

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
MONDAY, SEPTEMBER 24, 2007  
AT 2:00 P.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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**CHRONOLOGY OF THE MEETING:**

The meeting was called to order by Council President Peters at 2:03 p.m. Council President Peters recessed the meeting at 2:48 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 2:54 p.m. with all Council Members present. The meeting was adjourned by Council President Peters at 4:06 p.m.

**ATTENDANCE DURING THE MEETING:**

- (1) Council Member Peters-present
  - (2) Council Member Faulconer-present
  - (3) Council Member Atkins-present
  - (4) Council Member Young-present
  - (5) Council Member Maienschein-present
  - (6) Council Member Frye-present
  - (7) Council Member Madaffer-present
  - (8) Council Member Hueso-present
- Clerk-Maland (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-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 Ed Day of Horizon Christian Fellowship.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Hueso.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

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

**CS-1 *Kedar Pyatt, et al. v. City of San Diego*  
San Diego Superior Court Case No. GIC 880621-1**

**REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 25, 2007**

DCA Assigned: C. Fitzgerald

The Pyatts' filed an inverse condemnation action resulting from a storm drain failure in La Jolla. The City Attorney will update the Mayor and City Council on the status of the litigation in Closed Session and communicate a settlement offer.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:01 p.m. – 4:01 p.m.)

**Council President Peters closed the hearing.**

**CS-2** *Coastal Law Enforcement Action Network v. City of San Diego;*  
*Air California Adventure, LLC;*  
*David Jebb - (Complaint);*  
*City of San Diego v. Air California Adventure, LLC;*  
*Air California Adventure, Inc.;*  
*David Jebb; Maya Jebb - (Cross Complaint)*  
**San Diego Superior Court Case No. GIC 861914**

**REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 25, 2007**

DCA Assigned: M. Dickenson

This matter is a challenge under the California Coastal Act relating to the City's lease of the property known as the Torrey Pines Gliderport. The City Attorney will update the Mayor and City Council on the status of the litigation and requests that the Mayor and City Council consider a possible settlement of this case in Closed Session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:01 p.m. – 4:01 p.m.)

**Council President Peters closed the hearing.**

**CS-3** *City of San Diego v. Todd and Stacey Sabin; Stephen and Sandy Games*

**REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 25, 2007**

DCA Assigned: M. Dickenson

The City Attorney requests the City Council consider initiation of litigation to enforce a settlement agreement between the City and certain landowners in the La Playa area of the City of San Diego

Closed Session Comment 1:

Katheryn Rhodes commented on gates and fencing involved in the La Playa area.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:01 p.m. – 4:03 p.m.)

**Council President Peters closed the hearing.**

**CS-4** *City of San Diego v. Manchester Pacific Gateway, LLC*

**REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 25, 2007**

DCA Assigned: M. Dickenson

The City Attorney requests the City Council consider initiation of litigation to enforce Manchester Pacific Gateway, LLC's agreement to indemnify the City of San Diego.

Closed Session Comment 1:

Katheryn Rhodes commented on an active fault investigation for the property.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:03 p.m. – 4:03 p.m.)

**Council President Peters closed the hearing.**



ITEM-200: City Response to July 23, 2007 Securities and Exchange Commission Letter.

(See Independent Budget Analyst Report No. 07-80; draft letter from Mayor Jerry Sanders; letter from Jay M. Goldstone dated 8/7/2007; and Power Point Presentation regarding Response to Securities and Exchange Commission Letter from Audit Committee dated 8/6/2007.)

(Continued from the meetings of September 4, 2007, Item 333 and September 11, 2007, Item S500; last continued at the request of Councilmember Frye, for further review.)

**MAYOR SANDERS' RECOMMENDATION:**

Take the following actions:

(R-2008-268) ADOPTED WITH DIRECTION AS RESOLUTION  
R-303021

Authorizing the Mayor to submit City's Response to July 23, 2007 Securities and Exchange Commission letter;

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:06 p.m. – 2:43 p.m.)

MOTION BY MADAFFER TO ADOPT WITH DIRECTION TO HAVE THE INCLUSION OF COUNCIL PRESIDENT PETERS' SIGNATURE IN THE CITY'S RESPONSE LETTER TO THE SECURITIES AND EXCHANGE COMMISSION; AND ALSO, TO AMEND MR. JOHN HARTIGAN'S CONTRACT TO INCLUDE MAYOR AND CITY COUNCIL IN NOTIFICATION OF ANY AND ALL FUTURE CORRESPONDENCE FROM THE SECURITY AND EXCHANGE COMMISSION IN A TIMELY MANNER. Second by Falconer. Passed by the following vote: Peters-yea, Falconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Hueso-yea.



ITEM-201: 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; September 4, 2007, Item 330; and September 10, 2007, Item S400; last continued at the request of Roxanne Parks, Chief Compliance Officer from SDCERS, for further review.)

**SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM'S RECOMMENDATION:**

Take the following actions:

TRAILED TO TUESDAY, SEPTEMBER 25, 2007 AT 3:00 P.M.  
TIME CERTAIN

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: 2:49 p.m. – 2:49 p.m.;  
2:55 p.m. – 4:00 p.m.)



ITEM-202: Settlement of Binding Arbitration Award in Favor of the San Diego Chargers.

**CITY ATTORNEY'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2008-31) INTRODUCED, TO BE ADOPTED ON TUESDAY,  
OCTOBER 9, 2007

Introduction of an Ordinance amending Ordinance No. O-19652 (New Series) entitled "An Ordinance Adopting the Annual Budget for the Fiscal Year 2007-2008 and Appropriating the Necessary Money to Operate the City of San Diego for Said Fiscal Year," by authorizing the City Auditor and Comptroller to appropriate and to transfer up to \$1,980,339.60 from the City's General Fund Unallocated Reserve to the Public Liability Fund to pay an arbitration settlement with the San Diego Chargers.

**SUPPORTING INFORMATION:**

The proposed payment would resolve all claims brought by the San Diego Chargers which were the subject of Binding Arbitration of the 2002, 2003, 2004, and 2005 seasons. Binding arbitration was agreed to after the Chargers Football Company LLC demanded to be

compensated for present and future loss revenue, due to the loss of seats that resulted after renovation of Qualcomm Stadium in order to comply with ADA requirements. Future payments will depend on the percentage of actual seats sold based on the formula approved by the Arbitrator.

FISCAL CONSIDERATIONS:

The Auditor will be authorized to appropriate and transfer \$1,980,339.60 from Unallocated Reserves to the Public Liability Fund. The Arbitration Award will be paid from the Public Liability Fund.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This item was heard in closed session when authority was obtained to enter into binding arbitration.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable): N/A

Jones/Goldstone

Aud. Cert. 2800189.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 4:03 p.m. – 4:06 p.m.)

MOTION BY MADAFFER TO INTRODUCE. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-250: The list of ticket users for the City Suites at Qualcomm Stadium and Petco Park will be posted on the City Clerk’s website quarterly. This information will also be available for viewing by the public in the Office of the City Clerk.

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.

**REPORT OUT OF CLOSED SESSION:**

None.

**NON-DOCKET ITEMS:**

None.

**ADJOURNMENT:**

The meeting was adjourned by Council President Peters at 4:06 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 4:06 p.m. – 4:06 p.m.)