

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, MARCH 22, 2004
AT 2:00 P.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 2:13 p.m. Mayor Murphy recessed the meeting at 2:59 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 3:09 p.m. with Council Member Madaffer not present. Mayor Murphy recessed the meeting at 4:12 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 4:21 p.m. with Council Member Madaffer not present. Mayor Murphy adjourned the meeting at 5:09 p.m. into Closed Session on Tuesday, March 23, 2004, in the 12th floor committee room to discuss pending and potential litigation and Meet and Confer matters.

ATTENDANCE DURING THE MEETING:

- (M) Mayor Murphy-present
 - (1) Council Member Peters-present
 - (2) Council Member Zucchet-present
 - (3) Council Member Atkins-present
 - (4) Council Member Lewis-present
 - (5) Council Member Maienschein-present
 - (6) Council Member Frye-present
 - (7) Council Member Madaffer-(Excused by R-298973 adopted 03/15/04 due to representing the City at the China Familiarization Tour in China sponsored by the Chamber of Commerce)
 - (8) Council Member Inzunza-present
- Clerk-Abdelnour (er)

FILE LOCATION: MINUTES

ITEM-1: ROLL CALL

Clerk Abdelnour called the roll:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-present
- (4) Council Member Lewis-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-not present
- (8) Council Member Inzunza-not present

FILE LOCATION: MINUTES

ITEM-10: INVOCATION

Invocation was given by Pastor Janine Medcalf of El Cajon Church of the Nazarene.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Lewis.

FILE LOCATION: MINUTES

ITEM-30: Approval of Council Minutes.

TODAY'S ACTION IS: APPROVED

Approval of Council Minutes for the meetings of:

3/01/2004 - Adjourned

3/02/2004 – Adjourned

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

MOTION BY LEWIS TO APPROVE. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

ITEM-31: Lyric Opera San Diego 25th Anniversary Day.

DEPUTY MAYOR ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2004-937) ADOPTED AS RESOLUTION R-298974

Recognizing the 25th anniversary of Lyric Opera San Diego, and commending them for their ongoing commitment to excellence in the performing arts in San Diego;

Proclaiming March 22, 2004 to be “Lyric Opera San Diego 25th Anniversary Day” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:17 p.m. – 2:23 p.m.)

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

* ITEM-50: Dedicating City-Owned Land, Black Mountain Park, for a Public Park.

(Rancho Penasquitos Community Area. District-1.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced on 3/8/2004 (Council voted 8 to 0. Councilmember Madaffer not present.):

(O-2004-41) ADOPTED AS ORDINANCE O-19268 (New Series)

Setting aside and dedicating City-owned land, known as Black Mountain Park in the City of San Diego, California, for a public park;

Declaring that the City of San Diego specifically reserves the right to establish underground public service easements under, through and across the dedicated property so long as the construction and maintenance of the subject easement do not substantially negatively impact the availability of the property for use for park and recreational purposes.

FILE LOCATION: DEED F-9644

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

* ITEM-100: Agreement with DeLoitte and Touche LLP for Audit and Expert Witness Fees related to the Case of City vs. Civic Center Associates.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-931) ADOPTED AS RESOLUTION R-298975

Authorizing the City Manager to enter into an agreement with DeLoitte and Touche LLP and to pay \$600,000 for expert witness and lease audit fees related to the case of City of San Diego vs. Civic Center Associates, San Diego Superior Court Case No. GIC 793213 from the Public Liability Fund.

SUPPORTING INFORMATION:

The City Attorney's Office, at Council direction, pursued the Plaintiff's case, City of San Diego vs. Civic Center Associates, San Diego Superior Court Case No. GIC 793213. Senior Deputy City Attorney James M. Chapin obtained a verdict for the City in the amount of \$3,000,000, which amount was deposited into the City's General Fund. Lease audit fees and expert witness

fees in the amount of \$600,000 were incurred in the pursuit of this claim. Additionally, general litigation costs in the total of \$3,183.66 were incurred.

This action seeks to authorize an agreement to pay DeLoitte and Touche LLP, \$600,000 for audit and expert witness fees from the Public Liability Fund.

Ewell/Nome/JMC

Aud. Cert. 2400875.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

* ITEM-101: Participation Agreement with Naval Housing Developer for the Design and Construction of the wastewater Mains at the Liberty Station.

(Peninsula Community Area. District-2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-663) RETURNED TO THE CITY MANAGER

Authorizing the City Manager to enter into a Participation Agreement with San Diego Family Housing, LLC., for reimbursement of costs associated with the design and construction of approximately 1900 linear feet of 36" sewer main at the Liberty Station (Naval Training Center) for an amount not to exceed \$2,080,843;

Authorizing the expenditure of an amount not to exceed \$2,115,843 from Sewer Revenue Fund No. 41506, CIP-44-001.0, Sewer Main Annual Allocation, for the purpose of funding the Participation Agreement, in-house engineering, and related costs.

CITY MANAGER SUPPORTING INFORMATION:

The Metropolitan Wastewater Department has classified the East Point Loma Trunk Sewer as a Semi-Critical facility, and has identified the trunk sewer for future replacement. The Federal Government proposed military housing at development of Navy Housing at the Liberty Station (Naval Training Center), described in the site plan ("Development") The foundations for the buildings were next to sewer easement which would significantly increased the cost of sewer replacement. The soils in the area are very soft and sandy which would require special shoring techniques to protect building foundations. This Development was conditioned to build new public streets in locations that provide a superior alignment for the trunk sewer. The Developer is required to install new upgraded sewer facilities to serve the project, and relocation of the trunk sewer concurrent with this would make realignment of the trunk sewer possible. This improvement to the public wastewater system includes the installation of approximately 1900 linear feet of 36" concrete pipe with T-RIB (PVC) liner, or equivalent approved by the City, and abandonment of an existing sewer main (described in the site plan).

These trunk sewer improvements are necessary and are for the benefit of the City as a whole and City shall participate in the cost of the public wastewater system improvements. Staff recommends reimbursement of one hundred percent of the construction cost, provided the work is completed to the satisfaction of the City Engineer and Metropolitan Wastewater Department, except the reimbursement cost shall not in any case exceeds \$2,080,843.

FISCAL IMPACT:

The Participation agreement is not to exceed \$2,080,843 total estimated cost of this project is \$2,115,843. Funding is available for this project in Wastewater Fund 41506, Sewer Main Allocation, CIP-44-001.0, for the purpose of construction of CIP-44-222.0, Liberty Station (Navy Housing NTC).

Ewell/Christiansen/BS

Aud. Cert. 2400544.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO RETURN TO THE CITY MANAGER FOR FURTHER REVIEW. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

* ITEM-102: Easement Deeds for Sewer and Water Group 675.

(Peninsula and Roseville Community Areas. District-2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-774) ADOPTED AS RESOLUTION R-298976

Authorizing the City Manager to expend an amount not to exceed \$30,000 from Fund 41500, CIP-73083.0 (Sewer and Water Group 675/Annual Allocation-Water Main Replacement), for the acquisition, title, labor, and miscellaneous costs of property rights required for the Sewer and Water Group 675 Project.

CITY MANAGER SUPPORTING INFORMATION:

Sewer and Water Group 675 is part of the City of San Diego's continuing Annual Sewer and Water Main Replacement Program. The sewer and water mains being replaced in this project were constructed in the early 1900's and are approaching the end of their useful life. The project is located in the Peninsula Community and consists of replacing 8 and 6 inch sewer mains and 6 inch water mains. The mains are being relocated out of a canyon and into an alley requiring the acquisition of ten (10) new water and sewer easements. The project includes the construction of pedestrian ramps and resurfacing impacted streets. The streets affected by the easement deeds consist of the alleys between Ullman Street and Valemont Street and Trumbull Street and Ullman Street.

FISCAL IMPACT:

Funds in the amount of \$30,000 are available in Fund 41500, CIP-73083.0.

Herring/Griffith/BLM

Aud. Cert. 2400714.

FILE LOCATION: DEED F-9645

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

* ITEM-103: Street Dedication and Naming Rancho Toyon East of Toyon Mesa Court.

(Carmel Valley Community Area. District-1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-939) ADOPTED AS RESOLUTION R-298977

Approving the acceptance of a street dedication set aside in City-owned land in the City of San Diego located within the south half, southwest quarter, northeast quarter, Section 22, Township 14 South, Range 3 West, San Bernardino Meridian, shown on Engineering Drawing No. 19981-B, and the southwest quarter, northeast quarter, Section 22, Township 14 South, Range 3 West, San Bernardino Meridian, shown on Engineering Drawing No. 19983-B;

Naming said street dedication Rancho Toyon Place, and dedicating it to public use.

CITY MANAGER SUPPORTING INFORMATION:

The street being dedicated is located easterly of Toyon Mesa Court at the easterly terminus of Rancho Toyon Place, southwesterly of SR 56 and I-15, in the Carmel Valley Community Planning Area in Council District 1. Council is requested to approve the dedicating of City-owned land for public street purposes and naming the public street Rancho Toyon Place. The street is located in the S ½, SW ¼, NE ¼, Sec 22, T14S, R3W SBM, and in the E ½, NE ¼, SW ¼, NE ¼, Sec 22, T14S, R3W SBM, as shown on Engineering Drawing Nos. 19981-B and

19983-B. The dedication of this street is required to provide access and allow development to the proposed Cielo Del Mar subdivision to the east, and has been designed to correspond with the approved Tentative Map and improvement plans for Cielo Del Mar.

Staff recommends approval.

Ewell/Broughton/GRB

FILE LOCATION: DEED F-9646

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

* ITEM-104: Justice Judith L. Haller Day.

COUNCILMEMBER PETERS' RECOMMENDATION:

Adopt the following resolution:

(R-2004-948) ADOPTED AS RESOLUTION R-298978

Declaring March 19, 2004 to be "Justice Judith L. Haller Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

* ITEM-105: National Ataxia Foundation.

COUNCILMEMBER MADAFFER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-920) ADOPTED AS RESOLUTION R-298979

Recognizing National Ataxia Foundation (NAF) for the commitment and dedication to research and creating awareness of hereditary Ataxia.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

* ITEM-106: Appointment and Reappointments to the Balboa Park Committee.

(See memorandum from Mayor Murphy dated 3/15/2004, with resumes attached.)

MAYOR MURPHY'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-953 Cor.Copy) ADOPTED AS RESOLUTION R-298980

Council confirmation of the following appointment and reappointments by the Mayor, to serve as members of the Balboa Park Committee, for terms ending as indicated:

<u>NAME</u>	<u>TERM ENDING</u>	<u>NOMINATED BY</u>
Joyce Summer CCAC Representative	March 1, 2006	Centre City Advisory Committee (CCAC)

Darlene Gould Davies, Chair (Reappointed)	March 1, 2006	Mayor Murphy
Daniel T. Mazzella, Vice-Chair (Reappointed)	March 1, 2006	Mayor Murphy
Michael Stepner (Reappointed)	March 1, 2006	Deputy Mayor Atkins
Jeffery Y. G. Tom (Reappointed)	March 1, 2006	Deputy Mayor Atkins

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

* ITEM-107: Declaring a Continued State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico.

(District-8.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2004-514) ADOPTED AS RESOLUTION R-298981

Declaring a Continued State of Emergency regarding the discharge of raw sewage from Tijuana, Mexico.

FILE LOCATION: GEN'L – State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

- * ITEM-108: Declaring a Continued State of Emergency Due to Economic Circumstances in the San Diego-Tijuana Border Region.

(District-8.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2004-753) ADOPTED AS RESOLUTION R-298982

Declaring a Continued State of Emergency due to economic circumstances in the San Diego-Tijuana border region.

FILE LOCATION: GEN'L – State of Emergency Due to Economic Circumstances in the San Diego-Tijuana Border Region

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

- * ITEM-109: Declaring a Continued Local Health Emergency Due to the Spread of the Hepatitis C Virus and the Human Immunodeficiency Virus (HIV).

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2004-756) ADOPTED AS RESOLUTION R-298983

Declaring a Continued Local Health Emergency due to the spread of the Hepatitis C Virus and the Human Immunodeficiency Virus (HIV) for the purpose of

implementing a one-year clean needle and syringe exchange program.

CITY MANAGER SUPPORTING INFORMATION:

California Health and Safety Code section 11364.7 (effective January 1, 2000) acknowledges the public health threat posed by the sharing of needles and syringes by injection drug users. The Code requires a local jurisdiction to declare a local emergency due to the existence of a critical local public health crisis in order to establish a clean needle and syringe exchange program. In order to permit development and implementation of a pilot clean needle and syringe exchange program, today's action continues the state of emergency first declared by the City Council on November 27, 2001.

FILE LOCATION: GEN'L – Local Health Emergency Due to the Spread of Hepatitis C Virus and the Human Immunodeficiency Virus (HIV)

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-nay, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-nay.

* ITEM-110: Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City.

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2004-542) ADOPTED AS RESOLUTION R-298984

Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego.

FILE LOCATION: GEN'L – State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

ITEM-200: Red Light Photo Enforcement Program.

(See City Manager Report CMR-04-056.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2004-951) ADOPTED AS RESOLUTION R-298985

Accepting the City Manager's report on the Red Light Photo Enforcement Program.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:27 p.m. – 2:40 p.m.)

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

ITEM-201: Conference with Real Property Negotiator, pursuant to California Government Code Section 54956.8:

Property: Qualcomm Stadium.

Agency Negotiator: Assistant City Attorney Leslie J. Girard, Deputy City Manager Bruce Herring, Paul Jacobs, Esq., Daniel S. Barrett, and Robert Kheel.

Negotiating Parties: City of San Diego and the San Diego Chargers.

Under Negotiation: Real Property Interests at the Qualcomm Stadium site pursuant to the recommendations of the Citizens Task Force on Chargers Issues, and pursuant to the terms of Paragraph 31 of the 1995 Agreement for the Partial Use and Occupancy of Qualcomm Stadium.

Prior to City Council discussion in Closed Session and in compliance with the Brown Act (California Government Code Section 54956.8), this item is listed on the docket only for public testimony.

There is no Council discussion of this item. The City Council's actions are:

1) Open the Public Hearing and accept testimony from any members of the public wishing to address the City Council on this subject; 2) Conclude and close the public hearing; and 3) Refer the matter to Closed Session.

NOTE: Members of the public wishing to address the City Council on this item should speak "in favor" or "in opposition" to the subject.

Hearing held; referred to Closed Session.

FILE LOCATION: MEET (61)

COUNCIL ACTION: (Time duration: 2:40 p.m. – 2:43 p.m.)

ITEM-250: Notice of Completion and Acceptance of Subdivision Improvement Agreement.

Notice is hereby given that the City Manager of the City of San Diego intends to file a "Notice of Completion and Acceptance of Subdivision Improvement Agreement" indicating that the improvements included in the Subdivision Improvement Agreement have been satisfactorily completed for the following subdivisions:

SUBDIVISION

COMMUNITY AREA

Torrey Hills Unit No. 19

Torrey Hills

The certification shall be recorded 15 days after the date this notice appears on the Council Docket or shortly thereafter. If any person wishes to object to the filing of this notice, such person should communicate the objection on or before that date to the Director of Development Services or to the Subdivision Engineer, City Operations Building, 1222 First Avenue (MS 507), San Diego, CA 92101.

* ITEM-S400: Feral Cat Fix-A-Thon Day.

DEPUTY MAYOR ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2004-947) ADOPTED AS RESOLUTION R-298986

Commending Spay Neuter Action Project (SNAP), the Feral Cat Coalition (FCC), and the Annual Feral Cat Fix-A-Thon Day for its commitment to raise awareness about the huge number of feral cats existing in our region and providing low cost spay/neuter procedures to residents of San Diego County;

Proclaiming March 14, 2004 to be "Feral Cat Fix-A-Thon Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

* ITEM-S401: StairClimb to Cure Cystic Fibrosis Day.

DEPUTY MAYOR ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2004-946) ADOPTED AS RESOLUTION R-298987

Commending the Cystic Fibrosis Foundation and the 23rd Annual StairClimb for a Cure for its commitment to providing support and lifesaving research funds to the community's scientists and Cystic Fibrosis Foundation-accredited care centers in San Diego and across the United States;

Proclaiming March 12, 2004, to be "StairClimb to Cure Cystic Fibrosis Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:23 p.m. – 2:27 p.m.)

CONSENT MOTION BY LEWIS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-not present, Mayor Murphy-yea.

ITEM-S402: Conference with Real Property Negotiator, pursuant to California Government Code Section 54956.8:

Property: Approximately 1.25 acres located in the City of Santee on the east side of Highway 67 at the north terminus of Graves Avenue (APN 384-120-38)

Agency Negotiator: Real Estate Assets Director

Negotiating Party: Padre Dam Municipal Water District

Under Negotiation: Terms of Potential Disposition of Property

Prior to City Council discussion in Closed Session and in compliance with the Brown Act (California Government Code Section 54956.8), this item is listed on the docket **only** for public testimony.

There is no Council discussion of this item. The City Council's actions are:
1) Open the Public Hearing and accept testimony from any members of the public wishing to address the City Council on this subject; 2) Conclude and close the public hearing; and 3) Refer the matter to Closed Session on March 23, 2004.

NOTE: Members of the public wishing to address the City Council on this item should speak “in favor” or “in opposition” to the subject.

Hearing held; referred to Closed Session.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:43 p.m. – 2:43 p.m.)

ITEM-S403: San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings and Related Matters.

At the regular meeting of the City Council on March 15, 2004, the Council considered the matter of compliance with the California Brown Act and the noticing of matters for open and closed sessions of the San Diego City Council. Specifically, the City Council considered recommendations contained in a Report from Deputy Mayor Atkins and Councilmember Frye dated March 15, 2004. The City Council gave direction at the aforementioned meeting to the City Attorney to prepare for the regular meeting of the City Council on March 22, 2004 all necessary documents for the City Council to adopt and/or procedurally implement the recommendations contained in the Report from Deputy Mayor Atkins and Councilmember Frye. The City Council gave further direction to the City Attorney to analyze and comment upon the recommendations contained in the Report from Deputy Mayor Atkins and Councilmember Frye.

(See City Attorney’s Report No. RC-2004-8)

TODAY’S ACTION IS:

Adopt the following resolution:

(R-2004-982) CONTINUED TO, MONDAY, MARCH 29, 2004

Adopting a temporary rule, attached as Attachment “A” and incorporated herein by reference, which shall be called the “San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings;”

Declaring that the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings as set forth in Attachment "A" shall remain in effect for 120 calendar days from adoption or until such time that the Permanent Rules of the City Council are effectively amended to incorporate the subject matter addressed in the temporary rule, whichever occurs first;

Declaring that in accordance with Rule 31 of the Permanent Rules of the City Council, while the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings is in effect, if any provision of the temporary rule is in conflict with a Permanent Rule, the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings shall supersede and govern;

Establishing an Ad-Hoc subcommittee of three Council members to be known as the "Right to Know Committee." This Committee shall draft a proposal for a new Permanent Rule of the City Council to address the topic covered by the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings. The Right to Know Committee shall file a final report with the Rules Committee no later than 60 days after its first meeting, outlining a proposal for amendments to the Permanent Rules of the Council, which amendments shall be considered by the Rules Committee in accordance with Permanent Rule 33. In addition to the topic covered by the San Diego City Council Temporary Rule for Noticing and Conduct of Closed Session Meetings, the Right to Know Committee may consider and propose amendments to the Permanent Rules of the City Council with respect to the following topics: serial meetings; non-agenda public comment; the public's ability to obtain documents; noticing of meetings; and Brown Act compliance of City of San Diego boards, commissions, and committees. The Right to Know Committee shall be subject to the provisions of the Brown Act;

Directing the City Attorney to prepare a ballot measure, in the normal course of preparation of such matters for consideration by the Rules Committee, for placement on the November 2004 ballot for the purpose of amending the San Diego Charter to add a provision similar to California Senate Constitutional Amendment No. 1 (SCA 1), attached as Attachment "B" and hereby incorporated by reference, which is a proposed amendment to the Constitution of the State of California adopted by the State Legislature and scheduled for voter consideration on the November 2004 statewide ballot.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:43 a.m. – 5:08 p.m.)

Motion by Council Member Frye to adopt the resolution as revised by Council Member Frye and Council Member Atkins as follows:

**San Diego City Council Temporary Rule for Noticing and
Conduct of Closed Session Meetings [Strikeout/Underline Version]***

PURPOSE:

The San Diego City Council [City Council] may self-impose upon itself requirements which allow greater access to ~~their~~ its meetings than prescribed by the minimum legal standards set forth in the California Open Meeting Law, common known as “the Brown Act” (Cal. Gov’t Code Section 54950-54963). The purpose of this temporary rule is to create an opportunity in the open session portion of the regular meetings of the City Council to enhance public knowledge and to gain public input on matters considered by the ~~San Diego~~ City Council in closed sessions. ~~Public comment and City Council discussion and deliberation of closed session matters in open session shall be confined to matters already on the public record or otherwise known to the parties to litigation or the bargaining adversary.~~

Further, the temporary rule is to ensure in the interim, and prior to the development and approval of more comprehensive and permanent rules, that the City Council’s practices shall exceed the minimal requirements of the Brown Act so that the Council is in no jeopardy of suffering declaratory or injunctive orders, as in the cases of *Cause v. City of San Diego* and *Shapiro v. City Council of San Diego*.

I. FORM AND MANNER OF NOTICE:

- A. All closed session items shall be placed on the regular and supplemental meeting agenda of the City Council and listed under the heading of “Closed Session Notice and Disclosure.”
- B. All closed session agenda items shall contain descriptions, which can be easily understood and informative to the public in a meaningful way, unless to do so would harm the City and public interest by disclosing facts that are not known to the adverse party in any litigation or negotiations. Meaningful means ~~shall be defined~~ as: “clear and specific enough to alert a person of average intelligence and education

whose interest are affected by the item that he or she may have a reason to attend the meeting or seek more information on the item. The description should be concise and written in plain, easily understood words, ~~but with the sufficient details to inform the average person.~~”

C. For authorized exceptions to open meetings, the following minimum noticing and disclosure shall apply:

(1) Significant Exposure to Litigation

When a closed session is scheduled under the heading – “significant exposure to litigation” – unless the facts and circumstances creating the threat of litigation are not yet known to the likely plaintiffs, such facts and circumstances must be made known to the public. Supplemental oral or written announcements shall be made in the following circumstances:

(a) There has been no ~~kind of~~ communication yet from the ~~likely~~ foreseeable plaintiffs but the city is aware of ~~something that is~~ circumstances likely to prompt a litigation threat – for example, an ~~some~~ accident, disaster, incident or transactional ~~such as contract~~ dispute; ~~in such instances the circumstances shall~~ the facts must be publicly stated on the agenda if known at the time of its 72-hour advance posting or announced prior to the closed session if not.

(b) If a claim or some other written threat of litigation has been received, the document is a public record and ~~reference to the claim or communication must be publicly stated on the agenda or announced prior to the closed session~~ a copy shall be attached to the agenda if known at the time of its 72-hour advance posting or announced and distributed to those requesting a copy prior to the closed session if not.

(c) When the closed session is ~~triggered~~ deemed to be justified by a litigation threat made in an open and public meeting, reference to the statement ~~must~~ shall be publicly stated on the agenda if known at the time of its 72-hour advance posting or announced prior to the closed session if not.

(d) When an oral threat of litigation is made outside a meeting, it may not be made the basis of a closed session unless the official who ~~became aware of~~ heard it makes has made a memo explaining what was said and by whom. ~~The memo is a public record and reference to the claim or communication must be publicly stated on the agenda~~ A copy of

the memo shall be attached to the agenda if the threat is known at the time of its 72-hour advance posting or announced and distributed prior to the closed session if not.

(2) Conference with Real Property Negotiators

Property: Specify street address, (or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: Specify names of negotiators attending the closed session (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: Specify name of party (not agent)

Under negotiation: Specify whether instruction to negotiator will concern price, terms of payment, or both

(3) Conference with Legal Counsel- Existing Litigation

Name of case: (Specify by reference to claimant's name, names of parties, case, or claim numbers)

Or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

D. In open session, before public comment or City Council discussion of any closed session item, the City Attorney or appropriate staff shall provide an oral update or progress report on matters under litigation, real property negotiations or employee unit bargaining.

II. PUBLIC PARTICIPATION:

The public shall have the opportunity to directly address the City Council on any closed session item on the agenda, prior to City Council debate and action on the item and after the oral report by the City Attorney or appropriate staff.

III. COUNCIL DEBATE AND ACTION IN OPEN SESSION:

At the regular or special meeting of the City Council, the Mayor and Councilmembers shall have the opportunity to discuss the basis for convening into closed session, ask questions, respond to questions from the public, and vote to decide if they will convene into closed session.

IV. TRANSCRIPTION OF CLOSED SESSIONS:

All closed sessions shall be transcribed by a reporter from the City Clerk's Office or other similar reporter. All transcripts shall be retained.

V. REPORTING OF CLOSED SESSION RESULTS IN OPEN SESSION:

A. After every closed session, if a public report of any final action taken is required as set forth herein, the Mayor and City Council shall adjourn from closed session reconvene in open session, and publicly report such final action and the vote or abstention of every member present as follows:

(1) Approval of an agreement concluding real estate negotiations pursuant to California Government Section 54956.8 shall be reported after the agreement is final, as specified below:

- (a) If the Mayor and City Council's own approval renders the agreement final, they shall report that approval and the substance of the agreement in open session at the public meeting during which the closed session is held.
- (b) If final approval rests with the other party to the negotiations, the local agency shall disclose the fact of that approval and the substance of the agreement upon inquiry by any person, as soon as the other party or its agent has informed the local agency of its approval.

(2) Approval given to the City's legal counsel to defend, or seek or refrain from seeking appellate review or relief, or to enter as an amicus curiae in any form of litigation as the result of a consultation under Section 54956.9 shall be reported in open session at the public meeting during which the closed session is held. The report shall identify, if known, the adverse party or parties and the substance of the litigation. In the case of approval given to initiate or intervene in an action, the announcement need not identify the action, the defendants, or other particulars, but shall specify that the direction to

initiate or intervene in an action has been given and that the action, the defendants, and the other particulars shall, once formally commenced, be disclosed to any person upon inquiry, unless to do so would jeopardize the agency's ability to effectuate service of process on one or more unserved parties, or that to do so would jeopardize its ability to conclude existing settlement negotiations to its advantage.

(3) Approval given to its legal counsel of a settlement of pending litigation, as defined in Section 54956.9, at any stage prior to or during a judicial or quasi-judicial proceeding shall be reported after the settlement is final, as specified below:

(a) If the legislative body accepts a settlement offer signed by the opposing party, the body shall report its acceptance and identify the substance of the agreement in open session at the public meeting during which the closed session is held.

(b) If final approval rests with some other party to the litigation or with the court, then as soon as the settlement becomes final, and upon inquiry by any person, the local agency shall disclose the fact of that approval, and identify the substance of the agreement.

(4) Action to appoint, employ, dismiss, accept the resignation of, or otherwise affect the employment status of a public employee in closed session pursuant to Section 54957 shall be reported at the public meeting during which the closed session is held. Any report required by this paragraph shall identify the title of the position. The general requirement of this paragraph notwithstanding, the report of a dismissal or of the non-renewal of an employment contract shall be deferred until the first public meeting following the exhaustion of administrative remedies, if any.

(5) Approval of an agreement concluding labor negotiations with represented employees pursuant to Section 54957.6 shall be reported after the agreement is final and has been accepted or ratified by the other party. The report shall identify the item approved and the other party or parties to the negotiation.

B. Reports that are required to be made pursuant to this section may be made orally or in writing. The legislative body shall provide to any person who has submitted a written request to the legislative body within 24 hours of the posting of the agenda, or to any person who has made a standing request for all documentation as part of a request for notice of meetings pursuant to Section 54954.1 or 54956, if the requester is present at the time the closed session ends, copies of any contracts, settlement agreements, or other documents that were finally approved or adopted in the closed session. If the action taken

results in one or more substantive amendments to the related documents requiring retyping, the documents need not be released until the retyping is completed during normal business hours, provided that the presiding officer of the legislative body or his or her designee orally summarizes the substance of the amendments for the benefit of the document requester or any other person present and requesting the information.

C. The documentation referred to in paragraph (B) shall be available to any person on the next business day following the meeting in which the action referred to is taken or, in the case of substantial amendments, when any necessary retyping is complete.

D. Nothing in this section shall be construed to require that the legislative body approve actions not otherwise subject to legislative body approval.

VI. LITIGATION LOG:

The City Attorney, in coordination with the City Clerk shall provide to the Mayor and City Council a weekly listing of all litigation filed against or by the City of San Diego, its officers, or employees, and any City boards, redevelopment agencies and commission, etc., (collectively "the City") that has been served upon or filed by the City. The list shall include the court in which the case was filed, the name of the litigants, the date filed, and the Court case number. A copy of the list shall be kept on file in the Office of the City Clerk and available for members of the public. The list shall be provided every week, and shall report on cases served the immediate succeeding week.

Second by Atkins. Failed. Yea-3, 4, 6, 8; Nay-1, 2, 5, M; Not Present-7.

MOTION BY INZUNZA TO CONTINUE TO MONDAY, MARCH 29, 2004, FOR THE VOTE OF THE FULL COUNCIL. Second by Frye. Passed by the following vote: Peters-nay, Zucchet-yea, Atkins-yea, Lewis-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Inzunza-yea, Mayor Murphy-yea.

NON-DOCKET ITEMS:

None.

