

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
MONDAY, OCTOBER 15, 2007  
AT 2:00 P.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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#### CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Peters at 2:02 p.m. with Council Member Hueso not present. Council President Peters recessed the meeting at 3:56 p.m. for the purpose of a break. Council President Pro Tem Young reconvened the meeting at 4:00 p.m. with Council President Peters not present. The meeting was adjourned by Council President Pro Tem Young at 4:24 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-not present

FILE LOCATION:

MINUTES



ITEM-10:

INVOCATION

Invocation was given by Ray Regno of Horizon Christian Fellowship.

FILE LOCATION:

MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Atkins.

FILE LOCATION:

MINUTES

CLOSED SESSION ITEMS:

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

**CS-1 *T-Mobile v. City of San Diego***

San Diego Superior Court Case No. 07-CV-815-WGH

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 16, 2007**

DCA Assigned: J. Serrano

Lawsuit by wireless service provider, who leases City owned land for its facilities, contending the City's leasing policies are improper under Federal and State law. In Closed Session, the City Attorney will brief the City Council on the status of matter.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

- CS-2** *In the Matter of: Natural Gas Anti-Trust Cases I, II, III, & IV*  
RE All Price Indexing Cases, JCCP Nos. 4211, 4224, 4226, and 4228

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 16, 2007**

DCA Assigned: F. Ortlieb

This matter involves a pending consolidated action suit against wholesale sellers of natural gas for anti-competitive acts and unfair business practices in 2000 and 2001. In Closed Session, the City Attorney will discuss recommended settlements proposed for two defendants, Enserco Energy, Inc., and Aquila Merchant Services, Inc.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

- CS-3** *Heisey v. City of San Diego*  
San Diego Superior Court Case No. GIC 865903  
(Consolidated with *Foote v. City of San Diego*  
San Diego Superior Court Case No. GIC 865903)

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 16, 2007**

DCA Assigned: C. Brock

Plaintiff filed her Complaint for Nuisance, Trespass, Preliminary and Permanent Injunction, and Inverse Condemnation [Complaint] against the City in May 2006. Plaintiff's Complaint alleges water intrusion entering defects in the City street and gutter in front of her home has resulted in permanent damage to the hillside and patio structures on her property. In Closed Session, the City Attorney will present Plaintiff's settlement proposal to the City Council.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

CS-4 *San Diego Navy Broadway Complex Coalition v. City of San Diego, et al.*  
San Diego Superior Court Case No. GIC 880444

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 16, 2007**

DCA Assigned: M. Dickenson

This matter is a challenge under the California Environmental Quality Act relating to the City's environmental determinations for the Navy Broadway Complex. The City Attorney will update the Mayor and City Council on the status of the litigation and convey a settlement offer in Closed Session.

Closed Session Comment 1:

Katheryn Rhodes commented on civic lessons regarding building on unstable lands.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:51 p.m. – 3:55 p.m.)

**Council President Peters closed the hearing.**

**CS-5 *Philip Paulson v. City of San Diego***

United States District Court Case No. 89cv00820GT (LSP)

United States Court Case No. 09cv1597 LAB (WMc)

*Steve Trunk and Philip Paulson v. City of San Diego, et al.*

United States District Court Case No. 06cv1597 LAB (WMc)

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 16, 2007**

DCA Assigned: G. Schaefer

The Plaintiff in the first case (the *Paulson* case) obtained an injunction requiring the City of San Diego to remove the Mt. Soledad cross from City property. On June 15, 2007 the federal district court awarded the Plaintiff's counsel attorneys' fees and costs. The City has a pending appeal of that award. The appellate court has scheduled a mediation conference for October 23, 2007. The City Attorney needs to consult with the Mayor and Council in closed session on the City's position regarding settlement at the mediation. The City Attorney also needs to update the Council and Mayor regarding the status of the related Mt. Soledad litigation in the second case (the *Trunk* case) and the prospects for resolution of that case.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

**Public employment - performance evaluation, pursuant to California Government Code section 54957(b)(1):**

**CS-6 Title: Independent Budget Analyst**

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 16, 2007**

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**



ITEM-200: Informational Item – Selection of Enterprise Resource Planning (ERP) System Integrator.

(See Report to the City Council No. 07-155.)

**STAFF'S RECOMMENDATION:**

REPORT RECEIVED

Informational Item only.

**SUPPORTING INFORMATION:**

Axon Solutions Inc. (Axon) has been selected to supply SAP System Integration Consulting Services to SDDPC for the City's ERP Project. This report provides a review of the process used to select the system integrator, and an overview of the services to be provided by Axon.

**FISCAL CONSIDERATIONS:**

Overall fiscal considerations have been addressed in Report No. 07-027, Report No. 07-060, and Report No. 07-106.

The total amount authorized for the project is \$36.5 million; 3.5 million in Internal Service Fund (ISF) 50051, \$3.5 million in SDDPC equity, and \$29.5 million in CIP 500711.

The total amount budgeted in the CIP project is \$29.5 million; \$5 million in FY07, \$16.3 million in FY08 (included in the May Revised Budget), and \$8.2 million in FY09. These amounts match the projected fiscal year draws from the Lease Purchase Agreement with IBM Credit LLC.

Initial project estimates for the ERP software were in the range of \$4 million to \$5 million. Negotiated contract price for the ERP software, including SAP licenses and 3rd party software licenses, is \$3,757,250. Initial project estimates for the ERP software annual license maintenance were in the range of \$1 million to \$2 million. Negotiated price for the ERP software annual license maintenance, including SAP license maintenance and 3rd party license maintenance is \$818,633. The initial estimate for the system integrator was \$18 million. The negotiated contract is for \$16,951,786 with an option for an additional \$1,853,630. The total with options is \$18,805,416. The total amount without options is \$1,048,241 under the estimate.

The total amount including optional scope exceeds the estimate by \$805,416. The intent is to manage the overall project scope within the \$36.5 million in funds allocated for the project.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On September 6, 2006, the Mayor presented to City Council his proposed responses to the remedial recommendations of the City of San Diego's Audit Committee. The City Council agreed to accept and adopt in principle the Mayor's responses to the remedial recommendations of the City's Audit Committee, knowing that any changes in appropriations, Municipal Code, Council Policy or City Charter, will come to the Council for further review and discussion as the plan is implemented.

The project to implement the ERP system is described in Report No. 07-027 and was approved, in concept, by City Council on February 5, 2007.

Through OO-19618, introduced on April 24, 2007, and adopted on May 15, 2007, City Council authorized the Mayor to enter into a lease-purchase agreement with IBM LLC for the financing required to implement the ERP Core Project. In addition, City Council authorized establishment of ERP Fund (50071) and the transfer of up to \$3.5 million from the City's A-List Fund (50066) to the ERP fund.

On June 11, 2007, City Council passed Resolution No. R-302710 authorizing the Mayor to draw against the IBM Credit Facility for the purpose of acquiring the equipment, software, and services selected by SDDPC for the implementation of the City's ERP Project, and to add CIP-92-000.0, Enterprise Resource Planning ("ERP") Core Capital Project, Fund 500711, to the Fiscal Year 2007 Capital Improvements Program.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On August 24, 2006, the Mayor discussed his remediation plan in response to the City of San Diego's Audit Committee Report at a town hall style meeting. In addition, the Mayor created a "Kroll News Center" on the City's public website that includes the Mayor's proposed Remediation Plan with Fact sheet and Remediation Plan Remarks as well as a video link to the previously mentioned town hall meeting and the Audit Committee Report itself.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The City is evaluating the impact of this project on its business partners and on related agencies to include the San Diego City Employee Retirement System (SDCERS) and San Diego Data Processing Corporation (SDDPC).

It is anticipated that some effort will be required to integrate the financial systems used by these organizations with the City's ERP system. Detailed planning of these integrations will take place as part of the project planning phase.

McGarvey/Goldstone

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:00 p.m. – 4:17 p.m.)



ITEM-201: Appointment of Chief Operating Officer.

(See memorandum from Mayor Sanders dated September 20, 2007.)

**MAYOR SANDERS' RECOMMENDATION:**

Take the following action:

(R-2008-346) ADOPTED WITH DIRECTION AS RESOLUTION  
R-303075

Council confirmation of the appointment by the Mayor of Jay Goldstone to Chief Operating Officer of the City of San Diego;

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:04 p.m. – 2:22 p.m.)

MOTION BY ATKINS TO ADOPT WITH DIRECTION TO HAVE THE CITY ATTORNEY WRITE A LEGAL OPINION REGARDING CITY CHARTER SECTION 265 (b) LANGUAGE. Second by Faulconer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-yea, Hueso-yea.



[ITEM-202:](#) Residential Real Estate Broker Commissions.

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-266) ADOPTED AS RESOLUTION R-303076

Approving the commission schedule related to the sale of certain excess City-owned real properties designated for reference only as "Nautilus House," "6216 Beaumont," "904 33<sup>rd</sup> Street," "327 Langley Street," and "Otsego & Brookes," 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, five of which were residential. 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, his designee, and in conformance with San Diego Municipal Code Section 22.0905".

The City's Purchasing & Contracting Department issued a Request for Proposal (RFP) seeking bids for "Professional Residential Real Estate Brokerage Services". The RFP was advertised on the City's official web site and in the Daily Transcript. Twenty-one individual residential brokers were individually contacted based on their zip code and that of the residential properties. The City received responses from six companies: Ascent, Starbanc, Initiative and 3 Prudential offices (Jeanie Gleeson, George Abernathy and John Silva).

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; Marketing plan; Assessment of property sales opportunities and Broker/Sales Licenses.

The top three qualifiers were the Prudential George Abernathy Group, Prudential Jeannie Gleeson Group and Initiative Real Estate.

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 for the properties.

FISCAL CONSIDERATIONS:

All commissions are paid from the proceeds of the sale of the individual properties.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

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

Barwick/Anderson

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:17 p.m. – 4:21 p.m.)

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



**ITEM-203:** American Tower Corporation-30<sup>th</sup> Place. Appeal of Planning Commission's decision denying an application for a wireless communication facility located at 700 30<sup>th</sup> Place. (Southeastern San Diego Community Plan Area. District 8.)

Matter of the appeal by Robert Jystad, Channel Law Group, LLP on behalf of applicant American Tower Corporation from the decision by the Planning Commission denying an application for a wireless communication facility consisting of an existing 130 foot high monopole and a 500 square foot equipment shelter, originally approved by CUP No. 84-0469, which expired on November 20, 2004. The project site is located at 797 1/3 30<sup>th</sup> Place.

This project was determined to be categorically exempt from the California Environmental Quality Act on February 8, 2006 and the opportunity to appeal that determination ended February 23, 2006.

**STAFF'S RECOMMENDATION:**

Take the following actions:

(R-2007-00) CONTINUED TO TUESDAY, NOVEMBER 6, 2007

Adoption of a Resolution granting or denying the appeal and upholding or overturning the Planning Commission's decision denying Conditional Use Permit No. 296127 and Planned Development Permit No. 453612.

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

**OTHER RECOMMENDATIONS:**

Planning Commission on June 28, 2007 voted 5--0 to deny; was opposition.

Ayes: Schultz, Garcia, Naslund, Ontai, Otsuji

Recusing: Griswold

(vacant)

The Southeastern San Diego Planning Committee has been notified of this item and has not submitted a recommendation.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

Appeal of the Planning Commission's decision to deny a Conditional Use Permit and Planned Development Permit for a 130 foot high monopole and a 500 square foot equipment building located at 797 1/3 30<sup>th</sup> Place in the Southeastern San Diego Community Planning area.

**STAFF RECOMMENDATION:**

**DENY** the appeal and **UPHOLD** the Planning Commission's decision to deny Conditional Use Permit No. 296127 and Planned Development Permit No. 453612.

**EXECUTIVE SUMMARY:**

On November 20, 1984, the City Council approved a Conditional Use Permit (CUP) for a 130 foot high monopole and a 500 square-foot equipment shelter on the south side of Highway 94 at 797 1/3 30<sup>th</sup> Place. This was one of the first telecommunication facilities within the City. Since wireless communications was in its infancy, the Council imposed a 20 year limit on the life of the CUP in order to allow the facility to be constructed, the technology to be implemented and a review to occur in the future when technology and/or regulations changed. The condition included language regarding an extension to the permit, which would be required to be reviewed at a Planning Commission and City Council public hearing prior to November 20, 2004. The Land Development Code does not have provisions to extend discretionary permits.

The 130 foot tall monopole is situated at a high point along Highway 94 in a residential neighborhood and exceeds the MF-3000 height limit by 100 feet. Deviations to the development regulations require a PDP, which is a mechanism to encourage imaginative and innovative planning. Section 141.0405 of the Land Development Code (Communication Antennas) requires wireless facilities to be integrated into the landscape or camouflaged from public view. This monopole is a significant visual impact on the horizon along Highway 94 and the surrounding communities. Neither the findings for the CUP nor the findings for the PDP could be made in the affirmative; therefore staff recommended denial of the project to the Planning Commission.

On June 28, 2007, the Planning Commission considered the 30th Place monopole and voted unanimously (5-0) to deny the CUP because the facility is not camouflaged from public view and because it is not integrated into the environmental setting.

On July 11, 2007, Robert Jystad, attorney for American Tower Corporation, appealed the Planning Commission decision based on the findings not being supported and on the basis that the decision is of citywide significance. The appellant asserts that American Tower has vested rights to renewal and/or approval based on the fact that they relied on this approval to build out their network. The appellant also asserts that Finding No. 3 can be made in the affirmative. Staff believes that because the CUP had a specific expiration date, it was Verizon's (tenant) responsibility and American Tower's due diligence to make provisions in the network to accommodate changes that were inevitable to this tower. It has been consistently acknowledged by staff that these first generation support structures would eventually have to be removed and replaced if technology had advanced sufficiently for the changes to be made. Twenty years have passed; technology has advanced and American Tower and Verizon must comply with the regulations in order to maintain a wireless facility at this location.

The City has approximately twenty existing monopoles, all of which were approved more than ten years ago. With the advancement of technology and design capabilities in the wireless industry, it has been the City's practice over the past ten years not to allow additional monopoles, but instead, to encourage and provide incentives to the carriers to minimize the visual impacts associated with wireless facilities.

American Tower has raised the issue of vested rights in the past and staff has argued, and the Planning Commission has confirmed that a contract was signed by the original applicant of record, in this case, Pac Tel Mobile Access (now Verizon), acknowledging that the Conditional Use Permit not only ran with the land, but also expired on November 20, 2004. Preparations and modifications in the network should have been made to accommodate the potential for a height reduction. Verizon has worked closely with the City for the past twenty years and has known that monopoles were eventually going to be phased out and replaced.

FISCAL CONSIDERATIONS:

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

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

PLANNING COMMISSION RECOMMENDATION:

The Planning Commission voted 5-0 to recommend **DENIAL** of Conditional Use Permit No. 296127 and Planned Development Permit No. 453612.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

On March 27, 2006, American Tower met with the Technical Subcommittee of the Southeastern San Diego Planning Committee on 30<sup>th</sup> Place. They requested additional information on landscape and replacement of the existing chain link fence with wrought iron. American Tower has not been able to present to the Southeastern San Diego Planning Committee to date.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

Compliance with the Communication Antenna regulations will require American Tower Corporation and their tenant Verizon Wireless to expend funds to upgrade their facility and make modifications to other facilities to accommodate the reduction in height.

Anderson/Boekamp

**LEGAL DESCRIPTION:**

The project is located at 700 30<sup>th</sup> Place within the Southeastern San Diego Community Plan, in the City and County of San Diego.

**NOTE:** This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15301, Existing Facilities.

Staff: Karen Lynch-Ashcraft – (619) 446-5351

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

**NOTE:** See Item 204 on today's docket for a companion item.

**FILE LOCATION:** NONE

**COUNCIL ACTION:** (Time duration: 2:25 p.m. – 2:31 p.m.)

MOTION BY HUESO TO CONTINUE TO TUESDAY, NOVEMBER 6, 2007, AT THE REQUEST OF AMERICAN TOWER CORPORATION WITH DIRECTION BY COUNCIL MEMBER FRYE TO PROVIDE A TECHNICAL ANALYSIS REPORT TO COUNCIL AND STAFF ONE WEEK PRIOR TO TUESDAY, NOVEMBER 6, 2007. Second by Madaffer. Passed by the following vote: Peters-recused, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-204: American Tower Corporation-Mt. Ada. An application for a wireless communication facility located at 6426 Mt. Ada Road between Mt. Rias Place and Mt. Albertine Avenue. (Clairemont Mesa Community Plan Area. District 6.)

Matter of approving, conditionally approving, modifying or denying an application for a wireless communication facility consisting of an existing, expired 145 foot high monopole and a 572 square foot equipment shelter, originally approved by CUP No. 83-0629, which expired on November 20, 2004. The facility is located at 6426 Mt. Ada Road between Mt. Rias Place and Mt. Albertine Avenue.

This project was determined to be categorically exempt from the California Environmental Quality Act on January 23, 2006 and the opportunity to appeal that determination ended February 7, 2006.

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-188) CONTINUED TO TUESDAY, NOVEMBER 6, 2007

Adoption of a Resolution certifying findings supported by the minutes, maps and exhibits, all of which are incorporated herein by this reference with respect to Conditional Use Permit No. 292627/Site Development Permit No. 450714;

That Conditional Use Permit No. 292627/Site Development Permit No. 450714 is denied.

**OTHER RECOMMENDATIONS:**

Planning Commission on June 28, 2007 voted 5--0 to recommend denial; was opposition.

Ayes: Schultz, Garcia, Naslund, Ontai, Otsuji

Recused: Griswold

(vacant)

The Clairemont Mesa Planning Committee has recommended denial of this project.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

Conditional Use Permit and Site Development Permit for an existing 145 foot high monopole and a 572 square foot equipment building located at 6426 Mt. Ada in the Clairemont Mesa Community Planning area.

**STAFF RECOMMENDATION:**

**DENY** Conditional Use Permit No. 296627 and Site Development Permit No. 450714.

**EXECUTIVE SUMMARY:**

On November 20, 1984, the City Council approved a Conditional Use Permit (CUP) for a 145 foot high monopole and a 572 square-foot equipment shelter on the south side of Balboa Avenue between Mt. Rias Place and Mt. Albertine Avenue at 6426 Mt. Ada Road. This was one of the first telecommunication facilities within the City. Since wireless communications was in its infancy, the Council imposed a 20 year limit on the life of the CUP in order to allow the facility to be constructed, the technology to be implemented and a review to occur in the future when technology and/or regulations changed. The condition included language regarding an extension to the permit, which would be required to be reviewed at a Planning Commission and City Council public hearing prior to November 20, 2004. The Land Development Code does not have provisions to extend discretionary permits.

The 145 foot tall monopole is situated along the Balboa Avenue corridor in a commercial zone (CC-1-3) that borders multi-unit residential development with a large residential subdivision beyond. The Clairemont Mesa Height Limitation Overlay zone does not permit structures over 30 feet in height without City Council approval of a Site Development Permit (SDP). A SDP is a special permit used when a proposed development would have a significant impact on the surrounding area. Section 141.0405 of the Land Development Code (Communication Antennas) requires wireless facilities to be integrated into the landscape or camouflaged from public view. This monopole is a significant visual impact on the horizon along Balboa Avenue and the surrounding residential community. Neither the findings for the CUP nor the findings for the SDP could be made in the affirmative; therefore staff recommended denial of the permits to the Planning Commission.

On June 28, 2007, the Planning Commission considered the Mt. Ada monopole and voted unanimously (5-0) to recommend denial of the CUP/SDP because the facility is not camouflaged from public view and because it is not integrated into the environmental setting.

**FISCAL CONSIDERATIONS:**

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

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

**PLANNING COMMISSION RECOMMENDATION:**

The Planning Commission voted 5-0 to recommend **DENIAL** of Conditional Use Permit No. 296627 and Site Development Permit No. 450714.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

On March 21, 2006, the Clairemont Mesa Planning Committee voted 14-0-0 to recommend denial of Project No. 91178.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

Denial of the project will require American Tower Corporation and their tenant Verizon Wireless to expend funds to upgrade their facility and make modifications to other facilities to accommodate the reduction in height in order to comply with the regulations.

Anderson/Boekamp

**LEGAL DESCRIPTION:**

6426 Mount Ada Road in the Clairemont Mesa Community Planning area.

**NOTE:** This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15301, Existing Facilities.

Staff: Karen Lynch-Ashcraft – (619) 446-5351  
Andrea Contreras Dixon – Deputy City Attorney

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

**NOTE:** See Item 203 on today's docket for a companion item.

**FILE LOCATION:** NONE

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

MOTION BY HUESO TO CONTINUE TO TUESDAY, NOVEMBER 6, 2007, AT THE REQUEST OF AMERICAN TOWER CORPORATION WITH DIRECTION BY COUNCIL MEMBER FRYE TO PROVIDE A TECHNICAL ANALYSIS REPORT TO COUNCIL AND STAFF ONE WEEK PRIOR TO TUESDAY, NOVEMBER 6, 2007. Second by Madaffer. Passed by the following vote: Peters-recused, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



[ITEM-205:](#) Initiation of actions to Establish a Tourism Marketing District Pursuant to the Tourism Marketing District Ordinance.

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-317 Rev.) ADOPTED AS AMENDED AS RESOLUTION  
R-303077

A resolution of intention to establish a Tourism Marketing District; to levy assessments for a maximum of five (5) years; to direct the mailing of ballots to affected businesses; to set dates for a noticed public meeting for the purpose of receiving testimony and public hearing to count ballots, consider protests and establish the district; and to approve the Tourism Marketing District (TMD) Management Plan;

Declaring that this activity is exempt from California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15060(c)(3).

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

At the first Council Date:

1. Approve the Tourism Marketing District Management Plan;
2. Declare intent to establish Tourism Marketing District (TMD) and to levy assessments for the TMD for a maximum of 5 years and set a noticed public meeting date of November 20, 2007, and set December 3, 2007, as the noticed public hearing date for counting ballots and considering protests, and direct that the notice to affected businesses shall include a ballot whereby businesses may indicate their support of or opposition to the proposed assessment.

At the second Council date (November 20, 2007):

3. Hold public meeting and permit testimony in support of or in opposition to the proposed assessment.

At the third Council date (Council Meeting of December 3, 2007):

4. Hold public hearing and permit testimony in support of or in opposition to the proposed assessment and at the conclusion of the hearing direct City Clerk to count the ballots.
5. Establish the TMD and authorize the levying of the assessment.
6. Authorize the Mayor to execute an agreement with the non-profit representing the assessed businesses for management of the Tourism Marketing District.

**STAFF RECOMMENDATION:**

Approve the requested actions.

**EXECUTIVE SUMMARY:**

Representatives from the hotel industry approached City officials about implementing a Tourism Marketing District in mid-2005. Industry representatives were interested in developing a new source of revenue for marketing and promotion in order to retain and expand the tourism industry in San Diego. The tourism industry is the third largest revenue generator for the San Diego economy and a key employment sector. However, future growth of the industry is dependent on additional marketing of San Diego, especially as more hotel rooms come on-line. Maintaining or increasing hotel occupancy rates will also result in enhanced TOT revenues to the City.

Earlier this year, the Tourism Marketing District Procedural Ordinance was adopted. This ordinance outlines the process for forming a Tourism Marketing District. It requires that a TMD Management Plan be developed and that petitions be obtained in support of the district (and the TMD Management Plan) from hotels representing more than 50% of the proposed assessments in order to bring the matter to City Council. The TMD Management Plan (Attachment A) and petition was developed and distributed to 175 businesses (hotels) with 70 or more sleeping rooms. As of September 27, 2007, City Treasurer staff received and verified petitions in support of establishing a Tourism Marketing District from businesses representing more than 50% of the total proposed annual assessments.

As required by the Tourism Marketing District Procedural Ordinance, the establishment of the TMD is being brought to the City Council. Furthermore, if the Council declares its intention to establish the TMD and levy the assessment then the TMD Procedural Ordinance requires that a mailed ballot procedure be conducted by City staff and counted by the City Clerk to determine if a majority protest exists. If the San Diego Tourism Marketing District is established and is successful then the affected hotels could vote to extend the district at the end of the initial five (5) year period, if not, then the district would lapse of its own accord.

**FISCAL CONSIDERATIONS:**

If the TMD is established then it is anticipated that that the City will collect approximately \$25 million of TMD assessments annually which will then be disbursed back to the TMD non-profit on a reimbursement basis. Actual costs incurred by the City in administering the TMD program, but not to exceed \$300,000 annually plus a cost escalator, will be recouped from the TMD assessments. In FY 2008, approximately \$5.3 million will be reimbursed to the City from the TMD assessments for certain FY 2008 citywide TOT allocations. Additionally, the City will be reimbursed for initial start-up costs not to exceed \$60,000. On an on-going basis, for the term of the TMD, the City would no longer provide annual funding of approximately \$10 million to the San Diego Convention and Visitors Bureau and other tourism-related organizations since funding would be provided through the Tourism Improvement District assessments rather than being funded by the City with TOT funds.

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

On July 19, 2006, an information only presentation was made to the Budget and Finance Committee by the San Diego Lodging Industry Association on the status of the proposed Tourism Marketing District. The TMD Procedural Ordinance was introduced at Council and had a second reading in May 2007. The ordinance was added to the SDMC on May 30, 2007 and became effective on June 29, 2007.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

Both the Lodging Industry Association and the San Diego County Hotel-Motel Association have participated in the preparation of all Tourism Marketing District documents. Mr. Scott Kessler has addressed industry participants at monthly meetings of the San Diego County Hotel-Motel Association and at committee meetings of the Greater San Diego Chamber of Commerce. Meetings have also been held with representatives of the San Diego Convention and Visitors Bureau to answer questions about the Tourism Improvement District concept. Adopting the resolution of intent will require staff to notice the affected hotel business owners of the public hearings and cause a mailed ballot to occur to determine if there is a majority protest.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are the hotels in San Diego with 70 or more rooms that would be required to pay the TMD assessment.

Kessler/Anderson/MDB

Staff: Scott Kessler – (619) 236-6405  
Alex Sachs – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:32 p.m. – 3:50 p.m.)

MOTION BY FAULCONER TO ADOPT AS AMENDED TO CLARIFY AND ADDRESS ALL OF THE INDEPENDENT BUDGET ANALYST'S ISSUES IN THE CONTRACT TO INCLUDE AN ANNUAL ACTIVITY REPORT FROM THE INDUSTRY TO FULL CITY COUNCIL, TO SPECIFY REVENUE FROM PENALTIES ON TOURISM MARKETING DISTRICT ASSESSMENTS IN THE INTENT TO LEVY ASSESSMENTS, INCLUDE THE EXISTING BOND OBLIGATIONS AND THE DEBT SERVICE ON THE BONDS RELATED TO THE BALLPARK IN THE MANAGEMENT PLAN, AND TO INCLUDE A PROVISION IN THE CONTRACT TO ALLOW COUNCIL TO OVERRIDE INDUSTRY DECISION IN TERMS OF TO WHOM THEY AWARD FUNDS. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-nay, Maienschein-yea, Frye-nay, Madaffer-yea, Hueso-yea.

**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 – 4054 Illinois Street.**

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “4054 Illinois Street” (T.M. No. 266350/PTS No. 128568), located on the west side of Illinois Street between Polk Avenue and Lincoln 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-252: Notice of Pending Final Map Approval – Fairbrook Estates.

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 “Fairbrook Estates” (T.M. No. 98-1001/PTS No. 3033), located southeasterly of Pomerado Road and Fairbrook Road in the Scripps Miramar Ranch Community Plan Area in Council District 5, 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 Pro Tem Young at 4:24 p.m. in honor of the memory of:

Fayne Ruby Gibson as requested by Council President Pro Tem Young.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 4:22 p.m. – 4:24 p.m.)

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Elizabeth S. Maland, City Clerk  
City of San Diego