THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, MAY 22, 2006
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 Council President Peters at 2:03 p.m. Council President Peters recessed the meeting at 2:37 p.m. to convene the Redevelopment Agency. Council President Peters reconvened the regular meeting at 2:38 p.m. with all Council Members present. The meeting was adjourned by Council President Peters at 3:50 p.m.

ATTENDANCE DURING THE MEETING:

(1) Council Member Peters-present

(2) Council Member Faulconer-present

(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 Member Hueso-present

Clerk-Maland (gs)

FILE LOCATION: MINUTES

ITEM-1: ROLL CALL

Clerk Maland called the roll:

(1) Council Member Peters-present
(2) Council Member Faulconer-present
(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 Member Hueso-present

FILE LOCATION: MINUTES

ITEM-10: INVOCATION

Invocation was given by Reverend Gretchen Pena of Christ Unity Church.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Faulconer.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

Conference with Legal Counsel - anticipated litigation - significant exposure to litigation, pursuant to California Government Code section 54956.9(b):

CS-1 Legality of Superstore Ordinance to Preserve the General Welfare

REFERRED TO CLOSED SESSION OF TUESDAY, MAY 23, 2006

DCA: J. Garmo

The Joint Labor Management Committee has submitted to the City a proposed ordinance [SKU Ordinance], which would prohibit the establishment of Superstores (stores combining a general discount store with a full-sized supermarket under a single roof) in the City of San Diego. WalMart has threatened litigation if the City were to pass this ordinance.

CLOSED SESSION COMMENT 1:

Tom Turner commented that not a single SKU ordinance has been passed in the country.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:12 p.m. – 2:15 p.m.)

Council President Peters closed the hearing.

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

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 TUESDAY, MAY 23, 2006

CA: M. Aguirre

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. In closed session the City Council may take action on the waiver of attorney client privilege on closed session transcripts related to this case.

CLOSED SESSION COMMENT 1:

Dan Coffey commented on waiving the attorney-client privilege.

CLOSED SESSION COMMENT 2:

Hud Collins commented on providing brief reports to the public on closed session matters.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:21 p.m.)

Council President Peters closed the hearing.

ITEM-200: Transfer of Non-Exclusive Solid Waste Collection Franchise Agreement with Diamond Solid Waste Services, LLC for Solid Waste Management Services.

STAFF'S RECOMMENDATION:

Introduce the following ordinance:

(O-2006-126) INTRODUCED, TO BE ADOPTED ON TUESDAY, JUNE 20, 2006

Introduction of an Ordinance approving transfer of a Solid Waste Collection Franchise from NEWCO Inc., to Diamond Solid Waste Services, LLC; authorizing execution of a Class I Non-Exclusive Solid Waste Collection Franchise with Diamond Solid Waste Services, LLC; and finding no environmental impact by this action.

NOTE: 6 votes required.

STAFF SUPPORTING INFORMATION:

On December 13, 1996, the City Council enacted Ordinance No. O-18353, which amended the San Diego Municipal Code to establish Non-Exclusive Solid Waste Collection Franchises for solid waste haulers and authorized the City Manager to execute Non-Exclusive Solid Waste Collection Franchise Agreements with the City's seventeen existing licensed solid waste haulers. Under City Charter Section 103, franchises may be granted only by ordinance approved by a two thirds vote of the City Council. Charter Section 103 together with San Diego Municipal Code Section 66.0120 prohibit the transfer, sale, lease, or assignment of a franchise, including by way of a forced sale, bankruptcy or otherwise without Council approval which shall not be unreasonably withheld. Charter Section 103 further states that: "Absent Council approval, the franchise shall not be deemed to have been transferred to the new entity."

The NEWCO Franchise was the subject, in part, of a bankruptcy proceeding filed in the Federal Bankruptcy Court for the Southern District of California. That proceeding involved NEWCO, its predecessor franchisee Dominion Disposal, Inc., (Dominion), and a secured creditor of Dominion. The bankruptcy matter has been resolved in its entirety by way of a Settlement and Release Agreement (Settlement), executed by all interested parties, including the Trustee in Bankruptcy (Trustee), and recently approved by the Bankruptcy Court. NEWCO has ceased operations under the franchise since approximately February 2005. The Settlement contemplates a sale of the NEWCO franchise to a franchisee satisfactory to and duly approved by the City.

Diamond Solid Waste Services LLC (Diamond) has applied for the transfer of the NEWCO franchise to Diamond. An application containing current business license, business plan, proof of insurance, performance bond, and vehicle information data has been submitted and reviewed.

Staff has determined that Diamond's application meets all the technical and financial criteria for the transfer of a Non-Exclusive Solid Waste Collection Franchise within the City of San Diego. A background check was conducted through the City Attorney's Office, the results of which are satisfactory. ESD has verified that NEWCO has paid all amounts due and owing to the City under its Franchise Agreement. In addition, all parties to the bankruptcy matter, including the Trustee, and the applicant Diamond have executed the Consent To Transfer Of Solid Waste Collection Franchise and Waiver & Release whereby all parties expressly consent to the transfer of the NEWCO franchise to Diamond and expressly waive and release the City for any claims, etc., which were or could have been raised in the bankruptcy action or may be related to the past and present transfers of this franchise. The City of San Diego currently has 21 Franchise Agreements in place, including the agreement with NEWCO.

ALTERNATIVE ACTION(S):
Disapprove the transfer request. This action will result in one less Non-Exclusive Franchise Hauler available to offer services to the businesses and residents of the City of San Diego.

FISCAL CONSIDERATIONS:
There are no anticipated expenses or significant revenue impacts related to this action. This action will authorize the transfer of a franchise from one company to another.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:
None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:
This action is a transfer of an existing franchise and will not result in a decrease or increase of hauling services available to the businesses or residents of the City of San Diego.

KEY STAKEHOLDERS & PROJECTED IMPACTS:
National Environmental Waste Corporation, Dominion Disposal, Inc., Proptech, Inc. (Secured creditor of Dominion), Diamond Solid Waste Services, LLC, and City of San Diego.

If this action is approved there will be no impact on the number of hauling companies currently available to offer services to the businesses or residents of the City of San Diego.

Heap/Haas

Staff: Sammuel A. Merrill - (858) 573-1253
Grace C. Lowenberg - Deputy City Attorney

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:22 p.m. – 2:26 p.m.)

MOTION BY YOUNG TO INTRODUCE. Second by Atkins. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-201: Appointment and Reappointment to the Centre City Development Corporation Board of Directors.

(See memorandum from Mayor Sanders dated 4/26/2006.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2006-942) ADOPTED AS RESOLUTION R-301463

Declaring the following persons are nominated for election to the Centre City Development Corporation Board of Directors:

NOMINEE	CATEGORY	NOMINATED BY
Kim John Kilkenny (Carlsbad) (Replacing Gina Champion-Cain, who resigned) Term ending May 1, 2008	Real Estate	Mayor Jerry Sanders
Jennifer LeSar (South Park, Dist. 3) (Reappointment) Term ending May 1, 2009	Finance	Mayor Jerry Sanders

Declaring pursuant to Council Policy 000-13, for purposes of deliberation and consideration of appointment, it is determined that Kim John Kilkenny is a resident of San Diego County, but not the City of San Diego, and has unique qualifications to serve as a member of the Commission, therefore, a conscious exception to Council Policy 000-13 in hereby declared;

Declaring Jennifer LeSar is hereby re-elected and Kim John Kilkenny is hereby elected to the Centre City Development Corporation Board of Directors, for terms ending as indicated.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:06 p.m. – 2:11 p.m.)

MOTION BY MADAFFER TO APPONT KIM JOHN KILKENNY. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

MOTION BY MADAFFER TO REAPPOINT JENNIFER LESAR. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-ineligible, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-202: Matter of the City Council Reconsidering Final Payment to Heller Ehrman LLP for Services Rendered in Connection with the Lawsuit San Diego City Employees' Retirement System v. City Attorney Michael Aguirre, et. al.

(See memorandum M-06-04-19 from Councilmember Madaffer dated April 25, 2006; and letters from David E. Kleinfeld dated 4/13/2006 and 3/28/2006.)

COUNCILMEMBER MADAFFER'S RECOMMENDATION:

Reconsider the actions taken by Council on April 18, 2006.

DISCUSSED

The original recommendation on April 18, 2006 included:

Authorizing the final payment to Heller Ehrman LLP in the amount of $188,088.66, to be used solely and exclusively for the purpose of providing final payment for services rendered in connection with the lawsuit entitled San Diego Employees' Retirement System v. San Diego City Attorney Michael . Aguirre, et al. (San Diego Superior Court Case No. GIC841845);

Authorizing the City Auditor and Comptroller to appropriate and transfer funds from the General Fund Unappropriated/Unallocated Reserves to the Public Liability Fund for these purposes.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:39 p.m. – 3:28 p.m.)

ITEM-203: Final Payment to Heller Ehrman LLP for Services Rendered in Connection with the Lawsuit City of San Diego v. Callan Associates, Inc., et al.

(See memorandum M-06-04-19 from Councilmember Madaffer dated 4/25/2006; letters from David E. Kleinfeld dated 4/13/2006 and 3/28/2006.)

(Continued from the meeting of April 18, 2006, Item 332.)

COUNCIL PRESIDENT PETERS' RECOMMENDATION:

Take the following actions:

(R-2006-1010) ADOPTED AS RESOLUTION R-301464

Authorizing an amount not to exceed $634,308.33, for purpose of providing final payment for services rendered in connection with the lawsuit entitled City of San Diego v. Callan Associates, Inc., et al;

Directing the City Attorney to prepare appropriate resolutions in accordance with Charter Section 40, to expend not more than $634,308.33, subject to the City Auditor and Comptroller's declaration of sufficient funds.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:38 p.m. – 3:48 p.m.)

MOTION BY ATKINS TO PAY THE BILL IN THE AMOUNT OF $634,000. Second by Frye. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-not present, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-204: Two actions related to North University City Public Facilities Financing Plan and Facilities Benefit Assessment, FY 2007.

(See Report to the City Council No 06-034; Public Facilities Financing Plan and Facilities Benefit Assessment, Fiscal Year 2007. University Community Area. District 1.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2006-883) ADOPTED AS RESOLUTION R-301465

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

Subitem-B: (R-2006-884) ADOPTED AS RESOLUTION R-301466

Resolution approving the Development Impact Fee Schedule for properties within North University City.

LAND USE AND HOUSING COMMITTEE'S RECOMMENDATION:

On 03/29/2006, LU&H voted 4-0 to approve the Staff's recommendation. (Councilmembers Faulconer, Atkins, Madaffer, and Hueso voted yea).

SUPPORTING INFORMATION:

Council Policy 600-36 calls for an annual review of all existing Facilities Benefit Assessments (FBA). This is the annual review and will serve as the basis for the Capital Improvement Program as it pertains to programming FBA funds in North University City over the next nine-year period.

The proposed Public Facilities Financing Plan details the public facilities that will be needed through the ultimate development of the North University City area, which is presently estimated to be the year 2015. North University City is a partially developed community with many community facilities already in place. This Public Facilities Financial Plan and Facilities Benefit Assessment revises and updates the Fiscal Year 2005 Plan (R-299403 dated June 29, 2004).

The proposed FBA is based on current estimated costs of facilities to be funded under this program. The costs of the facilities are then apportioned equitably among the undeveloped parcels within the Area of Benefit. The objective of the FBA program is to insure that sufficient funds will be available to construct community facilities as the community develops.

The Proposed Public Facilities Financing Plan and Facilities Benefit Assessment include the addition of $30,198,348 in FBA funding as a result of existing project cost increases. These increases are a result of unprecedented rises in construction costs, material costs, and project delays. The increases necessitated a revision in the rate of assessment, resulting in an increase of 51%.

The proposed assessments for Fiscal Year 2007 in North University City are as follows:

LAND USE	CURRENT ASSESSMENT	PROPOSED ASSESSMENT PER UNIT OR PER ADT IN FY2007
Single Family Dwelling Units	$10,748	$16,229
Multi-Family Dwelling Units	$7,524	$11,361
Average Daily Trips	$724	$1,093

The FBA will be collected at the building permit issuance stage of development and deposited into a special interest earning fund for North University City. Annually, the Council receives a status report on the program and authorizes the appropriation of funds for construction of facilities which are programmed for the next fiscal year in the annual Capital Improvements Budget.

The proposed Resolution of Intention will set a date for a public hearing on the Facilities Benefit Assessment. Prior to the public hearing, mailed notices will be sent to all property owners within the proposed area of designation of the date of the hearing and their right to file a protest with the City Clerk prior to the start of the hearing. Notice will also be given by publication of the Resolution of Intention in the City's official newspaper. Unless overruled by a four-fifths vote of the Council, written protest by owners of more than one-half of the area of the property proposed to be included within the Area of Benefit shall cause the proceedings to be abandoned.

Should the City Council not approve the proposed North University City Public Facilities Financing Plan, Fiscal Year 2007, the existing fees would remain in place and new development would not be contributing its proportional share for new facilities identified in the University Community Plan. Alternative funding sources would have to be identified to fund the share of the identified facilities.

FISCAL CONSIDERATION:
Adoption of this revised Public Facilities Financing Plan will continue to provide a funding source for the public facilities identified in the North University City Community Plan.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:
The existing North University Public Facilities Financing Plan, Fiscal Year 2005, was unanimously approved by the Land Use and Housing Committee on May 19, 2004, and by the City Council on June 29, 2004.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:
The University City Community Planning Group (UCPG) voted to approve the North University City Public Facilities Financing Plan, Fiscal Year 2007, on March 14, 2006. The UCPG approved the document based on the following motion, "The University City Planning Group (UCPG) recommends City Council adoption of the Fiscal Year 2007 North University City Public Facilities Financing Plan. This plan includes the construction of the Regents Road Bridge and Regents Road improvements, as well as the widening of Genesee Avenue from Nobel Drive to State Route 52. Currently, the North/South Corridor Study and Environmental Impact Reports (EIR) are being analyzed regarding the need and timing of the aforementioned improvements. The UCPG cannot endorse these specific projects or the phasing of these projects until the City Council has made a final decision on the North/South Corridor Study." The UCPG unanimously approved the plan, 13-0.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):
All property owners with remaining new development are listed on the North University City Public Facilities Financing Plan, Fiscal Year 2007 Assessment Roll, starting on page 157 and will have received notice and a copy of this document in the mail. These property owners will have liens placed on their property and will be required to pay Facility Benefit Assessments upon any building permit issuance when developing their property. Any redevelopment which increases the intensity of existing uses may be subject to an impact fee per Attachment 2.

McCullough/Waring/JLC

Staff: Jennifer Carroll – (619) 533-3673
David Miller - Deputy City Attorney

FILE LOCATION: STRT-FB-1 (33)

COUNCIL ACTION: (Time duration: 2:12 p.m. – 2:12 p.m.)

MOTION BY MADAFFER TO ADOPT. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-205: Levanto.

Matter of approving, conditionally approving, modifying or denying a Community Plan Amendment, Site Development Permit, Planned Development Permit, Tentative Map with Easement Vacations and Rezone from CV-1-1 to RM-2-4, Parking Impact Overlay, and inclusion in the Residential Tandem Parking Overlay Zones. The project would consist of the demolition of an existing 96 room motel with a 7,000 square foot restaurant, and the construction of 100 residential condominium units with amenities on a 5.672 acre site at 4545 Waring Road within the Navajo Community Plan Area.

(Project No. 51049. MND/MMRP/CPA-PG&GP Amendment No. 154627/RZ No. 147058/SDP No. 147056/PDP No. 297522/TM No. 147057/Easement Vacation No. 310703. Navajo Community Plan Area. District 7.)

(Continued from the meetings of April 3, 2006, Item 204, and April 24, 2006, Item 202, last continued at the request of Councilmember Madaffer for further review.)

NOTE: Hearing open. No public testimony taken on April 3, 2006.
Hearing open. No public testimony taken on April 24, 2006.

STAFF'S RECOMMENDATION:

Adopt the resolutions in Subitems A, B, D, and E; and introduce the ordinance in Subitem C:

Subitem-A: (R-2006-774) ADOPTED AS RESOLUTION R-301467

Adoption of a Resolution certifying that the information contained in Environmental Mitigated Negative Declaration No. 51049, 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 declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the 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 a tentative map, site development permit for environmentally sensitive lands, planned development permit, community plan amendment and rezone for the Levanto project;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the Office of the City Clerk and incorporated by reference, is approved;

That pursuant to California Public Resources Code Section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto, as Exhibit A, and incorporated herein by reference;

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

Subitem-B: (R-2006-775) ADOPTED AS RESOLUTION R-301468

Adoption of a Resolution amending the Navajo Community Plan, a copy of which is on file in the Office of the City Clerk;

Amending the Progress Guide and General Plan for the City of San Diego to incorporate the above amended plan.

Subitem-C: (O-2006-103) INTRODUCED, TO BE ADOPTED ON TUESDAY, JUNE 20, 2006

Introduction of an Ordinance of the Council of the City of San Diego changing a 5.67 acres site, located at 4545 Waring Road, in the Navajo Community Plan Area, in the City of San Diego, California, from the CV-1-1 Zone (formerly known as the CR Zone), into the RM-2-4 Zone and the Residential Tandem Parking Overlay Zone, as defined by San Diego Municipal Code Sections 131.0406 and 132.0901, and repealing Ordinance No. O-11582 (New Series), adopted May 8, 1975, Ordinance No. O-9632 (New Series), adopted May 25, 1967, and Ordinance No. O-9794 (New Series) adopted April 11, 1968, of the Ordinances of the City of San Diego insofar as the same conflict herewith.

Subitem-D: (R-2006-776) ADOPTED AS RESOLUTION R-301469

Adoption of a Resolution certifying findings supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference, with respect to Site Development Permit No. 147056/Planned Development Permit No. 297522;

Granting Site Development Permit No. 147056/Planned Development Permit No. 297522 to William Lyon Homes, Inc., and Good Nite Inn San Diego, Inc., Owner/Permittee, under the terms and conditions set forth in the attached permit which is made a part of this resolution.

Subitem-E: (R-2006-777) ADOPTED AS RESOLUTION R-301470

Adoption of a Resolution certifying findings with respect to Tentative Map No. 147057 and Easement Vacation No. 310703, supported by the minutes, maps and exhibits, all of which are herein incorporated by reference;

That pursuant to California Government Code Section 66499 and Section 66343, the easements granted to the City of San Diego per Book 2430, recorded June 18, 1947, Book 7325, Recorded October 29, 1958, Easements on Map 6287 and 5995 located within the project boundaries as shown on Tentative Map No. 147057 with Easement Vacation No. 310703, shall be vacated, contingent upon the recordation of the approved final map for the project;

That Tentative Map No. 147057 and Easement Vacation No. 310703 is granted to William Lyon Homes, Inc. and Good Nite Inn San Diego, Applicant/Subdivider, and Lundstrom and Associates, Engineer, subject to the attached conditions which are made a part of this resolution by this reference.

OTHER RECOMMENDATIONS:

Planning Commission on February 16, 2006, voted 6-1-0 to recommend approval of the project with the direction to look at creative ways to provide affordable housing on site.

The applicant has agreed to pay the in-lieu fee for affordable housing at the time of building permit issuance. The fee is anticipated to rise to approximately $8.50 per square foot of living space on July 1, 2006; no opposition.

Ayes: Ontai, Steele, Schultz, Garcia, Griswold, Otsuji
Nays: Chase

The Navajo Community Planners, on May 16, 2005, voted 14-2-1 to recommend approval of the project with no conditions.

STAFF SUPPORTING INFORMATION:

The subject project would demolish existing structures and construct a 100-unit residential condominium complex on an approximately 5.672 acre site located at 4545 Waring Road in the Navajo Community Plan Area. This site is located on the southern border with the College Community and is in the Grantville Redevelopment Project area. The site is currently developed with a 33,471 square foot motel and restaurant, built in 1969. Access to the subject property is from Adobe Falls Road.

To the south of the project site is a concrete-lined drainage channel (Alvarado Creek) with disturbed vegetation along its south-facing slope. Currently the southeastern edge of the site is located in the identified 100-year flood plain. A project component would grade the entire site to raise the elevation of the southeastern portion two feet above the 100-year floodplain level.

The development would include deviations to development regulations for setbacks, retaining wall height, encroachments into required yards and building height. None of these deviations have been determined to have significant impacts per the California Environmental Quality Act. A Mitigated Negative Declaration was prepared for this project and identified the potential for noise impacts which will be mitigated through the submittal of an acoustical study and noise attenuation barriers for balconies facing Interstate 8 and Waring Road.

FISCAL CONSIDERATIONS:
None with this action. The costs associated with the processing of this project are covered by the applicant. The project includes the vacation of existing sewer and general easements and the granting of new easements to accommodate relocated public utilities. The easements being vacated were granted at no cost to the City.

PREVIOUS COMMITTEE ACTION:
Planning Commission Recommendation: On February 16, 2006, the Planning Commission voted 6-1-0 to recommend approval of the project with the direction to look at creative ways to provide affordable housing on site.

The applicant has agreed to pay the in-lieu fee for affordable housing at the time of building permit issuance. The fee is anticipated to rise to approximately $8.50 per square foot of living space on July 1, 2006. There were no speaker in opposition at the Planning Commission Recommendation Hearing.

KEY STAKEHOLDERS:
William Lyon Homes, Inc.; Law Offices of Cindy Eldred

Halbert/Halbert/JT

LEGAL DESCRIPTION:

The proposed project site is a developed 5.7 acre site at 4545 Waring Road. The existing motel and restaurant would be demolished. The project is located within the Parking Impact Overlay, the Navajo Community Plan area, and Council District 7.

Staff: Jeannette Temple – (619) 557-7908
Shannon Thomas – Deputy City Attorney

NOTE: This item is not subject to Mayor's veto.

FILE LOCATION: SUBITEMS A, B, D, & E: MEET
SUBITEM C: NONE

COUNCIL ACTION: (Time duration: 2:26 p.m. – 2:37 p.m.)

Testimony in favor by Erick Van Wechel.

MOTION BY MADAFFER TO ADOPT THE RESOLUTIONS IN SUBITEMS A, B, D, AND E; AND INTRODUCE THE ORDINANCE IN SUBITEM C. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-nay, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-206: Vista Diego.

Matter of approving, conditionally approving, or denying a Site Development Permit, Tentative Map, Public Right-Of-Way Use Permit, and Angle Parking to demolish the existing auto repair complex with associated structures, and consolidate the three parcels into one lot for the construction of a mixed-use development containing 11 for-sale residential units and two commercial retail spaces. The project would include the replacement of four on-street parallel parking spaces with 12 on-street angle parking spaces with five landscaped

islands on San Diego Avenue, and the reconfiguration and landscaping of the traffic island at the intersection of San Diego Avenue and California Street. The proposed project would conform with the Inclusionary Affordable Housing Requirements and Council Policy 600-27(A) criteria for the Affordable/In-Fill Housing Expedite Program by setting aside at least 10 percent of the total for-sale dwelling units on-site for households with an income at or below 100 percent Area Median Income (AMI). The 0.336-acre site is located at 1858 and 1866 San Diego Avenue on the corner of California Street and San Diego Avenue, east of Interstate 5 within the Uptown Community Plan, the CL-6 Zone of the Mid-City Communities Planned District, and the Airport Approach Overlay Zone (AAOZ).

(See Report to the City Council No. 06-066. Uptown Community Area. District 2.)

STAFF'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2006-903) CONTINUED TO MONDAY, JUNE 12, 2006

Adoption of a resolution certifying that Mitigated Negative Declaration No. 59986, 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 declaration reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the 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 site development permit/public right-of-way use permit/tentative map and angle parking for Vista Diego project;

That the City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that the Mitigated Negative Declaration, a copy of which is on file in the Office of the City Clerk and incorporated by reference, is approved;

That pursuant to California Public Resources Code Section 21081.6, the City Council adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, (Exhibit A) and incorporated herein by reference;

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

Subitem-B: (R-2006-904) CONTINUED TO MONDAY, JUNE 12, 2006

Adoption of a resolution adopting the findings with respect to SDP Permit No. 177769 and Public ROW Use Permit No. 305646;

That Site Development Permit No. 177769 and Public Right-of-Way Use Permit No. 305646 is granted to 1858 San Diego Avenue, LLC, Owners/Permittees, under the terms and conditions set forth in the permit.

Subitem-C: (R-2006-906) CONTINUED TO MONDAY, JUNE 12, 2006

Adoption of a resolution adopting the findings with respect to Tentative Map No. 17770;

That Tentative Map No. 17770, is granted to 1858 San Diego Avenue, LLC Applicant/Subdivider and Lundstrom and Associates, Engineer, subject to attached conditions which are made part of this resolution by this reference.

Subitem-D: (R-2006-905) CONTINUED TO MONDAY, JUNE 12, 2006

Adoption of a resolution that it permits the angle parking on San Diego Avenue, a copy of which is on file in the Office of the City Clerk.

OTHER RECOMMENDATIONS:

Planning Commission on March 30, 2006, voted 4-0 to approve; no opposition.

Ayes: Schultz, Chase, Ontai, Otsuji
Recused: Steele
Not present: Garcia, Griswold

The Uptown Planners Group has recommended denial of this project.

STAFF SUPPORTING INFORMATION:

The proposed project site is located on the corner of California Street and San Diego Avenue, east of Interstate 5 (Attachment 1). The site is located within the Uptown Community Plan, the CL-6 Zone of the Mid-City Communities Planned District, and the Airport Approach Overlay Zone (AAOZ). The proposed project includes an Affordable Housing Density Bonus component, and will provide one for-sale unit affordable to families with an income at or below 100 percent Area Median Income ($63,400 for a family of four).

The project proposes to demolish the existing auto repair services office, the auto repair garage, and two existing carports, and consolidate the three parcels into one lot for the construction of a mixed-use development containing 11 for-sale residential units and two commercial retail spaces. The proposed first floor would contain a grade level-parking garage with 15 parking spaces and two commercial condominiums, and the second floor would contain a parking garage with 12 parking spaces and three residential condominiums. The proposed third and fourth floors would contain four flat residential condominiums and four town home condominiums.

Development of the proposed project requires the approval of a Site Development Permit (SDP) for development within the Mid-City Communities Planned District and for deviations to the regulations (height, front yard setback, interior side yard setback, and street yard setback); Tentative Map (TM) for condominium units (residential and commercial); Public Right-of-Way (ROW) Use Permit for the reconfigured and landscaped traffic island at the intersection of San Diego Avenue and California Street; and for Angle Parking. The City Council may by resolution permit angle parking on any street pursuant to Chapter 8, Article 6, Division 0, Section 86.03 of the San Diego Municipal Code.

FISCAL CONSIDERATIONS:
None.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:
None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:
On October 4, 2005, the Uptown Planners voted 4-8-1 on a failed motion to approve the project. A second motion to deny the height deviation passed with a vote of 7-5-1.

On March 30, 2006, the proposed project was heard by the Planning Commission and after considering the staff report, public testimony, and clarification to the Planning Commissioner's questions, the Planning Commission voted 4-0 on a motion to recommend to the City Council approval of the proposed project based on the staff's recommendation.

The proposed project has generated community opposition in the form of two petitions with approximately 47 signatures (Attachment 24 in PC Report No. PC-06-066). The cover letter identifies the community issue and opposition to the proposed project is the height of the building. Additional emails in opposition were received after the report was distributed (Attachment 3).

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):
Gregory T. and Melinda Earl Smith,1858 San Diego Avenue, LLC, Owner/Applicant; M. W. Steele Group, Inc.,Architect; Lundstrom and Associates, Engineer; Environs, Landscape Architect; and URS Corporation, Acoustic Consultant.

Halbert/Waring/JAP

LEGAL DESCRIPTION:
The proposed project is located at 1858 and 1866 San Diego Avenue, at the triangular corner of San Diego Avenue and California Street, within the Mid-City Communities Planned District, the Airport Approach Overlay Zone, and the Uptown Community Planning Area. Legal Description: Lots 2-4, Block 193, Middletown.

Staff: Jeffrey A. Peterson – (619) 446-5237
Shannon M. Thomas – Deputy City Attorney

NOTE: This item is not subject to Mayor's veto.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:05 p.m. – 2:06 p.m.)

MOTION BY FAULCONER TO CONTINUE TO MONDAY, JUNE 12, 2006, FOR FURTHER REVIEW. Second by Frye. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-250: **Notice** of Pending Final Map Approval – Pacific Tower 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 Tower Condominiums" (T.M. No. 170196/PTS No. 84845), located on the south side of Felspar Street between Cass Street and Dawes Street in the Pacific Beach Community Plan Area in Council District 2, 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-251: SUBMISSION OF BALLOT PROPOSALS

City Council Policy 000-21 establishes the procedure for submittal of ballot proposals. The Council Policy states that members of the public shall submit proposals to the City Clerk, who shall then transmit them promptly to the Rules Committee for review and comment. The proposals must be submitted in time to allow the City Clerk to list on the Council Docket 127 days prior to the election the ballot proposals which have been referred back to Council following Rules Committee review.

Therefore, the City Clerk's Office has established the following administrative guidelines for the November 7, 2006 election:

DAY	DATE	DAYS BEFORE ELECTION	EVENT
Friday	6/16/2006	144	LAST DATE (10:00 a.m.) for public, departments, and agencies to submit ballot proposals to City Clerk for review by Rules Committee
Wednesday	6/21/2006	139	Rules Committee review of ballot proposals
Monday	6/26/2006	134	Council Docket (PUBLIC NOTICE) lists proposals referred by Rules Committee
Monday	7/10/2006	120	Council adopts propositions for ballot; directs City Attorney to prepare ordinances
Monday	7/31/2006	99	Council adopts ordinances prepared by City Attorney
Friday	8/11/2006	88	Last day for City Clerk to file with Registrar of Voters all elections material
Thursday	8/24/2006	75	Last day to file ballot arguments with City Clerk

If you have questions, please contact the Office of the City Clerk at (619) 533-4050.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Peters at 3:50 p.m. in honor of the memory of:

Lowell Dwaynn Farris as requested by Council Member Frye.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:48 p.m. – 3:50 p.m.)