

THE CITY OF SAN DIEGO, CALIFORNIA
 MINUTES FOR REGULAR COUNCIL MEETING
 OF
 TUESDAY, SEPTEMBER 7, 2004
 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 10:09 a.m. Mayor Murphy recessed the meeting at 10:38 a.m. to convene the Redevelopment Agency. The meeting was reconvened by Mayor Murphy at 10:46 a.m. with District 4 vacant and Council Member Inzunza not present. Mayor Murphy recessed the meeting at 11:21 a.m. for the purpose of a break. The meeting was reconvened by Mayor Murphy at 11:37 a.m. with all Council Members present and District 4 vacant. The meeting was recessed by Mayor Murphy at 11:57 a.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Mayor Murphy at 2:07 p.m. with Council Members Madaffer and Inzunza not present and District 4 vacant. Mayor Murphy recessed the meeting at 3:57 p.m. for the purpose of a break. Mayor Murphy reconvened the meeting at 4:06 p.m. with all Council Members present and Council District 4 vacant. Mayor Murphy recessed the meeting at 4:08 p.m. to convene the Housing Authority and thereafter reconvene the Redevelopment Agency. Mayor Murphy reconvened the meeting at 4:12 p.m. with all Council Members present and District 4 vacant. Mayor Murphy adjourned the meeting at 6:36 p.m.

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 District Four-vacant
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-present
- Clerk-Abdelnour (pr/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 District Four-vacant
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Inzunza-not present

ITEM-10: INVOCATION

Invocation was given by Reverend Homer Allen of Community Full Gospel Church.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by City Attorney Casey Gwinn.

FILE LOCATION: MINUTES

NON-AGENDA COMMENT:

PUBLIC COMMENT-1: REFERRED TO THE CITY MANAGER

Comment by Jennifer Smith regarding non-profit youth aquatic groups and increasing pool fees.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:47 a.m. – 10:54 a.m.)

PUBLIC COMMENT-2:

Comment by Theresa Quiroz regarding human trafficking and the problems on El Cajon Boulevard.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:54 a.m. – 10:58 a.m.)

PUBLIC COMMENT-3:

Comment by Joan Raymond regarding budget cuts, and the Facilities and Maintenance Division employees.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:58 a.m. – 11:01 a.m.)

PUBLIC COMMENT-4:

Comment by Doug Beckham regarding being the new President of the Linda Vista Civic Association, and what his future goals are.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:01 a.m. – 11:02 a.m.)

PUBLIC COMMENT-5:

Comment by Ron Boshun regarding Council actions.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:02 a.m. – 11:06 a.m.)

PUBLIC COMMENT-6:

Comment by Don Stillwell regarding God, the “New American History,” and his feelings that government is getting further away from God.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:06 a.m. – 11:09 a.m.)

PUBLIC COMMENT-7:

Comment by Ronson Shamoun regarding an appeal going through PS&NS Committee, and his attempt to obtain an alcohol license for his business.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:12 a.m. – 11:13 a.m.)

PUBLIC COMMENT-8: REFERRED TO THE CITY MANAGER

Comment by Guy Mock regarding the City’s permit process, and a business on the corner of Fairmount and Home Avenue that is near his home.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:13 a.m. – 11:16 a.m.)

PUBLIC COMMENT-9:

Comment by Tony Wilt regarding his successful “Victory Outreach” program, and helping the community through his ministry.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:16 a.m. – 11:18 a.m.)

PUBLIC COMMENT-10:

Comment by Muhammed Abdullah regarding his feelings on President Bush, and the September 11th terrorist attack on America.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:18 a.m. – 11:21 a.m.)

COUNCIL COMMENT:

None.

CITY MANAGER COMMENT:

None.

CITY ATTORNEY COMMENT:

None.

ITEM-30: Approval of Council Minutes.

TODAY'S ACTION IS: APPROVED WITH DIRECTION

Approval of Council Minutes for the meetings of:

07/19/2004
07/20/2004
07/26/2004
07/27/2004
08/02/2004
08/03/2004
08/09/2004 - Adjourned
08/10/2004

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:13 a.m. – 10:15 a.m.)

MOTION BY MADAFFER TO APPROVE THE MINUTES WITH DIRECTION FROM COUNCIL MEMBER FRYE TO INCLUDE DISCUSSION REGARDING A SPECIAL ELECTION FOR THE VACANCY IN DISTRICT 4, IN THE MINUTES OF AUGUST 10, 2004. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

ITEM-31: National Stop On Red Week.

MAYOR MURPHY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-219) ADOPTED AS RESOLUTION R-299588

Recognizing those efforts to educate citizens about the dangers of running red lights, and encouraging San Diegans to participate in programs and events during National Stop on Red Week to help reduce injuries and fatalities that result from red light running;

Proclaiming August 31 - September 6, 2004 to be "National Stop on Red Week"
in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:25 a.m. – 10:32 a.m.)

MOTION BY FRYE TO ADOPT. Second by Mayor Murphy. Passed by the following
vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-
yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

SPECIAL CLOSED SESSION ITEMS

**Conference with Legal Counsel - existing litigation, pursuant to California Government
Code section 54956.9(a):**

**CS-1 *De Anza Cove Homeowners Association, Inc. v. City of San Diego*
San Diego Superior Court Case No. GIC 821191**

REFERRED TO CLOSED SESSION ON TUESDAY, SEPTEMBER 7, 2004

DCA assigned: Gleeson

This matter concerns the litigation filed by the De Anza Cove Homeowners Association
[HOA] against the City of San Diego seeking damages related to expiration of the prior
lease and transition of the property from use as a mobile home park to park and
recreational use. In closed session, the City's outside litigation counsel and the City
Attorney will report on the status of the litigation, other matters affecting the litigation.

Mayor Murphy closed the Hearing.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:06 a.m. – 4:08 a.m.)

**CS-2 *Conde v. City of San Diego, et al.*
San Diego Superior Court No. GIC 834467**

REFERRED TO CLOSED SESSION ON TUESDAY, SEPTEMBER 7, 2004

ACA assigned: Girard

This matter concerns the special election to fill the Council District 4 seat following the death of Council Member Lewis. The Plaintiff contends that the City Council was required to take up the matter of the vacancy at its meeting of August 10, 2004, and that the special election to fill the District 4 seat must take place on November 2, 2004. Plaintiff also seeks a declaration that former Council Member George Stevens is not eligible to run for the District 4 seat.

In Closed Session, the City Attorney will advise the City Council on the status of the matter and the City's legal position with respect to the issues.

Mayor Murphy closed the Hearing.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:06 a.m. – 4:08 a.m.)

**CS-3 *Gonzalez-Bardford v. Abdelnour, et al.*
San Diego Superior Court No. GIC 834544**

REFERRED TO CLOSED SESSION ON TUESDAY, SEPTEMBER 7, 2004

DCA assigned: Chapin

This matter concerns Proposition F, a measure on the November 2, 2004, ballot that proposes to amend the City Charter to implement on a trial basis the "strong mayor" form of government. The Plaintiff contends that the wording of the ballot question is false and misleading, and is asking the court to require its revision.

In Closed Session, the City Attorney will advise the City Council on the status of the matter and the City's legal position with respect to the issues.

Mayor Murphy closed the Hearing.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:06 a.m. – 4:08 a.m.)

**CS-4 *Bernstein v. City of San Diego*
Claim File No. LP04-7773-1448**

REFERRED TO CLOSED SESSION ON TUESDAY, SEPTEMBER 7, 2004

HDCA assigned: Devaney

This is an un-litigated claim, which arises from a sewer back-up that damaged claimant's home in La Jolla. In closed session, the City Manager and City Attorney will brief the City Council on the matter and discuss a proposed settlement of it.

Mayor Murphy closed the Hearing.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:06 a.m. – 4:08 a.m.)

**CS-5 *Charles Terry Brown v. Charles G. Abdelnour*
San Diego Superior Court No. GIC834850**

REFERRED TO CLOSED SESSION ON TUESDAY, SEPTEMBER 7, 2004

DCA assigned: Duvernay

This matter concerns Proposition J, a measure on the November 2, 2004, ballot that proposes to amend the City Charter and Municipal Code to implement a Transient Occupancy Tax [TOT] increase from 10.5 percent to 13 percent. The Plaintiff contends that the wording of the City Manager's Fiscal Analysis is ballot question is false and misleading, and is asking the court to require its revision.

In Closed Session, the City Attorney will advise the City Council on the status of the matter, the City's legal position with respect to the issues and potential settlement of the matter.

Mayor Murphy closed the Hearing.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:06 a.m. – 4:08 a.m.)

**CS-6 *Border Business Park v. City of San Diego*
Appellate Case No. D039225; SDSC Case No. GIC 692794
Otay Acquisitions v. City of San Diego
SDSC Case No. GIC 753247
National Enterprises, Inc. v. City of San Diego
SDSC Case Nos. GIC 791407; GIC 805465**

REFERRED TO CLOSED SESSION ON TUESDAY, SEPTEMBER 7, 2004

ACA assigned: Girard

These matters involve a variety of disputes between certain companies owned or controlled by Roque de la Fuente and the City of San Diego [City] regarding the Border Business Park in Otay Mesa. The Border Business Park case resulted in a jury verdict against the City, which is now on appeal. The National Enterprises and Otay Acquisitions cases are currently awaiting trial in the Superior Court. In closed session, the City Attorney will report on the status of on-going settlement negotiations and request further direction regarding those negotiations.

Mayor Murphy closed the Hearing.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:06 a.m. – 4:08 a.m.)

- * ITEM-50: Consideration and Possible Action to Introduce and Adopt an Ordinance Repealing the City's Election Campaign Control Ordinance and Replacing it with New Provisions based on Recommendations Made by the Ethics Commission and Modifications Approved by the Rules Committee.

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinances which were introduced on 8/2/2004. (Council voted 8-0. Councilmembers Atkins and Frye voted nay on contribution limits; Councilmember Atkins voted nay on the \$100,000 loan limit. Councilmember Zucchet not present):

Subitem A: (O-2005-21 Cor. Copy) ADOPTED AS ORDINANCE O-19317
(New Series)

Repealing Chapter 2, Article 7, Division 29 of the San Diego Municipal Code regarding the City's Election Campaign Control Ordinance, and replacing the repealed division with a new Division 29, based on changes to the City's Election Campaign Control Ordinance proposed by the City of San Diego Ethics Commission and modified by the Rules Committee. Such changes would take effect on January 1, 2005, if approved by the full City Council.

Subitem B: (O-2005-22 Cor. Copy) ADOPTED AS ORDINANCE O-19312
(New Series)

Amending Chapter 2, Article 7, Division 29 of the San Diego Municipal Code with regard to three of the modifications to the Election Campaign Control Ordinance proposed in Subitem A, and which, if approved by Council would take effect on the thirtieth day after its passage.

- (1) Amend San Diego Municipal Code Section 27.2947 to allow personal trust account checks to be lawfully accepted in City of San Diego candidate elections.
- (2) Enact San Diego Municipal Code Section 27.2955 to require that candidates and committees sending mass mailings identify themselves as the entities paying for such mailings; and.
- (3) Enact San Diego Municipal Code Section 27.2956 to require that candidates and committees engaging in mass telephone communications identify themselves as the entities paying for such communications.

FILE LOCATION: SUBITEMS A & B: MEET

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

CONSENT MOTION BY MADAFFER TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCES. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea (Nay on the contribution limits; and nay on the \$100,000 loan amount), District Four-vacant, Maienschein-yea, Frye-yea (Nay on contribution limits), Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

- * ITEM-51: Amend Land Development Code Single Room Occupancy Hotel Regulations to be Consistent with the State Law.

CITY COUNCIL'S RECOMMENDATION:

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

(O-2004-133 Cor. Copy) ADOPTED AS ORDINANCE O-19313
(New Series)

Amending Chapter 11, Article 3, Division 1, of the San Diego Municipal Code by amending Section 113.0103; and amending Chapter 14, Article 3, Division 5, by amending Sections 143.0540 and 143.0570 titled SRO Hotel Regulations, all relating to General Regulations.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

- * ITEM-52: Amendment No. 2 to the Agreement with Tetra Tech for Sewer Pump Stations 18 and 19 Rehabilitation/Replacement Projects.

(Pacific Beach Community Area. District-2.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced on 8/10/2004. (Council voted 8-0. Councilmember District 4-vacant):

(O-2005-10 Cor. Copy) ADOPTED AS ORDINANCE O-19314
(New Series)

Authorizing the City Manager to execute Amendment No. 2 to the Agreement with Tetra Tech, for additional engineering consulting services for Sewer Pump Stations 18 and 19 Rehabilitation/ Replacement Project, in an amount not to exceed \$97,845 and under the terms and conditions set forth in the Agreement.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

- * ITEM-53: Fifth Amendment to the Consultant Agreement for the North Torrey Pines Road Bridge over Los Penasquitos Creek (Bridge #57C-206).

(Torrey Pines Community Area. District-1.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced on 8/10/2004. (Council voted 8-0. Councilmember District 4-vacant):

(O-2005-25) ADOPTED AS ORDINANCE O-19315 (New Series)

Authorizing the City Manager to execute the Fifth Amendment to the Agreement with PDC Consultants in an amount not to exceed \$148,380 for Professional Services related to biological mitigation and mitigation monitoring for the Project, CIP-53-050.0, under the terms and conditions set forth in the Agreement;

Authorizing the expenditure of an amount not to exceed \$148,380 from TransNet, Fund No. 30300, for the purpose of executing the Fifth Amendment to the Agreement for the North Torrey Pines Road Bridge over Los Penasquitos Creek, provided that the City Auditor and Comptroller first furnishes a certificate certifying that funds are available and contingent upon the approval of the Fiscal Year 2005, budget;

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

ITEM-54: Issuance of Use and Occupancy Permits.

CITY MANAGER'S RECOMMENDATION:

Introduce the following ordinance:

(O-2004-148) RETURNED TO THE CITY MANAGER/REFERRED TO NR&C FOR DISCUSSION

Introduction of an Ordinance amending Chapter 2, Article 2, Division 15, of the San Diego Municipal Code by amending Section 22.1502, relating to the authority of the Director of the Park and Recreation Department to issue Use and Occupancy Permits.

CITY MANAGER SUPPORTING INFORMATION:

Special Use and Preferential Use & Occupancy Permits are currently issued on an annual basis to social, civic, philanthropic, educational, or cultural clubs and organizations. The Special Use Permits are for the permittee's intermittent use of space, subject to availability. The Preferential Use Permits provide the permittee a more constant use and control of a particular location, although there is still a requirement that the public not be wholly or permanently excluded from the premises. Many of the provisions of the two permits are the same.

From 1954-1966, the Park and Recreation Director executed Special Use and Preferential Use & Occupancy Permits. In 1967, Preferential Use permits were approved by Council while Special Use Permits continued to be approved by the Director. In 1975, the Council approved allowing the Director the authority to issue both types of permits, on a form approved by Council.

The forms approved by Council in 1975 are outdated. Over the years, different versions (unapproved) of the form approved by Council have made their way into the system. Without knowing specifically when this occurred, it can only be speculated that at some point, the form became obsolete and not realizing it was a Council-approved form, staff began making changes. One of the terms deleted over the years was the right to appeal to Council in the event a permit was terminated or denied. The 1975 form requires significant changes and it would be beneficial to all if there is the flexibility to make future changes as needed. Some of the changes currently needed are new non-discrimination language, indemnification language, a notification regarding appropriate political action, and a notification that all City third-party agreements must be complied with.

In addition, the Park and Recreation Department hired the consulting firm of Calderon, Jaham & Osborn (CJO) to study and to make recommendations specific to recreation council operations and governance. CJO observed that different recreation councils have developed into different roles and organizational structures and recommended that Special Use Permit revisions to more accurately reflect these changes be pursued; a committee of recreation council chairs and City staff (SOP Sub-Committee) has been formed to develop a new Special Use Permit acceptable to recreation councils and the City.

An amendment to the Municipal Code is proposed which would allow the Park and Recreation Director to execute the permits subject to the approval of the City Manager, instead of the current language, which makes the issuance subject to the approval of the Council. This change will allow for the form to be updated as needs dictate and through negotiation by the Park and Recreation Director and the permittee, without seeking Council approval of a form document. This authority would be consistent with the authority currently granted to the City Manager to execute leases of City property for periods of less than three years on terms he deems proper.

Loveland/Oppenheim/BD

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:22 a.m.)

MOTION BY FRYE TO RETURN THIS ITEM TO THE CITY MANAGER WITH A REFERRAL TO NR& C FOR DISCUSSION. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

* ITEM-55: Exception for Trolley Structure from Underground District Requirements.

CITY MANAGER'S RECOMMENDATION:

Introduce the following ordinance:

(O-2005-32) INTRODUCED, TO BE ADOPTED ON MONDAY,
SEPTEMBER 20, 2004

Introduction of an Ordinance amending Chapter 6, Article 1, Division 5, of the San Diego Municipal Code by amending Section 61.0505, relating to exceptions from the Underground Utilities Procedural Ordinance.

CITY MANAGER SUPPORTING INFORMATION:

In 1968, the City Council adopted the Underground Utilities Procedural Ordinance, which provided for the creation of underground utility districts. This included Municipal Code Section 61.050, which specified several situations when undergrounding would not be feasible and provided exceptions. An exception was added in 1979 to permit the overhead structures used for supplying power to the San Diego Trolley vehicles. The trolley began service in 1981.

To provide better operational service for the public, fiber optic cables are proposed to run along the C street trolley line on the same overhead structures used to support the power supply. The fiber optic will carry data necessary for trolley operation, but because they do not supply power, the Municipal Code does not exempt them.

Accordingly, this action amends the Municipal Code to expand the exception from the underground utility district requirements to include all structures necessary for the operation of the trolley. This action is consistent with California Public Utility Code Section 320, which exempts railroad structures from the State's underground utility requirements.

FISCAL IMPACT:

None with this action.

Ewell/Goldberg/KAG/SPC

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

CONSENT MOTION BY MADAFFER TO INTRODUCE. Second by Atkins. Passed by the following vote: Peters-yea, Zuchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-, Mayor Murphy-yea.

ITEM-56: Regulating Alarm Systems.

(See City Manager Report CMR-04-159.)

CITY MANAGER'S RECOMMENDATION:

Introduce the following ordinance:

(O-2004-151 Cor. Copy) CONTINUED TO MONDAY, OCTOBER 4, 2004

Introduction of an Ordinance amending Chapter 3, Article 3, Division 37 of the San Diego Municipal Code by repealing Sections 33.3700, 33.3706.1, 33.3706.2, and 33.3707.1; amending Sections 33.3701 through 33.3715; and adding Sections 33.3716 through 33.3723; relating to burglary, robbery, and emergency alarm systems.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:16 a.m.)

MOTION BY ZUCCHET TO CONTINUE THIS ITEM TO MONDAY, OCTOBER 4, 2004, FOR FURTHER REVIEW. Second by Peters. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

- * ITEM-100: Establishing Council Policy on Funding for Maintenance Assessment District Formation.

(See City Manager Reports CMR-04-193, CMR-04-097, and CMR-03-251.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2005-184) ADOPTED AS RESOLUTION R-299589

Establishing Council Policy pertaining to Maintenance Assessment District Formation as set forth in the Council Policy;

Instructing the City Clerk to add the aforesaid to the Council Policy Manual;

Authorizing the City Auditor and Comptroller to transfer \$150,000 from the Environmental Growth Fund One-Third Fund No. 105051 fund balance to Fund No. 100, Department No. 449, Organization No. 2555, to reimburse eligible open space expenditures and appropriate revenue for open space expenditures within the General Fund;

Authorizing the City Auditor and Comptroller to create a special interest-bearing fund, Fund No. 70270, Maintenance Assessment District Formation Fund;

Authorizing the City Auditor and Comptroller to transfer \$150,000 from General Fund No. 100, Department 449, Organization No. 2555, Job Order No. 044961 to Fund No. 70270, Maintenance Assessment District Formation Fund.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 5/12/2004, NR&C voted 3 to 0 to approve the City Manager's recommendation. (Councilmembers Lewis, Frye, and Inzunza voted yea. Councilmembers Zucchet and Madaffer not present.)

(Note: This item was also heard at the NR&C Committee Meeting of 12/10/2003, Item-3.
Recommendation: No action taken. The item is to return to Committee at a later date for further discussion. Vote: 5-0.)

Aud. Cert. 2500139.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-101: Renewal of Lease Agreement with Educational Enrichment Systems, Inc., for the Operation and Management of a Child Care Center at 6960 Linda Vista Road.

(Linda Vista Community Area. District-6.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-202) ADOPTED AS RESOLUTION R-299590

Authorizing the City Manager to execute a lease agreement with Educational Enrichment Systems, Inc., a non-profit corporation, for the operation and management of a child care center serving low-income families at 6960 Linda Vista Road, for an initial term of five years with two additional five-year options to extend, at no rent plus administrative cost recovery, under the terms and conditions set forth in that lease agreement.

CITY MANAGER SUPPORTING INFORMATION:

The City owns an approximately 10,020 square foot parcel with a 4,030 square foot building located at 6960 Linda Vista Road. This site was previously the old Linda Vista Library. In 1992, the City approved \$281,750 from various funds for renovation to develop a low cost childcare facility in Council District 6. The property has been leased to Educational Enrichment Systems, Inc., ("EES") a non-profit corporation, since 1992. EES utilizes the building for low-income families with infants, toddlers and preschoolers that need childcare and early child education.

The existing lease expired and is currently on holdover which constitutes a month to month tenancy. EES has requested a five-year renewal of the lease with two, five-year options. They have a need for a long term lease in order to secure grant funding for capital improvements. EES has continuously maintained and improved the facility throughout the years, using a combination of CDBG Funds, private donations, state grants, and annual fund raising activities, totaling more than \$331,000.

Rent will be \$1.00 per year, plus an annual administrative fee of \$2,621 with annual CPI adjustments. City Valuation staff determined the fair market rental value of the property to be \$64,500 per year.

The basic terms and conditions of the proposed Lease are as follows:

USE - Operation of a childcare facility: care and education to infants, toddlers, and pre-schoolers from low-income families.

TERM - Five (5) years with two (2) five (5) year options.

RENT - One Dollar (\$1) per Lease Year with an Administrative Fee of Two Thousand Six Hundred Twenty-One Dollars (\$2,621) per Lease Year with annual CPI adjustments.

MAINTENANCE - Lessee is responsible for the maintenance of the premises for the term of the lease.

FISCAL IMPACT:

Amount of \$2,621, subject to annual CPI adjustments, will be deposited into the general fund revenue account #77444.

Herring/Griffith/CRG

FILE LOCATION: LEAS-EDUCATIONAL ENRICHMENT SYSTEM, INC.

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-102: Agreement with Duckor Spradling & Metzger for Additional Services Related to De Anza Harbor and Resort.

(Mission Bay Community Area. Districts-6 and All.)

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-208) ADOPTED AS RESOLUTION R-299591

Authorizing and directing the City Attorney to execute the fee agreement with Duckor Spradling & Metzger (the Firm), for an additional amount not to exceed \$300,000 for additional services from the Firm needed by the City in connection with the De Anza matter.

SUPPORTING INFORMATION:

The City of San Diego previously entered into an Agreement for Legal Services dated September 12, 2003, to retain the services of attorney Anna F. Roppo of Higgs, Fletcher & Mack for legal services in connection with the transition of De Anza Harbor Resort from a privately operated mobile home to City-operated park and recreation use, including defense of De Anza Homeowners Association, Inc. v. City of San Diego, San Diego Superior Court Case No. GIC 821191. Ms. Roppo joined the law firm of Duckor Spradling & Metzger effective April 26, 2004, and has, with the City's consent, continued to provide legal services to the City as part of that firm. This Agreement for legal services through trial, including any writs or appeals, is for an amount not to exceed \$300,000.

Noone/Herring

Aud. Cert. 2500181.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

ITEM-103: Additional Funding for Legal Services of Luce Forward Hamilton & Scripps Regarding Gleason v. San Diego City Employees' Retirement System, Et. Al.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-170) ADOPTED AS RESOLUTION R-299592

Authorizing the City Attorney to execute an amendment to the Fee Agreement with Luce Forward Hamilton & Scripps, for additional amount not to exceed \$200,000, for additional services now needed by the City in connection with the Gleason, et al. v. San Diego City Employees' Retirement System, and City of San Diego, et al., San Diego Superior Court Case No. GIC 803779.

Aud. Cert. 2500168.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:39 a.m. – 11:39 a.m.)

MOTION BY FRYE TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-abstain, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-104: Agreement with U.S. Army Corps of Engineers to Facilitate Priority Review of City of San Diego Capital Improvement Projects.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-161) ADOPTED AS RESOLUTION R-299611

Authorizing the City Manager to execute an agreement with U.S. Army Corps of Engineers, to facilitate priority review of City of San Diego Capital Improvements Projects, under the terms and conditions set forth in the Agreement;

Authorizing the expenditure of an amount not to exceed \$240,000 from Fund 41509, for the purpose of providing funds for the above referenced Project;

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

Authorizing the City Manager to execute the Memorandum of Understanding between the Metropolitan Wastewater and Engineering and Capital Improvements Departments, for reimbursement to the Metropolitan Wastewater Department of expenses unrelated to the sewer system.

CITY MANAGER SUPPORTING INFORMATION:

The City of San Diego is interested in funding a U. S. Army Corps (Corps) of Engineers position in the San Diego Field Office which would work exclusively on City of San Diego projects that require coordination with the Corps to process permit applications. The number of projects submitted to the Corps every year (approximately 30-40), the complexity of the issues related to most of the projects such as SR-56, the Canyon Sewer Access Project, and the Restoration Master Plan for the San Diego River, as well as the existing workloads of staff agency working on non-City submittals has resulted in relatively slow turn-around times to obtain permits for City of San Diego projects. Both the Corps and the City would benefit from having a position within the San Diego Field Office dedicated to processing City projects. The Corps would benefit by having one individual processing City permit applications which would free up other staff to work on non-City projects. The City would benefit by having our permit applications processed on a daily basis, as well as having the continuity of a Corps staff person to answer questions, provide direction, and attend meetings.

The Agreement will establish the responsibilities and procedures of the signatory agencies relative to the priority review of CIP projects involving the City, and the Corps. The goal of this Agreement is to obtain early priority review by the Corps staff of City projects, so that the proposed actions are sensitive to the protection of natural resources for which the Corps is responsible under federal statutes and regulations, include any conditions necessary to comply with the nation's environmental laws, and are permitted without delays. Based on current data, the cost per project would be approximately \$3,000 to \$5,000, and reduce permit processing times by approximately two to three months.

FISCAL IMPACT:

Funding necessary for this action in the amount of \$240,000 is available within the Metropolitan Wastewater Department's FY 05 budget.

Loveland/Belock/PB

Aud. Cert. 2500071.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:13 p.m. – 4:16 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Inzunza. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-105: Lease Approval with San Diego County Water Authority for a Radio Communications Facility at Mount Woodson Communications Center.

(Mount Woodson near Ramona Community Area. San Diego County.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-217) ADOPTED AS RESOLUTION R-299593

Authorizing the City Manager to execute a five-year lease agreement with two five-year options to extend with the San Diego County Water Authority for the installation, operation, and maintenance of a radio communication facility at the Mount Woodson Communications Center, at an initial annual rent of \$24,000, under the terms and conditions set forth in that lease agreement.

CITY MANAGER SUPPORTING INFORMATION:

The San Diego County Water Authority ("SDCWA") has requested a lease renewal for their communications facility on Mount Woodson where they presently rent rack space in the City vault. Due to the anticipated installation of the new City 800 MHz communications system, which will occupy most of the existing building when complete, SDCWA has requested to lease a currently vacant structure elsewhere on the mountaintop. They propose to enter into a ground lease for the land, renovate the existing building, and erect an antenna tower. They also plan on providing rack space opportunities for other non-city vault tenants that may likewise be displaced by installation of the new system. The City will receive fifty percent (50%) of the gross rental amount paid to the SDCWA from sub lessees.

PROPOSED LEASE TERMS:

USE: Installing, constructing, modifying, maintaining, operating, and removing, at its expense, a communications facility.

TERM: Five years with two 5-year options to extend.

GROUND RENT: \$24,000 annually (\$2,000 per month or \$2.42 per square foot) with annual 5% rent increases. This value is consistent with an outside independent fee appraisal dated January 2003 and updated in April 2004.

LEASEHOLD SIZE: 825 square feet.

FISCAL IMPACT:

The City will receive \$24,000 in the first year of the lease with 5% annual rent increases thereafter. Rental proceeds generated will be credited to the General Fund.

Herring/Griffith/JPA

FILE LOCATION: LEAS-SAN DIEGO COUNTY WATER AUTHORITY

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

ITEM-106: Grant Application to the State of California Department of Transportation (DOT) for Euclid Avenue Walkable Communities Environmental Justice Grant Project.

(Mid-City and City Heights Community Areas. Districts-3 and 7.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-179 Cor. Copy 2) CONTINUED TO MONDAY, SEPTEMBER 20,
2004

Authorizing the City Manager to apply to the State of California Department of Transportation (DOT) for a Grant for funding of the Euclid Avenue Walkable Communities Environmental Justice Grant Project;

Authorizing the City Manager to take all necessary actions to secure and accept Grant funds from DOT for development of the Project, and is authorized to submit all documents and to negotiate and execute all agreements necessary, including any amendments, to comply with DOT's Grant requirements, or to carry out and administer all obligation, responsibilities, and duties under the Grant;

Authorizing the City Auditor and Comptroller to increase the Fiscal Year 2005 Capital Improvements Program budget to reflect an increase of \$162,000 from DOT funds, upon receipt of a fully executed Grant agreement;

Authorizing the City Auditor and Comptroller to expend an amount not to exceed \$180,000 from CIP-52-699.1, Euclid Avenue Improvements, of which \$162,000 is from State DOT funds under the Grant, upon receipt of a fully executed Grant

agreement, and \$18,000 is from Fund No. 30300 for the Project and related expenses;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$18,000 from Fund No. 30300, CIP-52-715.0, New Walkways, to CIP-52.699.1, Euclid Avenue Improvements;

Authorizing the City Auditor and Comptroller to appropriate and expend Grant funds in an amount not to exceed \$162,000 for the Project, if the Grant is secured;

Authorizing and directing the City Auditor and Comptroller to establish a special interest-bearing fund for the Grant, if secured.

CITY MANAGER SUPPORTING INFORMATION:

In November 2001, the City of San Diego submitted an application for an Environmental Justice grant to the California Department of Transportation for the creation of a comprehensive pedestrian and transportation-oriented master plan along Euclid Avenue from Home Avenue to El Cajon Boulevard.

Euclid Avenue is one of only two north/south streets through the community of City Heights. As the only continuous artery through an urban canyon system, Euclid Avenue is a heavily utilized transportation corridor that must serve the needs of pedestrian, bicycle and vehicle traffic. Presently pedestrians are not well served by the infrastructure in the area. Due in part to inadequate transportation/land use planning, this area has experienced serious environmental justice problems. The absence of sidewalks and limited opportunities for pedestrian crossing, coupled with the speed and volume of traffic, create difficult conditions for pedestrians, drivers, and bicyclists. Grant funds were requested to hire a consultant to conduct community-based transportation planning studies as part of a larger community visioning process that would help identify ways to remedy environmental justice issues in the area.

In May 2004, the State DOT awarded \$162,000 in grant funding toward the \$180,000 Euclid Avenue Walkable Communities Grant request. The 10% match, or \$18,000, would constitute the balance of the total and would be paid with TransNet funds allocated to the project. Council authorization is requested to authorize the original submittal of the grant as well as to authorize the City Manager to accept, expend and administer grant funds.

FISCAL IMPACT:

The City would receive \$162,000 in environmental justice funds. The required 10% match, or \$18,000, would be available from Fund No. 30300.

Ewell/Goldberg/LBE

Aud. Cert. 2500132.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 11:09 a.m. – 11:11 a.m.)

MOTION BY ATKINS TO CONTINUE THIS ITEM TO MONDAY, SEPTEMBER 20, 2004, TO ALLOW TIME FOR STAFF TO MEET WITH THE PLANNING COMMITTEE TO EXPLAIN THE GRANT AND DESCRIBE THE PUBLIC PARTICIPATION PROCESS AND THE SCOPE OF THE GRANT. IN ADDITION, TO MEET WITH REPRESENTATIVES OF THE PLANNING GROUP; THE EUCLID RAP SUB-COMMITTEE; COUNCIL OFFICES; THE PLANNING DEPARTMENT; AND ENGINEERING AND CAPITAL PROJECT STAFF, IN AN ATTEMPT TO MOVE FORWARD. Second by Peters. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

ITEM-107: Grant Application to the U.S. Department of Justice, Bureau of Justice Assistance for San Diego Homeless Outreach Team (HOT) Project.

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-180) ADOPTED AS RESOLUTION R-299594

Authorizing the Chief of Police to apply for, accept, manage and expend this grant, including any amendments, extensions, or renewals, for a period of up to five years, provided funding is made available by the federal government;

Authorizing the Chief of Police to enter into a contractual agreement with the Psychiatric Emergency Response Team to allocate a portion of these grant funds to support their participation in this program;

Authorizing the Chief of Police to execute all aspects of program operation, including any amendments, extensions, or renewals, and to certify that the City will comply with all applicable statutory or regulatory requirements related to this program;

Certifying that any resources received hereunder shall not be used to supplant expenditures controlled by this body.

CITY MANAGER SUPPORTING INFORMATION:

The San Diego Police Department has been selected to receive a grant via the U.S. Department of Justice, Bureau of Justice Assistance (DOJ/BJA). The purpose of the grant is to expand the Homeless Outreach Team (HOT), which is an existing partnership between the San Diego Police Department and the Community Research Foundation Psychiatric Emergency Response Team (PERT).

The HOT Team has been in existence for several years. Presently the Team includes four SDPD Officers, and two PERT Clinicians. The Team targets homeless persons, especially the most hard-core, for intensive pro-active contacts. The purpose is to offer these individuals services and referrals that will assist them in obtaining treatment for mental, physical and substance abuse problems; obtaining shelter, food and clothing; providing services leading ultimately to employment and self-sufficiency, or to suitable placement so that they are no longer homeless.

The grant is for approximately \$178,830. Of this, SDPD will use approximately \$33,451 to purchase a passenger van for joint use by the HOT Teams, and publicity/outreach materials. The grant also allocates approximately, \$11,889 for emergency food and lodging vouchers for homeless persons and families. The balance will be subcontracted to Community Research Foundation to hire additional PERT Clinicians to provide additional support to SDPD HOT Team Officers.

FISCAL IMPACT:

There is no requirement for matching funds, and no requirement to continue grant funded activities or expenditures after grant funds are exhausted or terminated. This grant will not result in additional responsibility for SDPD Officers. It will provide supplementary support in the form of added PERT Clinicians to partner with SDPD HOT Officers. Clinicians are employees of PERT, and PERT shall be responsible for their employment status after grant funds are expended. Federal law requires that these funds supplement and not supplant funds otherwise available to law enforcement.

Ewell/Lansdowne/DJW

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:32 a.m. – 10:35 a.m.)

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

* ITEM-108: Granting an Easement to San Diego Gas & Electric Company – Canyonside Community Park.

(Rancho Peñasquitos Community Area. District-1.)

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-203) ADOPTED AS RESOLUTION R-299595

Authorizing the City Manager to execute the deed granting an easement in favor of San Diego Gas & Electric Company, affecting Lot 1 of Peñasquitos Park View Estate Unit No. 1, according to Map No. 10045.

CITY MANAGER SUPPORTING INFORMATION:

On June 3, 2003, Council approved funding in the amount of \$3,219,599 to enable construction of a 9,000 gallon per minute underground reclaimed water pump station within Canyonside Community Park. The construction of this pump station is necessary to convey reclaimed water from the North City Water Reclamation Plant to the northern region of the City, in order to satisfy the terms of the North City Water Reclamation Plant EPA grant.

San Diego Gas & Electric Company (SDG&E) has requested an easement for underground facilities to provide electricity to the reclaimed water pump station. In addition, SDG&E is requesting an easement for underground utilities it has previously installed which provide electricity for Canyonside Park.

The requested easement is located entirely within the boundaries of the park, and provides electric service solely to the park and the reclaimed water pump station. The easement is for underground facilities and appurtenances only, and contains approximately 9,739 square feet, almost all of which is located in the parking lot and driveway.

The easement has been valued by City Valuations staff and its value is within the \$3,350 to \$3,900 range. Since the easement provides for electricity to the park and pump station, which are City facilities, and for no other purpose, it is recommended that it be granted without a request for compensation. An Easement Processing Fee of \$1,590 has been charged.

FISCAL IMPACT:

Processing Fee of \$1,590 will be deposited to Fund 100.

Herring/Griffith/ACG

FILE LOCATION: DEED F-9809

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-109: Flood Water Storage Easement Vacation in Lot 1, Map 12279.

(Otay Mesa Community Area. District-8.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-214) ADOPTED AS RESOLUTION R-299596

Vacating the flood water storage easement located within Lot 1, Map No. 12279, to unencumber this property and facilitate development of the site under the procedure for the summary vacation of public service easements, Section 8330, et seq. of the California Streets and Highways Code.

CITY MANAGER SUPPORTING INFORMATION:

City Council action is requested to vacate a flood water storage easement in Lot 1, Map 12279 as shown on Engineering Drawing No. 20056-B. This site is located in the Otay Mesa Community Plan area, northeasterly of Britannia Blvd. and Panasonic Way in Council District 8.

This flood water storage easement vacation is a result of the design of the buildings to be constructed on the property. On February 19, 2004 as Document No. 2004-0131622, a flood water storage easement of approximately equal value as shown on Engineering Drawing No. 20055-B was acquired. This easement exchange is consistent with the improvement plans as shown on Engineering Drawing No. 32558-D.

Staff has reviewed and recommends approval of this action.

FISCAL IMPACT:

None.

Loveland/Broughton/GRB

FILE LOCATION: DEED F-9810

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-110: Easement Vacation – Portion of an Unnamed Easement within Lot 8 of Map 2664

(La Jolla Community Area. District-1.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-136) ADOPTED AS RESOLUTION R-299597

Vacating a portion of the unnamed easement located within Lot 8 of Map No. 2664, to unencumber this property under the procedure for the summary vacation of public service easements, Section 8330, et seq. of the California Streets and Highways Code.

CITY MANAGER SUPPORTING INFORMATION:

City Council action is requested to vacate a portion of an unnamed easement in Lot 8 of Map No. 2664. This property is located in the La Jolla Planning area within Council District 1. The easement is on private property and has the purpose of allowing construction and maintenance of public utilities within the easement.

Part of the easement will remain as a public easement because it contains an electric, telephone and cable facility. Access to these utilities is through a different part of the remaining easement. A public drainage pipe is located within the area of the easement that is proposed to be vacated and the drainage pipe is also located outside of the unnamed easement. A new drainage easement will be granted over the actual location of the drainage facility.

The easement was acquired at no cost to the City. Vacating this portion of the unnamed easement will allow improved utilization of the property.

FISCAL IMPACT:

None. All costs are paid by the applicant.

Development Services Department recommends approval of this request.

Herring/Broughton

FILE LOCATION: DEED F-9811

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-111: Waring Road Pump Station Access Easement.

(Allied Gardens Community Area. District-7.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-125) ADOPTED AS RESOLUTION R-299598

Authorizing the City Manager to expend the additional amount of \$35,000 from Fund 41500, CIP-73-327.0 (Waring Road Pump Station), for the acquisition, title, labor and miscellaneous costs of property rights required for a total amount not to exceed \$55,000;

Authorizing the City Manager, in exchange for payment of \$24,500 by City, to accept an Easement Deed executed by Mission Valley Church of the Nazarene, granting the City of San Diego an access easement across a portion of Lot 4 of C.F.S. Tract, in the City of San Diego, according to Map No. 10221, filed September 29, 1981, for ingress and egress to Waring Road Pump Station, CIP-73-3270.

CITY MANAGER SUPPORTING INFORMATION:

The Waring Road Pump Station (formerly known as the Adobe Falls Pump Plant) facility was recently upgraded and rehabilitated, with construction completed in the Fall of 2003. Access for construction was provided on the merits of Temporary Construction Permits, executed by neighboring private property owners. Permanent easement rights are now required to ensure the City perpetual rights of ingress and egress to the site for required periodic maintenance of the facility.

This action provides the authorization to accept the deed for the 1,963 square foot easement, to fulfill the above-described access requirement to the site.

FISCAL IMPACT:

Funds in the amount of \$35,000 are available in Fund 41500, CIP-73-327.0 (Waring Road Pump Station); the \$35,000 will supplement \$20,000 in funds previously authorized by Resolution No. 295121, adopted July 9, 2001, for a total amount not to exceed \$55,000.

Herring/Griffith/SLG

Aud. Cert. 2500129.

FILE LOCATION: DEED F-9812

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-112: Approving the Final Map of NTC – Unit No. 6.

(Peninsula Community Area. District-2.)

CITY MANAGER’S RECOMMENDATION:

Adopt the following resolution:

(R-2005-229) ADOPTED AS RESOLUTION R-299599

Approving the Final Map of NTC – Unit No. 6.

CITY MANAGER SUPPORTING INFORMATION:

This 91.078-acre map proposes 30 lots plus Lot "A", "B", "C", "D" and "E" for cultural, educational and commercial purposes, plus museums, arcades and promenades. This map is located in the Peninsula Community Plan area, southeasterly of Lytton Street and Rosecrans Street in Council District 2.

This map requires City Council approval because water and sewer easement set-asides are being vacated on the map, and because the City of San Diego is an owner of the map. The easements being vacated were set aside in favor of the City of San Diego per Parcel Map No. 18941 at no cost to the City. A change in the design of the utilities has necessitated the vacation of some of the existing easement set-asides. There are water, sewer and drainage easements of approximately equal value being granted on the map. The public improvements required for the project are shown on Engineering Drawing No. 31444-1-90-D, for which an agreement has been entered into and a bond posted in the amount of \$2,115,475 to assure the work. There are no park fees due in connection with this project.

Staff recommends approval.

FISCAL IMPACT:

None.

Loveland/Broughton/GRB

FILE LOCATION: LUP-Naval Training Center Unit No. 6,
9-7-2004 (65) (67)

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-113: Settlement of Claim in San Diego Police Officers Association v. City of San Diego.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-171) ADOPTED AS RESOLUTION R-299600

Authorizing the City Manager to pay the total sum of \$310,000 in attorney's fees as part of the settlement of each and every claim against the City of San Diego, its agents and employees, in Superior Court Case No. GIC 814284, San Diego Police Officers Association v. City of San Diego, San Diego Superior Court;

Authorizing the City Auditor and Comptroller to issue a check in the amount of \$310,000, made payable to Castle, Petersen and Krause, LLP, in full settlement of all claims.

Aud. Cert. 2500169.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-114: Settlement of Injury Claim for Jeremy Aue.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-218) ADOPTED AS RESOLUTION R-299601

A Resolution approved by the City Council in Closed Session on Monday, August 2, 2004 by the following vote: Peters-yea; Atkins-yea; Lewis-yea; Frye-yea; Madaffer-yea; Inzunza-yea; Mayor-yea. Councilmembers Zucchet and Maienschein not present.

Authorizing the City Manager to pay the total sum of \$140,000 in the settlement of each and every claim against the City, its agents and employees, in Superior Court Case No. GIC816432, Jeremy Aue v. City of San Diego, et al. resulting from the personal injury to Plaintiff Jeremy Aue;

Authorizing the City Auditor and Comptroller to issue one check in the amount of \$140,000, made payable to Jeremy Aue and his attorneys of record, West Seegmiller Attorneys, in full settlement of the lawsuit and of all claims;

Certifying said funds are to be payable from Fund No. 81140, Public Liability Reserve Fund.

CITY MANAGER SUPPORTING INFORMATION:

This constitutes the complete and final settlement of the Injury Claim to Jeremy Aue against the City of San Diego, its agents and employees, as a result of an incident which occurred on November 16, 2002.

Lexin/Lopez/JE

Aud. Cert. 2500199.

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-115: Excusing Councilmember Zucchet from Attending the City Council Meeting of August 2, 2004.

COUNCILMEMBER ZUCCHET'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-167) ADOPTED AS RESOLUTION R-299602

Excusing Councilmember Michael Zucchet from attending the regularly scheduled Council Meeting of August 2, 2004, due to illness.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-116: Excusing Councilmember Zucchet from Attending the Natural Resources and Culture Committee Meeting of August 4, 2004.

COUNCILMEMBER ZUCCHET'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-174) ADOPTED AS RESOLUTION R-299603

Excusing Councilmember Michael Zucchet from attending the regularly scheduled Natural Resources and Culture Committee Meeting of August 4, 2004.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

- * ITEM-117: Excusing Councilmember Zucchet from the Land Use and Housing Committee Meeting of August 4, 2004.

COUNCILMEMBER ZUCCHET'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-175) ADOPTED AS RESOLUTION R-299604

Excusing Councilmember Michael Zucchet from attending the regularly scheduled Land Use and Housing Committee meeting of August 4, 2004.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

- * ITEM-118: 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-2004-1247) ADOPTED AS RESOLUTION R-299605

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

FILE LOCATION: GENL-State of Emergency regarding the discharge of raw Sewage from Tijuana, Mexico

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

* ITEM-119: 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-2005-44) ADOPTED AS RESOLUTION R-299606

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

FILE LOCATION: GENL-State of Emergency due to Economic
Circumstances in the San Diego-Tijuana Border Region

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

ITEM-120: 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-2005-102) ADOPTED AS RESOLUTION R-299607

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: GENL-Local Health Emergency Due to Spread of the Hepatitis C and the Human Immunodeficiency Virus (HIV)

COUNCIL ACTION: (Time duration: 11:37 a.m. – 11:37 a.m.)

MOTION BY ATKINS TO ADOPT. Second by Frye. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-nay, Frye-yea, Madaffer-nay, Inzunza-yea, Mayor Murphy-nay.

* ITEM-121: 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-2004-1234) ADOPTED AS RESOLUTION R-299608

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

FILE LOCATION: GENL-State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego

COUNCIL ACTION: (Time duration: 10:15 a.m. – 10:22 a.m.)

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

ITEM-200: In the Matter of Declaring a Vacancy and Calling a Special Election in Council District 4.

CITY CLERK'S RECOMMENDATION:

Adopt the resolutions in Subitems-A and C, and introduce and adopt the ordinance in Subitem-B:

Subitem-A: (R-2005-228) ADOPTED AS RESOLUTION R-299612

Declaring that a vacancy exists in Council District 4 by reason of the unexpected death of Councilmember Charles Lewis, such vacancy to be effective the date of the adoption of this resolution.

NOTE: This resolution must be adopted before the Council calls the Special Election.

Subitem-B: (O-2005-33 REV.) ADOPTED AS ORDINANCE O-19316 (New Series)

Introduction and adoption of an Ordinance calling a Special Municipal Election in the City of San Diego, Council District 4, on November 30, 2004, for the purpose of nominating candidates for Council District 4, or electing a Councilmember for Council District 4 if a candidate receives a majority of the votes cast for the office. Also calling a Special Run-off Election on January 11, 2005, if no candidate receives a majority of the votes cast for the office at the November 30, 2004 election.

Subitem-C: (R-2005-216) ADOPTED AS AMENDED AS RESOLUTION R-299613

Requesting the Registrar of Voters of the County of San Diego to perform election services for a Special Election, and a Special Run-off Election, in Council District 4.

Authorizing the City Auditor and Comptroller to reimburse the County of San Diego in full for the services performed by the Registrar of Voters for the City of San Diego in connection with the election services.

SUPPORTING INFORMATION:

Councilmember Charles L. Lewis died unexpectedly on August 8, 2004, leaving a vacancy in the office of Councilmember for District No. 4. Pursuant to Charter Section 12, the City Council is required to fill the vacancy by special election because there is more than one year remaining in the term of office.

The procedures for filling a vacancy in a Council office by special election are contained in Divisions 7 and 9 of Chapter 2, Article 7 of the San Diego Municipal Code (SDMC). In accordance with SDMC Section 27.0704, upon the death of a City Councilmember, the City Council must adopt a declaration of vacancy. SDMC Section 27.0902 specifies that the special election must be held within 90 days of the of the date of the vacancy; or, if there is a regular municipal, statewide, or countywide election scheduled to be held within 180 calendar days of the vacancy, the City Council may consolidate the special election with that regular election.

This action is to request that the City Council adopt an ordinance declaring the vacancy in Council District 4 and calling a Special Election to fill the vacancy at an election to be held November 30, 2004, and calling a Special Election to be held January 11, 2005 if a run-off election is necessary; and to adopt a resolution requesting the services of the Registrar of Voters.

Following this Council action, the Clerk's Office will open the nomination period for potential candidates on September 17, 2004. The deadline for filing nomination papers will be Friday October 1, 2004. If one candidate receives the majority of votes cast for all candidates in the special election, that candidate will be elected to the vacant office. If no candidate receives a majority of votes cast in the special election, a special run-off election will be held on January 11, 2005. A candidate elected at either the special election or at the special run off election called by the City Council to fill the vacant office shall be declared elected to the unexpired term of his or her predecessor and will assume office at the time the City Council adopts the resolution declaring the results of the election.

Abdelnour

Aud. Cert. 2500154.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:40 a.m. – 11:57 a.m.; 2:08 p.m. – 3:56 p.m.)

Motion by Frye to adopt the resolutions in Subitem A and C and introduce and adopt the ordinance in Subitem B with the following amendments: Consolidate the Special Election with the regularly scheduled November 2, 2004, General Election. If it is found by a judge that it cannot be done, the City's position should be to support the consolidation and work with the people that are now suing the City in order to figure out a way to make that happen. If that cannot be done, discuss with the residents from District 4 their next date of choice to hold the Special Election. Direct the City Clerk to immediately notify the Registrar of Voters of the City Council's action. If a run-off election is necessary, it shall be held on November 23, 2004. The District 4 candidate filing period shall open on Wednesday, September 8, 2004 and close on Friday, September 17, 2004, at noon. The noon cut-off will allow the Registrar of Voters to get the new ballot to the printer before the start of the weekend. Direct the City Clerk to transmit to the Registrar of Voters a list of District 4 candidates, their ballot statements, and any additional information required by the Registrar of Voters immediately upon the close of the candidate filing period and make every reasonable effort to notify District 4 residents of the candidate filing period and assist potential candidates with the candidate filing process including but not limited to informing the print and electronic media and or file candidate materials on Saturday and Sunday with the office of the City Clerk working out of the City of San Diego community service center in District 4. Second by Atkins. Failed. Yeas-1, 2, 3, 6. Nays-5, 7, 8, M. Vacant-4.

MOTION BY INZUNZA TO ADOPT THE RESOLUTION IN SUBITEM A.

INTRODUCE AND ADOPT THE ORDINANCE IN SUBITEM B BY INTERLINIATION AS FOLLOWS: A SPECIAL ELECTION SHALL BE HELD IN COUNCIL DISTRICT 4 ON TUESDAY, NOVEMBER 16, 2004, AND IF NECESSARY, A SPECIAL RUN-OFF ELECTION ON TUESDAY, JANUARY 4, 2005. THE FOLLOWING DATES FOR NOMINATING CANDIDATES FOR THE SPECIAL ELECTION ARE AS FOLLOWS: FRIDAY, SEPTEMBER 10, 2004, NOMINATION PERIOD OPENS (67 DAYS PRIOR TO THE ELECTION); FRIDAY SEPTEMBER 10, 2004 FIRST DAY TO FILE NOMINATING PAPERS (67 DAYS PRIOR TO THE ELECTION); FRIDAY, SEPTEMBER 17, 2004, LAST DAY TO FILE

NOMINATING PAPERS (60 DAYS PRIOR TO THE ELECTION). AN INDEPENDENT CONSULTANT RETAINED BY THE CITY THROUGH THE CITY CLERK SHALL CANVASS RETURNS OF THE ELECTIONS. THE INDEPENDENT CONSULTANT SHALL COMMUNICATE THE RESULTS OF THE CANVASS TO THE CITY CLERK.

ADOPT THE RESOLUTION IN SUBITEM C WITH THE FOLLOWING AMENDMENTS: REQUEST THE SERVICES OF THE REGISTRAR OF VOTERS TO THE EXTENT POSSIBLE FOR THE SPECIAL ELECTION IN DISTRICT 4 ON NOVEMBER 16, 2004, AND IF NECESSARY A SPECIAL RUN-OFF ELECTION ON JANUARY 4, 2005.

Second by Madaffer. Passed by the following vote: Peters-yea, Zucchet-yea (nay on subitems B and C), Atkins-yea (nay on subitems B and C), District Four-vacant, Maienschein-yea, Frye-yea (nay on subitems B and C), Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

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:

<u>SUBDIVISION</u>	<u>COMMUNITY AREA</u>
Torrey Hills Unit No. 8	Torrey Hills
Torrey Hills Unit No. 9A	Torrey Hills
Coral Gate Unit No. 2	Tijuana River Valley
Halcyon West	North City West

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-251: Notice of Pending Final Map Approval – Cielo Del Mar.

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 “Cielo Del Mar” (T.M. No. 40-0513), located at the easterly terminus of Rancho Toyon Place northwesterly of Del Mar Mesa Road and I-15 in the Carmel Valley Community Planning Area in Council District 1, 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 Deputy City Engineer Lee Hennes at (619) 446-5291.

ITEM-252: **Notice** of Pending Final Map Approval - Villas Del Parque.

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 "Villas Del Parque" (T.M. No. 5954), located northeasterly of Palm Avenue and Beyer Way in the Otay Mesa-Nestor Community Planning Area in Council District 8, 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 Deputy City Engineer Lee Hennes at (619) 446-5291.

ITEM-253: **Notice** of Pending Final Map Approval – Pacific Beach Condominiums.

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 "Pacific Beach Condominiums" (T.M. No. 21490), a copy of which is available for public viewing at the Office of the San Diego City Clerk. Said project is located in the northeasterly of Pacific Beach Drive and Morrell Street in the Pacific Beach Community Plan Area in Council District 2. 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 Deputy City Engineer Lee Hennes at (619) 446-5291.

ITEM-330: Appeal of Environmental Determination for the Mi Arbolito Project.

Matter of the appeal by Bankers Hill, Hillcrest Park West Community Preservation Group in care of Johnson and Hanson, L.L.P. of the decision by City staff that the subject project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15332 of the State CEQA Guidelines.

(See City Manager Report CMR-04-139. Uptown Community Plan Area. District-3.)

(Continued from the meetings of July 13, 2004, Item 335 and August 10, 2004, Item 333, last continued at the request of Deputy Mayor Atkins, due to lack of time.)

NOTE: Hearing open. No testimony taken on 8/10/2004.
Hearing open. No testimony taken on 7/13/2004.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution to deny the appeal, and uphold the Staff determination that the Mi Arbolito Project is exempt from the California Environmental Quality Act per Section 15332 of the State CEQA Guidelines.

(R-2005-) CONTINUED TO MONDAY, SPETEMBER 13, 2004

Adoption of a resolution granting or denying the appeal, and upholding or overturning the Environmental Determination, with appropriate findings to support Council action.

CITY MANAGER SUPPORTING INFORMATION:

The proposed project is a 14-story, 14-unit multi-family residential building over underground parking. The 10,247-square-foot site is zoned MR-400 and is located on the northeast corner of the intersection of Sixth Avenue and Upas Street.

This appeal is before the City Council because of an amendment to CEQA. Effective January 1, 2003, Section 21151(c) of CEQA has been amended as follows: *If a non-elected decision making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision making body, if any.*

Pursuant to this amended legislation, Banker's Hill, Hillcrest, Park West Community Preservation Group c/o Johnson & Hanson, LLP filed an appeal of the staff environmental determination to exempt the project on April 12, 2004. However, this new appeal process applies only to the environmental determination.

The appeal is partly based on the allegation that an Environmental Impact Report (EIR) should have been prepared for the project. CEQA and case law require the preparation of an EIR when there is a fair argument that there is substantial evidence, in light of the whole record, that a project may have a significant impact on the environment. Section 21080(e) of CEQA states that ". . . substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative..."

The exemption prepared for this project is a categorical exemption found in Section 15332 of the State CEQA guidelines (Infill Development Projects). The appeal is also partly based on the following standard for using categorical exemptions:

Section 15300.2 (c) - Significant effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to **unusual circumstances** [emphasis added].

Finally, the appeal is also based on the applicability of the following conditions. A finding that these conditions have been met is a necessary precedent to using the Section 15332 exemption:

Section 15332 (a) - The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.

Section 15332 (d) - Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.

The staff response to each of these challenges has been provided below within the list of the appellants' specific concerns.

Pursuant to the issued permits noted below, construction of the underground parking garage is currently underway on the site.

<u>Date Submitted</u>	<u>Permit Type</u>	<u>Application #</u>	<u>Status</u>
March 27, 2003	Map Waiver and SDP	6686	Not Completed; Withdrawn
June 23, 2003	Grading/Temp Shoring	10278	(Approved, W-51473) Closed.
July 16, 2003	Building Permit: Footings	11489	(Approved, # 21521)
October 2, 2003	Building Permit: Building	15900	Approval Pending
January 7, 2004	Tentative Map	19032	Withdrawn

Because the Map Waiver and Tentative Map applications placed the City on notice that the project may require an approval by the Planning Commission (which would be deemed a "discretionary" decision for purposes of CEQA), the Environmental Analysis Section (EAS) of the Development Services Department reviewed this project assuming that the applications may be resubmitted.

Since this project did not include an application for a Tentative Map or Map Waiver at the time it was reviewed by EAS, EAS could not deem this project to be a "discretionary" project for CEQA purposes. However, since Mi Arbolito, LLC had twice placed the City on notice that the project may require a discretionary decision; EAS considered the CEQA review requirements for this project assuming it may include a discretionary decision in the future.

FISCAL IMPACT:

All costs associated with processing approvals of this project are paid from an existing fee paid by the applicant and, possibly, a future deposit account that would be maintained by the applicant if the applicant re-submits an application for a discretionary approval. Staff costs associated with processing this appeal have been borne by the Development Services Department because there is currently no deposit on account with Development Services.

Loveland/Christiansen/CZ

FILE LOCATION: LUP-Mi Arbolito Project 9-7-2004 (65)

COUNCIL ACTION: (Time duration: 4:16 p.m. – 4:29 p.m.)

MOTION BY ATKINS TO CONTINUED TO MONDAY, SEPTEMBER 13, 2004 AT THE REQUEST OF THE COMMUNITY TO ALLOW COMMUNITY MEMBERS TO BE PRESENT AT THE MEETING. Second by Mayor Murphy. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-331: Hardwood Tichenor Rental Property.

Matter of the appeal by Robin Munro, on behalf of Daniel G. Crotty, Thomas P. Crotty, Patrick H. Crotty, from the decision of the Historical Resources Board in approving the historical site designation of the property located at 1151-1159 10th Avenue in the City of San Diego.

(See City Manager Report CMR-04-197. Centre City Community Plan Area. District-2.)

TODAY'S ACTION IS:

(R-2005-) CONTINUED TO TUESDAY, NOVEMBER 9, 2004

Adoption of a resolution granting or denying the appeal and upholding or overturning the action of the Historical Resources Board.

CITY MANAGER'S RECOMMENDATION:

Deny the appeal and uphold the decision of the Historical Resources Board to designate the Harwood Tichenor Rental Property as a Historical Resource Site.

OTHER RECOMMENDATIONS:

Historical Resources Board voted 8-3 on April 22, 2004 to approve the building's designation.

Ayes: Sewell, Ahern, Burnett, Chuang, Delawie, Malone, Marshall, Silvas.

Nays: Emme, Schaefer, Schwartz

CITY MANAGER SUPPORTING INFORMATION:

The Harwood Tichenor Rental Property is comprised of four structures: An 1880 Queen Anne Victorian cottage (1157 Tenth Avenue), a two-story commercial/residential addition (1159 Tenth Avenue), and two rear Craftsman-style units (1151, 1153-1155 Tenth Avenue) dating from approximately 1912. The subject of this appeal is the 1880 Victorian cottage, a small, two-story wood-frame house that was moved to its current location between 1889 and 1905. Its projecting two-story residential/commercial component (1159 Tenth Avenue) was added around 1912. It is not part of the designation.

The Queen Anne cottage features drop siding and diamond-patterned shingles in the gable end. The front gabled roof has a boxed cornice with a plain frieze and incised vergeboard. The second floor windows are double-hung sash. The original full porch, reached by brick steps, is now enclosed with a series of rectangular glass windows added in 1947. The northern addition, which is not part of the designation, has a flat roof, narrow bevel siding and plain double-hung sash windows on the upper story. The ground floor store front originally featured plate glass windows. The windows have been boarded up and the ground floor is now converted to residential use. The northern side wall belonged to former Fire Department Station No. 2 and is currently supported by pipe buttresses.

Loveland/Goldberg/DK

FILE LOCATION: LUP-Hardwood Tichenor Rental Property 9-7-2004 (65)

COUNCIL ACTION: (Time duration: 10:23 a.m. – 10:24 a.m.)

MOTION BY ZUCCHET TO CONTINUE THIS ITEM TO TUESDAY, NOVEMBER 9, 2004, FOR FURTHER REVIEW. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

ITEM-332: Coronado Belt Line.

Matter of the appeal by Metropolitan Transit Development Board, from the decision of the Historical Resources Board in approving the designation of the Coronado Belt Line Railway.

(See City Manager Report CMR-04-196. Otay Mesa/Nestor Community Plan Area. District- 8.)

TODAY'S ACTION IS:

(R-2005-) GRANTED APPEAL, ADOPTED AS RESOLUTION
R-299614

Adoption of a resolution granting or denying the appeal and upholding or overturning the action of the Historical Resources Board.

CITY MANAGER'S RECOMMENDATION:

Deny the appeal and uphold the decision of the Historical Resources Board to designate the Coronado Belt Line as a Historical Resource Site.

OTHER RECOMMENDATIONS:

Historical Resources Board voted 9-1 on December 19, 2003 to approve the designation of the Coronado Belt Line Railway.

Ayes: Sewell, Brooks, Burnett, Ahern, Chuang, Delawie, Lynch, Malone, Schaefer
Nays: Schwartz

CITY MANAGER SUPPORTING INFORMATION:

The original Coronado Belt Line was an independent short line railroad built in 1888. Originally 20.3 miles in length, only about 7.5 miles of the Belt Line remains today. Of the approximately 7.5 mile remaining segment, only about 1.5 miles of it is within the boundary of the City of San Diego and is the only portion over which the City has any jurisdiction. The remnant of the line includes rails, tracks, trestles, crossing signals and other appurtenances. On December 19, 2003, the HRB designated the Coronado Belt Line as a historical resource under HRB CRITERIA A (Cultural Landscape), B (Historical Persons) and C (Architecture) by a vote of 9-1.

In acting to designate, the HRB concurred that the site is historically significant for its archaeological value; as an example of the private capitalization of infrastructure; for the site's significant contributions to the cultural, physical and economic development of San Diego; for being representative of its association with historically significant individuals, John D. Spreckels, Elisha Babcock and Hampton L. Story; and for being representative of railroad construction in the late 1800s.

Loveland/Goldberg/TD

FILE LOCATION: LUP-Coronado Belt Line 9-7-2004 (65)

COUNCIL ACTION: (Time duration: 4:29 p.m. – 6:26 p.m.)

Testimony in opposition by Michael McDade, Mayor Diane Rose, Charles Bencik, K.C. Butler, Kathy Keehan, Kerry Kunsman, Gordy Shields, and Supervisor Greg Cox.

Testimony in favor by Susan Brandt Hawley, Bruce Coons, Mitchel Beauchamp, Alana Coons, Richard Hamilton, Karen Huff, Welton Jones, Ed Kravitz, Elizabeth Montes, Richard Rupperts, Bruce Semelsberger, and David Swarens

MOTION BY INZUNZA TO GRANT THE APPEAL AND OVERTURN THE DECISION OF THE HISTORICAL RESOURCES BOARD TO DESIGNATE THE CORONADO BELT LINE AS A HISTORICAL RESOURCE SITE. Second by Madaffer. Passed by the following vote: Peters-yea, Zucchert-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-nay, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

ITEM-333: Two actions related to Amendment to the Undergrounding of Utilities 2003 Calendar Year Annual Allocation for Tennyson Street from Chatsworth Boulevard to Willow Street.

(Midway Community Plan Area. District-2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2005-27 Cor. Copy) ADOPTED AS RESOLUTION R-299609

A Resolution establishing Underground Utility District(s) financed through SDG&E Annual Allocation Funds (Case 8209).

Subitem-B: (R-2005-28) ADOPTED AS RESOLUTION R-299610

Certifying that the Addendum to Environmental Impact Report LDR No. 23247(a), on file in the office of the City Clerk 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 report 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 Tennyson Street from Chatsworth Boulevard to Willow Street and Sterne Street from Tennyson Street to Willow Street Underground Utility District.

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 this project.

CITY MANAGER SUPPORTING INFORMATION:

The proposed action to amend the 2003 annual allocation is made at the request of Council District 2 and is in accordance with Council Policy 600-08. The Tennyson Street underground project is being coordinated with a City CIP project to replace concrete streets to prevent the future trenching of the new concrete streets.

The formation of Tennyson Street and Chatsworth Boulevard to Willow Street and Sterne Street from Tennyson Street to Willow Street Underground Utility District will require the removal and/or underground conversion of certain overhead power and communications wires with poles within the established boundary. The expense of the underground installation and removal of overhead facilities within the right-of-way (street and sidewalk area) will be the responsibility of the utility companies in accordance with California Public Utilities Commission Rules.

It is the responsibility of the individual property owner(s) for the trenching and other related work to convert their property to receive electrical, telecommunication and cable television from an underground service. However, San Diego Gas and Electric will offer to property owner(s) within the Underground Utility Districts, to perform all the work necessary to convert private property, including necessary conduits for telephone and cable facilities at no cost to the property owner(s). In order to take advantage of San Diego Gas and Electric's offer to perform this work, property owners are required to sign a Permit to Enter Form.

FISCAL IMPACT:

SDG&E Cost: The amount of \$925,000 was previously authorized for the project known as Garrison Street from Clove Street to Rosecrans Street as part of the FY03 Annual Allocation (Case 8209). This action would replace the Garrison Street Project with a project known as the Tennyson Street from Chatsworth Boulevard to Willow Street and Sterne Street from Tennyson Street to Willow Street. The construction cost of \$1,113,078 will be financed through the use of SDG&E Annual Allocation Funds as directed by the Public Utilities Commission (Case 8209). The fiscal impact of \$18,000 to the City is the indirect cost of such street light replacement, and other related work. These funds will be available in Fund No. 30100, Undergrounding Surcharge Fund, contingent upon receipt of funds from San Diego Gas & Electric. The expenditure has been previously approved by R-295894. No additional expenditure authorization is required as part of this action.

Mendes/Belock/AO

FILE LOCATION: SUBITEMS A & B: STRT-K-321 (38)

COUNCIL ACTION: (Time duration: 11:39 a.m. – 11:39 a.m.)

MOTION BY ZUCCHET TO ADOPT. Second by Inzunza. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-yea, Mayor Murphy-yea.

* ITEM-S500: Appointment and Reappointments to the Commission on Arts and Culture.

(See memorandum from Mayor Murphy dated 9/1/2004, with resumes attached.)

MAYOR MURPHY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-249) RETURNED TO THE MAYOR

Council confirmation of the following appointment and reappointments by the Mayor of the City of San Diego, to serve as members of the Commission on Arts and Culture for terms ending as indicated:

<u>NAME</u>	<u>TERM ENDING</u>
Bennett Peji (replacing Barbara Finn-Pressley, who resigned)	August 31, 2006
Dorothy Annette (reappointment)	August 31, 2006
Steve Estrada (reappointment)	August 31, 2006
Steven L. Miller (reappointment)	August 31, 2006
Randy S. Robbins (reappointment)	August 31, 2006
Calvin Woo (reappointment)	August 31, 2006

Declaring that Vivian Reznik, who has served on the Commission since 1997 and currently is the chair, will continue to serve as chair until a successor is appointed and confirmed.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 10:15 a.m. - 10:22 a.m.)

CONSENT MOTION BY MADAFFER TO RETURN THIS ITEM TO THE MAYOR DUE TO AN ERROR IN THE MEMORANDUM DISTRIBUTED TO COUNCIL ON MONDAY, SEPTEMBER 1, 2004. Second by Atkins. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-yea, Frye-yea, Madaffer-yea, Inzunza-not present, Mayor Murphy-yea.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 6:36 p.m. in honor of the memory of:

Richard Paul Geysler, at the request of Deputy Mayor Atkins;
Sophia Isadora Lindley-Kessler, at the request of Deputy Mayor Atkins; and
Helen Copley at the request of Mayor Murphy.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 6:26 p.m. – 6:36 p.m.)