

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR SPECIAL COUNCIL MEETING  
OF  
MONDAY, DECEMBER 12, 2005  
AT 2:00 P.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Mayor Sanders at 2:08 p.m. Mayor Sanders adjourned the meeting at 2:29 p.m. into Closed Session in the twelfth floor Committee Room to discuss pending and existing litigation matters.

ATTENDANCE DURING THE MEETING:

- (M) Mayor Sanders-present
  - (1) Council Member Peters-present
  - (2) Council District 2-vacant
  - (3) Council Member Atkins-present
  - (4) Council Member Young-present
  - (5) Council Member Maienschein-present
  - (6) Council Member Frye-present
  - (7) Council Member Madaffer-present
  - (8) Council District 8-vacant
- Clerk-Maland (ek)

FILE LOCATION:            MINUTES

ITEM-1:                    ROLL CALL

Clerk Maland called the roll:

- (M) Mayor Sanders-present
- (1) Council Member Peters-present
- (2) Council District 2-vacant
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council District 8-vacant

FILE LOCATION: MINUTES

**CLOSED SESSION ITEMS:**

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

**CS-1 *Dean Marchant v. City of San Diego***  
San Diego Superior Court No. GIC842364

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

ACA assigned: E. Gordon

This matter is a lawsuit filed by Dean Marchant against the City of San Diego to recover damages for personal injuries sustained as a result of a traffic accident involving a City vehicle. The City Attorney will brief the City Council on the status of the matter and recommend appropriate action regarding settlement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:25 p.m. – 2:25 p.m.)

Mayor Sanders closed the hearing.

**CS-2 *SDCERS v. San Diego City Attorney Michael J. Aguirre, et al. more***  
San Diego Superior Court Case No. GIC841845

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

DCA assigned: A. Donovan

This case was originally filed by SDCERS for declaratory relief regarding whether the City Attorney's office may serve as general counsel for SDCERS. The City Attorney cross-complained against SDCERS for declaratory relief regarding the legality of pension benefits granted under MP I and MP II. Various cross-motions were heard on August 23, 2005. Further motions are to be heard on January 2, 2006. The case is being handled jointly by the Office of the City Attorney and the outside law firm of Heller Ehrman. In closed session the City Attorney will update the Mayor and Council on the status of the matter and seek additional funding for outside counsel services.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:25 p.m. – 2:25 p.m.)

Mayor Sanders closed the hearing.

**CS-3 *SDCERS v. City of San Diego***  
San Diego Superior Court Case No. GIC851286

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

DCA assigned: A. Donovan

This is a case for declaratory relief that was filed by SDCERS and is, essentially, a mirror image of the cross-complaint on file in the first SDCERS case. In this case SDCERS seeks a judicial declaration upholding the legality of benefits granted under MP I and MP II. Complaints in intervention have been filed by the various unions. Additionally, a separate complaint on the same issues was filed on behalf of 190 individual retirees, which has been consolidated with this case. The City Attorney's office has moved to consolidate this case with the first SDCERS case. That motion to consolidate will be heard on January 13, 2006. In closed session the City Attorney will update the Mayor and Council on the status of the matter.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:25 p.m. – 2:25 p.m.)

Mayor Sanders closed the hearing.

**CS-4 *City of San Diego v. Callan Associates, Inc., et al.***  
San Diego Superior Court Case No. 852419

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

DCA assigned: A. Donovan

This is a claim for monetary damages filed on behalf of the City against Callan Associates, Inc., the investment consultant for SDCERS and Gabriel, Roeder Smith, Inc., the SDCERS actuary. Discovery and investigation are ongoing; and initial settlement discussions have commenced between the City and GRS. This case is being handled jointly by the Office of the City Attorney and the outside law firm of Heller Ehrman. In closed session the City Attorney will update the Mayor and Council on the status of the matter and seek additional funding for outside counsel services.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:25 p.m. – 2:25 p.m.)

Mayor Sanders closed the hearing.

**CS-5 *William R. Newsome, III v. San Diego City Employees' Retirement System, et al.***  
San Diego Superior Court Case No. GIC856841

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

DCA assigned: A. Donovan

This is a new claim for monetary damages filed by Attorney Michael Conger on behalf of the SDCERS beneficiaries. The complaint sets forth claims against SDCERS and the City of San Diego for breach of fiduciary duty, aiding and abetting and civil conspiracy arising from the adoption of MP I and MP II. The Office of the City Attorney is currently evaluating all potential defenses to this claim, which was served on the City on November 16, 2005. The City's response is due on December 15, 2005. In closed session the City Attorney will update the Mayor and Council on the status of the matter.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:25 p.m. – 2:25 p.m.)

Mayor Sanders closed the hearing.

**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 OF MONDAY, DECEMBER 12, 2005

EACA assigned: D. McGrath

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. In closed session the City Attorney will discuss ongoing settlement negotiations and potential settlement offer.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:25 p.m. – 2:25 p.m.)

Mayor Sanders closed the hearing.

**CS-7 *City of San Diego v. Orrick Herrington & Sutcliff (attorneys) Calderon, Jahan & Osborn (accountants) Caporicci & Larson (accountants) and Webster & Anderson (attorneys)***

San Diego Superior Court No. GIC 857632

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

EACA assigned: D. McGrath

This matter is a pending lawsuit for money damages filed by the City of San Diego against accountants and attorneys whose legal advice and accountancy practices fell

below the standard of care for similarly situated and compensated professionals. The City Attorney will brief the City Council on the status of the matter and recommend appropriate action regarding recovery of funds to compensate the City.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:25 p.m. – 2:25 p.m.)

Mayor Sanders closed the hearing.

**CS-8 *City of San Diego v. Murphy, Zucchet and Inzunza***  
San Diego Superior Court No. GIC 854373

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

EACA assigned: D. McGrath

Description: The City through its City Attorney has brought suit against the defendants, all formerly elected City officers, for a judicial declaration setting aside (1) any purchased pension credits sold to defendants below actual cost; (2) any pension credits that any defendant used or attempted to use to satisfy the ten year vesting requirement for pension benefits provided for in the San Diego Charter; (3) any retroactive pension benefit granted by the City Council for which funding was not provided at the time when the purported pension credits were created between 2000 and 2002.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:25 p.m. – 2:25 p.m.)

Mayor Sanders closed the hearing.

**CS-9 *Abdelnour et al (194 plaintiffs) v. City of San Diego***  
San Diego Superior Court No. Case No. GIC 852100

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

EACA assigned: D. McGrath

Plaintiffs, 194 former or current members or beneficiaries of SDCERS, have sued for declaratory relief requesting that the Court judicially determine that SDCERS may properly and legally pay all of the benefits that the City has contested as illegal pursuant to the Cross Complaint filed by the City in the case SDCERS v. the City et al (GIC 841845). These benefits include all benefits created by way of Managers Proposals I and II.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:25 p.m. – 2:25 p.m.)

Mayor Sanders closed the hearing.

**CS-10 *John Torres, Ronald Saathoff, Cathy Lexin, Terri Webster, Sharon Wilkinson, Mary Vattimo v. City of San Diego***

San Diego Superior Court No. Case No. GIC 852293

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

EACA assigned: D. McGrath

Description: Plaintiffs, former SDCERS board members, seek specific performance and declaratory relief demanding that the City defend and indemnify plaintiffs in two civil cases that the City has brought against plaintiffs. These cases are: People of the State of CA v. Grissom et al (GIC 850246) and the City v. SDCERS et al. (GIC 841845). Plaintiffs claim that the City through its City Council agreed to indemnify "all past and future members" of the SDCERS board, by way of Resolution No. R-297335. On August 3, 2005 a Motion was made to provide such a defense. The Motion failed 4-2.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:25 p.m. – 2:25 p.m.)

Mayor Sanders closed the hearing.

**CS-11 *San Diego Police Officers Association v. Michael Aguirre, et al.***

United States District Court No. 05 CV 1581

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005



EACA assigned: D. McGrath

This matter is an action filed by the San Diego Police Officers Association for damages and declaratory relief. In closed session the City Attorney will brief the Council on the status of the matter and seek approval for the engagement of outside counsel.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:26 p.m. – 2:26 p.m.)

Mayor Sanders closed the hearing.

**CS-12 *William J. McGuigan v. City of San Diego, et al.***  
San Diego Superior Court GIC 849883

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

EACA assigned: D. McGrath

This lawsuit was filed on behalf of a retired City employee against the City of San Diego requesting that the Court order the City to immediately pay all past unfunded pension liability to the retirement system. In closed session, the City Attorney will brief the City Council on the matter and request appropriate direction, including direction with regard to hiring outside counsel to assist on this matter.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:26 p.m. – 2:26 p.m.)

Mayor Sanders closed the hearing.

**CS-13 *People of the State of California v. Grissom, et. al***  
San Diego Superior Court No. GIC850246

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

EACA assigned: D. McGrath

This matter is an action by the People of the State of California against a number of employees of the City and the retirement system. In closed session the City Council will consider a request by certain of the named individuals that the City provide a defense and indemnification in the case.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:26 p.m. – 2:26 p.m.)

Mayor Sanders closed the hearing.

**CS-14 *Marcus R. Abbe, et al. v. City of San Diego, et al.***  
United States District Court No. 05 CV 1629

REFERRED TO CLOSED SESSION OF MONDAY, DECEMBER 12, 2005

EACA assigned: D. McGrath

This matter is a class action filed by numerous police officers alleging violations of the memorandum of understanding with the City of San Diego. In closed session the City Attorney will brief the Council on the status of the matter and seek appropriate direction.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:26 p.m. – 2:26 p.m.)

Mayor Sanders closed the hearing.



ITEM-602: Appointing Andrea Tevlin as Independent Budget Analyst. and Affirming the Independent Budget Analyst's Salary.

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2006-566 Cor. Copy) ADOPTED AS RESOLUTION R-301146

Appointing Andrea Tevlin to the position of Independent Budget Analyst;

Declaring the salary of the Independent Budget Analyst shall be in the range of Executive Salaries for Department Heads, and set in the approximate amount of \$180,000 per year, and shall receive a standard package of managerial benefits.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:19 p.m. – 2:24 p.m.)

MOTION BY PETERS TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor Sanders-yea.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Mayor Sanders at 2:29 p.m. in honor of the memory of:

Patricia De Marce as requested by Deputy Mayor Atkins.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:26 p.m. – 2:29 p.m.)