

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, JULY 30, 2007
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

Table of Contents

CHRONOLOGY OF THE MEETING.....	3
ATTENDANCE DURING THE MEETING	3
ITEM-1: ROLL CALL.....	4
ITEM-10: INVOCATION	4
ITEM-20: PLEDGE OF ALLEGIANCE.....	4
CLOSED SESSION ITEMS.....	5
ITEM-200: Approving Real Estate Broker Commissions for the Sale of Seventeen Excess City-Owned Real Properties	11
ITEM-201: Two actions related to Proposition 218 Noticing for Wastewater Rate Adjustments Related to Shames v. City of San Diego; and Proposed Water Rate Adjustments Due to San Diego County Water Authority Rate Increase	13
ITEM-202: FY 2008 Agreements with Self-Managed Maintenance Assessment Districts. In the matter of City Council adopting a resolution authorizing actions related to seven Maintenance Agreements and associated actions	16
ITEM-203: Greater Golden Hill Maintenance Assessment District	24
ITEM-204: Business Improvement Districts – FY 2008 Annual Appropriation Process	30
ITEM-205: Fiscal Year 2008 Tax Rate Ordinance	36
ITEM-206: Fiscal Year 2008 Appropriation Ordinance	39
ITEM-207: Increased Authorization for Outside Legal Fees	42
ITEM-208: Continuing Provisions of Legal Services for Former and Current City Officials and Staff Related to SEC, District Attorney and U. S. Attorneys Investigations .	44

ITEM-209:	Authorize Continued Retention, Payment for Invoices and Future Reserve Funding for Latham & Watkins, LLP for Services in Otay Acquisition v. City of San Diego; National Enterprises v. City of San Diego; Border Business Park, Inc, v. City of San Diego; and Related Matters	47
ITEM-210:	Authorizing Continued Retention, Payment for Invoices and Future Funding for Latham & Watkins, LLP & Wehner & Perlman for Legal Services in SDPOA v. Aguirre, et al.; Marcus Abbe, et al. v. City of San Diego; and Aaron, et al. v. Aguirre	50
ITEM-211:	Authorizing Continued Retention, Payment for Invoices and Future Reserve Funding for Latham & Watkins, LLP in McGuigan v. City of San Diego.....	53
ITEM-250:	SUBMISSION OF BALLOT PROPOSALS.....	56
ITEM-251:	Notice of Pending Final Map Approval – Dennery Ranch Villages 2/3	57
ITEM-252:	Notice of Pending Final Map Approval – College Grove Condominiums	58
	REPORT OUT OF CLOSED SESSION	59
	NON-DOCKET ITEMS	59
	ADJOURNMENT.....	59

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Peters at 2:06 p.m. Council President Peters recessed the meeting at 4:08 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 4:13 p.m. with Council Member Maienschein not present. The meeting was adjourned by Council President Peters at 6:51 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-not present
 - (6) Council Member Frye-present
 - (7) Council Member Madaffer-present
 - (8) Council Member Hueso-present
- Clerk-Maland (mz)

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-not present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Hueso-present

FILE LOCATION:

MINUTES



ITEM-10:

INVOCATION

Invocation was given by Pastor Jeff Burnell of the Horizon Park Chapel.

FILE LOCATION:

MINUTES



ITEM-20:

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council President Pro Tem Young.

FILE LOCATION:

MINUTES

CLOSED SESSION ITEMS:

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

**CS-1 *McGuigan v. City of San Diego*
San Diego Superior Court Case No. GIC 849883**

REFERRED TO CLOSED SESSION OF TUESDAY, JULY 31, 2007

EACA Assigned: D. McGrath

The City Attorney's Office will update the City Council regarding the notice of Disqualification of Judge McCue and the Motion to Vacate the Arbitrator's Award and class motion challenging the award, as well as the settlement reached with Plaintiff's attorney, Michael Conger, related to same.

Closed Session Comment 1:

Daniel Coffey commented on funding for outside City Attorney fees.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:45 p.m. – 6:50 p.m.)

Council President Peters closed the hearing.

**CS-2 *Harvey Furgatch v. San Diego Unified Port District, et al.*
San Diego Superior Court Case No. GIC 775242**

REFERRED TO CLOSED SESSION OF TUESDAY, JULY 31, 2007

CDCA Assigned: H. Carlyle and DCA Assigned: J. Riley

Plaintiff alleges his lawsuit was a substantial factor in causing the termination of the purchase and sale agreement for the transfer of property (Tailgate Park) from the City to the San Diego Unified Port District. The Council will be advised of the status of this litigation and discuss whether to waive the attorney client and attorney work product privileges, in a limited scope, for the purpose of defending this lawsuit.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:43 p.m. – 6:45 p.m.)

Council President Peters closed the hearing.

**CS-3 *Jose Bautista Antero, et al v. City of San Diego, et al*
San Diego Superior Court Case No. GIC 879838**

REFERRED TO CLOSED SESSION OF TUESDAY, JULY 31, 2007

DCA Assigned: M. Herrin

This matter involves a traffic accident at the intersection of Kearny Avenue and Cesar E. Chavez Parkway, when a vehicle driven by a city employee was involved in a collision with a vehicle occupied by Plaintiffs. The City Attorney requests that the Mayor and City Council consider a possible settlement of the case in closed session.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:43 p.m. – 6:45 p.m.)

Council President Peters closed the hearing.

**CS-4 *City of San Diego v. Sunroad Enterprises et al.*
San Diego Superior Court Case No. GIC 877054**

REFERRED TO CLOSED SESSION OF TUESDAY, JULY 31, 2007

DCA Assigned: C. Brock

Case No. GIC 877054 was initiated by the City Attorney to abate the public nuisance created by Sunroad Enterprises' construction of a 12 story, 180 foot building which has been declared a "hazard" to air navigation at the City's Montgomery Field Airport by the Federal Aviation Administration ("FAA") Sunroad Enterprises cross-complained against the City claiming the City issued permits for the building and is responsible for any monetary loss Sunroad may incur. The City Attorney and outside counsel, Latham & Watkins, will discuss the status of the pending litigation and associated costs.

Closed Session Comment 1:

Daniel Coffey commented on City Attorney opinion for Sunroad construction.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:45 p.m. – 6:50 p.m.)

Council President Peters closed the hearing.

**CS-5 *San Diego Police Officers' Association v. Michael Aguirre, et al.* [POA1]
United States District Court Case No. 05 CV 1581 H**

REFERRED TO CLOSED SESSION OF TUESDAY, JULY 31, 2007

EACA assigned: D. McGrath

This matter is an action filed by the San Diego Police Officers Association for damages and declaratory relief alleging retaliation and civil rights violations. In closed session, the Executive Assistant City Attorney will brief the Mayor and City Council on the litigation's status.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:43 p.m. – 6:45 p.m.)

Council President Peters closed the hearing.

**CS-6 *Marcus Abbe, et al. [190⁺ Individual Police Officers] v. City of San Diego* [POA2]
United States District Court Case No. 05 CV 1629 DMS; 06 CV 0538**

REFERRED TO CLOSED SESSION OF TUESDAY, JULY 31, 2007

EACA Assigned: D. McGrath

Approximately 1500 current or former police officers of the San Diego Police Department have jointly sued the City in these two consolidated cases for violation of the federal Fair Labor Standards Act and the Memorandum of Understanding (“MOU”) between the City and the Police Officers Association. The Plaintiffs allege in the lawsuit that they are entitled to compensation for nonpayment of earned overtime wages and also compensation for unpaid benefits in accordance with the MOU. In closed session, the Executive Assistant City Attorney will brief the Mayor and City Council on the litigation's status.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:43 p.m. – 6:45 p.m.)

Council President Peters closed the hearing.

**CS-7 *Erica Aaron, et al. v. Michael Aguirre, et al. [POA3]*
United States District Court Case No. 06 CV 1451 H**

REFERRED TO CLOSED SESSION OF TUESDAY, JULY 31, 2007

EACA Assigned: D. McGrath

This matter is a class action filed by numerous police officers against the City Attorney, the City of San Diego and a number of current and former City Council Members and employees alleging retaliation and civil rights violations. In closed session, the Executive Assistant City Attorney will brief the Mayor and City Council on the litigation's status.

Closed Session Comment 1:

Daniel Coffey commented on City Attorney's conflict of interest.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:45 p.m. – 6:50 p.m.)

Council President Peters closed the hearing.

CS-8 *City of San Diego v. MBM Associates, et al.*
aka FSDRIP (San Diego River Project)
San Diego Superior Court Case No. GIC 878013

REFERRED TO CLOSED SESSION OF TUESDAY, JULY 31, 2007

DCA Assigned: J. Cordileone

It is a breach of contract lawsuit involving the dredging of the San Diego River. In closed session, the City Attorney will brief the Mayor and City Council on the status of the case.

Closed Session Comment 1:

Daniel Coffey commented on adoption of obligation in 1993.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:45 p.m. – 6:50 p.m.)

Council President Peters closed the hearing.



ITEM-200: Approving Real Estate Broker Commissions for the Sale of Seventeen Excess City-Owned Real Properties.

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-50) RETURNED TO THE MAYOR

Approving a schedule of real estate brokerage commissions for the sale of seventeen excess City-owned real properties previously approved for sale by the City Council on May 21, 2007.

STAFF SUPPORTING INFORMATION:

On May 21, 2007, the City Council approved the sale of seventeen properties excess to the City needs. Also approved was the "payment of a real estate broker's commission relating to the sale of the Properties, in each instance, at the discretion of the Mayor or his designee, and in conformance with San Diego Municipal Code Section 22.0905".

The City's Purchasing & Contracting Department issued a Request for Statement of Qualifications (RSFQ) seeking bids for "Professional Commercial Brokerage Services". The RSFQ was advertised in the City's official newspaper, the Daily Transcript, listed on the City's web site and notices were sent to commercial real estate firms. The City received proposals from eleven companies: Grubb & Ellis, NAI San Diego, Lee Associates, Associated Realtors, Coldwell Banker Commercial, Colliers International, CBRE, Cushman & Wakefield, Inc., Wiese & Associates, Burnham and Coldwell Banker Commercial.

A Technical Evaluation Committee, consisting of members of the Real Estate Assets Department, reviewed the proposals for technical merit and ranked them according to: Qualifications and Experience of Assigned Staff; References and Past Performance; Financial Capability to Perform; Suitability and Rapport; Firms' Relevant Experience; Executive Summary; Litigation History; Interpretation and Assessment of relevant market trends, Assessment of property sale opportunities; and Development of a Comprehensive Marketing Plan.

The top five qualifiers, Burnham, Colliers International, Grubb & Ellis, CBRE and Cushman & Wakefield, Inc., were invited for one-on-one interviews resulting in all five being selected and placed on a qualified vendors list for Commercial Real Estate contracts with the City. This list is valid for two years from the award date of June 27, 2007.

A Request for Proposals (RFP) was sent to these five companies to bid on the sale of eight properties, categorized in three groups - 1) Office Buildings, 2) Vacant Land and 3) Ground Leases. Each company submitted a written proposal and presentation to the Evaluation Committee. Each proposal was rated according to its technical merits and then the final pricing structure was evaluated with the best value selected by the City. Notification of intent to award was sent out on July 12, with a protest period to end on July 23, 2007.

This action requests approval of the best value proposals which do reflect, in this case, the lowest commission percentages that were received through the bid process described above (Attachment A), for the properties.

FISCAL CONSIDERATIONS:

All commissions are paid from the proceeds of the sale of the individual properties. The commission structures are well below market value rates for both commercial and residential properties.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The sale and payment of broker commissions was approved by Council on May 21, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

Barwick/Waring

Staff: James F. Barwick - (619) 236-6145
Brock Ladewig – Chief Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:09 p.m. – 2:09 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-not present, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-201: Two actions related to Proposition 218 Noticing for Wastewater Rate Adjustments Related to Shames v. City of San Diego; and Proposed Water Rate Adjustments Due to San Diego County Water Authority Rate Increase.

(See Reports to the City Council No. 07-125 and 07-126.)

STAFF'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2008-58) ADOPTED WITH DIRECTION AS RESOLUTION
R-302882

Receiving the Report to the City Council;

Authorizing the Mayor, or his designees, to notice a public hearing on proposed sewer rate adjustments in accordance with the requirements of Proposition 218 and the procedures previously adopted by the City Council in Resolution R-302245;

Declaring the public hearing for the City Council to consider the proposed sewer rate adjustments will be held during the regularly scheduled City Council Meeting of October 8, 2007, and will be conducted in accordance with Proposition 218 and the procedures previously adopted by the City Council in Resolution R-302245.

Declaring this activity is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(5) because this activity is an organizational or administrative activity of a government that will not result in direct or indirect physical changes in the environment.

Subitem-B: (R-2008-46) ADOPTED WITH DIRECTION AS RESOLUTION
R-302883

Receiving the Report to the City Council;

Authorizing the Mayor, or his designees, to notice a public hearing on proposed water rate adjustments in accordance with the requirements of Proposition 218 and the procedures previously adopted by the City Council in Resolution R-302245;

Declaring the public hearing for the City Council to consider the proposed water rate adjustments will be held during the regularly scheduled City Council Meeting of October 8, 2007, and will be conducted in accordance with Proposition 218 and the procedures previously adopted by the City Council in Resolution R-302245.

Declaring this activity is not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15378(b)(5) because this activity is an organizational or administrative activity of a government that will not result in direct or indirect physical changes in the environment.

STAFF SUPPORTING INFORMATION:

In 2005, a class action lawsuit was initiated seeking correction for perceived rate imbalances. On May 18, 2007, the Superior Court for the County of San Diego approved an agreement to settle this class action lawsuit over the City's past wastewater service rates. This rate increase action will start the Prop. 218 noticing and mailing and set the date for public hearing of the proposed rate increase. The rate increase is needed to provide sufficient revenue to meet the court settlement revenue requirement of \$40 million. It is revenue neutral to the City of San Diego during the payment period; all funds raised by this proposed rate adjustment will go towards reducing sewer service charges for eligible single family residential customers, paying plaintiff attorney fees, paying claims from former residents or provides funding for a non-profit, 501(c)(3) organization (\$20,000) to solicit donations for independent review of future sewer rate cases. After \$40 million is raised and distributed in accordance with the Court satisfying other terms of the court settlement, the rate reduction for single family residential customers will expire and the two 3.05% rate increases for all City sewer customers will sunset (about October 30, 2011).

On January 1, 2008, CWA will be increasing the rates to all their participating agencies, including the City of San Diego, for water purchases. The City intends to increase the currently effective Water system rates and fees proportionately across all customer classes in order to pass through the increased wholesale water purchase costs from CWA. The commodity fee will increase by \$0.09 per HCF of water usage for all customer classes and the base fee will increase by \$0.14 per equivalent dwelling unit, based upon meter size. For the typical single family residence customer using 14 HCF per month, the fee increases due to the CWA pass through costs will add approximately \$1.40 to the monthly water bill.

These rate increase pass-through were not part of the City Water Department's recent 4 year, 6.5% annual water rate increase approved by the City Council (Report to the City Council No. 07-039). As the CWA rate increases were not finalized or approved by the CWA Board at the time of presentation of the City Water Department's 4 year rate increase plan, CWA's rate increases were not included in the 4 year rate increase plan. The rate increase pass-throughs are considered to be cost/revenue neutral and will not affect the strategic plan presented with the 4 year water rate plan. These pass-throughs are subject to Proposition 218 noticing.

FISCAL CONSIDERATIONS:

Cost of noticing property-owners and customer base is approximately \$230,000. This cost will be shared equally by the Metropolitan Wastewater Department and Water Department.

PREVIOUS COUNCIL COMMITTEE ACTION:

On December 6, 2006, City Council approved a settlement of the suit that would give rebates to approximately 224,000 single-family ratepayers.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Proposition 218 notice will be issued upon approval of this action and will provide 45 days for public review and outreach.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Commercial, industrial, multi-family, and ineligible single-family residence account holders will see increases in their wastewater service charges over the next four years. Examples of impacts on these account types, based on average usage, are provided in the Discussion section of the Wastewater rate increases related to Shames v. City of San Diego report.

Single-family residential account holders whose residences had wastewater service prior to October 1, 2004 will have these wastewater rate increases credited back to them; additionally, they will receive a monthly credit that represents the distribution of revenues collected from all other account holders for this settlement action.

City of San Diego water and wastewater users will receive notice that the City Council will hold a public hearing on October 8, 2007 to consider adoption of the proposed adjustments to the existing wastewater and water fees and rates. This notice will also inform these users how to register a protest against either of these rate increases.

If adopted, the adjusted fees and rates would become effective November 1, 2007 (wastewater) and January 1, 2008 (water).

Bertch/Haas

Staff: Darlene Morrow - (858) 292-6384
Raymond C. Palmucci - Deputy City Attorney

FILE LOCATION: SUBITEM A: MEET
SUBITEM B: MEET

COUNCIL ACTION: (Time duration: 3:11 p.m. – 4:08 p.m.)

MOTION BY MADAFFER TO ADOPT THE RESOLUTIONS IN SUBITEM A AND SUBITEM B AND TO REVISE THE LANGUAGE CONTAINED IN PROPOSITION 218 - "NOTICE OF PUBLIC HEARING". ALL REFERENCES THAT READ "APPROVED BY THE CITY COUNCIL" WILL BE REVISED TO READ "APPROVED BY THE MAYOR AND CITY COUNCIL". Second by Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-not present, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-202: FY 2008 Agreements with Self-Managed Maintenance Assessment Districts. In the matter of City Council adopting a resolution authorizing actions related to seven Maintenance Agreements and associated actions.

(Centre City, College Area, City Heights, North Park, Ocean Beach, Southeastern, and Uptown Community Plan Areas. Districts 2, 3, 7 and 8.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-71 Cor. Copy) ADOPTED AS RESOLUTION R-302884

Authorizing the Mayor to execute a Maintenance Agreement for the administration of Contracts for Goods and Contracts for Services pursuant to San Diego Municipal Code section 65.0212 (Maintenance Agreement) with the Adams Avenue Business Association for the Adams Avenue Maintenance Assessment District for a one year period beginning July 1, 2007 through June 30, 2008, in accordance with the San Diego Municipal Code section 65.0212. A copy of the Maintenance Agreement for the Adams Avenue Maintenance Assessment District is on file in the Office of the City Clerk as Document No. RR _____;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$7,530 from Fund No. 70247 for administrative costs incurred by the Adams Avenue Business Association in the course of providing services under the Maintenance Agreement for the Adams Avenue Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$3,500 from Fund No. 70247 to Fund No. 70267 for administrative costs incurred by the City of San Diego (City) in the course of providing administrative services to the Adams Avenue Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the Mayor to execute a Maintenance Agreement with the Central Commercial District Revitalization Corporation for the Central Commercial Maintenance Assessment District for a one year period beginning July 1, 2007 through June 30, 2008 in accordance with the San Diego Municipal Code Section 65.0212. A copy of the Maintenance Agreement for the Central Commercial Maintenance Assessment District is on file in the office of the City Clerk as Document No. RR _____;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$32,780 from Fund No. 70260 for administrative costs incurred by the Central Commercial District Revitalization Corporation in the course of providing services under the Maintenance Agreement for the Central Commercial Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$8,741 from Fund No. 70260 to Fund No. 70267 for administrative costs incurred by the City in the course of providing administrative services to the Central Commercial Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the Mayor to execute a Maintenance Agreement with the City Heights Business Association for the City Heights Maintenance Assessment District for a one year period beginning July 1, 2007 through June 30, 2008, in accordance with the San Diego Municipal Code Section 65.0212. A copy of the Maintenance Agreement for the City Heights Maintenance Assessment District is on file in the Office of the City Clerk as Document No. RR _____;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$45,314 from Fund No. 70268 for administrative costs incurred by the City Heights Business Association in the course of providing services under the Maintenance Agreement for the City Heights Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$12,084 from Fund No. 70268 to Fund No. 70267 for administrative costs incurred by the City in the course of providing administrative services to the City Heights Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the Mayor to execute a Maintenance Agreement with the College Area Economic Development Corporation for the College Heights Maintenance Assessment District for a one year period beginning July 1, 2007 through June 30, 2008, in accordance with the San Diego Municipal Code Section 65.0212. A copy of the Maintenance Agreement for the College Heights Maintenance Assessment District is on file in the Office of the City Clerk as RR _____;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$41,128 from Fund No. 70266 for administrative costs incurred by the College Area Economic Development Corporation in the course of providing services under the Maintenance Agreement for the College Heights Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or 7 certificates certifying that the funds are available;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$10,968 from Fund No. 70266 to Fund No. 70267 for administrative costs incurred by the City in the course of providing administrative services to the College Heights Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the Mayor to execute a Maintenance Agreement with the Hillcrest Business Association for the Hillcrest Commercial Core Maintenance Assessment District for a one year period beginning July 1, 2007 through June 30, 2008 in accordance with the San Diego Municipal Code Section 65.0212. A copy of the Maintenance Agreement for the Hillcrest Commercial Core Maintenance Assessment District is on file in the Office of the City Clerk as Document No. RR _____;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$13,493 from Fund No. 70284 for administrative costs incurred by the ~~Central Commercial District Revitalization Corporation~~ Hillcrest Business Association in the course of providing services under the Maintenance Agreement for the ~~Central Commercial Maintenance Assessment District,~~ Hillcrest Commercial Core Maintenance Assessment District provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$3,598 from Fund No. 70284 to Fund No. 70267 for administrative costs incurred by the City in the course of providing administrative services to the Hillcrest Commercial Core Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the Mayor to execute a Maintenance Agreement with the Little Italy Association for the Little Italy Maintenance Assessment District for a one year period beginning July 1, 2007 through June 30, 2008, in accordance with the San Diego Municipal Code Section 65.0212. A copy of the Maintenance Agreement for the Little Italy Maintenance Assessment District is on file in the Office of the City Clerk as Document No. RR _____;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed ~~\$100,323~~ \$110,323 from Fund No. 70261 for administrative costs incurred by the Little Italy Association in the course of providing services under the Maintenance Agreement for the Little Italy Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$29,420 from Fund No. 70261 to Fund No. 70267 for administrative costs incurred by the City in the course of providing administrative services to the Little Italy Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the Mayor to execute a Maintenance Agreement with the Ocean Beach Main Street Association for the Newport Maintenance Assessment District for a one year period beginning July 1, 2007 through June 30, 2008, in accordance with the San Diego Municipal Code Section 65.0212. A copy of the Maintenance Agreement for the Newport Maintenance Assessment District is on file in the Office of the City Clerk as Document No. RR _____;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$8,372 from Fund No. 70241 for administrative costs incurred by the Ocean Beach Main Street Association in the course of providing services under the Maintenance Agreement for the Newport Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the City Auditor and Comptroller to transfer an amount not to exceed \$3,500 from Fund No. 70241 to Fund No. 70267 for administrative costs incurred by the City in the course of providing administrative services to the Newport Maintenance Assessment District, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available;

Authorizing the City Auditor and Comptroller to appropriate and expend an amount not to exceed \$201,811 from Fund No. 70267 for administrative costs incurred by the City in the administration of the Adams Avenue, Central Commercial, City Heights, College Heights, Hillcrest Commercial Core, Little Italy and Newport Avenue Maintenance Assessment Districts and the Downtown Property and Business Improvement District for Fiscal Year ~~2007~~ 2008, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are available.

OTHER RECOMMENDATIONS:

Each district holds regular meetings and publishes regular newsletters which are distributed to the property owners in the respective MADs.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

The City Council is being asked to authorize the following actions by resolution:

1. Authorizing the Mayor to execute Agreements with the Adams Avenue Business Association, Central Commercial District Revitalization Corporation, City Heights Business Association, College Area Economic Development Corporation, Hillcrest Business Association, Little Italy Association and Ocean Beach Main Street Association for administration of Contracts for Goods and Contracts for Services for the Adams Avenue, Central Commercial, City Heights, College Heights, Hillcrest Commercial Core, Little Italy and Newport Avenue Maintenance Assessment Districts for a one year period in accordance with the San Diego Municipal Code Section 65.0212. The effective date and term of the Agreement is July 1, 2007 through June 30 2008.
2. Authorizing the expenditure of funds for administration services to be provided by Adams Avenue Business Association, Central Commercial District Revitalization Corporation, City Heights Business Association, College Area Economic Development Corporation, Hillcrest Business Association, Little Italy Association and Ocean Beach Main Street Association beginning July 1, 2007 through June 30 2008.
3. Approve the transfer of City administrative fees totaling \$201,811 from Adams Avenue, Central Commercial, City Heights, College Heights, Hillcrest Commercial Core, Little Italy, Newport Avenue Maintenance Assessment Districts and Downtown Property & Business Improvement District to fund 70267.
4. Authorizing the expenditure of funds in an amount not to exceed \$201,811 from fund 70267 for City administration of Adams Avenue, Central Commercial, City Heights, College Heights, Hillcrest Commercial Core, Little Italy, Newport Avenue Maintenance Assessment Districts and Downtown Property & Business Improvement for Fiscal Year 2008.

STAFF RECOMMENDATION:

Approve all the requested actions mentioned above.

EXECUTIVE SUMMARY:

The San Diego Municipal Code allows non-profit corporations to administer MADs when an assessment weighted majority of district property owners support the selection of a particular non-profit corporation for their district. The San Diego Municipal Code Section 65.0212 paragraph (b)(2), authorizes the City Council to approve a one year Agreement with non-profit corporations to administer the Contracts for Goods and Contracts for Services in Maintenance Assessment Districts (“MADs”).

The property owner selected non-profit corporations (“Associations”) have managed their annual Agreements since the inception of each MAD and wish to continue their contract with the City from July 1, 2007 through June 30 2008. This action will authorize the Mayor to execute Agreements between the City and the Associations for a period of one year beginning on July 1, 2007 through June 30 2008. The Agreements provide the following:

1. The Associations will administer Contracts for Goods and Contracts for Services and prepare financial statements for their respective Districts as provided for in the Maintenance Assessment District Ordinance, Landscape and Lighting Act of 1972, and as set forth in the Assessment Engineer’s Report for the Adams Avenue, Central Commercial, City Heights, College Heights, Little Italy and Newport Maintenance Assessment Districts.
2. The Associations will perform all duties as set forth in each of their respective Agreements under Article I, section B, referred to as Specific Requirements.
3. The Associations will be compensated for administration in an amount not to exceed 15% of the total approved assessments for FY08. Projected total annual assessments for the following Assessment Districts in FY08 are \$7,541,735.

This action will also authorize the transfer of \$201,811 to fund 70267 to fund City administration (by the Economic Development Division of the City Planning and Community Investment Department) of the Adams Avenue, Central Commercial, City Heights, College Heights, Hillcrest Commercial Core, Little Italy and Newport Avenue self-managed MADS as well as the Downtown Property & Business Improvement District (PBID) for Fiscal Year 2008. Additionally, this action authorizes the expenditure of funds, in an amount not to exceed \$201,811 in Fiscal Year 2008, from fund 70267 for the administration of the above referenced

self-managed MADs and PBID by the Economic Development Division. City administrative fees in self-managed maintenance assessment districts range from a minimum of \$3,500 to a maximum of 4% of total assessments and will be used to fund engineering, auditing, payment processing, budgeting and other services related to the administration of each district.

<u>District</u>	<u>Assessment Amount</u>	<u>Non-Profit Administration Fee</u>	<u>City Administration Fee</u>
Adams Avenue MAD	\$ 50,200	\$ 7,530	\$ 3,500
Central Commercial MAD	\$218,536	\$ 32,780	\$ 8,741
City Heights MAD	\$302,095	\$ 45,314	\$ 12,084
College Heights MAD	\$274,189	\$ 41,128	\$ 10,968
Hillcrest Commercial Core MAD	\$ 89,950	\$ 13,493	\$ 3,598
Little Italy MAD	\$735,489	\$110,323	\$ 29,420
Newport MAD	\$ 55,812	\$ 8,372	\$ 3,500
Downtown PBID	\$5,815,464	N/A	\$130,000
Total	\$7,541,735	\$258,940	\$201,811

FISCAL CONSIDERATIONS:

Under the terms of the agreements, the City will be reimbursed \$201,811 for administrative services.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Approving the MAD agreements with the respective non-profit business associations is an annual process. The previous Council action was taken in August 8, 2006, and adopted as resolution R-301852.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Each district holds regular meetings and publishes regular newsletters which are distributed to the property owners in the respective MADs.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Key stakeholders are the business community and the property owners within the self managed districts.

Aud. Cert. 2800034.

Anderson/Waring/LEO

NOTE: This activity is not a project and therefore not subject to CEQA pursuant to the State CEQA Guidelines section 15060(c)(3).

Staff: Luis E. Ojeda – (619) 236-6475
Elizabeth Coleman – Deputy City Attorney

FILE LOCATION: STRT-M-514 FY08 (34)

COUNCIL ACTION: (Time duration: 2:32 p.m. – 2:37 p.m.)

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



ITEM-203: Greater Golden Hill Maintenance Assessment District.

(Greater Golden Hill Maintenance Assessment District Community Areas. Districts 3 and 8).

(First Public Hearing was held on June 12, 2007, Item 337.)

STAFF RECOMMENDATION:

Adopt the resolutions in Subitems A and B; and adopt the resolution in **either** Alternative A or Alternative B on Subitem C:

Subitem–A: (R-2008-67) ADOPTED AS RESOLUTION R-302885

Approving Fiscal Year 2008 budget for the Greater Golden Hill Maintenance Assessment District.

Subitem–B: (R-2008-68) ADOPTED AS RESOLUTION R-302886

Authorizing the City Auditor and Comptroller to establish and expend the Greater Golden Hill Maintenance Assessment District Fund.

Alternative A:

Subitem–C: (R-2008-69A Cor. Copy) NOTED AND FILED

Considering the protest, approving Assessment Engineer's Report, confirming the assessments, and ordering the improvements, maintenance and/or services, in the matter of the Greater Golden Hill Maintenance Assessment District.

or

Alternative B:

Subitem–C: (R-2008-69B Cor. Copy) ADOPTED AS RESOLUTION R-302887

Considering the protest, approving Assessment Engineer's Report, confirming the assessments, ordering the improvements, maintenance and/or services, and, if approved by ballot, authorizing the Mayor or his designee to negotiate a contract with the Greater Golden Hill Community Development Corporation pursuant to Municipal Code § 65.0212-65.0214 in the matter of the Greater Golden Hill Maintenance Assessment District.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

The City Council is being asked to authorize the following actions by resolution:

1. Propose the formation of the Greater Golden Hill Maintenance Assessment District; and Preliminarily approving the Engineer Report.
2. Authorize the intention to levy and collect assessments for Fiscal Year 2008, establish the maximum authorized assessments, and set maximum assessment indexed annually to the San Diego Regional Consumer Price Index-Urban (CPI-U) not to exceed 5%.
3. Authorize the mailing of ballots to all property owners subject to assessment.
4. Establish the time and place for a public hearing to count ballots; and

Upon affirmative findings at the public hearing on July 30, 2007

5. Authorize the consideration of protests, ordering the formation of the District, approve the Assessment Engineer's Report, confirm assessments, and order the improvements, maintenance, and/or services.
6. Approving the annual budget for the Greater Golden Hill Maintenance Assessment District in Fiscal Year 2008.
7. Authorize the City Auditor and Comptroller to establish an interest-bearing fund for the District.
8. If a weighted majority of returned ballots opened following the public hearing select the Greater Golden Hill Community Development Corporation, a non-profit Section 501(c)(3) organization, to administer the contracts for goods and services, authorize the Mayor or his designee to negotiate a contract with the Greater Golden Hill Community Development Corporation pursuant to Municipal Code § 65.0212-65.0214.

STAFF RECOMMENDATION:

Approve the requested actions listed above.

EXECUTIVE SUMMARY:

Recent efforts to form a potential Maintenance Assessment District in the Greater Golden Hill community began in early 2006 when the Greater Golden Hill Community Development Corporation (GGHCDC) received Community Development Block Grant (CDBG) Funds from Council Offices to explore the possible formation of a MAD. In the fall of 2006, the GGHCDC held two (2) community meetings open to residents and to the public. Public notices of these meetings were distributed and posted within the community. Nearly 100 residents attended these two community meetings. The purpose of these two (2) community meetings was to seek community input on how to make the Greater Golden Hill area safer and cleaner. Property owners and residents told the GGH CDC that they supported forming a MAD to fund services to make Greater Golden Hills cleaner, safer & greener. The public workshops resulted in the GGHCDC generating two (2) public mailings and surveys to gauge support for a potential Maintenance Assessment District among the 3,550 Greater Golden Hill property owners. Of the 650 surveys returned to date by property owners, support was expressed by 75% of property owners for forming a MAD in Greater Golden Hill. Extensive input was received from property owners who would be impacted by the proposed District as to the scope of and frequency of services desired within the community.

The GGHDC's outreach efforts included: 1) two noticed public workshops; 2) mail surveys to all property owners who would be impacted by the proposed assessment; 3) personal visits and telephone calls with property owners; 4) e-mail notices to impacted property owners.

Additional public outreach was made by Greater Golden Hill CDC Board members who appeared under public comments before the Greater Golden Hill Planning Committee at its meeting of Tuesday, March 11, 2007, to update Planning Group members on the survey mailings and possible MAD formation efforts. A more detailed informational presentation on the potential formation of a MAD was made before the Greater Golden Hill Planning Committee at its regularly scheduled monthly meeting of Tuesday, April 11, 2007. Additional community meetings and informational mailings will be made by the Greater Golden Hill CDC over the coming months to contact each and every property owner prior to and during the public balloting period.

The City staff has retained SCI Consulting Group to prepare an Engineer's Report for the requested District. This report summarizes the proposed district, describes requested services/associated costs, provides an assessment diagram and apportions property owner assessments based on the level of benefit received. District proponents had the opportunity to review and comment on the Engineer's Report.

The City Council is being asked to authorize the eight (8) requested actions cited above, with authorizations for actions 5 through 8 contingent upon affirmative findings at the public hearing scheduled for July 30, 2007. If the City Council approves the requested actions, ballots describing the proposed district and the associated assessments will be mailed to all property owners of record within the proposed district boundaries. Property owners can mail or deliver the ballots to the City Clerk.

Interested parties may comment at the July 30, 2007, public hearing regarding the proposed District. Ballots will be counted at the conclusion of the hearing. If a majority of property owners support formation of the District in accordance with State law, the City Council has the discretion to establish the District and levy assessments beginning in Fiscal Year 2008 as described in the Assessment Engineer's Report.

FISCAL CONSIDERATIONS:

The annual assessment for City owned property will be \$35,160.29. Approximately \$488,890 will be assessed and collected in the Greater Golden Hill Maintenance Assessment District in FY 2008 ranging from \$36.03 to \$9,594.68 per parcel.

The proposed assessments will fund an increased level of enhanced services within the District boundaries. If the District is approved by benefiting property owners, assessments will be levied and collected to fund the annual budget.

	<u>FY 07-08</u>	<u>Maximum Authorized</u>
REVENUES		
Assessments	\$488,890	\$488,890
Interest	<u>\$ 0</u>	<u>\$ 0</u>
TOTAL REVENUES	<u>\$488,890</u>	<u>\$488,890</u>
ACTIVITIES AND SERVICES EXPENSES		
Personnel	\$ 0	\$ 0
Contractual	\$326,500	\$326,500
Utilities	\$ 5,000	\$ 5,000
Incidentals/Administration	\$136,340	\$136,340
Contingency Reserve	<u>\$ 21,050</u>	<u>\$ 21,050</u>
TOTAL EXPENSES	<u>\$488,890</u>	<u>\$488,890</u>
BALANCE	<u>\$ 0</u>	<u>\$ 0</u>

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The outreach efforts include: 1) two noticed public workshops; 2) mail surveys to all property owners who would be impacted by the proposed assessment; 3) personal visits and telephone calls with property owners; 4) e-mail notices to impacted property owners.

Additional public outreach was made by Greater Golden Hill CDC Board members who appeared under public comments before the Greater Golden Hill Planning Committee at its meeting of Tuesday, March 11, 2007 to update Planning Group members on the survey mailings and possible MAD formation efforts. A more detailed informational presentation on the potential formation of a MAD was made before the Greater Golden Hill Planning Committee at its regularly scheduled monthly meeting of Tuesday, April 11, 2007. Additional community meetings and informational mailings will be made by the Greater Golden Hill CDC over the coming months to contact each and every property owner prior to and during the public balloting period.

Upon preliminary approval of the Engineer's report by the City Council, notices/ballots will be prepared and mailed to all property owners of the District who will ultimately vote whether or not they support the formation of the District. Property owners will also vote whether the Greater Golden Hill Community Development Corporation, a non-profit, Section 501(c)(3) organization, or the City should administer the contracts for goods and services for the District. If this action is approved, a public hearing will be scheduled where public testimony will be heard by the City Council.

City Clerk, Elizabeth Maland announced that the election has been conducted according to the assessment proceedings. The ballots in favor exceed the ballots in opposition with a weighted majority vote in favor, and the proposed formation of the Greater Golden Hill Maintenance Assessment District has passed. City Clerk, Elizabeth Maland certified the results and submitted them to the City Council.

MOTION BY HUESO TO ADOPT THE RESOLUTIONS IN SUBITEM A, SUBITEM B, AND SUBITEM C (ALTERNATIVE B) AND TO NOTE AND FILE SUBITEM C (ALTERNATIVE A). Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-recused, Young-yea, Maienschein-not present, Frye-nay, Madaffer-yea, Hueso-yea.



ITEM-204: Business Improvement Districts – FY 2008 Annual Appropriation Process.

(Centre City, College Area, Greater North Park, La Jolla, Mid-City, Mission Beach, Ocean Beach, Old San Diego, Pacific Beach, San Ysidro, Southeastern San Diego and Uptown Community Areas. Districts 1, 2, 3, 4, 7, and 8.)

NOTE: First Public Hearing was held on July 10, 2007, Item 333.

STAFF'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2007-1241) ADOPTED AS RESOLUTION R-302888

Confirming the Fiscal Year 2008 Budget Reports for specified Business Improvement Districts, and levying annual assessments. The reports are on file with the Office of the City Clerk under the following document numbers:

Business Improvement District:

Document Number:

Adams Avenue
City Heights
College Area
Diamond
Downtown

RR-_____
RR-_____
RR-_____
RR-_____
RR-_____

El Cajon Boulevard Central

RR_____

El Cajon Boulevard Gateway	RR-_____
Gaslamp	RR-_____
Hillcrest	RR-_____
La Jolla	RR-_____
Little Italy	RR-_____
Mission Hills	RR-_____
North Park	RR-_____
Ocean Beach	RR-_____
Old Town	RR-_____
Pacific Beach	RR-_____
San Ysidro	RR-_____

That the adoption of this Resolution shall constitute the levy of assessments for each specified District during Fiscal Year 2008, as referenced in the respective Budget Reports.

Subitem-B: (R-2007-1242 Rev. Copy) ADOPTED WITH DIRECTION AS
RESOLUTION R-302889

Authorizing the Mayor to execute the Fiscal Year 2008 operating agreements for specified Business Improvement Districts. The agreements being on file with the Office of the City Clerk under the following document numbers:

<u>Association:</u>	<u>Business Improvement District:</u>	<u>Document No:</u>
Adams Avenue Business Business Association, Inc.	Adams Avenue	RR-_____
City Heights Business Association	City Heights	RR-_____
College Area Economic Development Corporation	College Area	RR-_____
Diamond Community Development Corporation	Diamond	RR-_____
Downtown San Diego Partnership Inc.	Downtown Improvement Area	RR-_____
El Cajon Boulevard Business Improvement Association	El Cajon Gateway	RR-_____
El Cajon Boulevard Business Improvement Association	El Cajon Central	RR-_____
Gaslamp Quarter Association, Inc.	Gaslamp	RR-_____
Hillcrest Business Improvement	Hillcrest	RR-_____

Association, Inc.		
Promote La Jolla, Inc.	La Jolla	RR-_____
Little Italy Association	Little Italy	RR-_____
Mission Hills Business Improvement District	Mission Hills	RR-_____
North Park Organization of Businesses, Inc.	North Park	RR-_____
Ocean Beach Merchant's Association, Inc.	Ocean Beach	RR-_____
Old Town San Diego Chamber of Commerce	Old Town	RR-_____
The Pacific Beach Community Development Corporation dba Discover Pacific Beach	Pacific Beach	RR-_____
San Ysidro Improvement Corporation	San Ysidro	RR-_____

STAFF SUPPORTING INFORMATION:

REQUESTED ACTIONS:

1. Confirm the FY 2008 Budget Reports for each specified BID and levy the annual assessments for those BID's; and
2. Authorize the Mayor to execute the FY 2008 operating agreements with the non-profit associations for the specified BID's.

STAFF RECOMMENDATIONS: Adopt the requested actions.

EXECUTIVE SUMMARY:

The California Streets and Highways Code authorizes the City to establish Business Improvement Districts (BID's), to levy and collect an assessment from businesses within the BID's, and to apply these assessments toward improvements and activities that benefit the businesses within their respective BID's. The City established each of the BID's by adopting an ordinance that details the street ranges to be included within each BID, the categorization of the types of businesses within each BID, and in some cases, the size of the businesses as determined by the number of employees. The assessment levels, as determined by these factors, are also detailed in each ordinance.

Under State law, the City Council must annually review and approve the Budget Reports for the BID's. In addition, the City Council must annually authorize the levying of the assessments as established in the respective ordinances and hold a noticed public hearing on the matter. Once authorized, the BID assessments are collected by the City Treasurer at the same time and in the same manner as the City's business tax.

The City collects approximately \$1.3 million annually in BID assessments from about 12,000 businesses; these funds are accounted for separately in the City's accounting system and are provided to non-profit associations (whose memberships include the businesses in the respective BID's) under an operating agreement. Generally, funds are remitted to the non-profit associations on a reimbursement basis to manage BID programs in the respective BID's, though working capital advances are permitted under certain circumstances. State law also provides that the Budget Reports shall identify any surplus or deficit revenues to be carried over from a previous fiscal year. These funds are identified in the Budget Reports as Estimated Unexpended Assessments to be carried forward and Estimated Outstanding Operating Advances. In approving the Budget Reports, the City Council appropriates the assessments to be collected and the prior year surplus funds.

In FY 2007, the City approved the Budget Reports for, and authorized the levying of assessments on businesses within, the following BID's: Adams Avenue, City Heights, College Area, Diamond, Downtown, El Cajon Boulevard Central, El Cajon Boulevard Gateway, Gaslamp, Hillcrest, La Jolla, Little Italy, Midway, Mission Hills, North Park, Ocean Beach, Old Town, Pacific Beach, and San Ysidro. However, due to a claim filed against the City in March 2007 by the North Bay Association of San Diego (the non-profit association for the Midway BID) and circumstances giving rise to that claim, it is recommended that the City neither levy assessments within the Midway BID in FY 2008, nor enter into an operating agreement with the North Bay Association of San Diego for the management of the Midway BID in FY 2008.

FISCAL CONSIDERATIONS:

Because the City does not retain any of the BID assessments for administrative or other purposes, there is a zero net fiscal impact for collecting and disbursing the BID assessments.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

R-301539 and R-301540 (June 19, 2006); R-301855 and R-301856 (July 18, 2006).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The non-profit associations that manage the BID's hold regular meetings and publish regular newsletters, which are distributed to the businesses within the respective BID's. Organizational budgets and work plans are developed by the respective boards and approved at their meetings.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Businesses within the respective BID's are the key stakeholders and beneficiaries of community improvements and business marketing and development. Residents and property owners may also benefit from public improvements and enhanced business services.

Waring/Anderson/MDB

Staff: Meredith Dibden Brown – (619) 236-6485
Michael D. Neumeier – Deputy City Attorney

FILE LOCATION: STRT-L-27 (32)

COUNCIL ACTION: (Time duration: 2:38 p.m. – 3:11 p.m.)

Testimony in favor by Tiffany Sherer, Jennifer Finnegan, Benjamin Nicholls,
Joseph Kinard and Diana Spyridonidis.

MOTION BY MADAFFER TO ADOPT THE RESOLUTIONS IN SUBITEM A AND SUBITEM B WITH CHANGES TO SECTION 13.4.1 OF THE “FISCAL YEAR 2008 OPERATING AGREEMENTS” TO READ AS FOLLOWS: THE CITY, AT ITS SOLE DISCRETION, MAY IMMEDIATELY TERMINATE THIS AGREEMENT UPON WRITTEN NOTICE TO CONTRACTOR (DELIVERED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE XVII BELOW) IF: A) CONTRACTOR, OR ANY OF ITS OFFICERS OR DIRECTORS, ENGAGES IN CONDUCT THAT RESULTS IN CONTRACTOR, OR ANY OF ITS OFFICERS OR DIRECTORS, BEING CONVICTED OF A FELONY THAT MATERIALLY AND ADVERSELY AFFECTS CONTRACTOR’S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT, AND B) CONTRACTOR MISAPPROPRIATES FUNDS. Second by Young. Passed by the following vote: Peters-yea, Faulconer-nay, Atkins-yea, Young-yea, Maienschein-not present, Frye-nay, Madaffer-yea, Hueso-yea.



[ITEM-205:](#) Fiscal Year 2008 Tax Rate Ordinance.

(See Report to the City Council No. 07-124.)

STAFF'S RECOMMENDATION:

Introduce and adopt the following ordinance:

(O-2008-11) INTRODUCED AND ADOPTED AS
O-19657 (New Series)

Introduction and adoption of an Ordinance Fixing a rate of taxation of six hundred nineteen hundred-thousandths (0.00619%), comprised of a tax rate of 0.00500% for the Zoological Exhibits and a tax rate of 0.00119% for the Public Safety Communications Bonds, on each one hundred dollars' valuation of taxable property (full value) within the City of San Diego for the Fiscal Year 2007-2008 and levying the rate on all taxable property, both real and personal, in the City of San Diego, pursuant to the provisions of Section 75 of the Charter of the City of San Diego, Article XIII A of the State Constitution and the state legislation adopted pursuant thereto. Included herein is the amount required to be levied by Section 77a of said Charter;

Establishing an allowance of three and one-half percent (3.5%) for anticipated delinquencies in tax payments upon real property and improvements thereon and personal property secured, other than properties of public utilities;

Establishing an allowance of one and eight-tenths percent (1.8%) for roll corrections and assessment appeal reductions upon real property and improvements thereon and personal property secured, other than properties of public utilities;

The rate is computed as follows:

TAX REQUIREMENTS FOR 2007-2008 BUDGET

<u>Fund Name (Number)</u>	<u>Fiscal Year 2007-2008 Expenditures</u>	<u>Less Fund Balance Available for FY 2008 Budget</u>	<u>Less Delinquent Taxes and Intangibles</u>	<u>Less Unsecured</u>	<u>Total Tax for Secured Tax Levy</u>	<u>Secured Tax Rate on Each \$100 of Assessed Valuation</u>
Zoological Exhibits Fund (10222)	\$8,946,525	\$1,311,522	\$229,000	\$318,986	\$7,087,017	0.00500% ^a
General Obligation Public Safety Communications Bond Interest & Redemption Fund (21640)	\$2,328,948	\$255,845	\$117,000	\$84,890	\$1,871,213	0.00119%
TOTAL	\$11,275,473	\$1,567,367	\$346,000	\$403,876	\$8,958,230	0.00619%

Declaring the taxes hereby levied shall be due and payable and shall be collected at the same time and in the same manner as State and County taxes in the County of San Diego;

^aSection 77a of the City Charter requires a two-cent tax levy on each one hundred dollars (\$100.00) of assessed valuation. Subsequent to the adoption of Charter section 77a, Section 135 of the California Revenue and Taxation Code changed the definition of assessed valuation to "full value" where it had previously been 25 percent of "full value." Pursuant to Section 135(d) of the California Revenue and Taxation Code a conversion factor of one-fourth (1/4) is applied to the tax rate for purposes of translating the Charter Section 77a tax rates to the new definition. This rate will be applied to taxable property assessed a full value (\$100) for Fiscal Year 2007-2008.

STAFF SUPPORTING INFORMATION:

Public Safety Communications Bonds

On June 5, 1990, voters approved the issuance of \$25,500,000 of general obligation bonds for the Public Safety Communications Project. The project included new Police and Fire communications centers, new Police and Fire/Emergency Medical Services computer police field units and 800 megahertz radio systems.

It is necessary to set a tax rate to provide sufficient funds to pay scheduled principal and annual interest payments on outstanding Public Safety. Communications Bonds for capital improvements to be paid off in annual installments by Fiscal Year 2012.

Zoological Exhibits

The zoological exhibits in Balboa Park are financed from a fixed property tax levy of \$.02 per \$100 of assessed valuation mandated in the City Charter, Section 77 A. Subsequent to the adoption of Charter section 77a, Section 135 of the California Revenue and Taxation Code changed the definition of assessed valuation to "full value" where it had previously been 25 percent of "full value." Pursuant to Section 135(d) of the California Revenue and Taxation Code, a conversion factor of one-fourth (1/4) is applied to the tax rate, which changes the rate to \$.005 for purposes of translating the Charter Section 77a tax rates to the new definition. This rate will be applied to taxable property assessed at full value (100%) for Fiscal Year 2007-2008. The following is a comparison of Fiscal Year 2007 and Fiscal Year 2008 tax rates:

<u>Purpose</u>	<u>FY 2007 Per \$100 AV*</u>	<u>FY2008 Per \$100 AV*</u>
Public Safety Communication Bonds (Fund 21640)	0.00124	0.00119
Zoological Exhibits (Fund 10222)	0.00500	0.00500

* Assessed Valuation

The tax rate for the Public Safety Communications Bond is being reduced as the proposed tax is applied to a higher base due to the increase in assessed valuations. Amounts derived from the tax levy will be used to pay scheduled principal and annual interest payments on the bonds.

The Zoological Exhibits tax rate remains unchanged consistent with City Charter Section 77A.

The Charter of San Diego, Section 75 requires that an annual Tax Levy be adopted by ordinance no later than the last day of August of each year.

FISCAL CONSIDERATIONS:

Funding is appropriated in the Fiscal Year 2008 Annual Budget for Public Safety Communication Bonds, \$2,328,948, and for Zoological Exhibits, \$8,946,525.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: None.

Lewis/Levin/Goldstone

Staff: Julio Canizal (619) 236-5932
Mark D. Blake – Chief Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 6:42 p.m. – 6:43 p.m.)

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



ITEM-206: Fiscal Year 2008 Appropriation Ordinance.

(See Draft FY 2008 Appropriation Ordinance; Council President Peters' and Councilmember Hueso's joint memo dated 7/10/2007; FY 2008 Appropriation Ordinance Power Point; Statement of FY 2008 Budgetary Principles.)

TODAY'S ACTION IS:

Introduce and adopt the following ordinance:

(O-2008-17) INTRODUCED AND ADOPTED AS
O-19652 (New Series)

Introduction and adoption of an Ordinance approving the Fiscal Year 2008 Annual Appropriations Ordinance (which includes the changes recommended by the Budget and Finance Committee on July 11, 2007).

Directing the City Attorney to prepare the Appropriations Ordinance in final form for adoption on July 30, 2007.

or

Authorizing all actions necessary to prepare the Appropriations Ordinance in final form for adoption by the City Council on July 30, 2007; and

Send the City Attorney's Memorandum of Law dated July 20, 2007 to the Attorney General for a response.

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

BUDGET AND FINANCE COMMITTEE'S RECOMMENDATION:

On July 11, 2007, Budget and Finance Committee voted as follows:

Recommend that the City Council adopt the July 11, 2007, draft of the Statement of FY 2008 Budgetary Principles, including Service Reduction Criteria.
(Councilmembers Atkins, Faulconer, Peters, and Madaffer voted yea. Councilmember Frye voted nay.)

Recommend that the City Council adopt the FY 2008 Appropriation Ordinance, with the following changes:

1. In Section IV (F) (4), Facilities Benefit Assessment Funds and Development Impact Fee Funds, insert "and necessary" between "sufficient" and "amount".
(Councilmembers Atkins, Faulconer, Peters, Madaffer, and Frye voted yea.)
2. Request that the Chief Financial Officer, Independent Budget Analyst, and City Attorney review Section V Enterprise Funds and recommend whether or not to include qualifying language similar to that adopted with respect to Facilities Benefit Assessment Funds and Development Impact Fee Funds in No. 1, above.
(Councilmembers Atkins, Faulconer, Peters, Madaffer, and Frye voted yea.)
3. Incorporate language of the July 10, 2007, Council President Peters' and Councilmember Hueso's memorandum regarding litigation expenses, deleting the title.
(Councilmembers Atkins, Peters, and Madaffer voted yea. Councilmembers Frye and Faulconer voted nay.)

SUPPORTING INFORMATION:

The Fiscal Year 2008 Budget was prepared and submitted to the City Council by the Mayor. The City Council approved the budget on June 20, 2007. The Fiscal Year 2008 Budget is the basis for the development of the Annual Appropriation Ordinance (Ordinance). The Ordinance provides the legal authority for expenditure of the budget and is required by City Charter Section 71. Section 71 also provides the Ordinance shall be subject to two public hearings and must be adopted during the month of July. The first hearing before City Council is scheduled for July 23, 2007, the second on July 30, 2007. The Ordinance is not subject to Mayor veto as prescribed in City Charter Sections 280(a) (4) and 290(d).

FISCAL CONSIDERATIONS:

The Fiscal Year 2008 Appropriation Ordinance appropriates the Fiscal Year 2008 Budget.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Budget and Finance Committee meeting July 11, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS & PROJECTED IMPACTS: None.

Lewis/Levin/Goldstone

NOTE: Today's action is the second public hearing for the introduction and adoption of the ordinance. See the docket of Monday, July 23, 2007, Item 205, for the first public hearing.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:54 p.m. – 6:23 p.m.)

MOTION BY MADAFFER TO INTRODUCE, DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea (nay on Section 15), Atkins-yea, Young-yea, Maienschein-not present, Frye-yea (nay on Section 15), Madaffer-yea, Hueso-yea.

MOTION BY MADAFFER TO SEND A LETTER TO THE STATE ATTORNEY GENERAL IN THE FORM SUBMITTED BY COUNCIL ON JULY 30, 2007, REQUESTING CLARITY ON CITY ATTORNEY'S MEMORANDUM OF LAW DATED JULY 20, 2007. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-nay, Atkins-yea, Young-yea, Maienschein-not present, Frye-nay, Madaffer-yea, Hueso-yea.



[ITEM-207:](#) Increased Authorization for Outside Legal Fees.

(See Reports from the City Attorney dated 6/27/2005 and 12/21/2004.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2008-118) ADOPTED AS RESOLUTION R-302890

Authorizing \$204,000 in additional funding for payment of outside legal counsel fees on behalf of Council President Scott Peters related to the proceedings of the ongoing financial investigations and pension related litigation;

Authorizing the City Auditor and Comptroller to appropriate \$204,000 from the funding sources identified in the cost allocation matrix and to expend these funds on outside counsel fees on behalf of Council President Peters;

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

SUPPORTING INFORMATION:

The Securities and Exchange Commission (SEC), U.S. Attorney's Office and the District Attorney's Office have undertaken investigations into certain financial disclosure practices of the City of San Diego. In addition, pension-related litigation has been initiated. Over the course of the past three years certain elected officials have been asked to participate in interviews and proceedings related to these investigations and lawsuits.

In a report to the Mayor and City Council dated January 31, 2005, the City Attorney states "in our view it is appropriate for the Mayor and City Council members to have separate counsel to advise them in anticipation of a civil proceeding by the SEC". Subsequently, the City Attorney also advised that it was appropriate for these individuals to retain legal counsel with respect to pension related litigation proceedings.

The City has retained law firms on behalf of these elected officials, and funding has been authorized on three previous occasions totaling \$3,081,312. This funding was authorized and sub-allocated for individual Council members based on their anticipated expenditures. These individual allocations ranged from \$464,000 to \$668,000.

Legal expenses for Council President Peters now exceed the \$464,000 authorized on his behalf. This item requests approval of an additional \$204,000 for current and future expenditures, bringing the total authorization for Council President Peters to \$668,000.

These legal services contracts will continue to be managed by the Mayor's Office which includes review and approval of the invoice activities and charges by Robert J. O'Neill, Judge of the Superior Court, Retired.

FISCAL CONSIDERATIONS:

This action proposes to allocate these costs across the organization, consistent with the policy approved by the City Council. This allocation, based on full time equivalent positions, is detailed in the matrix.

The City Council has previously directed certain pension related investigative and legal costs to be charged solely to the General Fund. Such an allocation unduly burdens the General Fund with the full cost of expenditures arising from pension related issues involving all Enterprise as well as General Fund activities, is not consistent with proper cost accounting, and is not supported by the Chief Financial Officer.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Council previously authorized funding for the legal fees of current and former Council members on June 28, 2005, March 28, 2006, and June 20, 2006.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None associated with this action.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

The law firm of Sheppard Mullin Richter & Hampton, LLP is providing legal counsel on behalf of Council President Peters.

Plank/Goldstone

Aud. Cert. 2800019.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:13 p.m. – 4:25 p.m.)

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



ITEM-208: Continuing Provisions of Legal Services for Former and Current City Officials and Staff Related to SEC, District Attorney and U. S. Attorneys Investigations.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-27) ADOPTED AS RESOLUTION R-302891

Authorizing an additional amount not to exceed \$150,000 to pay attorney's fees for the representation of past and present City employees related to their participation in interviews and proceedings, including compliance with subpoenas, and in responding to the Securities and Exchange Commission (SEC) report, related to investigations by the SEC, United States Attorneys' Office, and the San Diego District Attorney's Office;

Authorizing the City Auditor and Comptroller to allocate and expend \$150,000 across all funds using an allocation based upon full-time equivalent salaries and authorizing the City Auditor and Comptroller to appropriate and expend \$106,305 from the Public Liability Fund to cover the General Fund portion of the costs, to pay the above described attorney's fees provided that the City Auditor and

Comptroller first furnish one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Declaring that newly-represented employees or former employees must make use of legal counsel already familiar with and engaged to assist other City clients on the financial disclosures investigation matters, and that, in the event this requirement is not satisfactory to the employee or former employee, that individual shall be required to request a separate authorization for their retention of legal counsel;

Declaring that the authorization for the above attorney's fees is to be suspended if criminal charges are brought against any past or present City employee, and that the City shall reserve its right to terminate the payment of fees and seek reimbursement of fees paid in the event that criminal charges are brought against any past or present employee, or if a conviction is obtained.

SUPPORTING INFORMATION:

Requested action relates to additional funding for the ongoing SEC/US Attorney/District Attorney investigations.

In February of 2004, the SEC and USAO informed the City that they were undertaking investigations into certain financial disclosure practices by the City. Additionally, the District Attorney's Office has initiated its own investigation into the propriety of acts relating to the granting of pension benefits. Also, several City employees have been interviewed and subpoenaed in connection with the investigation and litigation of SDCERS v. Aguirre, et al., SDSC, Case No. GIC 841845.

These investigations remain ongoing, with each agency requesting and/or issuing subpoenas requiring City employees to appear for interview and/or testimony. For the past 6 months, City employees also were responding to the SEC report. In order to facilitate the conduct of necessary interviews and testimony, and yet provide necessary advice to affected City employees, the City Council, acting pursuant to the discretion provided by Government Code section 995.8, has determined that it is in the best interests of the City to provide independent representation to employees.

The total cost allotted for the representation thus far was \$2,975,000, apportioned among a number of represented individuals, and appropriated as a result of seven requests: \$250,000 (AC 2401177, dated June 17, 2004); \$75,000 (AC 2500664, dated November 14, 2004); \$150,000 (AC 2500688, dated on January 25, 2005); \$200,000 (AC 2500802, dated on March 7, 2005); \$350,000 (AC 2501122, on June 28, 2005); \$500,000 (AC 2600236, dated October 11, 2005);

\$450,000 (AC 2600542, dated January 18, 2006); \$250,000 (AC 2600902, dated June 13, 2006); and \$750,000 (AC 2700396, dated November 21, 2006).

Over 30 current and former City employees have requested and/or retained outside legal counsel, and have submitted bills to be reviewed and processed by the City Attorney's Office. These totals do not include elected officials, the former Mayor, Council, and their staff.

Several firms have submitted significant invoices on behalf of their clients. As of June 30, 2007, the following firms had incurred the largest expenses:

- Shartsis Friese - More than \$950,000 for clients including former City Manager Lamont Ewell and former Assistant City Attorney Les Girard;
- Wertz McDade Wallace Moot & Brower - More than \$242,000 for client Ed Ryan;
- DLA Piper Rudnick - More than \$350,000 on behalf of three clients, including two Deputy City Attorneys; and
- McKenna Long & Aldridge - More than \$300,000 on behalf of clients including former City Manager Michael Uberuaga.

It is recommended that the City Attorney continue to execute and monitor the contracts on behalf of the City for the representation of individual current and former City employees. It is also recommended that each employee be permitted to retain only one law firm for representation. To pay outstanding invoices of approximately \$150,000 for outside counsel obligations.

FISCAL CONSIDERATIONS:

The Council is being asked to authorize the expenditure of \$150,000 across all funds using an allocation based upon full-time equivalent salaries including \$106,305 from the Public Liability Fund to cover the General Fund portion of the costs.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

As described above, there have been numerous Council actions approving outside counsel fees for counsel retained related to the ongoing Securities Exchange Commission, United States Attorneys Office and District Attorneys Office investigations into City finances, and the litigation of SDCERS v. Aguirre, et al.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Various law firms including the firms of Shartsis Friese; Wertz McDade Wallace Moot & Brower; DLA Piper Rudnick and McKenna Long & Aldridge.

McGrath

Aud. Cert. 2800040.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:26 p.m. – 4:30 p.m.)

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



ITEM-209: Authorize Continued Retention, Payment for Invoices and Future Reserve Funding for Latham & Watkins, LLP for Services in Otay Acquisition v. City of San Diego; National Enterprises v. City of San Diego; Border Business Park, Inc, v. City of San Diego; and Related Matters.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-52) ADOPTED AS RESOLUTION R-302892

Authorizing the City Attorney to continue the retention of Latham & Watkins, LLP, for an additional amount not to exceed \$1,245,000, to provide legal services in Otay Acquisition v. City, SDSC Case No. GIC 753247; National Enterprises v. City, SDSC Case No. GIC 730011; Border Business Park, Inc. v. City, SDSC Case No. GIC 692794; and Insurance Co. of the State of Pennsylvania, et al. v. City of San Diego, USDC Case No. 02 CV 0693;

Authorizing the City Auditor and Comptroller to expend an amount not to exceed \$1,245,000 from the Public Liability Fund, solely and exclusively, for the purpose of providing funds for the above described legal services, 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.

SUPPORTING INFORMATION:

De La Fuente Cases:

#1 (Border Business Park v. City of San Diego, S.D. Superior Court Case No. GIC692794); #2 (National Enterprises, Inc. v. City of San Diego, S.D. Superior Court Case No. GIC730011); #3 (Otay Acquisitions LLC v. City of San Diego, S.D. Superior Court Case No. GIC753247)

After the successful appeal in Border, these three De La Fuente cases are pending in San Diego Superior Court. Latham & Watkins has filed demurrers and motions to strike the Otay and National cases. The next step will be to file motions for summary judgment or summary adjudication in all three matters. If the City does not prevail, discovery and pretrial preparation will begin. Sixty percent of the fees are currently being reimbursed by an insurance carrier.

In closed session on July 10, 2007, the Council was informed of the status of the case and the legal fees pending. The Council was informed of the need for additional funding.

Outstanding Invoices Currently Due: \$140,000.00 - Latham & Watkins

Request for Future Reserve: \$500,000.00 - Latham & Watkins

The total amount requested for these three cases in this resolution is thus \$640,000 for Latham & Watkins.

De La Fuente Cases (Insurance Coverage Issues):

#4 (Insurance Co. of the State of Pennsylvania, et al v. City of San Diego, United States District Court Case No. 02CV0693)

This case involves a defense of AIG's insurance coverage litigation seeking to avoid defense and indemnity coverage for the De La Fuente cases. AIG has appealed (for the second time) the order requiring AIG to pay the City's defense costs in the cases. The City has moved to dismiss that appeal but may need to brief the appeal for the Ninth Circuit Court of Appeal. In addition, AIG has moved for summary judgment or partial summary judgment on a number of issues in federal court and the City is defending those motions. The City seeks to recover all of the City's attorneys' fees and costs in the matter as damages in a separate bad faith case.

In closed session on July 10, 2007, the Council was informed of the status of the case and the legal fees pending. The Council was informed of the need for additional funding.

Outstanding Invoices Currently Due: \$105,000.00 - Latham & Watkins

Request for Future Reserve: \$500,000.00 - Latham & Watkins

The total amount requested for these three cases in this resolution is thus \$605,000 for Latham & Watkins.

FISCAL CONSIDERATIONS:

Authorize an additional \$1,245,000 to defend the City of San Diego in the four De La Fuente matters listed above.

With this action, the Council will authorize the Auditor and Comptroller to appropriate \$1,245,000 from the Public Liability Fund to meet this obligation.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Council has been informed in Closed Session of the invoices due and the requests for future reserves detailed above.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not applicable

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Latham & Watkins

Heumann

Aud. Cert. 2800023.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:30 p.m. – 4:33 p.m.)

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



ITEM-210: Authorizing Continued Retention, Payment for Invoices and Future Funding for Latham & Watkins, LLP & Wehner & Perlman for Legal Services in SDPOA v. Aguirre, et al.; Marcus Abbe, et al. v. City of San Diego; and Aaron, et al. v. Aguirre.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-53) ADOPTED AS RESOLUTION R-302893

Authorizing the City Attorney to continue the retention of Latham & Watkins, LLP, for an additional amount not to exceed \$2,900,000, to provide legal services in SDPOA v. Michael Aguirre, et al., USDC Case No. 05 CV 1581; Marcus Abbe, et al. v. City of San Diego, USDC Case No. 05 CV 1629; and Erica Aaron, et al. v. Michael Aguirre, USDC Case No. 06 CV 1451;

Authorizing the City Attorney to continue the retention of Wehner & Perlman for an additional amount not to exceed \$315,000, to provide legal services in SDPOA v. Michael Aguirre, et al., USDC Case No. 05 CV 1581; and Erica Aaron, et al. v. Michael Aguirre, USDC Case No. 06 CV 1451;

Authorizing the City Auditor and Comptroller to expend the amount not to exceed \$3,215,000 from the Public Liability Fund, solely and exclusively, for the purpose of providing funds for the above described legal services, contingent upon the City Auditor and Comptroller first furnishing one or more certificates demonstrating that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

SUPPORTING INFORMATION:

SDPOA #1, SDPOA #2 and SDPOA #3 have been combined for billing purposes at this time.

1. San Diego Police Officers Association v. Michael Aguirre, et al. (SDPOA #1), United States District Court Case No. 05 CV 1581

On August 23, 2005, the San Diego Police Officers Association filed and served a complaint in this case. The case raised issues related to labor negotiations and retirement issues between the City and the POA. SDPOA #1 has now been dismissed by the United States District Court.

**3. Erica Aaron, et al v. Michael Aguirre, et al (SDPOA #3), United States District Court
Case No. 06 CV 1451**

On July 18, 2006, numerous police officers filed and served a complaint in this case, which raises issues related to SDPOA #1. This matter is still pending in United States District Court, but could be dismissed as a result of the court's decision in SDPOA #1.

No outstanding invoices are due. This request solely involves a reserve for future work on the matter.

Request for Future Reserve:	\$ 700,000 - Latham & Watkins
Request for Future Reserve:	\$ 100,000 - Wehner & Perlman

The total amount requested for this case in this resolution is thus \$800,000.

FISCAL CONSIDERATIONS:

Authorize an additional \$3,215,000 to provide defense to the City of San Diego, as well as current and former City officials and staff related to the defense of SDPOA #1 USDC Case No. 05CV1581 H, SDPOA #2 USDC Case No. 05CV152 and SDPOA #3 USDC Case No. 06CV1451.

With this action, the Council will authorize the Auditor and Comptroller to appropriate \$3,215,000 from the Public Liability Fund to meet this obligation.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Council has been informed in Closed Session of the invoices due and the requests for future reserves detailed above. Previously, the three POA matters were billed as two separate matters. They are now combined into one matter and this is why they are included in one Executive Summary.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not applicable.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Latham & Watkins and Wehner & Perlman

Heumann

Aud. Cert. 2800021.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:34 p.m. – 4:47 p.m.)

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



ITEM-211: Authorizing Continued Retention, Payment for Invoices and Future
Reserve Funding for Latham & Watkins, LLP in McGuigan v. City of San Diego.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-54) ADOPTED AS RESOLUTION R-302894

Authorizing the City Attorney to continue the retention of Latham & Watkins, LLP, for an additional amount not to exceed \$275,000, to provide legal services in McGuigan v. City of San Diego, SDSC Case No. GIC 849883;

Authorizing the City Auditor and Comptroller to expend an amount not to exceed \$275,000 from the Public Liability Fund, solely and exclusively, for the purpose of providing funds for the above described legal services, contingent upon the City Auditor and Comptroller first furnishing one or more certificates demonstrating that the funds necessary for expenditure are, or will be, on deposit in the City Treasury.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The Council has been informed in Closed Session of the invoices due and the requests for future reserves detailed above.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not applicable.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Latham & Watkins

Heumann

Aud. Cert. 2800022.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:48 p.m. – 4:53 p.m.)

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

ITEM-250: SUBMISSION OF BALLOT PROPOSALS

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

Therefore, the City Clerk’s Office has established the following administrative guidelines for the February 5, 2008 election:

<u>DAY</u>	<u>DATE</u>	<u>DAYS BEFORE ELECTION</u>	<u>EVENT</u>
Friday	9/14/2007	144	LAST DATE (10:00 a.m.) for public, departments, and agencies to submit ballot proposals to City Clerk for review by Rules Committee
Wednesday	9/19/2007	139	Rules Committee review
Monday	9/24/2007	134	Council Docket (PUBLIC NOTICE) lists proposals referred by Rules Committee (<i>NB: E-127 is 10/1/2007, a legislative recess</i>)
Monday	10/8/2007	120	Council adopts propositions for ballot; directs City Attorney to prepare ordinances
Monday	10/29/2007	99	Council adopts ordinances prepared by City Attorney
Friday	11/9/2007	88	Last day for City Clerk to file with Registrar of Voters all elections material
Monday	11/26/2007	71	Last day to file ballot arguments with City Clerk

If you have questions, please contact the Office of the City Clerk at (619) 533-4025.

ITEM-251: Notice of Pending Final Map Approval – Denny Ranch Villages 2/3.

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 “Denny Ranch Villages 2/3” (V.T.M. No. 307147/PTS No. 115096108297), located on east of I-805 north of Denny Road in the Otay Mesa Community Plan Area in Council District 8, 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-252: Notice of Pending Final Map Approval – College Grove Condominiums.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “College Grove Condominiums” (T.M. No. 172907/PTS No. 108297), located on the west side of College Grove Drive between College Avenue and College Grove Way 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 6:51 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:51 p.m. – 6:51 p.m.)