

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, NOVEMBER 23, 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 10:15 a.m. Mayor Murphy recessed the meeting at 12:00 p.m. for the purpose of the noon recess; meeting to be reconvened at 2:00 p.m.

The meeting was reconvened by Mayor Murphy at 2:05 p.m. with Council Member Peters, Council Member Zucchet, Council Member Maienschein, Council Member Madaffer not present, and District 4 vacant. Mayor Murphy recessed the meeting at 3:43 p.m. for the purpose of a break. The meeting was reconvened by Mayor Murphy at 3:59 p.m. with Council Member Zucchet, Council Member Maienschein, Council Member Madaffer not present, and District 4 vacant. Mayor Murphy wished to congratulate Council Member Maienschein and his wife on their new addition to the family; an 8lb., 10 ounce baby girl born at 2:15 p.m. today.

Mayor Murphy adjourned the meeting at 4:12 p.m. immediately into Closed Session in the twelfth floor conference room to discuss Meet and Confer matters.

ATTENDANCE DURING THE MEETING:

- (M) Mayor Murphy-present
- (1) Council Member Peters-present
- (2) Council Member Zucchet-present
- (3) Council Member Atkins-present
- (4) District Four-vacant
- (5) Council Member Maienschein-Excused (By R-300002 due to birth of his daughter)
- (6) Council Member Frye-present
- (7) Council Member Madaffer-Excused (By R-299945, no reason given)

(8) Council Member Inzunza-present

Clerk-Abdelnour/Lane (gs/pr)

FILE LOCATION: MINUTES

ITEM-300: ROLL CALL

Clerk Lane called the roll:

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

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Don Stillwell commented on a video by the name of "America's Godly Heritage."

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:18 a.m.)

PUBLIC COMMENT-2:

Al Strohlein commented on extending the Catamaran lease.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:21 a.m.)

PUBLIC COMMENT-3:

Wes Johnson commented on accessible tourism in the City of San Diego.

FILE LOCATION: AGENDA

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

PUBLIC COMMENT-4:

Jarvis Ross commented on controversy surrounding the recent election.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:23 a.m. – 10:25 a.m.)

PUBLIC COMMENT-5:

Ron Boshun commented on actions of Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:26 a.m. – 10:29 a.m.)

PUBLIC COMMENT-6:

Noel Neudeck commented on changes in City Hall.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:30 a.m. – 10:32 a.m.)

PUBLIC COMMENT-7:

Phil Hart commented on the City's finances.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:33 a.m. – 10:36 a.m.)

PUBLIC COMMENT-8:

Joyceline Tarr commented on a judge's recent ruling concerning the mayoral election.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:37 a.m. – 10:38 a.m.)

PUBLIC COMMENT-9:

Sandy Summers commented on domestic terrorism.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:41 a.m.)

PUBLIC COMMENT-10:

St. Clair Adams wished the City Attorney and the City Manager farewell.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:42 a.m. – 10:42 a.m.)

PUBLIC COMMENT-11:

Marvin Carpenter commented on closed planning and wrongful information.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:43 a.m. – 10:46 a.m.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member Zucchet announced Bravo San Diego's annual event which raised money for the Arts and Culture.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:49 a.m. – 10:51 a.m.)

COUNCIL COMMENT-2:

Mayor Murphy announced his son's achievement in passing the bar exam and graduating from the University of San Diego.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:52 a.m. – 10:52 a.m.)

CITY CLERK COMMENT:

Assistant City Clerk Joyce Lane thanked everyone involved with the special election held in the Fourth Council District. She commented and acknowledged the huge task well done by City employees.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:47 a.m. – 10:48 a.m.)

CITY MANAGER COMMENT:

None.

CITY ATTORNEY COMMENT:

None.

ITEM-105: Agreement with Hawkins, Delafield and Wood, LLP, for Bond and Disclosure Counsel Services for Pension Obligation Bonds.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-201) ADOPTED AS RESOLUTION R-299883

Authorizing the City Manager to execute an agreement with Hawkins, Delafield and Wood, LLP, for bond and disclosure counsel services for Pension Obligation Bonds, in an amount not to exceed \$175,000, under the terms and conditions set forth in the Agreement, contingent upon the City Auditor and Comptroller first furnishing a certificate certifying that funds are available.

SUPPORTING INFORMATION:

The City is contemplating the issuance of pension obligation bonds (Bonds) in early 2005 to reduce the City's outstanding pension Unfunded Accrued Liability (UAAL). It is in the best interest of the City to retain Hawkins, Delafield and Wood, LLP (Firm) to provide bond and disclosure counsel service in connection with the Bonds. The Firm proposed to provide such

services for an hourly rate in connection with the Bonds for a maximum amount not to exceed \$175,000. Such fees are contingent on the Bonds being sold and shall be paid from the proceeds of the Bonds. The City has determined to accept the firm's proposal and retain it as bond and disclosure counsel for the Bonds.

Noone/RD

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:00 p.m. – 4:11 p.m.)

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

ITEM-330: Status of Off-Leash Dog Parks and Addressing Fees Associated with the Off-Leash Dog Sessions.

(See City Manager Report CMR-04-130 and memorandum from Ellen Oppenheim dated 11/17/2004 – Addendum to the City Manager Report CMR-04-130; memorandum from Ellen Oppenheim dated 11/9/2004 and Information from Laura Emerick. Citywide.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2005-158) ADOPTED AS RESOLUTION R-299884

Declaring that permanent Off Leash Areas are designated (where one-year trials have successfully concluded) at: Doyle Community Park, Dusty Rhodes Neighborhood Park, Kearny Mesa Community Park, and Torrey Highlands Neighborhood Park (Maintenance Assessment District);

Declaring that one of the following four alternative proposals for Grape Street Park Off Leash area are adopted:

- a. Recommend approval of the schematic plan for the provision of a fenced Off Leash area at Grape Street Park in Balboa Park, and recommend expanded hours of Off Leash use for the fenced Off Leash area at Grape Street Park in Balboa Park.
- b. Recommend approval of the schematic plan for the provision of a fenced Off Leash area at Grape Street Park in Balboa Park *with modifications*, and recommend expanded hours of Off Leash use for the fenced Off Leash area at Grape Street Park in Balboa Park.
- c. Do not recommend approval of the schematic plan for the provision of a fenced Off Leash area at Grape Street Park in Balboa Park, and maintain the current posted hours of Off Leash use.
- d. Do not recommend approval of the schematic plan for the provision of a fenced Off Leash area at Grape Street Park in Balboa Park, and recommend expanded hours of Off Leash use at Grape Street Park in Balboa Park.

Adopting procedure revisions to the community input process for considering, initiating, reviewing status, modifying or revoking Off Leash areas;

Recommending the development of an annual procedure for Off Leash User Group registration;

Recommending the development of City Wide policy standards for Off Leash area development as an element of a City Wide Parks System Master Plan.

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 6/16/2004, LU&H voted 5 to 0 to accept the City Manager's recommendation on Issues #1, 3, 4, and 5 in the staff report with additional direction to the City Manager to continue to work with the Recreation Council to develop an expansion plan for Dusty Rhodes Park off-leash use area and to begin to develop alternatives to deal with the problem of turf maintenance at dog parks throughout the City.

The Committee voted 5 to 0 to: Refer Issue #2 in the staff report to the full City Council without a recommendation regarding the alternatives presented for Grape Street Park.

(Councilmembers Peters, Zucchet, Lewis, Frye, and Inzunza voted yea.)

Subitem-B: (R-2005-585) ADOPTED AS RESOLUTION R-299885

Addressing Fees Associated with the Off-Leash Dog Sessions.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 11/17/2004, NR&C voted 4 to 0 to direct the City Manager to add to the City Manager's Report 04-130 a discussion of Permit fees for Off-Leash Dog Sessions for consideration at the City Council Meeting of November 23, 2004.

(Councilmembers Zucchet, Frye, Madaffer, and Inzunza voted yea. District 4-vacant.)

SUPPORTING INFORMATION:

On June 16, 2004 the Land Use and Housing Committee reviewed the proposed staff recommendations and heard public testimony on items #1, 3, 4 & 5 of the staff report. Following public input and Committee discussion, the Land Use and Housing Committee unanimously recommended approval of items #1, 3, 4 & 5. The Committee also reviewed information and took public testimony regarding the four alternative options for the Grape Street Off Leash area (item #2). Following testimony the Committee forwarded item #2 to the City Council without any recommendation.

See City Manager Report CMR-04-130.

FISCAL IMPACT:

None with this action.

Herring/Oppenheim/MM

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:52 a.m. – 12:00 p.m.;
2:07 p.m. – 3:42 p.m.)

MOTION BY ATKINS TO ADOPT THE RESOLUTION TO APPROVE ITEM ONE THROUGH SIX OF THE STAFF REPORT, AND TO APPROVE THE RESOLUTION IN SUBITEM A, ALTERNATIVE D NUMBER TWO. TO DIRECT STAFF TO CONSIDER THE TYPE OF FENCE THAT WOULD CONTAIN THE ENTIRE PARK SO AS NOT TO DIVIDE IT FOR SPECIFIC USES, AND AS FUNDING BECOMES

AVAILABLE. TO ADDRESS HOW ADJACENCY ISSUES SHOULD BE TREATED; HOW TO ACCOMPLISH THE PROTECTION OF SENSITIVE LANDS; AND WHETHER VIEW CORRIDORS SHOULD BE PROTECTED. Second by Frye. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District 4-vacant, Maienschein-not present, Frye-yea, Madaffer-not present, Inzunza-yea, Mayor Murphy-yea.

ITEM-331: Avalon Plaza.

Matter of the appeal by Mayfair Homes, Inc., of the decision by the Planning Commission in denying the request for the waiver of undergrounding of utilities in connection with the Avalon Plaza project. Planning Commission approved the project on June 10, 2004, however they denied the request for the waiver of undergrounding of utilities. Avalon Plaza is an application for a Coastal Development Permit, Planned Development Permit and Tentative Map to construct a three-story mixed use building, to total approximately 47,595 square feet of gross floor area, with 24 two-bedroom residential units, 13 first floor commercial units, and a subterranean parking garage on a 24,883 square foot property. The project site is located at 924-936 Hornblend Street, between Cass Street and Bayard Street, within the CC-4-2 Zone, Coastal Overlay Zone, Coastal Height Limit Overlay Zone, Beach Parking Impact Overlay Zone and within the Pacific Beach Community Plan Area.

(See City Manager Report CMR-04-248. Pacific Beach Community Plan Area. District 2.)

CITY MANAGER'S RECOMMENDATION:

Adopt the resolution in subitem A; and adopt the resolution in subitem B to grant the appeal and grant the permits; and adopt the resolution in subitem C to grant the map and the waiver of undergrounding:

Subitem-A: (R-2005-) CONTINUED TO MONDAY, NOVEMBER 29, 2004

Adoption of a Resolution certifying Mitigated Negative Declaration Project No. 13862, and adopting the Mitigation, Monitoring and Reporting Program (MMRP).

Subitem-B: (R-2005-) CONTINUED TO MONDAY, NOVEMBER 29, 2004

Adoption of a Resolution granting or denying the appeal and granting or denying Coastal Development Permit No. 29920, and Planned Development Permit No. 29921, with appropriate findings to support Council action.

Subitem-C: (R-2005-) CONTINUED TO MONDAY, NOVEMBER 29, 2004

Adoption of a Resolution granting or denying Tentative and Waiver of Undergrounding No. 29944, with appropriate findings to support Council action.

OTHER RECOMMENDATIONS:

Planning Commission on June 10, 2004, voted 5-0 to approve the CDP/PDP and Tentative Map and to deny the Waiver of Undergrounding, along with staffs modifications that were read into the record; no opposition.

Ayes: Lettieri, Chase, Garcia, Ontai, Otsjusi
Abstaining: Steele
Not present: Schultz

The Pacific Beach Community Planning Committee has recommended approval of this project.

CITY MANAGER SUPPORTING INFORMATION:

The 24,883 square foot project site is currently vacant and fenced off. In the past, the site had been used as an open commercial parking lot, not tied to or containing required parking for any surrounding development. Surrounding the project site are predominately commercial land uses with some mixed-use. The project site is located at 924-936 Hornblend Street, on the north side of Hornblend just south of Garnet Avenue, between Cass Street and Bayard Street, within the CC-4-2 Zone, Coastal (non-appealable) Overlay Zone, Coastal Height Limit Overlay Zone, Beach Parking Impact Overlay Zone and within the Pacific Beach Community Plan Area. The proposed grading, construction, and subdivision all constitute, by definition, Coastal Development, which pursuant to the Land Development Code (Section 126.0702) requires a Coastal Development Permit. A Tentative Map is required, by the Land Development Code (Section 144.0202), for the proposed consolidation of the seven existing lots into a one lot subdivision for 24 condominium units. The applicant requested the Planned Development Permit in order that the project design can be reviewed for conformance as a transit-oriented

development, which would allow for the increased residential density of up to 43 dwelling units per acre.

FISCAL IMPACT:

None.

Loveland/Halbert/GRG

LEGAL DESCRIPTION:

The project site is located is located at 924-936 Hornblend Street within the Pacific Beach Community Planning Area and is more particularly described as Lots 27 thru 34 of Block 224 of Pacific Beach, Map Nos. 697 and 854.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 10:52 a.m. – 10:53 a.m.)

MOTION BY ZUCCHET TO CONTINUE TO MONDAY, NOVEMBER 29, 2004, FOR FURTHER REVIEW. Second by Inzunza. Passed by the following vote: Peters-yea, Zucchet-yea, Atkins-yea, District Four-vacant, Maienschein-not present, Frye-yea, Madaffer-not present, Inzunza-yea, Mayor Murphy-yea.

ITEM-S500: Amendment to the Retention Agreement with Vinson & Elkins to Provide Representation before the Securities & Exchange Commission and to Perform Additional Investigation with Respect to the Audit of the City's FY 2003 Financial Statements.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-535) ADOPTED AS RESOLUTION R-299880

Authorizing and directing the City Manager to execute an amendment to the retention agreement with Vinson & Elkins (V&E) for an additional amount not to exceed \$350,000 for services related to the conduct of additional investigation concerning the City's FY 2003 basic financial statements, and for continued representation before the Securities & Exchange Commission (SEC).

SUPPORTING INFORMATION:

The City previously retained the law firm of Vinson & Elkins to prepare an internal report on the City's securities disclosure practices from 1996 through the present, and to provide representation of the City before the Federal Securities & Exchange Commission (SEC) with respect to an investigation by the SEC. The total contract amount authorized by the City Council for those purposes was in an amount not to exceed \$2.0 million. Vinson & Elkins delivered its report to the City, and has been continuing to represent the City before the SEC, primarily at this time focused on responding to document requests and other requests for information.

As is well known, the City's FY 2003 CAFR has not been finalized and issued. The City Manager retained the firm of KPMG, LLP to perform the audit of the City's FY 2003 basic financial statements. Pursuant to accounting standards and practices, the City needs to conduct additional investigation beyond the scope of the Vinson & Elkins Report on Investigation to address issues relating to the financial statements. The additional investigation is necessary because the City's and KPMG's obligations with respect to allegations of illegal conduct in the context of an audit are broader than the investigation and reporting on federal disclosure law violations, the purpose for which the Vinson & Elkins Report was commissioned. The additional investigation will address legal issues and allegations of wrongdoing that were not the subject of the Vinson & Elkins Report.

V&E was retained to perform the additional investigation by the City Manager. The initial contract amount was not to exceed \$250,000. The City has also retained additional expertise to advise it in these matters, including the law firm of Susman Godfrey, which provides expertise in accounting law, and the firm Chicago Partners, which provides forensic auditing expertise. The City has been working cooperatively with KPMG on the scope and progress of the additional investigation, and a program for additional investigation has been prepared. In order to complete the additional investigation, additional funding for V&E's services is required. It is anticipated that an additional \$350,000 will be sufficient to conduct the additional investigation, although additional sums may be necessary to complete the additional investigation if the City and KPMG, working cooperatively through the investigation, determine additional investigative steps are appropriate.

Bradley/Ewell/LG

Aud. Cert. 2500496.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:54 a.m. – 11:50 a.m.)

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

ITEM-S501: Third Amendment to the Retention Agreement with KPMG, LLP (KPMG) to Perform an Audit of the City's FY 2003 Basic Financial Statements.

CITY MANAGER'S RECOMMENDATION:

Adopt the following resolution:

(R-2005-536) ADOPTED AS RESOLUTION R-299881

Authorizing and directing the City Manager to execute an amendment to the retention agreement with KPMG, for an additional amount not to exceed \$500,000, for a total contract amount not to exceed \$1.7 million.

CITY MANAGER SUPPORTING INFORMATION:

On January 27, 2004, the City filed a voluntary financial disclosure concerning, in part, certain errors and correctible statements in the City's FY 2002 Comprehensive Annual Financial Report ("CAFR"). As a result, the FY 2003 CAFR has not been finalized and issued. The City Manager retained the firm of KPMG LLP to perform the audit of the City's FY 2003 basic financial statements, which are included in the CAFR, before the FY 2003 CAFR is finalized and issued. The preliminary estimate for the cost to initiate the audit was approximately \$500,000. On July 12, 2004 the City Council authorized the first amendment with KPMG to increase the not to exceed amount to \$800,000. Subsequently on August 9, 2004, the City Council authorized the second amendment with KPMG to increase the total not to exceed amount to \$1.2 million.

To date, KPMG has spent over 6,900 hours working on the Fiscal Year 2003 Financial Statements. The City has expended approximately \$1.14 million to date and currently has received additional invoices from KPMG for approximately \$327,498. KPMG's invoices are averaging \$70-80,000 every two weeks.

Pursuant to accounting standards and practices, the City needs to conduct additional investigation beyond the scope of the Vinson & Elkins Report on Investigation. The additional investigation is necessary because the City's and KPMG's obligations with respect to allegations

of illegal conduct in the context of an audit are broader than the investigation and reporting on federal disclosure law violations, the purpose for which the Vinson & Elkins Report was commissioned, and the additional investigation will address legal issues and allegations of wrongdoing that were not the subject of the Vinson & Elkins Report. The City has been working cooperatively with KPMG on the scope of the additional investigation.

Given the continued importance of a thorough review, the City Manager is requesting that the City Council authorize a third amendment with KPMG for an additional \$500,000 for a total contract amount of not to exceed \$1,700,000. The \$500,000 will be used to pay \$327,498 of existing KPMG invoices as well have funding authorized to pay future invoices.

Ewell/Irvine

Aud. Cert. 2500479.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:54 a.m. – 11:50 a.m.)

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

NON-DOCKET ITEMS:

None.

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ADJOURNMENT:

The meeting was adjourned by Mayor Murphy at 4:12 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 4:12 p.m.)