

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, JUNE 25, 2007
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Peters at 2:02 p.m. Council President Peters recessed the meeting at 3:06 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 3:11 p.m. with Council Member Madaffer not present. Council President Peters recessed the meeting at 3:47 p.m. to convene the Redevelopment Agency and thereafter the Housing Authority. Council President Peters reconvened the regular meeting at 3:51 p.m. with Council Member Madaffer not present. The meeting was adjourned by Council President Peters at 3:52 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-302697; no reason given
 - (8) Council Member Hueso-present
- Clerk-Maland (dlc)

FILE LOCATION: MINUTES

ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Peters-present
- (2) Council Member Faulconer-present
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-not present
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES



ITEM-10: INVOCATION

Invocation was given by Intern Pastor Randy Lyle of Horizon Christian Fellowship.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Frye.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

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

**CS-1 *De Anza Cove Homeowners Association, Inc. v. City of San Diego, et al.*
San Diego Superior Court Case No. GIC 821191**

Ernest Abbitt, et al. v. City of San Diego, et al.
San Diego Superior Court Case No. GIC 865536

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 26, 2007

CDCA Assigned: M. Severson

The *De Anza Cove Homeowners Association, Inc. v. City of San Diego, et al.* matter is an action filed by the De Anza Cove Homeowners Association for damages and declaratory relief. The *Ernest Abbitt, et al. v. City of San Diego, et al.* matter is an action filed by individual residents at De Anza Cove for damages. The Court has coordinated these two cases. In closed session, the City Attorney will brief the Council on the status of these related matters.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:44 p.m. – 3:44 p.m.)

Council President Peters closed the hearing.

**CS-2 *County of San Diego v. Redevelopment Agency of the City of San Diego, et al.*
San Diego County Superior Court Case No. GIC 850455
(Consolidated with San Diego County Superior Court Case No. GIC 850829)**

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 26, 2007

DCA Assigned: G. Spitzer

This litigation regards the validity of the City Council's adoption of the Grantville Redevelopment Plan, Ordinance No. O-19380. City Council will confer with the City Attorney regarding settlement with the County of San Diego and property owner Atomic Investments.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:44 p.m. – 3:44 p.m.)

Council President Peters closed the hearing.

**CS-3 Steve Trunk, et al. v. City of San Diego
United States District Court Case No. 89cv00820 GT (LSP)**

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 26, 2007

DCA Assigned: G. Schaefer

The Plaintiff in this case obtained an injunction from a federal district court requiring the City of San Diego to remove the Mount Soledad cross from City property. On June 15, 2007, the federal district court awarded the Plaintiff's counsel \$962,691.28 in attorneys' fees and costs. The City Attorney needs to consult with the Mayor and Council in closed session on the issue of whether an appeal of this award should be filed.

CLOSED SESSION COMMENT 1:

Hud Collins commented on the appeal regarding the Mount Soledad cross in the Trunk vs. City of San Diego case.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:44 p.m. – 3:44 p.m.)

Council President Peters closed the hearing.



ITEM-150: Two actions related to Lobbying Representation in Washington, D.C. and Sacramento, CA.

(See Reports to the City Council No. 07-050 and 07-034; Intergovernmental Relations Department's 3/7/2007 PowerPoint; and PowerPoint dated 2/7/2007.)

TODAY'S ACTIONS ARE:

Adopt the following resolutions:

Subitem-A: (R-2007-966 Cor. Copy) ADOPTED AS RESOLUTION R-302759

Authorizing the Mayor, or his designee, to enter into and execute, for and on behalf of the City, a contractual agreement for federal lobbying representation for a term of two years commencing July 1, 2007, with Patton Boggs, LLP, under the terms and conditions set forth in the agreement;

Authorizing the expenditure of an amount not to exceed \$180,000, solely and exclusively, for the purpose of providing funds for the above agreement with Patton Boggs, LLP, contingent upon the City Auditor and Comptroller first furnishing one or more certificates demonstrating that the funds necessary for expenditures 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 funds, if any, to the appropriate reserves.

Subitem-B: (R-2007-967) CONTINUED TO MONDAY, JULY 16, 2007

Authorizing the Mayor, or his designee, to enter into and execute, for and on behalf of the City, a contractual agreement for state lobbying representation for a term of two years commencing July 1, 2007, with Sloat Higgins Jensen & Associates and Marston+Marston, Incorporated, under the terms and conditions set forth in the agreement;

Authorizing the expenditure of an amount not to exceed \$168,000, solely and exclusively, for the purpose of providing funds for the above agreement with Sloat Higgins Jensen & Associates and Marston+Marston, Incorporated, contingent upon the City Auditor and Comptroller first furnishing one or more

certificates demonstrating that the funds necessary for expenditures 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 funds, if any, to the appropriate reserves.

**RULES, OPEN GOVERNMENT, AND INTERGOVERNMENTAL RELATIONS
COMMITTEE'S RECOMMENDATION:**

On 3/7/2007, Rules voted 5 to 0 to approve the recommendation that Sloat Higgins Jensen & Associates/Marston+Marston be selected as the City's Sacramento lobbyist, with direction that contract terms be provided prior to City Council consideration. (Councilmembers Peters, Young, Maienschein, Frye, and Madaffer voted yea.)

On 2/7/2007, Rules voted 5 to 0 to approve the Mayor's recommendation with direction to the Independent Budget Analyst to prepare a report prior to adoption of the budget regarding the appropriate oversight of the lobbying function. (Councilmembers Peters, Young, Maienschein, Frye, and Madaffer voted yea.)

SUPPORTING INFORMATION:

For more than 40 years, the City has contracted with government relations firms to ensure that the City maintains effective advocacy before the legislative and executive branches of the Federal and State governments. These advocates, working through the Community and Legislative Services Division, Intergovernmental Relations Department, advocate City adopted policy regarding: funding opportunities; Legislative goals; and Regulatory goals.

The principal responsibility of the lobbying contractor shall be achieving funding and determined legislative and regulatory outcomes on behalf of the City.

FISCAL CONSIDERATIONS:

Contract costs are \$348,000 annually combined. Patton Boggs, LLP will be compensated \$180,000 annually and Sloat Higgins Jensen/Marston+Marston, Incorporated will be compensated \$168,000 annually.

Funding for the contract costs have been included in the Mayor's Proposed Fiscal Year 2008 budget. The impact to the General Fund is \$219,600 for Department 220; impact to Non-General Fund is \$128,400 dispersed among Refuse Disposal Fund (\$10,440), Recycling (\$8,400), Water

(\$34,800), Metropolitan Waste Water (\$71,400), and Development Services (\$3,360). Contract payments will occur via the General Fund with the Non-General Fund providing reimbursement under the cost allocation described above.

During the current fiscal year the Intergovernmental Relations Department conducted a review of the previous allocations by fund and compared those to the actual time spent on lobbying activities by the federal and state lobbying contractors. Based upon the results of that review, the funding allocations from each fund have been reduced to more accurately reflect the amount of time the contract lobbyists spend working on non-general fund priorities.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Rules, Open Government and Intergovernmental Relations Committee voted 5-0 on February 7, 2007 to authorize the Mayor to negotiate and execute an Agreement with Patton Boggs, LLP for federal lobbying services.

The Rules, Open Government and Intergovernmental Relations Committee voted 5-0 on March 7, 2007 to authorize the Mayor to negotiate and execute an Agreement with Sloat Higgins Jensen/Marston+Marston, Incorporated for state lobbying services.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: -

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable): -

Nelson/Michell

Aud. Cert. 2700815.

FILE LOCATION: Subitem A: MEET
Subitem B: NONE

COUNCIL ACTION: (Time duration: 2:26 p.m. – 2:46 p.m.)

MOTION BY HUESO TO ADOPT THE RESOLUTION IN SUBITEM A AND CONTINUE SUBITEM B TO MONDAY, JULY 16, 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-not present, Hueso-yea.



ITEM-200: Public Contract Operations (MWWD Department-Wide Bid to Goal) Implementation.

(See Report to the City Council No. 07-114. Citywide.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-1184) NOTED AND FILED

Ratifying the Memorandum of Understanding for the Bid to Goal Public Contract Operations Agreement regarding the operation of the City's wastewater system;

Authorizing the Mayor, or his designee, pursuant to the Memorandum of Understanding, to approve and accept a responsible and responsive Metropolitan Wastewater Department Labor-Management Partnership Bid for the operation of the City's wastewater system;

Declaring that this activity is not a "project" and therefore not subject to the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15060(c)(3).

STAFF SUPPORTING INFORMATION:

In 1997, City Council authorized the first Bid to Goal Agreement (Agreement) with the Metropolitan Wastewater Department (MWWD). Currently, two divisions of MWWD have Agreements in place (through FY 2007). Over the past 10 years, the Bid to Goal approach has demonstrated remarkable success as a strategy to optimize public sector service delivery, promoting significant improvements in the efficiency and effectiveness of relevant MWWD functions. This proposed department-wide Agreement is complementary to the recent MWWD Business Process Reengineering (BPR) effort that validated MWWD performance levels and developed a Most Efficient Organization (MEO). While this Agreement maintains most of the elements of the two operative Agreements, significant refinements are included and addressed in the accompanying Report to Council. MWWD and the Labor Organizations have reached a tentative Bid to Goal Agreement pending the City Council approval.

FISCAL CONSIDERATIONS:

MWWD's Bid to Goal Agreement is projected to yield estimated annual savings of \$20 million compared to projections made prior to implementing the MEO. Incentives and accountability provisions are incorporated to encourage efficiency savings beyond these projections.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Two existing MWWD Bid to Goal Agreements and related Amendments were approved with MWWD's Operations & Maintenance and Wastewater Collection Divisions (both expire 6/30/2007).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Past Bid to Goal efforts and the proposed expansion to a department-wide agreement were discussed with the Public Utilities Advisory Commission in conjunction with presentations on the MWWD BPR process. Performance results will be briefed in public forum at appropriate venues.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Results of actions described above are intended and designed to deliver reliable, cost-effective services to MWWD's ratepayers with reduced staff and expenses. This agreement extends and maintains the labor-management partnership of the City and participating labor organizations.

Bertch/Haas

Staff: Margaret Wyatt - (858) 292-6467
Thomas C. Zeleny - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:04 p.m. – 2:26 p.m.)

Motion by Atkins to adopt the Resolution as amended by deleting the clause "Termination for Convenience" on page 8 of the contract. Second by Frye. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maisenschein-yea, Frye-yea, Madaffer-not present, Hueso-yea.

NOTE: This item was redocketed on July 24, 2007.

ITEM-S400: Approval of Participation and Administration Agreements in San Diego City Employees' Retirement System (SDCERS) Group Trust.

(Continued from the meeting of June 18, 2007, Item 200, at the request of City Attorney, for further review.)

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM'S RECOMMENDATION:

Take the following actions:

TRAILED TO TUESDAY, JUNE 26, 2007

Approving the attached Participation and Administration Agreement between SDCERS and the Unified Port District; and

Approving the attached Participation and Administration Agreement between SDCERS and the Airport Authority; and

Approving the attached Participation and Administration Agreement between SDCERS and the City of San Diego;

Directing the City Attorney to prepare the appropriate resolutions in accordance with Charter Section 40.

Along with the City, the Port and the Airport Authority participate in SDCERS under City Charter Section 149 and San Diego Municipal Code Sections 24.1801 et seq. These provisions allow a public agency to contract with SDCERS to participate in the SDCERS Trust Fund, after the City Council makes a finding that the public agency is eligible and approves the contract between the agency and SDCERS. In 2002, the City Council found that the Port and the Airport Authority were eligible to participate in SDCERS under Charter Section 149, and approved the initial contracts between SDCERS and each agency.

Under Charter Section 149 and Municipal Code Section 24.1806, all funds contributed by a contracting public agency and its employees must be held in trust and used only to pay benefits and necessary expenses related to administering the retirement benefits of that agency. In order to carry out the intent of these provisions, and prevent the use of any contracting agency's plan assets to pay the liabilities associated with another agency's plan, tax counsel advised SDCERS to establish a Group Trust, within which SDCERS would administer each public agency's plan as a separate trust. Based on this advice, on March 16, 2007, the SDCERS Board unanimously approved a "Declaration of Trust" establishing the SDCERS Group Trust effective July 1, 2007.

At that same time, the Board unanimously approved the three attached Participation and Administration Agreements with the City, the Port and the Airport Authority.

The Port and Airport Authority Boards have unanimously approved their respective Participation and Administration Agreements. Municipal Code Section 24.18020(j) requires that the Participation and Administration Agreements between SDCERS and each contracting public agency be approved by the City Council by Resolution.

A Council vote to approve the Participation and Administration Agreements of the City, Port, and Airport will ensure that the plan assets associated with each plan sponsor currently participating in SDCERS are unavailable to satisfy the liabilities of each other plan sponsor's plan. Both the Port and Airport Boards have made it clear that the participation of their assets in the SDCERS Group Trust is critical to their continued participation in SDCERS. If the City Council does not approve their Participation and Administration Agreements, the Port and Airport may be forced to seek out another pension alternative to SDCERS.

FISCAL CONSIDERATIONS:

There is no financial impact associated with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are the City, Port, and Airport Authority, as well as their employees and retirees. Council approval of the three SDCERS Group Trust Participation and Administration Agreements will assure the employees and retirees of all three agencies that the assets in their retirement plans are safe from claims by or against the other SDCERS-administered plans.

Hebrank/Wesco

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:12 p.m. – 3:35 p.m.)

MOTION BY FRYE TO TRAIL TO TUESDAY, JUNE 26, 2007, FOR FURTHER REVIEW. Second by Faulconer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-yea.



[ITEM-S401](#): Fiscal Year 2007 Year-End Budget Adjustments.

(See Report to the City Council No. 07-105.)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced as amended on 6/18/2007,
Item 150. (Council voted 7-0. Councilmember Madaffer not present):

(O-2007-159 Cor. Copy 1)

ADOPTED AS ORDINANCE O-19646
(New Series)

Adoption of an Ordinance amending Ordinance No. O-19522 (New Series) entitled "An Ordinance Adopting the Annual Budget for the Fiscal Year 2006-2007 and Appropriating the Necessary Money to Operate the City of San Diego for Said Fiscal Year," to make Fiscal Year 2007 year-end budget adjustments and to authorize the City Auditor and Comptroller to make such other transfers as necessary to balance each department and fund.

NOTE: Today's action is the second public hearing and adoption of the Ordinance. See Item 150 on the docket of Monday, June 18, 2007, for the first public hearing.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:36 p.m. – 3:44 p.m.)

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

ITEM-250: **Notice of Pending Final Map Approval – 4585 Ohio Street**

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “4585 Ohio Street” (T.M. No. 208440/PTS No. 105204), located on the east side of Ohio Street between Madison Avenue and Meade Avenue in the Greater North Park Community Plan Area in Council District 3, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

ITEM-251: **Notice** of Pending Final Map Approval – 4432-4436 56th Street.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “4432-4436 56th Street” (T.M. No. 255399/PTS No. 111294), located on the southwest corner of 56th Street and Adelaide Avenue in the Mid-City: Eastern Area Community Plan Area in Council District 7, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Peters at 3:52 p.m. in honor of the memory of:

Julie Barbara Kerr as requested by Council President Peters.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 3:51 p.m. – 3:52 p.m.)