

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, FEBRUARY 26, 2007
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 3:07 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 3:12 p.m. with all Council Members present. Council President Peters recessed the meeting at 5:03 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 5:12 p.m. with all Council Members present. Council President Peters recessed the meeting at 6:25 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 6:38 p.m. with Council Member Maienschein not present. The meeting was adjourned by Council President Peters at 9:10 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-not present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Hueso-not present

FILE LOCATION: MINUTES



ITEM-10: INVOCATION

Invocation was given by Pastor Brad Rigney of North Park Community Church.

FILE LOCATION: MINUTES



ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Atkins.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

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

**CS-1 *La Jolla Alta Master Council v. City of San Diego*
San Diego Superior Court Case No. GIC 822281**

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 27, 2007

DCA assigned: J. Boardman

This matter is a lawsuit filed by the La Jolla Alta Master Council for inverse condemnation and declaratory and injunctive relief. In closed session, the City Attorney will brief the Council on the status of the litigation.

FILE LOCATION: AGENDA

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

Council President Peters closed the hearing.

**CS-2 *City of San Diego v. Sunroad Enterprise, et al.*
San Diego Superior Court Case No. GIC 877054**

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 27, 2007

DCA assigned: C. Brock

This case was initiated by the City Attorney to abate the public nuisance created by Sunroad Enterprises' construction of a twelve-story, 180-foot building that has been declared a hazard to air traffic at the City's Montgomery field. The City Attorney will discuss the status of the pending litigation and seek authority to retain outside counsel to defend the cross-action against the City.

FILE LOCATION: AGENDA

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

Council President Peters closed the hearing.

**CS-3 *Estate of Beatrice Maidson, et al. v. City of San Diego*
San Diego Superior Court Case No. GIC 857262**

THIS ITEM NOT TAKEN

DCA assigned: R. Walters

This lawsuit arises out of a traffic accident which occurred at the intersection of Pershing Drive and Jacaranda Place. Plaintiffs allege that the intersection was a dangerous condition which was a cause of the accident. In closed session the City Attorney will discuss the status of the lawsuit.

FILE LOCATION: AGENDA

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

**CS-4 *La Playa View Holdings, LLC, et al. v. City of San Diego*
San Diego Superior Court Case No. GIC 843584**

THIS ITEM NOT TAKEN

DCA assigned: M. Dickenson

This matter is a quiet title action brought by certain landowners in the La Playa area of the City. The City Attorney will update the Mayor and City Council on the status of the litigation in closed session.

FILE LOCATION: AGENDA

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

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

CS-5 *AFSCME Local 127 v. City of San Diego*
Unfair Practice Charge No. LA-CE-352-M

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 27, 2007

DCA assigned: D Buljat

In closed session the City Attorney will report on the unfair practice charge filed on February 13, 2007, by AFSCME Local 127 with the Public Employment Relations Board and seek authority to retain outside counsel.

FILE LOCATION: AGENDA

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

Council President Peters closed the hearing.

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

CS-6 Agency negotiator: Scott Chadwick, J. Rod Betts, Lisa Briggs, Rich Snapper,
Jessica Falk Michelli, William Gersten, and Debora Buljat

Employee organizations: Local 145 International Association of Firefighters AFL-
CIO, San Diego Police Officers Association, and Deputy
City Attorney Association

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 27, 2007

DCA assigned: W. Gersten/D. Buljat

Discuss with Council pending substantive negotiations with employee unions (Police Officers Association, International Association of Firefighters Local 145, and the Deputy City Attorney's Association).

FILE LOCATION: AGENDA

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

Council President Peters closed the hearing.



ITEM-200: Two actions related to Sewer Revenue Increase and Capacity Fee Increase.

(See Report to the City Council No. 07-040; memorandum from Mayor Sanders dated 2/15/2007; Mayor Sanders Fact Sheet dated 2/15/2007; and City of San Diego Wastewater Cost of Service Rate Study Final Report dated 12/15/2006.)

STAFF'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2007-812) ADOPTED AS RESOLUTION R-302378

Approving the sewer rate adjustments, increasing sewer revenues incrementally by 8.75% in each of Fiscal Years 2007 and 2008, and by 7% in each of Fiscal Years 2010 and 2011, as reflected in the sewer rate tables within the Proposition 218 Notice that do not include the "Shames Settlement," and consistent with the Sewer Cost of Service Rate Study (COSS);

Adopting the COSS recommendations, as reflected in the sewer rate tables in Proposition 218 Notice, including but not limited to:

- a. Raising the SFR billing cap from 14 hcf to 20 hcf, effective May 1, 2007;
- b. Reducing the return to sewer factor for SFR from 100% to 95% of water usage effective May 1, 2007;

Declaring the sewer service fee for new SFR customers (customers without historical winter water usage at the new location to base return to sewer estimates) shall be based on the average SFR usage of 9 hcf, increasing the monthly fee from \$35.88 to \$38.32 effective May 1, 2007, and incrementally thereafter in

accordance with annual revenue increases approved herein and others that may be approved by the City Council hereafter;

Approving an increase in sewer capacity fees from \$3,710 to \$4,124 per equivalent dwelling unit, consistent with the COSS, effective May 1, 2007;

Declaring that effective May 1, 2007, the Trucker's Discharge fee is increased from \$25 per year plus \$5 per 1,000 gallons of septic tank, chemical toilet, and other domestic waste and \$10 per 1,000 gallons of industrial waste to \$25 per year plus the actual cost of disposal and treatment then in effect, based on volume, total suspended solids, and chemical oxygen demand, as set forth in the COSS and the Proposition 218 Notice for "Hauled Waste," and as may be subsequently adjusted by City Council.

Subitem-B: (R-2007-813) ADOPTED AS RESOLUTION R-302379

Finding that some portion of the sewer revenue increases will be used to meet salaries, wages and fringe benefits, based on the assumptions in the Wastewater Rate Model relating to pension costs and Retiree Health Annual Required Contributions;

Finding that some portion of the sewer revenue increases will be used to meet financial reserve needs and requirements, based on the assumptions in the Wastewater Rate Model relating to operating reserves and Unallocated Reserves;

Declaring that based on Metropolitan Wastewater Department Project Forecasts for FY 2008 through FY 2011, and the Population Growth Projections assumption used in the Wastewater Rate Model that expansions in system capacity from some capital projects are to reduce the chances of sewage spills or to serve increases in population within existing service areas, and not to expand the sewer system to new service areas;

Finding that the sewer revenue increases approved pursuant to Resolution No. R-_____, are exempt from the California Environmental Quality Act pursuant to Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273(a).

STAFF SUPPORTING INFORMATION:

The sewer rate and capacity increases were developed to enable the City to sign the Final Consent Decree with the Environmental Protection Agency by June 30, 2007. This will fund the Operations & Maintenance and Capital Improvement Program projects mandated in the first 4 years in the Final Consent Decree. The City is currently operating under a Partial Consent Decree entered in the cases of *United States v. City of San Diego* and *Baykeeper v. City of San Diego*, which expires on June 30, 2007. The Shames settlement increases will be re-noticed, pursuant to Proposition 218 at a latter date. Current waste hauler load fees have not changed since they were adopted in February 1984 and the existing annual permit base fee of \$25 is unchanged.

FISCAL CONSIDERATIONS:

N/A

PREVIOUS COUNCIL COMMITTEE ACTION:

The sewer rate subcommittee of the Public Utilities Advisory Commission (PUAC) on November 29, 2006 and the PUAC on December 4, 2006 supported the proposed sewer rate adjustments and the Wastewater Cost of Service Study recommendations. This was an informational item at the Natural Resources and Culture Committee on January 24, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Public input sessions have been held throughout San Diego and listed in the Report to the City Council.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Customers of the Metropolitan Wastewater system will incur rate increases as indicated above.

Bertch/Haas

Staff: Darlene Morrow - (858) 292-6384
Thomas C. Zeleny - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:06 p.m. – 9:09 p.m.)

Testimony in opposition by Murtaza Baxamusa, Don Farnsworth, Al Strohlein, Bill Newsome, Sue Macomber, Bernie Axmann, David Todd, Adriadna Wall, Edmund Kapelczak, Daniel Stonesifer, Hal Simon, Valerie Stallings, Jarvis Ross, Zack Hayman, Leo Leonard, Carl DeMaio, Ruth Storr, Jewell Hooper, Charles Heisman, Conrad Pawelski, David Katz, John Pilch, Otto Emme, Tom Scott, and Mrs. Allan Calderwood.

Testimony in favor by Alexis Strauss, Randy Barnard, Jerry Butkiewicz, Bruce Reznik, Marco Gonzalez, Lani Lutar, Scott Alevy, Dieter Wirtzfeld, Alan Pentico, Brad Barnum, Karen Prescott, and Jerry Livingston.

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

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

ITEM-201: Proposed Final Consent Decree in San Diego Baykeeper/Surfrider v. City and USA v. City.

CITY ATTORNEY'S RECOMMENDATION:

This is an informational item for discussion only.

DISCUSSED

SUPPORTING INFORMATION:

On March 29, 2001, San Diego Baykeeper and Surfrider Foundation filed Case No. 01-CV-0550-B against the City of San Diego in Federal Court alleging repeated violations of the Clean Water Act due to sewer system overflows. On July 3, 2003, the State of California (Regional Water Quality Control Board) filed a similar action against the City of San Diego in Case No. 03-CV-1381-B. The United States of America (Environmental Protection Agency) also filed a similar action on July 9, 2003, in Case No. 03-CV-1349-K. The cases were consolidated into one proceeding on September 3, 2003.

On January 31, 2005, the Mayor and City Council approved a final settlement with the State of California in Resolution No. R-300023. With regard to San Diego Baykeeper, Surfrider Foundation, and the Environmental Protection Agency, the City is currently operating under the Second Partial Consent Decree, which expires on June 30, 2007. The litigation is currently stayed until March 31, 2007. The Plaintiffs and the Court have indicated that the City must be in a position to sign the proposed Final Consent Decree by June 30, 2007, or no further stays will be granted and the case will proceed to trial.

The proposed Final Consent Decree requires the City to continue to take steps to reduce sewage spills. Requirements include upgrades and repairs to 27 sewer pump stations and repair or replace 250 miles of sewer pipe, including 17 trunk sewers. In addition, the City will be required to clean at least 1,500 miles of sewer pipe each year. The estimated cost of complying with the proposed Final Consent Decree is \$163 million per year in capital costs, plus an additional \$50 million per year in operation and maintenance costs, through Fiscal Year 2013. Proposed sewer rate adjustments to fund the first four years of the proposed Final Consent Decree are being brought forward to City Council as a separate item.

FISCAL CONSIDERATIONS:

N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

N/A

Zeleny/Haas

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:06 p.m. – 8:59 p.m.)



ITEM-202: Two actions related to Water Revenue Increase and Capacity Fee Increase.

(See Report to the City Council No. 07-039; memorandum from Mayor Sanders dated 2/15/2007; Mayor Sanders Fact Sheet dated 2/15/2007; City of San Diego Water Cost of Service Rate Study Final Report dated 12/14/2006; Department of Health Services letter dated 2/9/2007; and Mayer Hoffman McCann P.C. report dated 8/2/2006.)

STAFF'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2007-810) ADOPTED AS RESOLUTION R-302380

Approving the water rate adjustments, increasing water system customer revenues incrementally by 6.5% in Fiscal Years 2008, 2009, 2010, and 2011, as referenced in the water rate tables within the Proposition 218 Notice, and consistent with the Water Cost of Service Rate Study (COSS);

Adopting the COSS recommendations, including:

- a. Adjusting the monthly base service charges and commodity charges, as referenced in the water rate tables within the Proposition 218 Notice, effective July 1, 2007; and
- b. Increasing the number of user classifications, as referenced in the water rate tables within the Proposition 218 Notice, effective July 1, 2007.

Approving an increase in water capacity fees from \$2,550 to \$3,047 per equivalent dwelling unit, consistent with the COSS, effective July 1, 2007.

Subitem-B: (R-2007-811) ADOPTED AS RESOLUTION R-302381

Finding that some portion of the water rate adjustments will be used to meet operating expenses, including salaries, wages and fringe benefits, based on the assumptions in the Water Rate Model relating to increases in wages, salaries, pension costs, and Retiree Health Annual Required Contributions,

Finding that some portion of the water rate adjustments will be used to meet financial reserve needs and requirements, based on the assumptions in the Water Rate Model relating to operating reserves, Secondary Purchase Reserve, Unallocated Reserves, and CIP Reserves;

Finding that some portion of the water rate adjustments will be used to obtain funds for capital projects, necessary to maintain service within existing service areas, because expansions in system capacity from some capital projects are to serve increases in population within existing services areas, and not to expand the water system to new service areas, based on the 4-Year CIP Project Forecast, and the Population Growth Projections assumption used in the Water Rate Model;

Finding that the water rate adjustments approved pursuant to Resolution No. R-_____ (R-2007-810), are exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273(a).

STAFF SUPPORTING INFORMATION:

In response to state and federal mandates requiring the City to immediately upgrade its water system, water rate increases of 6.5% per year are being requested for Fiscal Years 2008, 2009, 2010, and 2011, and a capacity fee increase from \$2,550 to \$3,047 per equivalent dwelling unit effective July 1, 2007. This increase is needed to ensure the Water Department can execute the existing California Department of Health Services Compliance Order.

FISCAL CONSIDERATIONS:

N/A

PREVIOUS COUNCIL COMMITTEE ACTION:

On January 8, 2007, the Water Department presented to Council the request to issue the Proposition 218 Notice. It was approved and the notice was subsequently issued. The water rate subcommittee of the Public Utilities Advisory Committee (PUAC) on 11/29/2006 and the full PUAC on 12/4/2006 unanimously supported the proposed water rate adjustments of 6.5% in Fiscal Years 2008, 2009, 2010, and 2011, and the COSS recommendations.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Public input sessions have been held throughout the San Diego as detailed in the Report to the City Council.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Water customers will incur rate adjustments.

Barrett/Haas

Staff: Rodney J. Greek - (619) 533-5407
Lori W. Girard – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:06 p.m. – 9:10 p.m.)

Testimony in opposition by Murtaza Baxamusa, Don Farnsworth, Al Strohlein, Bill Newsome, Sue Macomber, Bernie Axmann, David Todd, Adriadna Wall, Edmund Kapelczak, Daniel Stonesifer, Hal Simon, Valerie Stallings, Jarvis Ross, Zack Hayman, Leo Leonard, Carl DeMaio, Ruth Storr, Jewell Hooper, Charles Heisman, Conrad Pawelski, David Katz, John Pilch, Otto Emme, Tom Scott, and Mrs. Allan Calderwood.

Testimony in favor by Alexis Strauss, Randy Barnard, Jerry Butkiewicz, Bruce Reznik, Marco Gonzalez, Lani Lutar, Scott Alevy, Dieter Wirtzfeld, Alan Pentico, Brad Barnum, Karen Prescott, and Jerry Livingston.

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

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

ITEM-250: **Notice** of Pending Final Map Approval – 3695 Texas Street.

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 “3695 Texas Street” (T.M. No. 238921/PTS No. 106692), located on the southeast corner of Texas Street and Landis Street in the Greater North Park 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 9:10 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 9:10 p.m.)