

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
TUESDAY, APRIL 10, 2007  
AT 9:00 A.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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**CHRONOLOGY OF THE MEETING:**

The meeting was called to order by Council President Peters at 10:00 a.m. Council President Peters recessed the meeting at 11:03 a.m. for the purpose of a break. Council President Peters reconvened the meeting at 11:08 a.m. with Council Members Madaffer and Hueso not present. The meeting was recessed by Council President Peters at 11:58 a.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Council President Peters at 2:04 p.m. with Council Member Hueso not present. Council President Peters recessed the meeting at 3:25 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 3:33 p.m. with Council Member Hueso not present. Council President Peters recessed the meeting at 5:50 p.m. to convene the Redevelopment Agency. Council President Peters reconvened the regular meeting at 5:56 p.m. with Council Member Hueso not present. The meeting was adjourned by Council President Pro Tem Young at 6:32 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-Excused by R-302521; no reason given
  - (8) Council Member Hueso-not present
- Clerk-Maland (sr/dlc)

FILE LOCATION: MINUTES



ITEM-300: 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

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Don Stillwell commented on his absence from the Council meetings and his 17<sup>th</sup> anniversary of attending meetings.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:25 a.m. – 10:27 a.m.)

PUBLIC COMMENT-2:

Linda Smith commented on concerns regarding Park and Recreation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:27 a.m. – 10:29 a.m.)

PUBLIC COMMENT-3:

Al Strohlein commented on losing faith in the City.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:29 a.m. – 10:32 a.m.)

PUBLIC COMMENT-4:

Phil Hart commented on finances in the City.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:32 a.m. – 10:35 a.m.)

PUBLIC COMMENT-5:

Mary Berglund and Todd Figi commented on support of Arts and Culture.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:35 a.m. – 10:38 a.m.)

PUBLIC COMMENT-6:

Joseph Braverman commented on voters' rights.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:38 a.m. – 10:41 a.m.)

PUBLIC COMMENT-7:

Patrick Harris commented on attack by a co-worker and Environmental Service employee's position in the budget.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:42 a.m. – 10:43 a.m.)

**PUBLIC COMMENT-8:**

Ron Boshun commented on Council actions.

FILE LOCATION: AGENDA

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

**PUBLIC COMMENT-9:**

Clifford Weiler commented on the integrity of the legal system.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:47 a.m. – 10:49 a.m.)

**PUBLIC COMMENT-10:**

Pat Granger commented on Sunroad building height.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:49 a.m. – 10:52 a.m.)

**PUBLIC COMMENT-11:**

Paul Martin commented on mini dorms in residential communities.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:52 a.m. – 10:56 a.m.)

PUBLIC COMMENT-12:

Marcie Beckett commented on violation of the community plan and the master Environmental Impact Report.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:56 a.m. – 10:58 a.m.)

PUBLIC COMMENT-13:

Katheryn Rhodes commented on overflight easement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:59 a.m. – 11:01 a.m.)

PUBLIC COMMENT-14:

Chris Christensen commented on condominium conversions.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:01 a.m. – 11:02 a.m.)

PUBLIC COMMENT-15:

Scott Chipman commented on concentration of alcohol establishments in Pacific Beach.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:02 a.m. – 11:03 a.m.)

PUBLIC COMMENT-16:

Joy Sunyata commented on civil procedures.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:34 p.m. –3:37 p.m.)

**PUBLIC COMMENT-17:**

Hal Simon commented on the water bills.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:37 p.m. –3:40 p.m.)

**PUBLIC COMMENT-18:**

Jarvis Ross commented on NTC Shoreline Plaza.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:42 p.m. –3: 45 p.m.)

**COUNCIL COMMENT:**

None.

**INDEPENDENT BUDGET ANALYST COMMENT:**

None.

**CITY ATTORNEY COMMENT:**

None.



ITEM-30: Food Stamp Program Awareness Month.

**COUNCILMEMBER ATKINS' RECOMMENDATION:**

Adopt the following resolution:

(R-2007-804) ADOPTED AS RESOLUTION R-302506

Commending the San Diego Hunger Coalition for its passionate commitment to the promotion of the Food Stamp Program, which is a benefit to all San Diegans;

Proclaiming April 2007, to be "Food Stamp Program Awareness Month" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:01 a.m. – 10:11 a.m.)

MOTION BY ATKINS TO ADOPT. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

ITEM-31: Autism Awareness Month.

**COUNCILMEMBER FRYE'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-849) ADOPTED AS RESOLUTION R-302507

Proclaiming April 2007, to be "Autism Awareness Month" in the City of San Diego and commending the San Diego County Chapter of the Autism Society of America for providing much needed resources for families and for raising awareness of autism.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:12 a.m. – 10:15 a.m.)

MOTION BY FRYE TO ADOPT. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

ITEM-50: Establishment of an Independent Rates Oversight Committee  
Incorporating the Duties of the Public Utilities Advisory Commission.

(See Independent Budget Analyst Report No. 07-33 and Mayor Sanders memorandum dated 2/15/2007. Citywide.)

**CITY COUNCIL'S RECOMMENDATION:**

Adopt the following ordinance which was introduced on 3/20/2007, Item 358.  
(Council voted 8-0):

(O-2007-109 Rev.) ADOPTED AS ORDINANCE O-19607  
(New Series)

Amending Chapter 2, Article 6, of the San Diego Municipal Code by adding Division 20, titled City of San Diego Independent Rates Oversight Committee, and adding Sections 26.2001, 26.2002, and 26.2003; and by repealing Division 11, Sections 26.1101, 26.1102, and 26.1103; all relating to the City of San Diego Independent Rates Oversight Committee.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:33 p.m. – 3:25 p.m.)

MOTION BY FRYE TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by Faulconer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-not present.

\* ITEM-51: Amending the San Diego Municipal Code by Amending Section 63.20.5 Titled Waste, Refuse, Fires to Clarify Regulations Pertaining to Beach Fires.

(See Draft Ordinance with Strike-Out. Districts 1, 2, 6, and 8.)

**CITY COUNCIL'S RECOMMENDATION:**

Adopt the following ordinance which was introduced on 3/27/2007, Item 60.  
(Council voted 6-0. Council President Peters and Council President Pro Tem  
Young not present):

(O-2007-108)            ADOPTED AS ORDINANCE O-19605  
(New Series)

Amending Chapter 6, Article 3, Division 00 of the San Diego Municipal  
Code, by amending Section 63.20.5, titled Waste, Refuse, Fires, to clarify  
regulations pertaining to beach fires.

FILE LOCATION:            MEET

COUNCIL ACTION:            (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO DISPENSE WITH THE READING  
AND ADOPT THE ORDINANCE. Second by Young. Passed by the following  
vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-  
yea, Madaffer-not present, Hueso-not present.

\* ITEM-52:    Los Vientos.

(Barrio Logan/Harbor Community Plan Area. District 8.)

**CITY COUNCIL'S RECOMMENDATION:**

Adopt the following ordinance which was introduced on 3/26/2007, Item 203,  
Subitem C. (Council voted 8-0):

(O-2007-106 Cor. Copy)    ADOPTED AS ORDINANCE O-19606  
(New Series)

Changing 1.04 acres located within the Barrio Logan Community Plan  
Area, in the City of San Diego, California, from the Barrio Logan Planned  
District Redevelopment Subdistrict Light Industry/Commercial Use Zone  
into the RM-3-9 Zone, as defined by San Diego Municipal Code Section  
131.0415.

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

**FILE LOCATION:** MEET

**COUNCIL ACTION:** (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-53: Amending the San Diego Municipal Code Relating to Regulations Involving the Operation of Mobile Food Units.

(See memorandum from the City Attorney dated 2/26/2007.)

**TODAY'S ACTION IS:**

Introduce the following ordinance:

(O-2007-107) INTRODUCED, TO BE ADOPTED  
TUESDAY, APRIL 24, 2007

Introduction of an Ordinance amending Chapter 4, Article 2, Division 1, of the San Diego Municipal Code, by amending Sections 42.0160, 42.0161, and 42.0166, all relating to Regulations Involving the Operation of Mobile Food Units.

**PUBLIC SAFETY AND NEIGHBORHOOD SERVICES COMMITTEE'S RECOMMENDATION:**

On 2/28/2007, PS&NS voted 4 to 0 to approve. (Councilmember Faulconer, Council President Pro Tem Young, Councilmembers Maienschein and Hueso voted yea.)

**FILE LOCATION:** NONE

**COUNCIL ACTION:** (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO INTRODUCE. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.



ITEM-54: Establishing Angle Parking Zone on Main Street between Cesar Chavez Parkway and Sigsbee Street.

(Barrio Logan Community Area. District 8.)

**STAFF'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2007-116) INTRODUCED, TO BE ADOPTED ON  
TUESDAY, APRIL 24, 2007

Introduction of an Ordinance authorizing the creation of an angle parking zone on Main Street between Cesar Chavez Parkway and Sigsbee Street, pursuant to the authority conferred by and in accordance with the provisions of California Vehicle Code Section 22503 and San Diego Municipal Code Section 86.03;

Authorizing the installation of the necessary signs or markings be and the same to be made on said street, and the regulations hereinabove imposed shall become effective upon the installation of such signs or markings, or 30 days after the final passage of this ordinance, whichever comes later;

Declaring that this action is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15301 because this action is the minor alteration of an existing facility with a negligible expansion beyond the existing use.

**STAFF SUPPORTING INFORMATION:**

This action will authorize the installation of angle parking on Main Street between Cesar Chavez Parkway and Sigsbee Street. This action is in accordance with Municipal Code Section 86.03, and California Vehicle Code Section 22503.

Main Street between Cesar Chavez Parkway and Sigsbee Street is a two-lane 52-foot wide two-way street with parking permitted on both sides of the street. In their effort to increase available parking in Barrio Logan, the Family Health Center of San Diego has requested the conversion of this segment of Main Street from parallel to angle parking. The installation of angle parking at this location would result in a net gain of 16 parking spaces. Please see sketch of the proposed angle parking.

**FISCAL CONSIDERATIONS:**

The fiscal impact is estimated to be \$2,384.90. Funds are not budgeted for this specific project. However, Street Division will reprioritize other maintenance needs in order to complete this project.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:** None.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

75% of adjacent properties on the block Main Street between Cesar Chavez Parkway and Beardsley Street submitted a petition in support of the proposed angle parking. Only one business exists on the south side of Main Street between Beardsley Street and Sigsbee Street and they submitted a petition in support of the angle parking. In addition, Perkins Elementary School on the north side of this block submitted a letter of support. The Barrio Logan Project Action Committee voted in favor of this action.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

Businesses along this segment of Main Street, parking users, and the Barrio Logan Project Action Committee.

Boekamp/Haas

Aud. Cert. 2700633.

Staff: Deborah Van Wanseele - (619) 533-3012  
Timothy J. Miller - Deputy City Attorney

**FILE LOCATION:** NONE

**COUNCIL ACTION:** (Time duration: 3:48 p.m. – 4:10 p.m.)

MOTION BY FAULCONER TO INTRODUCE. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-not present.



**ITEM-55:** Angle Parking on First Avenue.

(Uptown Community Area. District 2.)

**STAFF'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2007-115)                   INTRODUCED AS AMENDED, TO BE  
ADOPTED ON TUESDAY, APRIL 24, 2007

Introduction of an Ordinance authorizing the creation of an angle parking zone on First Avenue between Redwood Street and Palm Street, pursuant to the authority conferred by and in accordance with the provisions of California Vehicle Code Section 22503 and San Diego Municipal Code Section 86.03;

Authorizing the installation of the necessary signs or markings be and the same to be made on said street, and the regulations hereinabove imposed shall become effective upon the installation of such signs or markings, or 30 days after the final passage of this ordinance, whichever comes last;

Declaring that this action is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Section 15301 because this action is the minor alteration of an existing facility with a negligible expansion beyond the existing use.

**STAFF SUPPORTING INFORMATION:**

This action will authorize the Mayor to install angle parking on First Avenue between Redwood Street and Palm Street. This action is in accordance with Municipal Code Section 86.03.

First Avenue between Redwood Street and Palm Street is a two-lane 52-foot wide two-way street with parking permitted on both sides of the street. In their efforts to increase the available parking, the residents have submitted a petition representing 53% of the properties in support of converting this segment of First Avenue from parallel to angle parking. The installation of angle parking at this location would result in a net gain of five parking spaces.

In addition, the residents have expressed concern with speeding traffic along this segment of First Avenue. The installation of angle parking at this location is anticipated to have a traffic calming effect resulting from the narrowing of travel lanes required to implement angle parking.

**FISCAL CONSIDERATIONS:**

\$1,382.18. Funds are not budgeted for this purpose. However, Street Division will reprioritize other maintenance needs in order to complete this project.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The residents on First Avenue between Redwood Street and Palm Street have submitted a petition representing 53% of the properties in support of angle parking. In addition, letters were sent to property owners, who did not sign the petition and to property owners whose tenants signed the petition notifying them of the proposed change. Two property owners have contacted staff by telephone and expressed support for the proposal. Two other property owners have written and expressed concern with the proposed angle parking and staff responded to their concerns. One of the two property owners followed-up and requested eliminating three of the proposed angle parking spaces while retaining two parallel spaces adjacent to his driveway for visibility.

To address his concern, staff recommends eliminating one angle parking space without retaining any parallel parking, which is more than the standard clearance provided at driveways when installing angle parking. Eliminating three angle parking spaces may diminish the traffic calming effect desired from the proposed angle parking and is not recommended.

The Uptown Planners has voted in support of this proposal.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Property owners, tenants living on First Avenue between Redwood Street and Palm Street, and other parking users.

Boekamp/Haas

Aud. Cert. 2700632.

Staff: Deborah Van Wanseele - (619) 533-3012  
Timothy J. Miller - Deputy City Attorney

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 3:48 p.m. – 4:10 p.m.)

MOTION BY FAULCONER TO INTRODUCE AS AMENDED TO ELIMINATE 3-ANGLED PARKING SPACES AND REPLACE WITH PARALLEL PARKING. Second by Atkins. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-not present.

ITEM-56: Amending the San Diego Municipal Code Relating to Regulations  
Involving the Operation of Cardrooms.

(See memorandum from the City Attorney dated 3/2/2007. Districts 3 and  
7.)

**CITY ATTORNEY'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2007-15) RETURNED TO THE CITY ATTORNEY

Introduction of an Ordinance amending Chapter 3, Article 3, Division 39,  
of the San Diego Municipal Code, by amending Section 33.3911, relating  
to regulations involving the operation of cardrooms.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

MOTION BY COMMON CONSENT TO RETURN TO THE CITY  
ATTORNEY FOR FURTHER REVIEW. Passed by the following vote: Peters-  
yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea,  
Madaffer-not present, Hueso-not present.

\* ITEM-100: Inviting Bids for the Construction of Water Group 521 Project.

(See Executive Summary Sheet dated 1/17/2007. Centre City Community  
Area. District 2.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2007-768) ADOPTED AS RESOLUTION R-302508

Approving the plans and specifications for the construction of Water  
Group 521 (Project), on Work Order No. 182401;

Authorizing the Mayor, or his designee, after advertising for bids in  
accordance with law, to execute a construction contract with the lowest

responsible and reliable bidder for the Project, contingent upon the City Auditor and Comptroller first furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed \$1,689,128 from Water Fund 41500, CIP-73-083.0, Annual Allocation-Water Main Replacement, solely and exclusively, for the purpose of providing funds for the Project and related costs, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer;

Approving the use of City Forces on the Project for the purpose of constructing Water Group 521 for a cost not to exceed \$252,109;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves;

Declaring that this activity is statutorily exempt from CEQA pursuant to State CEQA Guidelines Section 15284(k). (BID-K072650C)

**NATURAL RESOURCES AND CULTURE COMMITTEE'S  
RECOMMENDATION:**

On 1/24/2007, NR&C voted 3 to 0 to approve. (Councilmembers Maienschein, Frye, and Hueso voted yea. Councilmember Faulconer not present.)

**SUPPORTING INFORMATION:**

Water Group 521 is part of a program established by the City of San Diego and the Department of Health and Services mandating the replacement of all cast iron water mains currently in service. This project is located in the Centre City community area. This project includes the construction of approximately 1,621 linear feet new 12-inch water mains, replacing existing 4-inch, 10-inch and 12-inch cast iron and asbestos cement water mains. It also includes street resurfacing. The streets affected by construction operations within this project are: Sixth Avenue, Seventh Avenue, Broadway, "C" Street, "B" Street, and "A" Street, as shown on the Location Map. Traffic control plans have been prepared for the project by the City's design consultant.

As indicated in the Engineer's Project Cost Estimate for the use of City Forces, it is estimated to be more economically than if let by contract. In addition, the Department of Health Services (DHS) under the California Safe Drinking Water Act requires certified

operators to perform this type of work (work in live water mains) to ensure the integrity of the water system.

**FISCAL CONSIDERATIONS:**

The total estimated cost of this project is \$1,689,128. Funding is available in Water Fund 41500, CIP-73-083.0, Annual Allocation - Water Main Replacement for this purpose. This item provides full funding for Water Group 521. The Auditor's Certificate will be issued prior to contract award.

**PREVIOUS COUNCIL COMMITTEE ACTION:**

The Committee on Natural Resources and Culture on January 24, 2007, consent motion by Councilmember Hueso, second by Councilmember Maienschein. Vote to approve 3-0.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

This project was presented to the Centre City Development Corporation in their meeting on October 22, 2003, the Paradise in Progress meeting on July 14th, 2003, and the Gaslamp Quarter Association in their meeting on May 11, 2004. In addition, residents and businesses will be notified at least one (1) month before construction begins by the City's Engineering and Capital Projects Department and again, ten (10) days before construction begins by the Contractor through hand distribution of notices.

**SUPPORTING INFORMATION:** (Continued)

**KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):**

Residents in this area will encounter minor inconvenience during construction. After completion, residents will experience improved reliability of the water system.

Boekamp/Haas

**FILE LOCATION:** CONT-ORTIZ CORPORATION

**COUNCIL ACTION:** (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-101: Highland Ranch Neighborhood Park Play Area Improvements.

(Carmel Mountain Ranch Community Area. District 5.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-909)            ADOPTED AS RESOLUTION R-302509

Amending the Fiscal Year 2007 Capital Improvement Program Budget by adding CIP-29-936.0, Highland Ranch Neighborhood Park Play Area Improvements (Project), to the Fiscal Year 2007 Capital Improvement Program;

Declaring the City Auditor and Comptroller authorizes the transfer of funds in the amount of \$58,767 from Fund No. 11110, Carmel Mountain Ranch East Park Service District Fund, to CIP-29-936.0 for the purpose of providing funds for the above-referenced Project;

Authorizing the City Auditor and Comptroller to appropriate and expend \$58,767 from CIP-29-936.0, Highland Ranch Neighborhood Park Play Area Improvements, Fund 11110, Carmel Mountain Ranch East Park Service District Fund, for the purpose of completing this project, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves;

Declaring that this project is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301.

**STAFF SUPPORTING INFORMATION:**

As a condition of their PDP Permit No. 8803 for the Cypress Greens development, Shea Homes was required to construct sports lighting for two outdoor basketball courts at Carmel Mountain Community Park. In addition, Shea Homes was to pay a special per unit park fee minus the cost of construction for the basketball court lighting. These fees and lighting costs total \$58,767.

However, since the time the PDP Permit was issued, the community priority changed from the outdoor basketball court lighting to the renovation of the play area at Highland Ranch Neighborhood Park. The play area at Highland Ranch Neighborhood Park was originally installed in 1989 and much of the play equipment no longer meets the current

playground safety or ADA standards. The Carmel Mountain/Sabre Springs Recreation Council has identified the renovation of this play area as the top priority for park improvements within their community.

The Park and Recreation Department approached Shea Homes and asked them to consider assisting in the renovation of the Highland Ranch Neighborhood Park play area in lieu of providing the sports lighting at Carmel Mountain Community Park and paying the special park fees that their Cypress Greens PDP Permit required. Shea Homes declined to assist in the renovation of the play area due to liability and contractual concerns. Therefore, the Park and Recreation Department, with the support of the Carmel Mountain/Sabre Springs Recreation Council, agreed to accept payment of the per unit special park fees in the amount of \$58,767 to satisfy Shea Homes permit requirement. To supplement the fees paid to the City by Shea Homes, the Carmel Mountain/Sabre Springs Recreation Council voted to donate new play equipment to the City with an approximate value of \$50,000 for the installation at Highland Ranch Neighborhood Park upon approval by the City to earmark the fees paid by Shea Homes for the play area renovation.

The combined effort of the City and the Carmel Mountain/Sabre Springs Recreation Council will provide for a completed renovation of this highly used play area at Highland Ranch Neighborhood Park.

FISCAL CONSIDERATIONS:

The proposed donation by the Carmel Mountain/Sabre Springs Recreation Council of play equipment will be the catalyst for completing the play area renovation at Highland Ranch Neighborhood Park. The fees paid by Shea Homes in the amount of \$58,767 will pay for the installation of the donated equipment. The renovation of the play area will not increase the current maintenance costs associated with the existing play area.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Meetings and correspondence with the Chair of the Carmel Mountain/Sabre Springs Recreation Council.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The Carmel Mountain/Sabre Springs Recreation Council and the community of Carmel Mountain. Only positive impacts are anticipated.

Reynold

Aud. Cert. 2700618.

Staff: Jim Winter - (619) 533-3040  
Kimberly A. Davies - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

ITEM-102: Watershed Water Quality Improvements – Phase I.

(La Jolla, City Heights, Normal Heights, Kensington-Talmadge and Barrio Logan Community Areas. Districts 1, 3, and 8.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-882) RETURNED TO MAYOR

Amending the Fiscal Year 2007 Capital Improvement Program Budget by adding CIP-12-159.0, Watershed Water Quality Improvements;

Amending the Fiscal Year 2007 Capital Improvements Program Budget for Fund 630221 by increasing the budget amount by \$2,075,000;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$2,075,000 from Fund 100, General Services, Storm Water Pollution Prevention Division Operating Fund to Fund 630221, Contributions from 100 Fund;

Authorizing the appropriation and expenditure of an amount not to exceed \$2,075,000 from CIP-12-159.0, Fund 630221, for providing funds for Watershed Water Quality Improvements – Phase I project;

Declaring that the above expenditure is contingent on appropriate approval and award of one or more contracts for performance of the Watershed Water Quality Improvements – Phase 1 project, if the project will not be performed by City forces, and provided that the City Auditor and

Comptroller first furnishes one or more certificates demonstrating that the funds necessary for the expenditure under such contracts are, or will be, on deposit in the City Treasury;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves;

Declaring that this activity is not a "project" and is therefore exempt from CEQA Guidelines Section 15060(c)(2).

**STAFF SUPPORTING INFORMATION:**

The goal of the Watershed Water Quality project is to address stringent storm drain discharge water quality standards required by the Dissolved Metals Total Maximum Daily Load Program for the Chollas Creek Watershed and the California Ocean Plan's Areas of Special Biological Significance requirements in the La Jolla Shores area. In addition, the projects will assist in satisfying watershed-based water quality activity requirements in the Regional Water Quality Control Board's Municipal Storm Water National Pollutant Discharge Elimination System (NPDES) Permit.

This project proposes improvements at two locations in the Chollas Creek Watershed. One location, at the intersection of Dalbergia Street and Thor Street, consists of constructing planter areas in the street, adjacent to the curb, to capture runoff before it drains into the gutter and storm drain system. Secondly, within the police station parking lot west of Fairmount Avenue between Landis and Wightman Streets, the existing raised planter areas will be lowered and converted to infiltration strips. Sections of the existing asphalt parking lot may also be replaced with pervious concrete.

A third location for water quality improvements is proposed in the La Jolla Shores Watershed. Specifically, the westerly half of the Kellogg Park parking lot will be reconstructed with pervious concrete and re-graded to drain toward the planter areas at the fringes of the lot. Furthermore, new concrete gutters will be placed to convey high flows from the ends of each planter area to the existing catch basins at the north and south ends of the parking lot.

**FISCAL CONSIDERATIONS:**

The Storm Water Pollution Prevention Division's Fiscal Year 2007 approved budget includes \$3,565,269 for watershed water quality improvement projects. Funds in the amount of \$2,075,000 for this action are available in Fund 100, General Services, Storm Water Pollution Prevention Division Operating Fund.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Approved Fiscal Year 2007 budget for Storm Water Pollution Prevention Division.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Storm Water Pollution Prevention Division will be offering stakeholder participation and public outreach support to the Engineering and Capital Projects Department staff. City staff will involve community members and all other affected City departments in the final site selections and design of the projects.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key Stakeholders: City of San Diego; Communities of La Jolla, City Heights, Normal Heights, Kensington-Talmadge, and Barrio-Logan.

Projected Impacts: The approval of this action will allow the City to begin the community and stakeholder outreach, project design, and eventually construction of improvements to address water quality standards and satisfy watershed-based activity requirements set forth in the Regional Water Quality Control Board's Municipal Storm Water National Pollutant Discharge Elimination System Permit.

Boekamp/Haas

Aud. Cert. 2700564.

Staff: Dave Zoumaras - (619) 533-3138  
Peter A. Mesich - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:33 p.m. – 3:33 p.m.)

MOTION BY COMMON CONSENT TO RETURN TO THE MAYOR FOR FURTHER REVIEW. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-not present.

- \* ITEM-103: Authorizing an Additional \$200,000 for the Firm of Morgan Lewis & Bockius for Outside Counsel Services to Represent the City of San Diego before the Securities and Exchange Commission In the matter of City of San Diego Bond Offerings, the United States Securities and Exchange Commission No. LA-2842 Investigation into City Bond and Disclosure Practices.

**CITY ATTORNEY'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-600)            ADOPTED AS RESOLUTION R-302510

Authorizing an additional \$200,000 for the payment of outside counsel expenses to the firm of Morgan Lewis & Bockius;

Authorizing the City Auditor and Comptroller to allocate these expenditures across all funds using an allocation based upon the number of full time employees;

Authorizing the expenditure of these funds, solely and exclusively, for the purpose of providing funds for the above project.

**SUPPORTING INFORMATION:**

In September 2005, the then-City Manager, the acting Deputy Mayor and members of the City Council determined to retain John Hartigan of the law firm of Morgan Lewis & Bockius for representation of the City before the Securities and Exchange Commission related to the investigation into the City's bond practices.

The initial \$250,000 allocated for Morgan Lewis' representation proved sufficient to carry the City through more than one year of Mr. Hartigan's retention, however it did not prove sufficient to cover all of the firm's fees and costs.

On November 14, 2006, the Securities and Exchange Commission issued findings and a cease-and-desist order to the City and accepted the City's Offer of Settlement. The Morgan Lewis firm represented the City in the negotiations with the SEC that led to this resolution. The City Attorney now seeks an additional funding authorization of \$200,000 to cover past due and anticipated expenses in order to cover the conclusion of the City's need for outside counsel legal services from Morgan Lewis & Bockius.

**FISCAL CONSIDERATIONS:**

The City Council will authorize the expenditure of \$200,000 in funds, allocated across the funds based upon pensionable salaries.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

Retention of Morgan Lewis in September 2005 and periodic updates to Council at closed session.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Law firm of Morgan Lewis & Bockius and attorney John Hartigan.

Harris/Goldstone

Aud. Cert. 2700549.

Staff: Alex Sachs - (619) 533-5875  
Todd Bradley - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-104: Martin Luther King Junior Community Park Recreation Center Roof Replacement.

(Southeastern San Diego Community Area. District 4.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-787) ADOPTED AS RESOLUTION R-302511

Authorizing the Mayor, or designee, for and on behalf of the City, to make an application to the State of California for \$25,000 in Park Bond Per Capita Program under the California Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Act of 2000 for the Martin Luther King Junior Community Park - Recreation Center Roof Replacement Project (Project);

Authorizing the Mayor, or designee, to take all necessary actions to secure funds from the State of California for the Project;

Authorizing the Mayor, or designee, to accept funds from the State of California in the amount of \$25,000 in Per Capita Program under the California Safe Park Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Act of 2000 for the Project;

Authorizing the City Auditor and Comptroller to accept, appropriate and expend funds if the grant funding is secured;

Authorizing the City Auditor and Comptroller to establish a special interest-bearing fund for the grant;

Amending the Fiscal Year 2007 Capital Improvements Program Budget by increasing CIP-29-914.0, Martin Luther King Junior Community Park - Recreation Center Roof Replacement, by \$25,000, from State of California 2000 Park Bond Per Capita funding, contingent upon receipt of a fully executed grant agreement;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$36,000 of RZH Proposition 12 funding from CIP-29-479.0, Fund 38143, Martin Luther King Junior Community Park - George L. Stevens Senior Center, to CIP-29-914.0, Fund 38143, Martin Luther King Junior Community Park-Recreation Center Roof Replacement;

Authorizing the City Auditor and Comptroller to appropriate and expend \$61,000 from CIP-29-914.0, Martin Luther King Junior Community Park-Recreation Center Roof Replacement Project, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves;

Declaring this activity is categorically exempt from CEQA per CEQA Guidelines Section 15301(d) (existing facilities).

**STAFF SUPPORTING INFORMATION:**

The recreation center building at the MLK Jr. Community Park was built in 1985 with its original metal roof in place. Over the years, the roof started to deteriorate, causing an extensive leaking problem and water damages in the building during a rainy season. The project proposes to replace the entire roof, including minor structural repairs and

demolition of the existing roof to alleviate further damage to the building's structure and interior fixtures.

The total project cost is estimated to be \$101,000 of which \$40,000 will be funded by a telecom revenue generated from a telecommunication project at the MLK Park in the summer of 2007. The requested funding in the total amount of \$61,000 will allow for the project to be fully funded; \$25,000 of which is requested from the 2000 Park Bond Per Capita funding application and the remainder of \$36,000 is available for transfer within the RZH Fund from the MLK Jr. George L. Stevens project which was completed in January 2006 under budget.

FISCAL CONSIDERATIONS:

The requested fund increase and transfer in the amount of \$61,000 to CIP-29-914.0 are anticipated in unallocated 2000 Park Bond Per Capita funding and RZH funding available in the George L. Stevens Senior Center project's cost savings.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The roof replacement at MLK Jr. Community Park will be presented at the MLK Recreational Council once the project is fully funded.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

For the MLK Jr. Community Park - Recreation Center Roof Replacement project, key stakeholders are the Encanto Neighborhoods Community Plan Area and MLK Recreational Council.

Medina/Martinez

Aud. Cert. 2700541.

Staff: Carol Wood - (619) 533-8217  
Kimberly Ann Davies - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-105: Standley Recreation Center Floor Replacement.

(University Community Area. District 1.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-886) ADOPTED AS RESOLUTION R-302512

Authorizing the Mayor, or his designee, for and on behalf of the City of San Diego, to apply for \$20,450 from the Per Capita Program under the California Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Act of 2000 for Standley Recreation Center Floor Replacement (Project);

Authorizing the Mayor, or designee, to take all necessary actions to secure funds from the California Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Act of 2000 for the Project;

Amending the Fiscal Year 2007 Capital Improvements Program Budget by adding CIP-29-937.0, Standley Recreation Center Floor Replacement;

Authorizing the City Auditor and Comptroller, to accept, appropriate and expend funds if the Grant funds are secured;

Amending Fiscal Year 2007 Capital Improvements Program Budget by increasing CIP-29-937.0, Standley Recreation Center Floor Replacement by \$20,450, contingent upon receipt of a fully executed grant agreement;

Declaring that the City Auditor and Comptroller establish a special interest bearing account for grant funds;

Authorizing the City Auditor and Comptroller to transfer \$20,450 from CIP-29-859.0, University Village Play Area Upgrade and Improvements, Fund No. 38166 to CIP-29-937.0, Standley Recreation Center Floor Replacement;

Authorizing the City Auditor and Comptroller to accept a donation from the Standley Recreation Council of \$7,050 to be deposited into CIP-29-937.0, Standley Recreation Center Floor Replacement;

Authorizing upon receipt of a fully executed agreement, the expenditure of an amount not to exceed \$27,500 from CIP-29-937.0, Standley Recreation Center Floor Replacement for the purpose of providing funds for the Project, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess funds, if any, to the appropriate reserves.

**STAFF SUPPORTING INFORMATION:**

The Standley Community Park recreation center was opened in 1978. The flooring material currently within the lobby area, hallways, game room, activity room, craft room, kitchen, front office and assistant center director's office is the original material installed when the building was constructed. Some small portions of the flooring has been repaired or replaced over the years, but almost thirty years of wear have made the floors in these areas difficult to maintain. In the past 5 years, the City, in cooperation with the Standley Recreation Council, has undertaken several projects in an attempt to modernize and extend the life of this important community facility. These improvements have included remodeling the restrooms, painting all interior walls, resurfacing the gymnasium floor, replacing doors and windows, installing energy efficient lighting as well as other minor improvements to enhance the appearance and operation of the facility. The replacement of the flooring material has been on the deferred maintenance list for the facility for many years and is the Recreation Council's top priority for building improvements. However, due to lack of sufficient funding, the flooring has never been replaced.

In March 2004, the City applied for and received a \$281,450 grant from the Council District 1 portion of the Per Capita Program under the California Safe Neighborhood Parks, Clean Water, Clean Air and Coastal Protection Act of 2000 (Prop 12 Grant). Initially, this money was to be used to develop a new play area at University Village Neighborhood Park in South University City, CIP-29-859.0.

At the request of the Standley Recreation Council, these funds were reallocated to assist in the completion of a play area upgrade and comfort station installation at University Gardens Neighborhood Park, also within South University City. After the reallocation of the grant funds, \$20,450 remained in CIP 29-859.0, University Village Play Area Upgrade and Improvements. These particular grant funds must be expended by March 2008 to ensure reimbursement from the State of California. Since additional funds for the University Village Play Area have not been secured, it became necessary to move the grant funds from the University Village Play Area to another project within South University City that could be completed prior to the March 2008 deadline. The

replacement of the flooring material within the Standley recreation center is an ideal candidate.

The project estimate for the flooring material replacement at the Standley recreation center is \$27,500. In their January 25, 2007 meeting, the Standley Recreation Council unanimously approved the reallocation of the Prop 12 Grant funds from CIP-29-859.0, University Village Play Area Upgrade and Improvements to the floor replacement project. The Standley Recreation Council recognized that the \$20,450 from the Prop 12 Grant funds was not enough to complete the project. In a separate motion, they unanimously approved expending funds from their own accounts to complete the flooring project. The minimum contribution by the Standley Recreation Council will be \$7,050. This \$7,050 donation will be added to the CIP account to ensure the floor replacement project can be completed. The Environmental Services Department will be contracting out and managing the asbestos removal portion of the work and the General Services Department will be installing the new flooring material and baseboards.

FISCAL CONSIDERATIONS:

The reallocation of the Prop 12 Grant funds to the Standley recreation center flooring replacement and the donation of \$7,050 from the Standley Recreation Council will complete a long-standing deferred maintenance priority at the recreation center.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Resolution R-298944, adopted on March 8, 2004, secured the initial Prop 12 Grant funding and reallocated it to complete projects within South University City.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Standley Recreation Council voted to reallocate the Prop 12 Grant funds from CIP-29-859.0 to the Standley recreation center floor replacement project and provide additional funding to complete the project.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Standley Recreation Council and the Park and Recreation Department. This project will extend the useful life of the Standley recreation center.

Reynold

Staff: Jim Winter - (619) 533-3040  
Kimberly A. Davies - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-106: Rick Kurylo Day.

**COUNCILMEMBER ATKINS' RECOMMENDATION:**

Adopt the following resolution:

(R-2007-896) ADOPTED AS RESOLUTION R-302513

Congratulating and offering appreciation to Rick Kurylo, and proclaiming March 26, 2007, as "Rick Kurylo Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-107: San Diego Floral Association Day.

**COUNCILMEMBER ATKINS' RECOMMENDATION:**

Adopt the following resolution:

(R-2007-866) ADOPTED AS RESOLUTION R-302514

Congratulating the San Diego Floral Association for its passionate commitment to the education and guidance of San Diego's horticultural issues over the past 100 years;

Proclaiming April 15, 2007, to be "San Diego Floral Association Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-108: San Diego Cesar E. Chavez Commemoration Committee.

**MAYOR SANDERS', COUNCIL PRESIDENT PRO TEM YOUNG'S, AND COUNCILMEMBER HUESO'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-869) ADOPTED AS RESOLUTION R-302515

Commending and congratulating the “San Diego Cesar E. Chavez Commemoration Committee” for their goals and achievements in the community.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-109: Alpha Project Day.

**COUNCILMEMBER MAIENSCHIN'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-924) ADOPTED AS RESOLUTION R-302516

Proclaiming March 31, 2007, to be “Alpha Project Day” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-110: National Family Justice Center Alliance Day.

**COUNCILMEMBER MAIENSCHIN'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-929) ADOPTED AS RESOLUTION R-302517

Proclaiming April 11, 2007, as “National Family Justice Center Alliance Day” in recognition with the City of San Diego’s alliance in fighting family violence with the San Diego Family Justice Center.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-111: Lupus Alert Day.

**COUNCILMEMBER FRYE'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-898) ADOPTED AS RESOLUTION R-302518

Proclaiming April 1, 2007, to be “Lupus Alert Day” in the City of San Diego and commending the Lupus Foundation of Southern California for

its continued commitment to educate and support those residents living with lupus in San Diego and Imperial Counties.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-112: Global Warming Awareness Day.

**COUNCILMEMBER FRYE'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-872) ADOPTED AS RESOLUTION R-302519

Proclaiming April 11, 2007, to be "Global Warming Awareness Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-113: Excusing Councilmember Madaffer from Attending the City Council Meeting of April 9, 2007.

**COUNCILMEMBER MADAFFER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-889) ADOPTED AS RESOLUTION R-302520

Excusing Councilmember Jim Madaffer from attending the regularly scheduled City Council Meeting on April 9, 2007.

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

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-114: Excusing Councilmember Madaffer from Attending the Morning Session of the April 10, 2007, City Council Meeting.

**COUNCILMEMBER MADAFFER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-923) ADOPTED AS RESOLUTION R-302521

Excusing Councilmember Jim Madaffer from attending the morning session of the April 10, 2007, City Council meeting.

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-115: Excusing Councilmember Madaffer from Attending the Budget and Finance Committee Meeting of April 18, 2007.

**COUNCILMEMBER MADAFFER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-921)            ADOPTED AS RESOLUTION R-302522

Excusing Councilmember Jim Madaffer from attending the regularly scheduled Committee on Budget and Finance meeting of April 18, 2007.

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

FILE LOCATION:            MEET

COUNCIL ACTION:            (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

\* ITEM-116: Excusing Councilmember Madaffer from Attending the City Council and Closed Session Meetings of April 16 and April 17, 2007.

**COUNCILMEMBER MADAFFER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-920)            ADOPTED AS RESOLUTION R-302523

Excusing Councilmember Jim Madaffer from attending the regularly scheduled City Council and Closed Session Meetings on April 16 and April 17, 2007.

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

FILE LOCATION:            AGENDA

COUNCIL ACTION:            (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

- \* ITEM-117: Declaring a Continued State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico.

(District 8.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2007-857)            ADOPTED AS RESOLUTION R-302524

Declaring a Continued State of Emergency regarding the discharge of raw sewage from Tijuana, Mexico.

FILE LOCATION:            Gen'l

COUNCIL ACTION:            (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.

- \* ITEM-118: Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City.

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2007-688)            ADOPTED AS RESOLUTION R-302525

Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego.

FILE LOCATION:            Gen'l

COUNCIL ACTION:            (Time duration: 10:16 a.m. – 10:24 a.m.)

CONSENT MOTION BY ATKINS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-not present.



ITEM-330: Alternative Proposal for Amendments to the Appropriations Ordinance; Repeal of BPR Ordinance; All Relating to the Budget Authority of the Mayor and City Council.

(See Independent Budget Analyst Report No. 07-30 and memorandum from Council President Peters dated 3/1/2007.)

(Continued from the meeting of March 19, 2007, Item 200, at the request of Council President Pro Tem Young, for further review.)

**COUNCIL PRESIDENT PETERS' AND COUNCIL PRESIDENT PRO TEM YOUNG'S RECOMMENDATION:**

Take the following actions:

(O-2007-B) REFERRED TO BUDGET COMMITTEE, RULES COMMITTEE AND CHARTER REVIEW COMMITTEE

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 amending Paragraph 14 thereof with respect to Business Process Reengineering and other matters connected therewith;

The Mayoral authority to make changes to the adopted budget shall be limited as follows:

Budgetary control shall be at the department level by Fund as approved in the Appropriation Ordinance and adopted by the City Council;

Salary savings cannot be used to cover non-personnel expenses;

Funding increases above the amount included in the Appropriations Ordinance require an amendment to the Appropriations Ordinance by the City Council;

Any cumulative reduction in spending resulting from Mayor action in an amount of 10% or \$4 million, whichever is less, in a particular department will require an amendment to the Appropriations Ordinance by the City Council. This may be triggered by either the first budgetary adjustment that meets this threshold or a later budget adjustment that has the cumulative affect of exceeding this threshold;

Immediately upon elimination of any program or service affecting the community, not requiring an amendment to the Appropriations Ordinance as described above, the Mayor shall inform the City Council and City Clerk by providing a memo fully describing the change, any resulting service impact and the corresponding fiscal impact. The City Clerk shall then include such notification on the next available Council docket following receipt of the notice from the Mayor;

Money and/or positions moved between departments will require City Council approval;

Repealing and is of no further effect the Ordinance No. 19523.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:08 a.m. – 11:58 a.m.  
2:04 p.m. – 3:19 p.m.)

MOTION BY YOUNG TO REFER TO BUDGET COMMITTEE, RULES COMMITTEE AND CHARTER REVIEW COMMITTEE. Second by Atkins. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-nay, Hueso-not present.

ITEM-331: Amendments to the Appropriations Ordinance, Repeal of BPR Ordinance, and Resolutions to Clarify Budget Process Requirements.

(See Independent Budget Analyst Reports No. 07-13, 07-19, 07-22, and 07-23; memorandum from Council President Peters dated 3/1/2007; and Councilmember Frye's News Release dated 3/5/2007.)

(Continued from the meetings of March 5, 2007, Item 202, and March 19, 2007, Item 201, last continued at the request of Council President Pro Tem Young, for further review.)

**CITY COUNCIL'S RECOMMENDATION:**

Adopt the following ordinance which was introduced on 2/5/2007, Item 200, Subitem A. (Council voted 5-3. Council President Peters, Councilmembers Faulconer, and Maienschein voted nay):

(O-2007-90 Rev. Copy)      REFERRED TO BUDGET COMMITTEE,  
RULES COMMITTEE AND CHARTER  
REVIEW COMMITTEE

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 amending Paragraph 14 thereof with respect to Business Process Reengineering and other matters connected therewith;

Declaring budget change authority granted to the Mayor requires City Council approval if such action will result in materially and substantially reducing, altering, or eliminating service levels to the community, based upon the Fiscal Year 2007 Budget;

Repealing and is of no further effect the Ordinance No. 19523.

FILE LOCATION:              MEET

COUNCIL ACTION:              (Time duration: 11:08 a.m. – 11:58 a.m.  
2:04 p.m. – 3:19 p.m.)

MOTION BY YOUNG TO REFER TO BUDGET COMMITTEE, RULES COMMITTEE AND CHARTER REVIEW COMMITTEE. Second by Atkins. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-nay, Hueso-not present.



ITEM-332: Amendments to the San Diego Municipal Code Eliminating the Surplus Undistributed Earnings ("Waterfall") as Codified in San Diego Municipal Code Section 24.1502 and as Referred to in Sections 24.1501, 24.1503, 24.1504, and 24.1507, all relating to the City Employees' Retirement System.

(See Report from the City Attorney dated 2/2/2007.)

**CITY COUNCIL'S RECOMMENDATION:**

Adopt the following ordinance which was introduced on 3/5/2007, Item 203.  
(Council voted 8-0):

(O-2007-93) CONTINUED TO TUESDAY, APRIL 17, 2007

Amending Chapter 2, Article 4, Division 15, of the San Diego Municipal Code, by repealing Section 24.1502, and amending Sections 24.1501, 24.1503, 24.1504, and 24.1507, all relating to the "Waterfall".

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 6:34 p.m. – 6:35 p.m.)

MOTION BY MAIENSCHIN TO CONTINUE TO TUESDAY, APRIL 17, 2007, FOR FURTHER REVIEW. Second by Atkins. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-not present.

ITEM-333: Save Our Forests and Ranchlands (SOFAR) v. City of San Diego, et al.  
Settlement Agreement.

(District 2.)

**CITY ATTORNEY'S RECOMMENDATION:**

Adopt the following resolution:

(R-2007-919) ADOPTED AS RESOLUTION R-302526

Approving the Settlement Agreement attached to this resolution as Exhibit "A";

Authorizing the Mayor, or his authorized designee, to execute said Settlement Agreement on behalf of the City;

Authorizing the Council President, or his authorized designee, to execute said Settlement Agreement on behalf of the San Diego City Council;

Declaring that entering into this Settlement Agreement is not a “project” and is therefore exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

**SUPPORTING INFORMATION:**

On April 13, 2006, a citizen group known as Save Our Forests and Ranchlands ("SOFAR") filed a petition for writ of mandate challenging the City's compliance with the California Environmental Quality Act ("CEQA") in its February 28, 2006 approvals of the Downtown Community Plan ("DCP") and subsequent implementing ordinances. SOFAR claims in its petition that the Centre City Development Corporation ("CCDC") and the City violated CEQA by failing to consider an adequate range of alternative transportation and transit options to the proposed DCP and by failing to adequately analyze and mitigate transportation and parking impacts.

Through the course of settlement discussions, the parties have agreed that the most efficient way to examine a transit alternative would be for CCDC to analyze it, at CCDC's expense, in a separate, stand-alone Environmental Impact Report ("EIR") that the City Council could certify if it eventually gives its approval to such a transit alternative. The details of this proposal are set forth in the Settlement Agreement marked as Exhibit "A" to the proposed resolution.

The Settlement Agreement further provides and upon payment to SOFAR of its attorneys' fees, in the amount of \$60,613, SOFAR will execute and file a notice of dismissal of its petition with prejudice, which means that SOFAR may not refile a suit alleging the same claims against the DCP EIR.

**FISCAL CONSIDERATIONS:**

Funds for all costs to be incurred with the implementation of this Settlement Agreement on behalf of all respondents and defendants are available and will be paid for by CCDC.

**PREVIOUS COUNCIL and/or COMMITTEE ACTION:**

On January 31, 2007, the CCDC Board recommended approval of the SOFAR Settlement Agreement as it is reflected in Exhibit "A" to the resolution. On March 20, 2007, this matter went before the City Council in closed session. Upon a motion duly made and seconded, the City Council voted 7-0 (Councilmember Frye recused herself) to approve the Settlement Agreement and to authorize its execution.

**COMMUNITY PARTICIPATION & PUBLIC OUTREACH EFFORTS:**

None with this action.

Carlyle

**NOTE:** See the Redevelopment Agency Agenda of 4/10/2007 for a companion item.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:56 p.m. – 5:57 p.m.)

MOTION BY FAULCONER TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-recused, Madaffer-yea, Hueso-not present.



ITEM-334: Balboa Mesa.

Matter of the appeal by Butch Biendara applies only to the environmental determination on an application for a Planned Development Permit to Amend Planned Commercial Development No. 96-7779 and Site Development Permit to demolish four buildings totaling 13,096 square feet and construct four buildings totaling 29,430 square feet, for a new total of approximately 207,138 square feet of commercial retail space on 16.2 acre site located at 5401-5685 Balboa Avenue and 4104 Genesee Avenue within the CC-1-3 zone and CN-1-2, Clairemont Mesa Height Limit and Community Plan Implementation Overlay Zones of the Clairemont Mesa Community Plan area. (Companion Item to Genesee Plaza Expansion)

(See Report to the City Council No. 07-052. Clairemont Mesa Community Plan Area. District 6.)

According to the San Diego Municipal Code (SDMC), Land Development Code, Section 112.0520(d)(1)-(3), the City Council shall consider the appeal and shall, by a majority vote:

- 1) Deny the appeal, uphold the environmental determination and adopt the CEQA findings of the previous decision-maker, where appropriate;
- 2) Grant the appeal and make a superseding environmental determination or CEQA findings; or
- 3) Grant the appeal, set aside the environmental determination, and remand the matter to the previous decision-maker, in accordance with SDMC Section 112.0520(f), to reconsider the environmental determination that incorporates any direction or instruction the City

4) Council deems appropriate.

If the City Council denies the appeal or grants the appeal under Section 112.0520(d)(2), the lower decision-maker's decision to grant the entitlements, approval or City authorization, shall become effective immediately.

If the City Council grants the appeal under Section 112.0520(d)(3), the lower decision-maker's decision to grant the entitlements, approval or City authorization shall be deemed vacated and the lower decision maker shall reconsider its environmental determination and its decision to grant the entitlements, approval or City authorization, in view of the action and, where appropriate, any direction or instruction from the City Council.

**STAFF'S RECOMMENDATION:**

Take the following actions:

(R-2007- ) DENIED APPEAL ADOPTED AS RESOLUTION  
R-302527

Adoption of a Resolution granting or denying the appeal and upholding or overturning the decision by the Planning Commission certifying Mitigated Negative Declaration (MND) No. 70797, and adopting the Mitigation, Monitoring and Reporting Program (MMRP);

Certifying that the information contained in Mitigated Negative Declaration No. 70797, 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 Administrative Code Section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the City of San Diego City Council;

That the City of San Diego City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that said Mitigated Negative Declaration is hereby approved;

That pursuant to California Public Resource Code Section 21081.6, the City of San Diego City Council hereby 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;

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;

Directing the City Attorney to prepare the appropriate resolutions according to Section 40 of the City Charter.

**OTHER RECOMMENDATIONS:**

Planning Commission on January 25, 2007, voted 4-2-1 to approve staff's recommendation to deny the appeal; Certify the Mitigated Negative Declaration; Adopt Mitigation, Monitoring, and Reporting Program ; and Approve the Site Development Permit and Planned Development Permit; and Conditional Use Permit; was opposition.

Ayes: Naslund, Griswold, Ontai, Otsuji

Nays: Schultz, Garcia

(one vacancy)

The Clairemont Mesa Community Planning Group has recommended approval of this project.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

**UPHOLD** the Hearing Officer's and Planning Commission's certification of Mitigated Negative Declaration No. 70797.

**STAFF RECOMMENDATION:**

**DENY** the appeal and **UPHOLD** the Environmental Determination (Mitigated Negative Declaration No. 70797).

Make an express finding that the information provided by the appellants is not substantial evidence of significant impacts, because it is argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

**EXECUTIVE SUMMARY:**

The only issue before the Council is the appeal of the environmental determination. A Mitigated Negative Declaration (MND) was prepared for the project in accordance with

the California Environmental Quality Act (CEQA). As stated in Section III (Determination) of the MND:

*The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect in the following areas: human health/public safety/hazardous materials. Subsequent revisions in the project proposal create the specific mitigation identified in Section V [Mitigation, Monitoring and Reporting Program] of this Mitigated Negative Declaration. The project as revised now avoids or mitigates the potentially significant environmental effect previous identified, and the preparation of an Environmental Impact Report will not be required.* In addition, the Initial Study includes discussions regarding other environmental issues such as transportation/circulation and water quality issues which staff considered during the environmental review, however, no significant impacts were identified.

Pursuant to Section 21151(c) of the CEQA statutes, Mr. Butch Biendara filed an appeal of the City of San Diego Hearing Officer's certification of the MND for the Balboa Mesa project, and of the Planning Commission's validation of the Hearing Officer's certification. It should be noted that the appellants have also stated that they are preserving their right to appeal the project. However, all project appeal rights have been exhausted. The only issue before the Council is the appeal of the environmental determination.

The appeal, received February 5, 2007, is lengthy, with the issue areas somewhat intermixed. To focus on the environmental issues only, staff has highlighted the issue areas pertaining to the environmental document and have provided responses in a Report to City Council to the four main topics of discussion raised in the appeal that relate to the environmental document.

These issue areas include 1) Segmentation of the project as it relates to the California Environmental Quality Act; 2) Conformance with the Clairemont Mesa Community Plan as stated in the Mitigated Negative Declaration; 3) Mitigated Negative Declaration does not adequately address safety impacts of proposed traffic signal for pedestrians; 4) Discussion of alternatives for the location of the traffic signal in the Mitigated Negative Declaration.

Information about the project has been included in the report to provide a context for Council's discussion of the Mitigated Negative Declaration. Any project details and conditions discussed relate to an already approved project, and they cannot be changed.

Staff believes that MND No. 70797 adequately addresses the project's potential impacts, and that implementation of the MMRP would avoid or reduce such impacts to below a level of significance.

As alternative actions for consideration, the Council can either 1) GRANT the appeal, set aside the environmental determination, and REMAND the matter to the Development Services Director for reconsideration, with direction or instruction the City Council deems appropriate -or- 2) GRANT the appeal and make a superseding environmental determination or CEQA findings. If Council chooses this alternative, staff respectfully requests direction from Council regarding the existence of substantial evidence, as required by Section 21082.2 of the California Public Resources Code, supporting a fair argument that the project would result in significant environmental effects.

**FISCAL CONSIDERATIONS:**

All costs associated with the processing of this appeal are paid by the applicant.

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:**

On January 25, 2007, the Planning Commission voted 4-2-1 to DENY the appeal and UPHOLD the Hearing Officer's Decision.

On November 15, 2006, the Hearing Officer, CERTIFIED Mitigated Negative Declaration No. 70797 and APPROVED Site Development Permit No. 215119 and Planned Development Permit No. 215120.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

On July 18, 2006, the Clairemont Mesa Planning Committee voted 14-1-0 to recommend approval of the project with concerns regarding the safety of the new traffic signal.

**KEY STAKEHOLDERS & PROJECTED IMPACTS:**

Balboa Realty, LLC; Balboa Avenue Citizen's Advisory Committee

Waring/Escobar-Eck/JT

**LEGAL DESCRIPTION:**

The project site is approximately 16.2 acres and is located at 5401-5685 Balboa Avenue and 4104 Genesee Avenue within the CN-1-2-Zone, the CC-1-3 Zone, the Clairemont Mesa Height Limit Overlay Zone, and the Community Plan Implementation Overlay Zone Area "B" within the Clairemont Mesa Community Plan area and Council District 6 and is more particularly described as Lot 3, of Parcel Map No. 6045.

Staff: Jeannette Temple – (619) 557-7908

**NOTE:** See Item 335 on today's docket for a companion item.

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:11 p.m. – 5:50 p.m.)

Testimony in favor of the appeal by Butch Biendara, Billy Hame, Beverly Boys, Thomas Schmidt, Fran Lauer and Billy Paul.

Testimony in opposition of the appeal by Lynne Hiedel, John Zearth, Martin Wilson, Sheri Mongeau, Bruce Wilcox and Janet Dahvey.

MOTION BY FRYE TO ADOPT STAFF'S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE PLANNING COMMISSION'S CERTIFICATION OF THE MITIGATED NEGATIVE DECLARATION. IN ADDITION, THE SIGNAL THAT WILL BE INSTALLED WILL BE PROTECTIVE PERMISSIVE. AFTER A SIX-MONTH'S STUDY, IF THE STUDY SHOWS THAT IT NEEDS TO BE PROTECTED, IT WILL BE CHANGED AT THE DEVELOPER'S EXPENSE. Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-not present.

ITEM-335: Genesee Plaza Expansion.

Matter of the appeal by Butch Biendara applies only to the environmental determination on an application for a Planned Development Permit, Site Development Permit and Conditional Use Permit, an amendment to permit numbers 89-0740, 92-0216 and 95-0199 to demolish or modify seven buildings totaling 355,490 square feet and construct or modify five buildings totaling 397,811 square feet, for a new total of approximately 516,948 square feet of commercial retail space on 43.84 acre site located at properties including 5502-6050 Balboa Avenue & 4203-4375 Genesee Avenue within the CC-1-3 zone and the Clairemont Mesa Height Limit and Community Plan Implementation Overlay Zones of the Clairemont Mesa Community Plan area. (Companion Item to Balboa Mesa.)

(Report to City Council No. 07-053/Mitigated Negative Declaration No. 63208/Site Development Permit (SDP) No. 188311/Planned Development Permit (PDP) No. 189029/Conditional Use Permit (CUP) No. 190103/Project No. 63208. Clairemont Mesa Community Area. District 6.)

According to the San Diego Municipal Code (SDMC), Land Development Code, Section 112.0520(d)(1)-(3), the City Council shall consider the appeal and shall, by a majority vote:

- 1) Deny the appeal, uphold the environmental determination and adopt the CEQA findings of the previous decision-maker, where appropriate;
- 2) Grant the appeal and make a superseding environmental determination or CEQA findings; or
- 3) Grant the appeal, set aside the environmental determination, and remand the matter to the previous decision-maker, in accordance with SDMC Section 112.0520(f), to reconsider the environmental determination that incorporates any direction or instruction the City Council deems appropriate.

If the City Council denies the appeal or grants the appeal under Section 112.0520(d)(2), the lower decision-maker's decision to grant the entitlements, approval or City authorization, shall become effective immediately.

If the City Council grants the appeal under Section 112.0520(d)(3), the lower decision-maker's decision to grant the entitlements, approval or City authorization shall be deemed vacated and the lower decision maker shall reconsider its environmental determination and its decision to grant the entitlements, approval or City authorization, in view of the action and, where appropriate, any direction or instruction from the City Council.

**STAFF'S RECOMMENDATION:**

Take the following actions:

(R-2007- ) DENIED APPEAL; ADOPTED AS RESOLUTION  
R-302528

Adoption of a Resolution granting or denying the appeal and upholding or overturning the decision by the Planning Commission certifying Mitigated Negative Declaration (MND) No. 63208, and adopting the Mitigation, Monitoring and Reporting Program (MMRP);

Certifying that the information contained in Mitigated Negative Declaration No. 63208, 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 Administrative Code Section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the City of San Diego City Council;

That the City of San Diego City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that said Mitigated Negative Declaration is hereby approved;

That pursuant to California Public Resource Code, Section 21081.6, the City of San Diego City Council hereby 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;

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;

Directing the City Attorney to prepare the appropriate resolutions according to Section 40 of the City Charter.

**OTHER RECOMMENDATIONS:**

Planning Commission on January 25, 2007, voted 4-2-1 to approve; with opposition.

Ayes: Naslund, Ontai, Otsuji, Griswold

Nays: Schultz, Garcia

(One vacancy)

The Clairemont Mesa Community Planning Group has recommended approval of this project.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

**UPHOLD** the Hearing Officer's and Planning Commission's certification of Mitigated Negative Declaration No. 63208

STAFF RECOMMENDATION:

**DENY** the appeal and **UPHOLD** the Environmental Determination (Mitigated Negative Declaration No. 63208).

Make an express finding that the information provided by the appellants is not substantial evidence of significant impacts, because it is argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment.

EXECUTIVE SUMMARY:

The only issue before the Council is the appeal of the environmental determination. A Mitigated Negative Declaration (MND) was prepared for the project in accordance with the California Environmental Quality Act (CEQA). As stated in Section III (Determination) of the MND:

*The City of San Diego conducted an Initial Study which determined that the proposed project could have a significant environmental effect in the following areas: human health and public safety, and transportation/circulation. Subsequent revisions in the project proposal create the specific mitigation identified in Section V (Mitigation, Monitoring and Reporting Program) of this Mitigated Negative Declaration. The project as revised now avoids or mitigates the potentially significant environmental effect previously identified, and the preparation of an Environmental Impact Report will not be required.* In addition, the Initial Study includes discussions regarding other environmental issues such as water quality issues which staff considered during the environmental review, however, no significant impacts were identified.

Pursuant to Section 21151(c) of the CEQA statutes, Mr. Butch Biendara filed an appeal of the City of San Diego Hearing Officer's certification of the MND for the Genesee Plaza Expansion project, and of the Planning Commission's validation of the Hearing Officer's certification. It should be noted that the appellants have also stated that they are preserving their right to appeal the project. However, all project appeal rights have been exhausted. The only issue before the Council is the appeal of the environmental determination.

The appeal, received February 5, 2007, is lengthy, with the issue areas somewhat intermixed. To focus on the environmental issues only, staff has highlighted the issue areas pertaining to the environmental document and have provided responses in a Report to City Council to the four main topics of discussion raised in the appeal that relate to the environmental document.

These issue areas include 1) Segmentation of the project as it relates to the California Environmental Quality Act; 2) Conformance with the Clairemont Mesa Community Plan as stated in the Mitigated Negative Declaration; 3) Mitigated Negative Declaration does

not adequately address safety impacts of proposed traffic signal for pedestrians; 4) Discussion of alternatives for the location of the traffic signal in the Mitigated Negative Declaration.

Information about the project has been included in the report to provide a context for Council's discussion of the Mitigated Negative Declaration. Any project details and conditions discussed relate to an already approved project, and they cannot be changed.

Staff believes that MND No. 63208 adequately addresses the project's potential impacts, and that implementation of the MMRP would avoid or reduce such impacts to below a level of significance.

As alternative actions for consideration, the Council can either 1) GRANT the appeal, set aside the environmental determination, and REMAND the matter to the Development Services Director for reconsideration, with direction or instruction the City Council deems appropriate -or- 2) GRANT the appeal and make a superseding environmental determination or CEQA findings. If Council chooses this alternative, staff respectfully requests direction from Council regarding the existence of substantial evidence, as required by Section 21082.2 of the California Public Resources Code, supporting a fair argument that the project would result in significant environmental effects.

**FISCAL CONSIDERATIONS:**

All costs associated with the processing of this appeal are paid by the applicant.

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:**

On January 25, 2007, the Planning Commission voted 4-2-1 to DENY the appeal and UPHOLD the Hearing Officer's Decision.

On November 15, 2006, the Hearing Officer, CERTIFIED Mitigated Negative Declaration No. 63208 and APPROVED Site Development Permit No. 188311, Planned Development Permit No. 189029 and Conditional Use Permit No. 190103.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

On July 18, 2006, the Clairemont Mesa Planning Committee voted 14-1-0 to recommend approval of the project with concerns regarding the safety of the new traffic signal.

**KEY STAKEHOLDERS & PROJECTED IMPACTS:**

TGF Company; Balboa Avenue Citizen's Advisory Committee.

Waring/Escobar-Eck/JT

**LEGAL DESCRIPTION:**

The 43.84 acre project site is located at 5522 Balboa Avenue in the CC-1-3 Zone within the Clairemont Mesa Community Plan area.

Staff: Jeannette Temple – (619) 557-7908

**NOTE:** See Item 334 on today’s docket for a companion item.

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:11 p.m. – 5:50 p.m.)

Testimony in favor of the appeal by Butch Biendara, Billy Hame, Beverly Boys, Thomas Schmidt, Fran Lauer and Billy Paul.

Testimony in opposition of the appeal by Lynne Hiedel, John Zearth, Martin Wilson, Sheri Mongeau, Bruce Wilcox and Janet Dahvey.

MOTION BY FRYE TO ADOPT STAFF’S RECOMMENDATION TO DENY THE APPEAL AND UPHOLD THE PLANNING COMMISSION’S CERTIFICATION OF THE MITIGATED NEGATIVE DECLARATION. Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-not present.



**ITEM-603:** Actions Related to the Duties and Responsibilities of the Audit Committee.

[▶ View referenced exhibit back-up material](#)

**COUNCILMEMBER FAULCONER’S RECOMMENDATION:**

Introduce the following ordinances:

Subitem-A: (O-2007-122) INTRODUCED, TO BE ADOPTED ON TUESDAY, APRIL 24, 2007

Introduction of an Ordinance amending the San Diego Municipal Code by amending Chapter 2, Article 2, Division 1, Section 22.0101.5 entitled “Permanent Rules of the Council,” by amending Rule 6.1 and adding a new Rule 6.11.6; amending Chapter 2, Article 2, by adding new Division 43, titled “Audit Committee”, and adding new Sections 22.4301, 22.4302, 22.4303, 22.4304, and 22.4305; amending Chapter 2, Article 6, by

repealing Division 17, titled "Financial Reporting Oversight Board", and by repealing Sections 26.1701, 26.1702, 26.1703, 26.1704, 26.1705, and 26.1706 in their entirety; amending Chapter 2, Article 2, Division 41, titled "Securities Disclosure", by amending Sections 22.4101, 22.4105, 22.4106, 22.4109, and 22.4112; amending Chapter 2, Article 2, Division 3, titled "City Attorney", by amending Section 22.0304; amending Chapter 2, Article 2, Division 7, titled "City Auditor and Comptroller", by amending Section 22.0708; all related to a New Audit Committee.

Subitem-B: (O-2007-126)                      INTRODUCED, TO BE ADOPTED ON  
TUESDAY, APRIL 24, 2007

Introduction of an Ordinance amending the San Diego Municipal Code by amending Chapter 2, Article 2, Division 43, titled "Audit Committee", and adding new Section 22.4306, related to the Operating Principles of the Audit Committee.

**SUPPORTING INFORMATION:**

On January 9, 2007, the City Council approved a resolution adopting temporary rules to establish the Audit Committee. This resolution created the Audit Committee as the Council's sixth standing committee, as reflected in the amended Rule 6.1 ("Creation of Standing Committees") and the new Rule 6.11.6 ("Audit Committee"). Since that time, the Audit Committee has met under these temporary rules. Also, the resolution required that the Audit Committee develop and recommend a Charter containing the duties and responsibilities of the Committee for approval by the City Council within 90 days.

The new permanent rules, the Charter, and the Statement of Operating Principles with the Mayor were drafted by the City's Independent Consultant with the collaboration of the Audit Committee, the Mayor, the City Attorney, and the IBA. The Audit Committee unanimously approved these three items on February 26, 2007.

The requested actions before the City Council are to amend Rule 6.11.6 to reflect the new permanent rules of the Audit Committee and approve the Audit Committee's Charter and Statement of Operating Principles with the Mayor. The Charter outlines the Audit Committee's purpose, membership, resources, procedures, and responsibilities. The Statement of Operating Principles with the Mayor primarily addresses the relationship the internal auditor will have with the Audit Committee during the interim period prior to revision of the City Charter.

As outlined in the Statement, the internal auditor shall be selected by the Mayor with the participation of the Audit Committee. The internal auditor is directed to communicate with the Audit Committee insofar as it relates to the Committee's oversight

responsibilities with respect to the internal audit function. The internal auditor shall also have the responsibility to inform the Audit Committee if he or she believes his or her independence is being compromised.

FISCAL CONSIDERATIONS:

These actions will have no fiscal impact.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The City Council adopted temporary rules to establish the Audit Committee on January 9, 2007.

The Audit Committee voted unanimously to approve the Audit Committee's Permanent Rules, Charter, and Statement of Operating Principles with the Mayor on February 26, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: -

KEY STAKEHOLDERS AND PROJECTED IMPACTS: -

Faulconer

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:57 p.m. – 6:31 p.m.)

MOTION BY FAULCONER TO INTRODUCE. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-not present.

REPORT OUT OF CLOSED SESSION:

To view the list of all available City Council Closed Session Meetings Reports refer to the link below:

<http://www.sandiego.gov/city-clerk/closedsess.shtml>

FILE LOCATION: MINUTES

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

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Pro Tem Young at 6:32 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:32 p.m. – 6:32 p.m.)