

THE CITY OF SAN DIEGO, CALIFORNIA
 MINUTES FOR REGULAR COUNCIL MEETING
 OF
 MONDAY, DECEMBER 4, 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 2:01 p.m. Council President Peters recessed the meeting at 2:53 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 2:58 p.m. with all Council Members present. The meeting was adjourned by Council President Peters at 4:37 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-not present
- (8) Council Member Hueso-not present

FILE LOCATION: MINUTES



ITEM-10: INVOCATION

Invocation was given by Aaron Keil of Horizon Christian Fellowship.

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 - existing litigation, pursuant to California Government Code Section 54956.9(a):

**CS-1 *Anja Freeman v. City of San Diego, et al.*
San Diego Superior Court Case No. GIC 844968**

REFERRED TO CLOSED SESSION OF TUESDAY, DECEMBER 5, 2006

ACA Assigned: E. Gordon

This employment discrimination lawsuit is brought by a former Emergency Medical Technician who alleges she was subjected to sexual harassment, retaliation, and wrongful termination. The parties engaged in mediation, and believe they have reached an appropriate settlement. In closed session the City attorney will update Council on the status of the litigation and recommend approval of the proposed settlement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:34 p.m. – 4:35 p.m.)

Council President Peters closed the hearing.

**CS-2 *Michael Shames v. City of San Diego*
San Diego Superior Court Case No. GIC 831539**

REFERRED TO CLOSED SESSION OF TUESDAY, DECEMBER 5, 2006

DCA Assigned: J. Riley

This case involves an alleged over billing of single-family sewer customers in violation of the state constitution and a breach by the City of San Diego of loan and grant contracts from the State of California and the Federal Government. In closed session, the City Attorney will update the City Council related to the mediation process and seek approval of the proposed settlement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:34 p.m. – 4:35 p.m.)

Council President Peters closed the hearing.

**CS-3 *County of Santa Clara et al v Atlantic Richfield Co. et al*
Santa Clara County Superior Court Case No. CV 7888657**

REFERRED TO CLOSED SESSION OF TUESDAY, DECEMBER 5, 2006

CDCA Assigned: Sim von Kalinowski

This matter involves a claim by numerous California public entities against lead paint manufacturers, suppliers, and distributors among others for environmental contamination from lead paint. The City Attorney requests that the City Council consider allowing the City to enter the case as a plaintiff, and retain outside counsel to represent the City in the matter.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:34 p.m. – 4:35 p.m.)

Council President Peters closed the hearing.

Conference with Legal Counsel - anticipated litigation - initiation of litigation, pursuant to California Government Code Section 54956.9(c):

CS-4 Number of Cases: One

REFERRED TO CLOSED SESSION OF TUESDAY, DECEMBER 5, 2006

DCA Assigned: J. Cordileone

In closed session the City Attorney will advise the City Council on potential litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:34 p.m. – 4:35 p.m.)

Council President Peters closed the hearing.

Conference with Labor Negotiator, pursuant to Government Code Section 54957.6:

CS-5 Agency Negotiator: Scott Chadwick, J. Rod Betts, Lisa Briggs, Rich Snapper, Jessica Falk Michelli William Gersten, Joe Harris, Rick Reynolds

Employee Organizations: Municipal Employees Association, Local 145 International Association of Firefighters AFL-CIO, San Diego Police Officers Association, Deputy City Attorney Association, AFSCME Local 127

REFERRED TO CLOSED SESSION OF TUESDAY, DECEMBER 5, 2006

DCA Assigned: D. Buljat and W. Gersten

Discuss with Council the negotiations with all five labor unions (Municipal Employees Association, AFSCME Local 127, Police Officers Association, International Association of Firefighters Local 145, and the Deputy City Attorney's Association) regarding the implementing ordinances for the Mayor's

Ballot proposals that would allow for the managed competition of certain City services and also require voter approval for enhancements to employee pension benefits, and deliberations, if necessary, following impasse procedures.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:34 p.m. – 4:35 p.m.)

Council President Peters closed the hearing.



ITEM-200: Ninth Amendment to the Agreement with KPMG, LLP for FY 2003 Comprehensive Annual Financial Report (CAFR) Auditing Services.

(See Report to the City Council No. 06-189 and memorandum from Jay M. Goldstone dated 12/1/2006.)

CHIEF FINANCIAL OFFICER'S RECOMMENDATION:

Introduce the ordinance in Subitem A and adopt the resolution in Subitem B:

Subitem-A: (O-2007-60 Cor. Copy 2) INTRODUCED, TO BE ADOPTED
TUESDAY, JANUARY 9, 2007

Introduction of an Ordinance amending Ordinance No. O-19522 (New Series) entitled "An Ordinance Adopting the Annual Budget for the Fiscal Year 2006-2007 and Appropriating the Necessary Money to Operate the City of San Diego for said Fiscal Year," by authorizing the City Auditor and Comptroller to appropriate and to transfer up to \$1,320,000 from the City's General Fund Unallocated Reserve to the Public Liability Fund, to pay for services rendered by KPMG, LLP in connection with auditing the City's Fiscal Year 2003 Comprehensive Annual Report.

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

Subitem-B: (R-2007-635) ADOPTED AS RESOLUTION R-302152

Authorizing the Mayor to enter into a Ninth Amendment to the Agreement with KPMG for auditing services on the City's Fiscal Year 2003 Comprehensive Annual Financial Report (CAFR) and authorizing the City Auditor and Comptroller to pay from the City's Public Liability Fund up to \$1,320,000 for such audit services.

Aud. Cert. 2700374.

Staff: Jay M. Goldstone - (619) 236-5941
Brant C. Will - Deputy City Attorney

FILE LOCATION: SUBITEM A: NONE
SUBITEM B: MEET

COUNCIL ACTION: (Time duration: 3:10 p.m. – 4:31 p.m.)

MOTION BY FAULCONER TO INTRODUCE THE ORDINANCE IN SUBITEM A AND ADOPT THE RESOLUTION IN SUBITEM B. Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-nay, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-201: Agreement and Amendments to Agreement with Macias, Gini & O'Connell, LLP for the FY 2003 - FY 2006 Financial Statements Audits.

(See Report to the City Council No. 06-187.)

CHIEF FINANCIAL OFFICER'S RECOMMENDATION:

Introduce the ordinance in Subitem A and adopt the resolution in Subitem B:

Subitem-A: (O-2007-61 Cor. Copy 2) INTRODUCED AS AMENDED, TO BE ADOPTED TUESDAY, JANUARY 9, 2007

Introduction of an Ordinance amending Ordinance No. O-19522 (New Series) entitled "An Ordinance Adopting the Annual Budget for the Fiscal Year 2006-2007 and Appropriating the Necessary Money to Operate the City of San Diego for said Fiscal Year," by authorizing the City Auditor and Comptroller to appropriate and to transfer up to \$681,804.32 from the City's General Fund Unallocated Reserve to the General Fund, Dept. 050, City Auditor and Comptroller, and \$327,325 from the Unallocated Reserve to the Public Liability Fund, to pay for audit services rendered by Macias, Gini, & O'Connell, LLP in connection with auditing the City's Fiscal Year 2003-2006 Comprehensive Annual Reports, re-auditing the Fiscal Year 2003 Financial Reports of the Redevelopment Agency, re-auditing the City's Fiscal Year 2003 Single Audit and the ongoing fraud investigation in connection of the FY2003-2005 Financial Statement Audits.

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

Subitem-B: (R-2007-634) ADOPTED AS AMENDED AS RESOLUTION R-302153

Authorizing the Mayor to enter into or amend the Agreements with Macias, Gini & O'Connell in connection with auditing the City's Fiscal Year 2003-2006 Comprehensive Annual Reports, reauditing the Fiscal Year 2003 Financial Reports of the Redevelopment Agency, reauditing the City's FY 2003 Single Audit and ongoing fraud investigation in connection of the FY 2003-2005 Financial Statement Audits.

Aud. Cert. 2700375.

FILE LOCATION: SUBITEM A: NONE
SUBITEM B: MEET

COUNCIL ACTION: (Time duration: 4:32 p.m. – 4:34 p.m.)

MOTION BY FAULCONER TO INTRODUCE THE ORDINANCE IN SUBITEM A AS AMENDED AND ADOPT THE RESOLUTION IN SUBITEM B AS AMENDED TO: 1) RE-CALENDAR THE 2006 ASSIGNMENT TO MACIAS, GINI & O'CONNELL, LLP FOR THE NEXT YEAR; 2) INCLUDE THE WORDING "IN AN AMOUNT NOT TO EXCEED \$888,634"; AND 3) MACIAS, GINI & O'CONNELL, LLP WILL COME BEFORE COUNCIL BEFORE ANY FURTHER AGREEMENTS OR AMENDMENTS ARE ENTERED INTO. Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-nay, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-202: **NOTE:** This item has been pulled from the docket.

ITEM-203: **NOTE:** This item has been pulled from the docket.



ITEM-204: Appointment to the Board of the San Diego County Regional Airport Authority.

(See memorandum from Mayor Sanders dated 11/17/2006.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2007-607) ADOPTED AS RESOLUTION R-302154

Council confirmation of the appointment by the Mayor of the City of San Diego of Alan D. Bersin, to serve as a member of the Executive Committee of the San Diego County Regional Airport Authority, for a term ending December 4, 2010, pursuant to California Public Utilities Code Section 170028.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:03 p.m. – 2:525 p.m.)

Motion by Frye to continue to Tuesday, January 9, 2007, for further review. Second by Madaffer. Failed. Yeas-5, 6, 7. Nays-1, 2, 3, 4, 8.

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

ITEM-205: Third Amendment and Restated Operating Agreement to the San Diego Medical Services Enterprise (SDMSE) Contract Regarding Profit Distributions.

(See Report to the City Council 06-184.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-258 Cor. Copy) ADOPTED WITH DIRECTION AS
RESOLUTION R-302155

Amending the Third Amended and Restated Operating Agreement of San Diego Medical Services Enterprise, LLC (SDMSE), to change the profit distribution policy of the company.

Staff: Jill Olen - (619) 236-7169
Brant C. Will - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:58 p.m. – 3:09 p.m.)

MOTION BY MADAFFER TO ADOPT THE RESOLUTION WITH THE INDEPENDENT BUDGET ANALYST'S RECOMMENDATIONS TO: 1) PLACE THE EXISTING PROFIT DISTRIBUTION CRITERIA IN THE AMENDED OPERATING AGREEMENT; 2) FILL THE VACANT EMERGENCY MEDICAL SERVICES PROGRAM MANAGER POSITION WITH SOMEONE A LITTLE MORE INDEPENDENT OF FIRE RESCUE TO MAINTAIN SOME LEVEL OF OBJECTIVITY; AND 3) DOCKET THE ISSUE RELATED TO THE CITY'S SHARE OF PROFITS ADDRESSING EXPENDITURES, DIRECTION, AND ACCOUNTABILITY. 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-206: Third Amendment and Restated Operating Agreement to the San Diego Medical Services Enterprise (SDMSE) Contract Regarding Expiration Language.

(See Report to City Council 06-183.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-575) ADOPTED AS RESOLUTION R-302156

Amending the Third Amended and Restated Operating Agreement of San Diego Medical Services Enterprise, LLC (SDMSE), to change the language related to the expiration of the company until the first anniversary of the date on which the company ceases to provide services to any third party.

Staff: Tracy Jarman - (619) 533-4301
Brant C. Will - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:09 p.m. – 3:09 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-250: **Notice** of Pending Final Map Approval – Fairbanks Country Villas.

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 “Fairbanks Country Villas” (T.M. No. 7439/PTS No. 11104), located westerly of Camino Ruiz between Carmel Valley Road and Torrey Meadows Drive in the Torrey Highlands Community Plan 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-251: Notice of Pending Final Map Approval – 4093 First Avenue 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 “4093 First Avenue Condominiums” (T.M. No. 268398/PTS No. 106701), located on the southeast corner of Lewis Street and First Avenue in the Uptown Community Plan Area in Council District 3, 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.

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Peters at 4:37 p.m. in honor of the memory of:

Evelyn Lakoff as requested by Council President Peters.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:35 p.m. – 4:37 p.m.)