

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, SEPTEMBER 10, 2007
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

Table of Contents

CHRONOLOGY OF THE MEETING.....	2
ATTENDANCE DURING THE MEETING	2
ITEM-1: ROLL CALL.....	3
ITEM-10: INVOCATION	3
ITEM-20: PLEDGE OF ALLEGIANCE.....	3
CLOSED SESSION ITEMS.....	4
ITEM-150: Tobacco Retailer Ordinance – Version D, Relating to Requirements for Permits for Tobacco Project Sales	8
ITEM-200: 3502 Jackdaw Street (Hill Residence), Variance to allow existing development constructed over the maximum height and maximum floor area ratio and to allow the conversion of a carport to a fully enclosed garage and vacate an unimproved portion of Walnut Street. (Uptown Community Plan Area. District 2.).....	11
ITEM-201: La Jolla Mesa Vista Underground Utility District. In the matter of holding a public hearing and forming the District. (La Jolla Community Plan Area. District 2.).....	18
ITEM-250: Notice of Pending Final Map Approval - 4170 Alabama Street Condominiums.	25
ITEM-251: SUBMISSION OF BALLOT PROPOSALS.....	26
ITEM-S400: Approval of Participation and Administration Agreements in San Diego City Employees’ Retirement System (SDCERS) Group Trust	28
REPORT OUT OF CLOSED SESSION	30
NON-DOCKET ITEMS	30
ADJOURNMENT.....	30

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Pro Tem Young at 2:02 p.m. with Council President Peters not present. Council President Pro Tem Young recessed the meeting at 3:48 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 3:54 p.m. with Council President Peters not present. Council President Pro Tem Young recessed the meeting at 4:23 p.m. to convene into a Special Meeting of the Redevelopment Agency. Council President Pro Tem Young reconvened the regular meeting at 4:37 p.m. with Council President Peters not present. Council President Pro Tem Young adjourned the meeting at 4:37 p.m.

ATTENDANCE DURING THE MEETING:

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

FILE LOCATION: MINUTES



ITEM-1:

ROLL CALL

Clerk Maland called the roll:

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

FILE LOCATION:

MINUTES



ITEM-10:

INVOCATION

Invocation was given by Reverend Reginald Gary of the
New Creator Church.

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 Adam C. Lewis v. City of San Diego, et al.
San Diego Superior Court Case No. GIC 877604**

REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 11, 2007

DCA Assigned: B. Hsu

Plaintiff claims personal injuries as a result of an automobile accident which occurred on May 1, 2006. The City Attorney requests the City Council consider settlement of the case in closed session.

FILE LOCATION: AGENDA

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

Council President Peters closed the hearing.

**CS-2 *People of the State of California v. Willkie Farr and Gallagher, LLP*
San Diego Superior Court Case No. 37-2007-00072585-CU-BT-CTL**

REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 11, 2007

EACA Assigned: D. McGrath

This is a lawsuit filed by the People of the State of California against Willkie Farr and Gallagher, LLP. In closed session, the Executive Assistant City Attorney and Bryan Vess will brief the Mayor and City Council on the litigation's status; as well as request that Bryan Vess be retained to represent the People of the State of California in this matter.

Closed Session Comment 1:

Daniel Coffey commented on the City of San Diego's involvement in the case.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:23 p.m. – 4:27 p.m.)

Council President Peters closed the hearing.

CS-3 *City of San Diego v. Willkie Farr and Gallagher, LLP*
San Diego Superior Court Case No. 37-2007-00072584-CU-BT-CTL

REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 11, 2007

EACA Assigned: D. McGrath

This is a lawsuit filed by the City of San Diego against Willkie Farr and Gallagher, LLP. In closed session, the Executive Assistant City Attorney and Bryan Vess will brief the Mayor and City Council on the litigation's status, as well as request that Bryan Vess be retained to represent the City of San Diego in this matter.

Closed Session Comment 1:

Daniel Coffey commented on the request for purchase and the process of obtaining representation in this case.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:27 p.m. – 4:29 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, SEPTEMBER 11, 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 associated costs of litigation to the public.

Closed Session Comment 2:

Joy Sunyata commented on closure regarding Sunroad.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:29 p.m. – 4:33 p.m.)

Council President Peters closed the hearing.

**CS-5 *La Jolla Alta Master Council v. City of San Diego*
San Diego Superior Court Case No. GIC 822281**

REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 11, 2007

DCA Assigned: J. Boardman

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

FILE LOCATION: AGENDA

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

Council President Peters closed the hearing.

**CS-6 *Harvey Furgatch v. San Diego Unified Port District, et al.*
San Diego Superior Court Case No. GIC 775242**

REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 11, 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: AGENDA

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

Council President Peters closed the hearing.



ITEM-150: Tobacco Retailer Ordinance – Version D, Relating to Requirements for Permits for Tobacco Project Sales. (Citywide)

(See Report from the City Attorney dated 6/29/2006; E-mail from Molly Bowman dated 7/12/2006; letter from Auday P. Arabo, Esq. dated 7/12/2006; City Manager Report No. 05-091; and Reports from the City Attorney dated 5/4/2007, 3/23/2007, 4/8/2005, and 4/7/2005 [not available at the Committee].)

TODAY'S ACTION IS:

Introduce the following ordinance:

(O-2007-128) INTRODUCED AS AMENDED; TO BE ADOPTED TUESDAY, SEPTEMBER 25, 2007

Introduction of an Ordinance amending Chapter 3, Article 3, of the San Diego Municipal Code by adding Division 45, Sections 33.4501 to 33.4518, titled “Permits for Tobacco Product Sales,” relating to requirements for permits for tobacco product sale. State Assembly Bill 71, codified in California Business and Professions Code section 22971.3, created a state licensing program for the sale of tobacco products, and authorizes local governments to adopt their own ordinances to provide for the suspension or revocation of a local license for any violation of a state tobacco control law. This ordinance provides for local regulation of tobacco retail businesses by requiring police permits. The intent is to discourage violations of law prohibiting the sale or distribution of tobacco products to minors to protect their health, welfare, and safety. It is also the intent that all costs associated with the administration and enforcement of this Division be borne by tobacco retailer applicants and permittees.

PUBLIC SAFETY AND NEIGHBORHOOD SERVICES COMMITTEE'S RECOMMENDATION:

On 7/12/2006, PS&NS voted 4 to 0 to forward this item to the full City Council without a recommendation subject to analysis by the Independent Budget Analyst and the City Attorney, working with stakeholders, to incorporate the issues raised. (Councilmembers Faulconer, Young Maienschein, and Hueso voted yea.)

NOTE: Ordinance version D, prepared by the City Attorney in response to the Committee's referral and questions, has neither been reviewed nor opined on by the Committee.

SUPPORTING INFORMATION:

Tobacco use by minors is a public health and safety risk. State laws are insufficient to address tobacco use by minors, and state law authorizes local governments to adopt their own ordinances to provide for the suspension or revocation of a local license for any violation of a state tobacco control law. The proposed ordinance provides for local regulation of tobacco retail businesses by requiring police permits. The proposed ordinance will discourage violations of law which prohibit or discourage the sale or distribution of tobacco products to minors.

FISCAL CONSIDERATIONS:

A proposed permit fee of \$163 allows for full cost recovery of administration and enforcement costs related to this ordinance in the first year. Costs will be reviewed annually, and the permit fee will be adjusted, as necessary, to reflect true costs. Costs will be included in the Police Department's fiscal year appropriation.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

In April 2005, the Committee on Public Safety and Neighborhood Services was presented with two versions of a Tobacco Retailer Ordinance, O-2005-65-DRAFT and O-2005-65-DRAFT - Version B. Neither version passed Committee. In July 2006, Version C was presented to the Committee. Version C received enough votes to move forward without recommendation, pending resolution and clarification of several issues. Those issues are addressed in Version D.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

American Lung Association; California Grocers Association; San Diego small business owners.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Local retailers will be required to obtain police permits to sell tobacco products.

Aguirre

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:05 p.m. – 3:48 p.m.)

MOTION BY MAIENSCHIN TO INTRODUCE THE ORDINANCE AS AMENDED TO INCLUDE A SINGLE SENTENCE IN SECTION 33.4501 UNDER “PURPOSE AND INTENT” TO READ AS FOLLOWS: IT IS FURTHER THE INTENT THAT RECOVERIES HEREUNDER SHALL BE USED TO PAY THE COST OF ENFORCEMENT OF THIS DIVISION; IN SECTION 33.4518 UNDER “REPORTING PROVISIONS” INCLUDE THE FOLLOWING: A PERMIT FEE OF \$163 FOR FISCAL YEAR 2008 AND A MANDATORY ANNUAL REPORT TO THE PUBLIC SAFETY AND NEIGHBORHOOD SERVICES COMMITTEE PRIOR TO THE BUDGET HEARING WHICH WOULD INCLUDE (1) NUMBER OF VIOLATIONS, (2) NUMBER AND AMOUNT OF FINES, (3) NUMBER AND TYPE OF PENALTIES, (4) HOW FINE REVENUES ARE BEING USED, AND (5) DETAILING THE PROGRAM BUDGET. Second by Hueso. Passed by the following vote: Peters-not present, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-200: 3502 Jackdaw Street (Hill Residence), Variance to allow existing development constructed over the maximum height and maximum floor area ratio and to allow the conversion of a carport to a fully enclosed garage and vacate an unimproved portion of Walnut Street. (Uptown Community Plan Area. District 2.)

Matter of approving, conditionally approving, modifying or denying an application for a Variance to allow existing development constructed over the maximum height and maximum floor area ratio and to allow the conversion of a carport to a fully enclosed garage. This project also includes a request to vacate an unimproved portion of Walnut Street, and expand an existing Encroachment

Maintenance Removal Agreement. The property is zoned RS-1-7 (Single-Family Residential) addressed as 3502 Jackdaw Street, and located at the northwest corner of Jackdaw and Walnut Streets, legally described as Lot 13 in Block 437 of the Subdivision of the east half and the south quarter of Pueblo Lot 1122, Map No. 381.

(Variance No. 209653/Encroachment Maintenance Removal Agreement No. 209658/Street Vacation. Uptown Community Plan Area. District 2.)

(Continued from the meeting of June 19, 2007, Item 332, at Councilmember Faulconer's request, for further review.)

NOTE: Hearing open. Testimony taken on 6/19/2007.

STAFF'S RECOMMENDATION:

Take the following actions:

Subitem-A: (R-2008-207) ADOPTED AS RESOLUTION R-302970

Adoption of a Resolution certifying findings with respect to Variance No. 209653; and Encroachment Maintenance and Removal Agreement No. 209658 supported by the minutes, maps and exhibits, all of which are herein incorporated by reference;

That Variance No. 209653 and Encroachment Maintenance and Removal Agreement No. 209658 to remedy and authorize the existing height and design conditions previously created by the applicant without benefit of the necessary permits is granted to Steven M. and Sandi M. Hill, Owner/Permittee, under the terms and conditions set forth in the Variance attached hereto and made a part hereof.

Subitem-B: (R-2008-208) ADOPTED AS RESOLUTION R-302971

Adoption of a Resolution that the street right-of-way located adjacent to 3502 Jackdaw Street, and legally described as Lot 13, Block 437, of the Subdivision of the east half and the south quarter of Pueblo Lot 1122, Map No. 381 in connection with Variance No. 209653, and Encroachment Maintenance and Removal

Agreement No. 209658, as more particularly described in the legal description marked as Exhibit "A," and shown in the drawing marked as Exhibit "B";

That the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested by her under seal, to be recorded in the Office of the County Recorder.

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

OTHER RECOMMENDATIONS:

Planning Commission on April 21, 2005, voted 4-2 to approve; was opposition.

Ayes: Steele, Garcia, Schultz, Otsuji
Nays: Chase, Ontai
Not present: Griswold

Uptown Planners has taken a vote resulting in a mixed recommendation for the project. Please refer to the Planning commission Report No. PC-04-182.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

Approval of a ~~permit amendment~~, three variances, and encroachment into the unimproved public right-of-way of Walnut Avenue to allow existing improvements associated with a single family residence to remain. The project is located at 3502 Jackdaw Street in the Uptown Community Plan area.

STAFF RECOMMENDATION:

1. APPROVE ~~Hillside Review Permit/Resource Protection Ordinance Permit No. 32731~~, Variance No. 209653, and Encroachment Removal Agreement No. 209658; and
2. DENY Public Right-of-Way Vacation No. 209656.

EXECUTIVE SUMMARY:

The application was deemed complete on January 11, 1999 and is therefore subject to the Municipal Code in effect at that time. The site is located at 3502 Jackdaw Street in the Uptown Community Plan area. The 25 foot by 100 foot rectangular lot slopes approximately 30 feet down from the street. The majority of the parcel is within the Hillside Review Overlay Zone (Old Code). Previous approvals in 1989 authorized the construction of the property with two variances for yard setbacks. A soils investigation during initial grading determined that removal

of undocumented full material was necessary. This resulted in modifications to the foundation design and lowered the measurement of grade approximately five feet. This resulted in the

residence observing a height of approximately 38 feet, rather than 33 feet approved with the original permit. Furthermore, changes to the foundation design using retaining walls to support the structure in lieu of caissons resulted in a previously open area beneath the structure being enclosed. Regulations require this enclosed area be included in the floor area measurement of the residence which now exceeded that allowed in the permit. A permit amendment and variance is required to remedy these conditions.

In 1990, an Encroachment Maintenance and Removal Agreement (EMRA) was approved to allow encroachments into the unimproved public right-of-way of Walnut Avenue, immediately south of the residence. These encroachments extend fifteen feet into the right-of-way and include a concrete walkway and steps which provide access to the residence and landscaping. In 1998, a Notice of Violation was issued to the owner citing non-compliance with the approved HRP/RPOZ Permit No. 88-0742. In 1999, the owner submitted the current application to amend the approved HRP/RPOZ Permit No. 88-0742 in an effort to legalize the existing height and gross floor area. The application includes a request to modify the existing structure to add additional floor area and an EMRA to legalize existing encroachments in the public right-of-way beyond those approved in the 1990 EMRA. As an alternative to an EMRA, the project includes a request to vacate a portion of the undeveloped Walnut Avenue right-of-way.

Staff recommends approval of ~~Hillside Review Permit/Resource Protection Ordinance Permit No. 32731~~, Variance No. 209653 and Encroachment Removal Agreement No. 209658 and recommends denial of Public Right-of-Way Vacation No. 209656.

The project is exempt from the California Environmental Quality Act (CEQA) pursuant to Article 19, Section 15301(1) "Existing Facilities".

FISCAL CONSIDERATIONS:

No cost to the City. All costs are recovered through a deposit account funded by the applicant.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On April 21, 2005, the Planning Commission of the City of San Diego voted 4:2:0 to recommend approval of Hillside Review and Resource Overlay Zone Permit No. 32731, amending HRP/RPOZ Permit No. 88-0742, and Variance No. 209653 to maintain the existing as-built and enclosed under-floor area of the residence; and to recommend denial of a Variance to enclose an existing carport for use as a garage; Street/Public Right-of-Way Vacation No. 209656; and

Encroachment Removal Agreement No. 209658, requiring the area that was disturbed be revegetated and returned to the state it was in prior to being encroached upon without permission, with a minimum maintenance period from one to three years.

On October 3, 2000, the Uptown Planners voted 5:3:1 to recommend denial of the street vacation. On May 1, 2001, the Uptown Planners voted 11:0:1 to recommend approval of the project, minus the street vacation.

KEY STAKEHOLDERS:

Steve M. and Sandy M. Hill, Owners/Applicant

Waring/Escobar-Eck/JSF

NOTE: The City of San Diego as Lead Agency under CEQA has determined that the action is exempt pursuant to Article 19 of the Guidelines for Categorical Exemptions, Section 15301(1), Existing Facilities.

Staff: John Fisher – (619) 446-5231
Shirley R. Edwards – Chief Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:08 p.m. – 4:19 p.m.)

Testimony in favor of the variance by Sandi Hill, Steve Hill, and Ray Slocum.

Testimony in opposition of the variance by Michael Herman.

MOTION BY FAULCONER TO ADOPT THE RESOLUTION IN SUBITEM A APPROVING VARIANCE NO. 209653, AND ENCROACHMENT REMOVAL AGREEMENT NO. 209658; AND TO ADOPT THE RESOLUTION IN SUBITEM B DENYING PUBLIC RIGHT-OF-WAY VACATION NO. 209656. Second by Atkins. Passed by the following vote: Peters-not present, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-201: La Jolla Mesa Vista Underground Utility District. In the matter of holding a public hearing and forming the District. (La Jolla Community Plan Area. District 2.)

NOTE: First Hearing was held on July 23, 2007, Item 204.

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2007-1276 Cor. Copy 2) ADOPTED AS RESOLUTION R-302972

Adoption of a Resolution establishing an underground utility district financed through the La Jolla Mesa Vista Underground Utility Assessment District No. 4098 and the City of San Diego Undergrounding Surcharge Fund for the La Jolla Mesa Vista Community Planning Area.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTIONS:

At July 23, 2007 Council Hearing:

1. Set a date for a public hearing date of September 10, 2007 to consider creating an Underground Utility District (District); and
2. Authorizing a \$380,000 increase in the Fiscal Year 2008 Capital Improvements Program Budget in CIP-37-027.0, La Jolla Mesa Vista Underground Utilities Assessment District, Fund 30101, Underground Surcharge Fund; providing the City Auditor and Comptroller first certifies with one or more certificates that the funds are or will be on deposit with the City Treasurer; and
3. Authorizing the transfer of \$380,000 from CIP-37-028.0, Annual Allocation Undergrounding City Utilities to CIP-37-027.0, La Jolla Mesa Vista Underground Utilities Assessment District, within Fund 30101, Underground Surcharge Fund; and
4. Authorizing the Auditor and Comptroller to appropriate and expend \$380,000 from CIP-37-027.0, La Jolla Mesa Vista Underground Utilities Assessment District, Fund 30101, Underground Surcharge Fund for the purpose of utility undergrounding and associated activities as described in the Engineers Report for La Jolla Mesa Vista Underground Utility Assessment District No. 4098; an

5. Authorizing the Mayor to accept \$10,000 from the La Jolla Mesa Vista Homeowners Association for the purpose of funding the proposed formation of the La Jolla Vista Mesa Underground Utility Assessment District and;

6. Authorizing a \$10,000 increase in the Fiscal Year '08 Capital Improvements Program Budget in CIP-37-027.0, La Jolla Mesa Vista Assessment District, in Fund 63022, Private and Other Contributions.
7. Authorizing the Auditor and Comptroller to appropriate and expend \$10,000 from CIP-37-027.0, La Jolla Mesa Vista Assessment District, Fund 63022, Private and Other Contributions, for the purpose of the undergrounding utilities project, and transfer excess funds, if any, to the appropriate reserves.

At September 10, 2007 Council Hearing:

1. Hold Noticed Public Hearing and Create said District;

STAFF RECOMMENDATION:

Adopt the requested actions.

EXECUTIVE SUMMARY:

On June 5, 2007, the City Council passed Resolutions initiating proceedings to form the proposed La Jolla Mesa Vista Undergrounding Utilities Assessment District and the commencement of an assessment ballot procedure. The Council passed a Resolution which set a public hearing date of July 23, 2007 for formation of the proposed assessment district. Should the proposed *Assessment District* be formed, it is recommended that the Council consider the formation of an *Underground Utility District* at a future public hearing. These actions would set a date for a public hearing to consider creation of an *Underground Utility District*. The creation of an Underground Utility District is not a necessary action in order to consider creation of the Assessment District. Underground Utility Districts require the removal of overhead utilities and prohibits future overhead utilities within said Districts.

In addition, the Council has previously expressed its desire to cost share \$380,000 from the Underground Surcharge Fund as part of the FY 2005 and FY 2006 Annual Allocation of Undergrounding Projects. These actions would provide the necessary appropriations of those funds to the La Jolla Mesa Vista project concurrent with the creation of the Assessment District.

In accordance with San Diego Municipal Code (SDMC), Chapter 6, Article 1, Division 5, Underground Utilities Procedural Ordinance these actions will create the La Jolla Mesa Vista Underground Utility District and will underground all overhead utilities within the designated District.

The formation of this district will require by Ordinance the removal and/or underground conversion of certain overhead power and communications wires with poles within the established boundary, replacement of street lighting and street restoration.

The expense of the underground installation and removal of overhead facilities within the right-of-way (street and sidewalk area) will be the responsibility of the utility companies in accordance with California Public Utilities Commission (CPUC) Rules and Tariffs and will be financed through the proposed La Jolla Mesa Vista Assessment District No. 4098 and a cost sharing component of the City of San Diego of \$380,000 from the Underground Surcharge Fund (30100), per Council Resolutions 300051 and 300572.

By Ordinance, creation of this Underground Utility District will require all property owner(s) within said District to perform all necessary trenching and other related work to convert their property to receive electrical, telecommunication and cable television from an underground service, including all necessary permits and compliance with minimum conformance as outlined in the SDMC Chapter 14, Article 6, Division 2. Namely, that their electrical panels: (1) are dead front operated, (2) have a grounding rod; (3) have appropriate operating clearances; and (4) are sufficient load capacity.

FISCAL CONSIDERATIONS:

The estimated construction cost of \$1,070,412 for work within the public right-of-way, will be financed through the proposed La Jolla Mesa Vista Assessment District No. 4098 and a cost sharing component of the City of San Diego of \$380,000 from the Underground Surcharge Fund (30100), per Council Resolutions 300051 and 300572. Property owners are solely responsible for all work on private property necessary to convert their property to underground utility systems.

PREVIOUS COUNCIL COMMITTEE ACTION:

1. Allocation of Underground Conversion Projects for Fiscal Year 2005, Resolution 300051, January 11, 2005, Managers Report 05-001, provided for \$280,000 in cost sharing for the LJMV project.
2. Allocation of Underground Conversion Projects for Fiscal Year 2006, Resolution 300572, June 21, 2005, Managers Report 05-149, provided for \$100,000 in cost sharing for the LJMV project.
3. Approved City Council Resolutions of June 5, 2007 initiating proceedings to form the proposed La Jolla Mesa Vista Undergrounding Utilities Assessment District and setting a public hearing date of July 23, 2007 for formation of the proposed assessment district, and the commencement of the assessment ballot procedure.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

LJMV property owner representatives have worked with Engineering & Capital Projects / Undergrounding Program staff to coordinate with the various utilities to define the project and estimate the costs. At the request of district proponents, Debt Management staff and the City

Attorney's Office helped formulate the Petition that was circulated by a primary district proponent.

In addition, the Underground Program Manager and the Debt Management Department sent letters to the LJMV property owners providing information regarding the project and the proceedings being undertaken by the City to consider the formation of the district and the levy of assessments on properties for the purpose of undergrounding the overhead utility lines.

At the point the Petition was prepared and distributed to the community, the Underground Program Manager met with the community at two different locales and times, both at resident's homes, one during the day and one in the evening, to provide information and answer questions regarding the underground process and information regarding the assessment district formation process.

KEY STAKEHOLDERS:

Property owners within the proposed La Jolla Mesa Vista Underground Utility Assessment District. Business entities involved in the formation of the proposed assessment district include Bureau Veritas North America, Inc. (Assessment Engineer) and Best, Best and Krieger LLP (Outside Legal Counsel).

Haas/Oskoui/NB

NOTE: This activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15302(d), and Public Utilities Commission General Order 131-D dated August 11, 1995.

Aud. Cert. 2700849.

Staff: Nathan Bruner (619) 533-3777
Peter A. Mesich – Deputy City Attorney

FILE LOCATION: K-328 (38)

COUNCIL ACTION: (Time duration: 4:20 p.m. – 4:23 p.m.)

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

ITEM-250: Notice of Pending Final Map Approval - 4170 Alabama Street 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 "4170 Alabama Street Condominiums" (T.M. No. 78500/PTS No. 95895), located on the west side of Alabama Street between Howard Avenue and Polk 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: 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-S400: Approval of Participation and Administration Agreements in San Diego City Employees' Retirement System (SDCERS) Group Trust.

(Continued from the meetings of June 18, 2007, Item 200; June 26, 2007, Item S400; July 10, 2007, Item 339; and September 4, 2007, Item 330; last continued at the request of City Attorney, for further review.)

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM'S RECOMMENDATION:

Take the following actions:

CONTINUED TO MONDAY, SEPTEMBER 24, 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.

SUPPORTING INFORMATION:

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/Wescoe

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:04 p.m. – 2:05 p.m.
3:54 p.m. – 4:08 p.m.)

MOTION BY MADAFFER TO CONTINUE TO MONDAY, SEPTEMBER 24, 2007,
FOR FURTHER REVIEW. Second by Atkins. Passed by the following vote: Peters-not
present, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-
yea, Hueso-yea.

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Pro Tem Young at 4:37 p.m.

FILE LOCATION: MINUTES

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

City of San Diego