORNEY GWINN. Second by Inzunza. Passed by the following vote: Peters-yea, Wear-yea, Atkins-yea, Stevens-yea, Maienschein-nay, Frye-yea, Madaffer-nay, Inzunza-yea, Mayor Murphy-yea.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 11:25 a.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Tape location: B334.)