

THE CITY OF SAN DIEGO, CALIFORNIA  
 MINUTES FOR REGULAR COUNCIL MEETING  
 OF  
 TUESDAY, APRIL 22, 2008  
 AT 9:00 A.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 10:03 a.m. Council President Peters recessed the meeting at 11:19 a.m. for the purpose of a break. Council President Peters reconvened the meeting at 11:23 a.m. with all Council Members present. The meeting was recessed by Council President Peters at 12:00 p.m. to reconvene at 2:00 p.m.

The meeting was reconvened by Council President Peters at 2:05 p.m. with all Council Members present. Council President Peters recessed the meeting at 3:38 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 3:42 p.m. with all Council Members present. The meeting was adjourned by Council President Peters at 6:57 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 (dlc/mz)

FILE LOCATION:                      MINUTES



ITEM-300:

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

NON-AGENDA COMMENT:

PUBLIC COMMENT-1:

Don Stillwell commented on prayer and the flag salute.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:29 a.m. – 10:31 a.m.)

PUBLIC COMMENT-2:

Nancelle Lauffer commented on the homeless.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:31 a.m. - 10:34 a.m.)

PUBLIC COMMENT-3:

Cricket Blane commented on car problems.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:34 a.m. - 10:37 a.m.)

PUBLIC COMMENT-4:

Tom Hunter commented on a budget proposal.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:37 a.m. - 10:39 a.m.)

PUBLIC COMMENT-5:

Sky sang a song about funding.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:39 a.m. - 10:42 a.m.)

PUBLIC COMMENT-6:

**Referred to City Attorney:** Pansy Hillard commented on a house permit.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:43 a.m. - 10:46 a.m.)

**PUBLIC COMMENT-7:**

Izean Rim, Jr., commented on public safety.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:50 a.m. - 10:53 a.m.)

**PUBLIC COMMENT-8:**

Elinor Rector commented on a Bible perspective.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:53 a.m. - 10:56 a.m.)

**PUBLIC COMMENT-9:**

**Referred to Mayor:** Cynthia Conger commented on antenna towers.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:56 a.m. - 10:59 a.m.)

**PUBLIC COMMENT-10:**

Jarvis Ross commented on the April 21, 2008, Council Meeting.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:01 a.m. - 11:02 a.m.)

PUBLIC COMMENT-11:

Ted Patrick commented on a drive-by shooting.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:02 a.m. - 11:05 a.m.)

PUBLIC COMMENT-12:

**Referred to Mayor:** Katheryn Rhodes commented on Rose Canyon.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:08 a.m. – 11:11 a.m.)

PUBLIC COMMENT-13:

**Referred to Mayor:** David Ross commented on displaced people.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:13 a.m. – 11:14 a.m.)

PUBLIC COMMENT-14:

Joy Sunyata commented on voices being heard.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:17 a.m. – 11:20 a.m.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member Frye recognized Armenian Genocide Day and invited the public to view the screening of the documentary film, "Screamers" showing at UCSD.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:08 p.m. – 2:11 p.m.)

COUNCIL COMMENT-2:

Council Member Atkins recognized the fundraising event, "Dine Out for Life" on Thursday, April 24, 2008, to benefit AIDS/HIV.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:11 p.m. – 2:13 p.m.)

INDEPENDENT BUDGET ANALYST COMMENT:

None.

CITY ATTORNEY COMMENT:

None.

 [ITEM-30:](#) Approval of Council Minutes.

**TODAY'S ACTION IS:**

APPROVED

Approval of Council Minutes for the meetings of:

03/24/2008

03/25/2008

03/31/2008 - Adjourned

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:03 a.m. – 10:03 a.m.)

MOTION BY MADAFFER TO APPROVE. 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-31:](#) Commending the Recipients of the San Diego Annual Recycling Award and Proclaiming April 22, 2008 as “San Diego Recycles Day”.

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-875) ADOPTED AS RESOLUTION R-303608

Commending the following recipients of the City's 16th Annual San Diego Waste Reduction and Recycling Awards for their commitment to waste reduction and recycling:

Rear Admiral L. R. Hering, Sr., United States Navy  
Cox Communications  
Mercury Celebrity Cruises  
Neyenesh Printers  
Point Loma Nazarene University  
Qualcomm Incorporated  
Reuben H. Fleet Science Center  
San Diego City College  
San Diego Convention Center  
San Diego International Airport  
SeaWorld  
V.A. San Diego Healthcare System  
Whole Food Market - La Jolla

Proclaiming April 22, 2008, to be “San Diego Recycles Day” in the City of San Diego.

**STAFF SUPPORTING INFORMATION:**

The Environmental Services Department’s (ESD) Annual Waste Reduction and Recycling Awards Program recognizes local businesses, military operations, schools, organizations, and individuals that have taken an environmental leadership role by implementing innovative and successful programs in waste reduction, recycling, and environmentally preferable purchasing. The efforts of these organizations and individuals help the City achieve its waste reduction and recycling goals, reduce greenhouse gas emissions and extend the life of the Miramar Landfill.

ESD will also highlight the second annual San Diego Climate Protection Champion Award. This award recognizes a group or organization who has committed much of its time to reducing greenhouse gas emissions in the community. Applicants included local businesses, nonprofit organizations and schools.

On April 22, 2008, the 16th Annual Waste Reduction and Recycling Award Winners and the Climate Protection Champion Award Winners will be recognized by Mayor Jerry Sanders and Council President Scott Peters before City Council.

**FISCAL CONSIDERATIONS:**

There are no expenditure impacts to this action.

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

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

City of San Diego businesses and residents.

Gonaver/Heap

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:03 a.m. - 10:18 a.m.)

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



ITEM-50: Contract Change Order No. 2 with Habitat West Inc. for Los Peñasquitos North Wetland Creation Project. (Los Peñasquitos Canyon Preserve Community Area. District 1.)

(See Metropolitan Wastewater Department's 12/31/2007 Executive Summary Sheet.)

TODAY'S ACTION IS:

Introduce the following ordinance:

(O-2008-124) INTRODUCED, TO BE ADOPTED ON TUESDAY,  
MAY 6, 2008

Introduction of an Ordinance authorizing the Mayor, or his designee, to execute, for and on behalf of the City, Change Order No. 2, dated January 2, 2008, together with the changes set forth, amounting to an extension of time of 1,095 calendar days, issued in connection with the agreement between the City and Habitat West, Inc.;

Declaring that the above activity is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15060(c)(3) and 15378 because this activity is subsequent discretionary approval of a project which was adequately addressed in Environmental Impact Report, PTS No. 6020, and there is no change in circumstance, additional information, or project changes to warrant additional environmental review.

**NOTE: 6 votes required pursuant to Section 99 of the City Charter.**

**NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:**

On 3/26/2008, NR&C voted 4 to 0 to approve. (Councilmembers Peters, Faulconer, Atkins, and Frye voted yea.)

**SUPPORTING INFORMATION:**

On October 4, 2004 the City entered into an agreement with Habitat West, Inc., with a Document Number RR-299709. The agreement, in the amount of \$679,995, included the design and construction support work associated with the Los Peñasquitos North Wetland Creation Project. The project consists of the creation of 3.8 acres of wetland habitat to be used as compensatory mitigation for past and future impacts to wetlands within the Los Peñasquitos Creek Watershed.

Habitat mitigation projects involve construction, installation, and a mandatory 5 year maintenance and monitoring period. The Los Peñasquitos North Wetland Creation Project is currently in year 2 of the 5 year maintenance period. The existing contract and requested 3 year extension with Habitat West, Inc., would exceed five years and requires a time extension to complete the current activities related to the long- term maintenance of the mitigation site.

This request is for a "NO COST" time extension for three (3) additional years from the expiration date of the existing contract. The contract will expire on August 4, 2008. This Contract Change Order will enable Habitat West, Inc., to continue to provide maintenance services for the Los Peñasquitos North Wetland Creation Project as required by regulatory permits.

**EQUAL OPPORTUNITY CONTRACTING:**

The prime contractor, Habitat West, Inc., is a WBE/DBE contractor and holds 67.2% of the contract.

Funding Agency: City of San Diego  
Goals: 15% Voluntary (MBE/WBE/DBE/DVBE/OBE)  
Subconsultant Participation: Dudek and Associates (Other) - 4.2%  
Subcontractor Participation: Robert Engineering (Other) - 28.6%  
Other: Habitat West is a Certified WBE (Women Business Enterprise) firm. A work force report has been submitted. Habitat West Inc. has demonstrated efforts to diversify their workforce which precludes the need to request an Equal Opportunity Plan.

FISCAL CONSIDERATIONS:

None with this action.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Resolution R-299709 authorized contract in the amount of \$679,995. This action will be reviewed by the Natural Resources and Culture Committee on March 6, 2008.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Habitat West, Inc.

Ferrier/Barret

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:28 a.m.)

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



\* ITEM-100: Two actions relating to Inviting Bids for the Construction of Sewer and Water Group 683A Project. (City Heights Community Area. District 3.)

(See Engineering and Capital Project's Executive Summary Sheet dated 9/19/2007.)

**TODAY'S ACTIONS ARE:**

Adopt the following resolutions:

Subitem-A: (R-2008-281) ADOPTED AS RESOLUTION R-303609

Approving the plans and specifications for the construction of Sewer and Water Group 683A (Project) as advertised by Purchasing and Contracting Department, on Work Order Nos. 176191/189041;

Authorizing the Mayor, or his designee, after advertising for bids in accordance with law, to award the Project contract to the lowest responsible and reliable bidder, provided that the City Auditor and Comptroller first furnishes one or more certificates demonstrating that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Authorizing the expenditure of an amount not to exceed \$5,692,500 from Sewer Fund 41506, CIP-44-001.0, Annual Allocation-Sewer Main Replacements, and \$1,132,846 from Water Fund 41500, CIP-73-083.0, Annual Allocation -Water Main Replacements, solely for the construction and Project related costs, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer;

Authorizing the City Auditor and Comptroller, upon advice from the administering department, to transfer excess budgeted funds, if any, to the appropriate reserves. (BID-K084076C)

Subitem-B: (R-2008-282) ADOPTED AS RESOLUTION R-303610

Declaring that the Revised Final Mitigated Negative Declaration, Project No. 28711, dated September 24, 2007 (MND) for Sewer and Water Group 683A (the Project), has been completed in compliance with the California Environmental

Quality Act of 1970 (California Public Resources Code Section 21000 et seq.), as amended, and the State Guidelines thereto (California Code of Regulations Sections 15000 et seq.);

Declaring that the MND reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in the report, together with any comments received during the public review process, has been reviewed and considered by this Council in connection with the approval of the Project;

Finding that revisions to the Project now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, approving said Project 28711 MND;

Adopting Mitigated Negative Declaration No. 28711 for the Project;

Adopting the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the Project as required by this body in order to mitigate or avoid significant effects on the environment, pursuant to California Public Resources Code Section 21081.6;

Directing the City Clerk to file a Notice of Determination (NOD) with the Clerk of the Board of Supervisors for the County of San Diego regarding the above Project.

**NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:**

On 9/26/2007, NR&C voted 4 to 0 to approve. (Councilmembers Faulconer, Maienschein, Frye, and Hueso voted yea.)

**SUPPORTING INFORMATION:**

Sewer and Water Group 683A is part of the City of San Diego's Cast Iron (CI) Water Main Replacement Program as mandated by Department of Health Services Compliance Order No. 04-14-96-022 and the Sewer Main Replacement Program as mandated by the Environmental Protection Agency (EPA). This project is located within the Mid-City community of City Heights. This project consists of replacing approximately 9,686 linear feet (1.83 miles) of sewer mains and 1,676 linear feet (0.32 miles) of water mains. Also, there will be approximately 984 linear feet of sewer mains abandonment within the residential neighborhoods of this project, and approximately 883 linear feet of sewer mains in a canyon environment and underneath I-805 Freeway. The total length of abandonment would be 1,867 linear feet. It also includes installing curb ramps and street resurfacing.

The streets affected by construction operations within this project are: Orange Avenue, Polk Avenue, University Avenue, Wightman Avenue, Landis Street, Wilson Avenue, Bellingham Avenue, 35th Street, and Lincoln Avenue. Also, the project alignment is located within alleys west of 37th Street, south of El Cajon Boulevard, north of Bellingham Avenue, and east of 33 Street, as shown on the location map.

**FISCAL CONSIDERATIONS:**

The total estimated cost of this project is \$6,948,304. Funding of \$122,958 for the sewer portion of the project was previously authorized by Council (R-300460) for CCTV inspection costs. Funding is available in Water Fund 41500, CIP-73-083.0, Annual Allocation - Water Main Replacements, and Sewer Fund 41506, CIP-44-001.0, Annual Allocation - Sewer Main Replacements, for this purpose.

The project costs for the sewer portion of \$5,692,500 may be bond reimbursed approximately 80% by current or future debt financings. Water Department revenue is dedicated for this project. The Water Department will be reimbursed from available debt financing proceeds equal to 80% of the project. The total estimated cost of the water portion is \$1,132,846. This project will be funded in FY 08. No future funding is anticipated. The Auditor's Certificate will be provided prior to contract award.

**PREVIOUS COUNCIL AND/OR COMMITTEE ACTIONS:**

The Committee on Natural Resources and Culture on September 26, 2007, consent motion by Councilmember Hueso, second by Councilmember Faulconer. Vote to approve 4-0. On May 23, 2005, the City Council adopted Resolution No. R-300460 authorizing the expenditure of \$122,958 for the Closed Circuit Televising (CCTV) inspection and assessment costs required for the Sewer & Water Group 683A project.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

During design, Sewer and Water Group 683A was presented to the City Heights Community Planning Group on January 5, 2004 and June 6, 2005. Once financing is approved, the community will be updated on the project. In addition, residents and businesses will be notified by mail by the City's Engineering and Capital Projects Department at least one (1) month before construction begins and again ten (10) days before construction begins by the Contractor through hand distribution of notices. Traffic control plans have been prepared for this project and will be implemented during construction.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Residents in this area will encounter inconveniences during construction. After completion, residents will experience improved reliability of the water distribution and sewer collection systems.

EQUAL OPPORTUNITY CONTRACTING:

Funding Agency: City of San Diego - Prevailing wages do not apply to this contract.

Goals: 14% Mandatory Subcontractor Participation Goal, 5% Advisory Participation Goal Disadvantaged Business Enterprise (DBE), 1% Advisory Participation Goal Disabled Veteran Business Enterprise (DVBE), 8% Advisory Participation Goal Other Business Enterprise (OBE).

Other: Prior to award, a workforce report, and if necessary, an Equal Opportunity Plan shall be submitted. Staff will monitor the Plan and adherence to the Nondiscrimination Ordinance. EOC staff will evaluate the bidder's compliance with SCOPE. Failure to comply with SCOPE will lead to the bid being declared non-responsive. This contract will be advertised for bids in the San Diego Daily Transcript, the City of San Diego's website, and the E-Bid Board. In addition, once implemented, the Bidder Registration Program will notify registered participants of bid opportunities. Prior to implementation of the Bidder Registration Program, the City will notify trade associations and eligible firms via fax and/or e-mail.

Boekamp/Jarrell

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:28 a.m.)

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



ITEM-101: Licensing Agreement with Mattel Incorporated for the Use  
of the City's Fire-Rescue Department Name and Logo.

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-786)                      ADOPTED AS RESOLUTION R-303611

Authorizing the Mayor to enter into a non-monetary license agreement with Mattel Incorporated allowing for their use of the City's Fire-Rescue Department name and logo in conjunction with the manufacture, marketing, distribution, promotion and sale of various scaled "Matchbox" toy replicas of fire apparatus;

Authorizing the Mayor to enter into this agreement for a term of three years with two optional one year periods. Per Charter Section 99, the agreement will not exceed more than a total of five years unless presented as an ordinance for Council consideration at a future date.

**STAFF SUPPORTING INFORMATION:**

In January 2008, Mattel, Incorporated, contacted the San Diego Fire-Rescue Department (SDFD) expressing interest to design and market Matchbox® miniature toys based on SDFD fire apparatus. Previous collaborations by Mattel have mainly involved only large city police departments, but for the first time the company is initiating a line of Matchbox® toys featuring fire apparatus from large city fire departments. The City of San Diego Fire-Rescue Department was their first choice for 2008.

The San Diego Fire-Rescue Department will have complete review and approval authority of the toy apparatus designs and finished models which will be emblazoned with the City/SDFD logo and insignias. Partnering with Mattel, Incorporated provides the City and SDFD with a highly visible and positive public image and recognition opportunity. Not only will the Matchbox® fire apparatus toys assist in furthering the City's "brand", the Mattel toys will also create positive exposure for the SDFD and its personnel in as much as the toys will be marketed and distributed worldwide.

Although the target market for the toys are young children, the Matchbox® series is some 55 years old and is also known nationwide and worldwide to adults and collectors of all ages, thus potentially having a positive side effect in enhancing Fire-Rescue Department recruitment efforts.

The proposed licensing agreement with Mattel, Incorporated, is legally considered a form of product endorsement, and as such is under Council Policy and the Administrative Regulation requiring Council authority.

FISCAL CONSIDERATIONS: No fiscal impact.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: None.

Jarman/Olen

Staff: Maurice Luque - (619) 533-4418  
William J. Gersten - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:28 a.m.)

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



ITEM-102: Agreement with Latham and Watkins LLP for Legal Services as Outside Counsel to Represent the City in AFCSME Local 127 and San Diego Municipal Employees Association vs. City of San Diego, Public Employment Relations Board.

**CITY ATTORNEY'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-844 Cor. Copy)      RETURNED TO CITY ATTORNEY

Authorizing the City Attorney to retain Latham & Watkins LLP for the provision of legal services in AFCSME Local 127 and San Diego Municipal Employees Association vs. City of San Diego, Case No. LA-CE-352-M, in an amount not to exceed \$675,000;

Authorizing the City Auditor and Comptroller to allocate the cost of the agreement using the Fiscal Year 2008 FTE Cost Allocation Table;

Authorizing the City Auditor and Comptroller to expend up to \$498,825 from the Public Liability Fund on this matter;

Authorizing the City Auditor and Comptroller to expend up to \$176,175 from the Enterprise Funds.

**SUPPORTING INFORMATION:**

\$675,000 has been approved for this matter in Closed Sessions to date. The City has been invoiced approximately \$501,000 through December 31, 2007.

In the Closed Session Meeting of March 6, 2007, the City Council voted on Item CS-5, AFSCME Local 127 v. City of San Diego, Unfair Practice Charge No. LA-CE-352-M, to authorize the City Attorney to hire Latham & Watkins for an amount not to exceed \$50,000 to be paid from unallocated reserves. The motion was made by Councilmember Frye and seconded by Councilmember Faulconer. The motion passed 7 to 0 with Councilmember Atkins recused.

In the Closed Session Meeting of September 4, 2007, the City Council voted on Item CS-5, AFSCME Local 127 v. City of San Diego, Unfair Practice Charge No. LA-CE-352-M to authorize an increase in outside counsel, Latham & Watkins, fees up to \$250,000.

The motion was made by Council President Pro Tem Young and seconded by Council President Peters. The motion passed 7 to 0 with Councilmember Faulconer absent.

In the Closed Session Meeting of January 22, 2008, the City Council voted on Item CS-3, AFSCME Local 127 v. City of San Diego, Unfair Practice Charge No. LA-CE-352-M, to authorize an additional \$375,000 to defend the case at trial and if needed, the P.E.R.B. Appeal Hearing. The motion was made by Councilmember Frye and seconded by Councilmember Madaffer. The motion passed 6 to 0 with Councilmember's Faulconer and Atkins absent.

**FISCAL CONSIDERATIONS:**

The City shall compensate Latham & Watkins LLP based on its hourly rates for consulting services. This Agreement has a cumulative not-to-exceed amount of \$675,000. Using the FY 2008 FTE Cost Allocation Table, up to \$498,825 will be borne by the General Fund and up to \$176,175 will be borne by the Enterprise Funds.

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

This is the initial request for approval of services for the above listed matter. The firm of Latham & Watkins LLP previously has provided employment law and advisory services to the City.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:** None.

**KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):**

The City and its efforts to implement Propositions B and C.  
Latham & Watkins LLP.

Tomanek

Aud. Cert. 2800676.

**FILE LOCATION:** MEET

**COUNCIL ACTION:** (Time duration: 10:19 a.m. – 10:20 a.m.)

**MOTION BY COMMON CONSENT TO RETURN TO THE CITY ATTORNEY'S OFFICE.** Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-103: Agreement with Latham and Watkins LLP for Legal Services as Outside Counsel to Represent the City in McGuigan vs. City of San Diego and Newsome, III v. San Diego City Employees Retirement System, Et Al.

**CITY ATTORNEY'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-847)                      RETURNED TO CITY ATTORNEY

Authorizing the City Attorney to continue retention of Latham & Watkins LLP for the provision of legal services in McGuigan v. City of San Diego, San Diego Superior Court Case No. GIC 849883 (California Court of Appeal Case No. D050291) and Newsome, III, v. San Diego City Employees Retirement System, et al., San Diego Superior Court Case No. GIC 856841, in an additional amount not to exceed \$75,000;

Authorizing the City Auditor and Comptroller to expend up to \$75,000 from the Public Liability Fund.

**SUPPORTING INFORMATION:**

This lawsuit was originally brought by former City employee, William McGuigan, alleging that the City violated state and local law by under funding the City's public employee pension system. The City settled the case in 2006 by agreeing to pay \$173 million to SDCERS over a period of five years. The settlement has been partially funded through the securitization of future tobacco settlement revenue, transfers of actual tobacco settlement revenue receipts, and additional employee "pick-up" savings.

The San Diego Police Officers' Association (SDPOA) filed an appeal, challenging the Court's judgment approving the settlement. The City is defending the settlement on appeal against the SDPOA's challenge to its fairness.

FISCAL CONSIDERATIONS:

With this action the Council will authorize the City Auditor and Comptroller to expend up to \$75,000 using the FY 2008 FTE Cost Allocation Table.

Latham & Watkins will proceed with the case on an hourly billing basis pursuant to the terms of their retainer agreement.

With this action the cumulative authorized for this matter is \$600,000; \$525,000 has been paid and \$19,593.32 in invoices have been received and are owing.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The City Council on January 22, 2008, voted in Closed Session on Item CS-4, McGuigan v. City of San Diego, San Diego Superior Court Case No. GIC 849883 (California Court of Appeal Case No. D050291) and Newsome, III, v. San Diego City Employees Retirement System, et al, San Diego Superior Court Case No. GIC 856841, to authorize an additional \$75,000 for legal fees to defend on appeal (briefs and oral argument). The motion was made by Council President Pro Tem Madaffer and the second by Councilmember Frye. The motion passed 6 to 0 with Council Members Faulconer and Atkins absent.

On May 30, 2006, Council authorized retention of Latham & Watkins and authorized an amount not to exceed \$250,000. (R-301517)

On July 30, 2007, Council authorized the continued retention of Latham & Watkins and authorized an additional amount not to exceed \$275,000, for a cumulative authorized amount of \$525,000. (R-302894)

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

Law Firm of Latham & Watkins

Tomanek

Aud. Cert. 2800675.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:19 a.m. – 10:20 a.m.)

MOTION BY COMMON CONSENT RETURN TO THE CITY ATTORNEY'S OFFICE. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-104: Memorandum of Agreement with Airport Authority on Airport Master Plan Phase 1. (Downtown, Point Loma and Mission Hills Community Areas. District 2.)

(See Report to the City Council No. 08-057.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-923 Rev.) ADOPTED AS RESOLUTION R-303620

Authorizing the Mayor, or his designee, to execute and deliver the Memorandum of Agreement with the San Diego Regional Airport Authority concerning the Lindbergh Field Airport Master Plan; agreeing to toll the 30 day Statue of Limitations to file suit on the Final Environmental Impact Report/Notice of Determination Associated with the Master Plan for one Year, agreeing to engage in coordinated planning regarding additional improvements to the Airport and its environs with various local municipal agencies, groups, and individuals.

**SUPPORTING INFORMATION:**

The resolution authorizes the Mayor to sign a Memorandum of Agreement with the Airport Authority to toll the statute of limitations on CEQA litigation to allow the Airport Authority, SANDAG and the City of San Diego the reasonable opportunity to resolve their differences without resorting to litigation. Over the next 12 months the three agencies will undergo an intensive planning process to try and address the CEQA concerns of the City and SANDAG. The costs of any studies as spelled out by the MOA will be paid for by Airport Authority. The MOA was approved 6-2 in Closed Session as an alternative to immediate CEQA litigation against the

Airport Authority. Because the Council decided to refrain from going immediately to litigation, the City Attorney advised Council that the MOA must also be approved in open session per the Brown Act.

**REPORT:**

As required by the California Environmental Quality Act (CEQA), the Airport Authority prepared and on May 31, 2006, circulated for an initial 150-day public/agency review and comment period a Draft Environmental Impact Report (May 2006 DEIR) for the Draft AMP with an initial deadline for comment of October 18, 2006. The May 2006 DEIR limited analysis of potential environmental effects of the Draft Airport Master Plan (AMP) to those that might occur through the year 2015, but as a result of the public comments received, the Authority elected to broaden the scope of the DEIR to consider the potential environmental effects of the Draft AMP that might occur through the year 2030 and ultimately extended the deadline to February 4, 2008.

The Draft AMP outlines proposed near-term airport improvements designed to allow the Airport to meet current passenger demand to 2015 through projects, which include a 10-gate build-out of Terminal 2 West, a dual-level roadway in front of Terminal 2, and various parking, roadway and airfield improvements. The Authority, the City, and SANDAG have not fully agreed upon the assumptions and approach to identifying, addressing and mitigating the significant environmental impacts of the Phase 1 AMP.

The City recognizes the Authority's desire to ensure the environmental review process for the Airport Master Plan is completed in a timely manner. The City, SANDAG and the Airport Authority also wish to avoid litigation amongst public agencies, however, the City and SANDAG believe it is their responsibility to retain the ability to file suit under CEQA should the Authority fail to perform the terms and conditions described in this MOA.

The proposed elements of the Phase 1 AMP focus on incremental improvements to the Airport, the parties all agree that the next phase of the AMP should have a broader scope and focus on development that addresses more fully integrating on-Airport improvements and more effectively linking air and surface transportation. Therefore SANDAG, the City, and the Authority desire to memorialize in this MOA a vision for studying the longer term development for the Airport, and a process by which the parties may work together cooperatively as the Authority continues its planning and environmental review processes for the longer term while still retaining their CEQA rights to file suit.

Nelson/Michell

Staff: Job Nelson - (619) 236-5980  
John H. Serrano – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:26 p.m. – 6:20 p.m.)

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



\* ITEM-105: Grant Application to State of California for the Martin Luther King Junior Community Park Recreation Center Roof Replacement. (Southeastern San Diego Community Area. District 4.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-810) ADOPTED AS RESOLUTION R-303612

Authorizing the Mayor, or his representative, to make an application to the State of California for \$43,787 in Roberti-Z'berg-Harris Per Capita grant funds under the California Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Act of 2000, for a new roof at the Martin Luther King Junior Community Park Recreation Center, CIP-29-914.0;

Authorizing the Mayor, or his representative, to take all necessary actions to secure funding from the State of California for the Martin Luther King Junior Community Park Recreation Center Roof Replacement;

Authorizing the City Auditor and Comptroller to establish a special interest-bearing Fund 38261 for the grant;

Authorizing the City Auditor and Comptroller to accept, appropriate and expend an additional \$43,787, from CIP-29-914.0, Martin Luther King Junior Community Park Recreation Center Roof Replacement project, Fund 38261, Martin Luther King Junior Recreation Center Roof Replacement RZH grant, for a new roof at the Martin Luther King Junior Community Park Recreation Center, contingent upon receipt of a fully executed grant agreement;

Authorizing the City Auditor and Comptroller to transfer \$5,213 from CIP-20-013.0, Park and Recreation Grant Match Funding, to CIP-29-914.0, Martin Luther King Junior Community Park - Recreation Center Roof Replacement, within Fund 630221, General Fund Contributions to the CIP;

Authorizing the City Auditor and Comptroller to transfer \$25,000 from Fiscal Year 2008 General Services Department Budget (536), Fund 100 to Fund 630221, General Fund Contributions to the CIP, for the purpose of funding CIP-29-914.0, Martin Luther King Community Park - Recreation Center Roof Replacement;

Authorizing an increase in the Fiscal Year 2008 Capital Improvements Program Budget for CIP-29-914.0, Martin Luther King Junior Community Park - Recreation Center Roof Replacement, Fund 630221, General Fund Contributions to the CIP, by an amount of \$25,000;

Authorizing an increase in the Fiscal Year 2008 Capital Improvements Program Budget for CIP-29-914.0, Martin Luther King Junior Community Park - Recreation Center Roof Replacement, Fund 10150, Antenna Lease Revenue, by an amount of \$45,328;

Authorizing the City Auditor and Comptroller to appropriate and expend \$45,328 in Fund 10150, Antenna Lease Revenue, and \$30,213 in Fund 630221, General Fund Contributions to the CIP, from CIP-29-914.0, Martin Luther King Community Park – Recreation Center Roof Replacement, for the purpose of installing a new roof at the Martin Luther King Junior Community Park Recreation Center;

Declaring that this activity is not a Project and therefore not subject to the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301(d).

**STAFF SUPPORTING INFORMATION:**

Martin Luther King Junior Community Park Recreation Center was built in 1985 with a metal roof system which has been deteriorating over the years causing extensive leaking and water damage to the building. The proposed roof replacement is necessary to prevent further damage to the interior of the recreation center and minimize operational disruptions to the recreation center.

Council Resolution R-302511 authorized the addition of this project to the Fiscal Year 2007 Capital Improvement Program, established CIP-29-914.0, and authorized the expenditure of \$25,000 from the 2000 Park Bond Per Capita and \$36,000 from the RZH Per Capita Programs.

In July 2001, legislative action authorized the California Department of Parks and Recreation to release \$14,152,697 of the RZH Per Capita portions of the 2000 Park Bond to San Diego. Based upon Mayoral and City Council approval, the funds were divided among the eight council districts to complete park projects throughout the City. This action authorizes this roof replacement project to be funded with Prop 12 Per Capita dollars allocated to Council District 4.

In order to fully fund this project, other sources of funding have been identified including \$43,787 of cost saving from 2000 Park Bond Per Capita RZH funding available in the George L. Stevens Senior Center Project, \$25,000 of General Services funding and \$5,213 of Park and Recreation Grant Match funding. As anticipated, the project needs \$45,328 from Antenna Lease Revenue fund as part of the City's Telecom Master Lease Agreement with Nextel of California, Inc. A summary of all existing and proposed funds for this project is listed below:

<b><u>Fund Amount</u></b>	<b><u>Sources of Funding</u></b>	<b><u>Status</u></b>
\$36,000	2000 Park Bond Roberti-Z'berg-Harris funding	existing
\$25,000	2000 Park Bond Per Capita funding	existing
\$45,328	Antenna Lease Revenue	proposed
\$43,787	2000 Park Bond Roberti-Z'berg-Harris funding	proposed
\$25,000	General Services Fund	proposed
<u>\$ 5,213</u>	Park and Recreation Matching funds	proposed
<b>Total = \$180,328</b>		

The funds from 2000 Park Bond RZH funding is subject to expiration in March 2009. This deadline makes it necessary to add the funding at this time, in order to have a fully funded construction contract now and meet the grant deadlines. In addition, the roof replacement is urgent due to the poor condition of the current roof which has serious leaks causing damage to the interior of the recreation center.

EQUAL OPPORTUNITY CONTRACTING:

The replacement of the Martin Luther King Junior Recreation Center roof will be awarded under the Mayor's authority to award contracts when the project and funding have been approved by Council. Prior to award of any contract, a work force report, and if necessary, an Equal Opportunity Employment Plan shall be submitted. EOC staff will evaluate the bidder's compliance with contract goals and the good faith effort. Failure to comply with the programs requirements will lead to the bid being declared non-responsive.

Funding Agency: State 2000 Park Bond Roberti-Z'berg-Harris bond funds and various City funding.

Prevailing Wages: State Prevailing Wages apply.

FISCAL CONSIDERATIONS:

The total project cost is currently estimated at \$180,328 of which \$61,000 was funded in April 2007. This request will increase total project funding by \$119,328 in Fiscal Year 2008 Capital Improvements Program Budget CIP-29-914.0.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Council Action authorizing the addition of CIP-29-914.0 to the Fiscal Year 2007 Capital Improvement Program, the applications to the State Grant of California and the RZH Per Capita, and the appropriation and expenditure of funds for the Martin Luther King Junior Community Park - Recreation Center Roof Replacement per Resolution 302511, adopted April 19, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

This roof replacement project will be presented at the Martin Luther King Recreational Council once the project is fully funded and prior to the installation of roof replacement. The Recreation Council is in support of using Antenna Lease Revenue for the roof replacement.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Martin Luther King Recreational Council and Encanto Neighborhoods Community Plan Area.

Oskui/Jarrell

Aud. Cert. 2800639.

Staff: Darren Greenhalgh - (619) 533-3104  
Shannon Thomas - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:28 a.m.)

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



\* [ITEM-106](#): Development Impact Fees Fiscal Year 2007 Annual Report.

(See Report to the City Council No. 08-059.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-821) ADOPTED AS RESOLUTION R-303613

Accepting the Development Impact Fees Fiscal Year 2007 Annual Report and making findings related to unexpected balances as required by California Government Code Section 66001;

Declaring that this activity is not subject to CEQA pursuant to Sate Guidelines Section 15060(c)(3).

**STAFF SUPPORTING INFORMATION:**

The purpose of this Report to the City Council, and the accompanying attachments, is to fulfill state mandated annual reporting and disclosure requirements with respect to the imposition of development impact fees by local governments.

The California Government Code requires that local agencies that impose fees in connection with the approval of development projects make certain information available to the public on an annual basis. This section of the Government Code requires that the following be disclosed: a) a brief description of the type of fee in the fund; b) the amount of the fee; c) the beginning and ending balance of the fund; d) the amount of fees collected and the interest earned; e) an identification of each public improvement on which fees were expended and the amount of the

expenditures on each improvement; and f) an identification of an approximate date by which the construction of the public improvement will commence if the public agency determines that sufficient funds have been collected to complete financing of an incomplete public improvement.

Reports 1 through 3 relate to Development Impact Fees, Park Development Fees, and Urban Impact Fees. Reports 4 and 5 relate to the Sewerage Utility Expansion Fund and the Water Utility Expansion Fund. These reports were made available to the public in the City Clerk's Office on December 18, 2007.

Section 66001 of the Government Code mandates additional disclosure with respect to any fees collected and remaining unexpended in the fifth year after collection. For this category, whether the fees are committed or not, the following findings must be made: 1) identify the purpose to which the fee is to be put; 2) demonstrate a reasonable relationship between the fee and the purpose for which it is charged; and 3) identify all sources and amounts of funding anticipated to complete financing of incomplete improvements and the approximate dates on which such funding is expected to be deposited into the appropriate fund. When sufficient funds have been collected to complete financing of incomplete public improvements and the improvements remain incomplete, the agency is required to identify an approximate date by which construction of the public improvement will be commenced, or shall refund to the then current owners of record the unexpended portion of the fee and interest accrued thereon with limited exception. Required findings for funds collected over five years ago are contained in Attachment 6.

FISCAL CONSIDERATIONS: Not applicable.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

As this is an annual report, the City Council approved the Developer Impact Fees FY 2006 Report on March 27, 2007, Resolution R-302427.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On December 18, 2007, Report 1 through Report 5 (see Attachments) were filed with the Office of the City Clerk for public review.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Not applicable.

Gabriel/Anderson

Staff: Pam Bernasconi - (619) 533-3677  
Jana L. Garmo - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:28 a.m.)

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



\* ITEM-107: Extending the Barrio Logan Project Area Committee (PAC) for One Year and to Notice and Conduct the 2008 PAC Election for the Barrio Logan Redevelopment Project Area. (Barrio Logan Community Area. District 8.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-877) ADOPTED AS RESOLUTION R-303614

Extending the Barrio Logan PAC for one year beginning May 21, 2008;

Directing the staff of the Redevelopment Agency of the City of San Diego to notice and conduct the Barrio Logan PAC Election in 2008;

Declaring that this activity is not a “project” and is therefore not subject to CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

**STAFF SUPPORTING INFORMATION:**

California Community Redevelopment Law, California Health and Safety Code Section 33385, requires the legislative body of a city to call upon residents and existing community organizations in a redevelopment project area to form a PAC if, there is a substantial number of low or moderate-income residents within the project area, and the redevelopment plan contains authority for the agency to acquire property, by eminent domain, on which anyone resides; or the redevelopment plan contains one or more public projects that will displace a substantial number of low/moderate-income residents. Each PAC serves as an advisory body to the Redevelopment

Agency on policy matters affecting the residents of the project area. The Agency is required to consult with the PAC for at least three years after the redevelopment plan is adopted, subject to one year extensions by the legislative body.

Each PAC is elected and conducts its business in accordance with its specific PAC Formation Procedures (“Procedures”) that were adopted individually by the City Council. The Procedures address the purpose and authority of the PAC, define the PAC’s composition and membership, establish eligibility requirements for the term of membership and set procedures for conducting elections.

In accordance with the Barrio Logan PAC Procedures, Agency staff must seek authorization from the City Council to: 1) Extend the Redevelopment PAC for one year and 2) Notice and conduct PAC elections.

**FISCAL CONSIDERATIONS:**

None with this action.

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

As previously stated, the Agency, according to California Community Redevelopment law, is required to consult with the PAC for at least three years after the redevelopment plan is adopted and for one year extensions thereafter by approval of the legislative body. On April 18, 2007, the City Council of the City of San Diego (“Council”) approved R-302555 to extend the Barrio Logan PAC for one year. On December 12, 1989, the Council approved R-274894 to adopt the formation procedures for the Barrio Logan Redevelopment Project Area Committee (PAC); and on December 8, 2003, the Council amended the Procedures by R-298704.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

A verbal report on the Barrio Logan PAC’s recommendation may be given at the April 22, 2008 Council Meeting.

**KEY STAKEHOLDER & PROJECTED IMPACTS (if applicable):**

Barrio Logan Redevelopment PAC.

Weinrick/Anderson

Staff: Sam Johnson - (619) 236-6265  
Alex W. Sach - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:28 a.m.)

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



\* [ITEM-108](#): Housing America Month.

**COUNCIL PRESIDENT PETERS' AND COUNCILMEMBER ATKINS' RECOMMENDATION:**

Adopt the following resolution:

(R-2008-878) ADOPTED AS RESOLUTION R-303615

Commending the National Association of Housing and Redevelopment Officials and the various City housing agencies for their dedicated commitment to address affordable housing and community development needs;

Proclaiming April 2008 to be “Housing America Month” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:28 a.m.)

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

 \* [ITEM-109](#): San Diego District Day.

**COUNCILMEMBER FRYE'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-879)            ADOPTED AS RESOLUTION R-303616

Proclaiming April 18, 2008, to be "San Diego District Day" in the City of San Diego and commending all of the clubs of the San Diego District for their devotion to the community.

FILE LOCATION:            AGENDA

COUNCIL ACTION:            (Time duration: 10:20 a.m. – 10:28 a.m.)

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

 [ITEM-330](#): Agreement with the San Diego Tourism Promotion Corporation for the Operation of the Tourism Marketing District. (Citywide.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-880)            ADOPTED AS AMENDED AS RESOLUTION R-303621

Authorizing the Mayor to execute the Tourism Marketing District (TMD) Operating Agreement with the San Diego Tourism Promotion Corporation for a five year period effective April 1, 2008, through June 30, 2008, for the operation of the Tourism Marketing District.

**STAFF SUPPORTING INFORMATION:**

Representatives from the hotel industry approached City officials about implementing a Tourism Marketing District (TMD) 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.

During 2007, the Tourism Marketing District Procedural Ordinance was adopted which outlines the process for forming a Tourism Marketing District. Pursuant to this ordinance, the industry developed a TMD Management Plan which provides a framework for implementing such a district and undertook the necessary petition drive required to bring the establishment of the TMD to the City Council.

Between October and December 2007, the City Council adopted resolutions approving the TMD Management Plan and declaring its intention to establish the TMD and hold a public meeting and public hearing as required by the Tourism Marketing District Procedural Ordinance and the Ralph M. Brown Act. At the conclusion of these hearings, the City Council established the TMD with an effective start date of January 1, 2008.

At the December 3, 2007 Council meeting, City staff reported that the agreement to operate the TMD had not been finalized due to continuing negotiations between the City and the newly formed San Diego Tourism Promotion Corporation. Even though City Council adopted the resolution including authorizing the Mayor to execute an agreement for the operation of the TMD, City staff offered to bring the agreement back to City Council in early 2008 in order to address concerns raised by the Council and by staff from the Independent Budget Analyst's office.

**FISCAL CONSIDERATIONS:**

This action incurs no additional costs nor creates additional revenue.

Previous Council actions approved establishing the TMD and levying assessments of approximately \$25 million on an annual basis on hotels with 70 or more units within the City of San Diego. Furthermore, the TMD Management Plan approved by Council provides that the TMD assessments will be disbursed to the San Diego Tourism Promotion Corporation for operation of the TMD in accordance with the TMD Management Plan.

The agreement formalizes previously agreed upon fiscal considerations such as the City recouping initial start-up costs not to exceed \$60,000, recouping actual costs incurred in administering the TMD program over the five year life of the district but not to exceed \$300,000 annually plus a cost escalator, and recouping approximately \$5.3 million for certain FY2008 Citywide TOT allocations.

Additionally, 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:**

The TMD Procedural Ordinance was approved by Council in May of 2007 and became effective on June 29, 2007. The establishment of the TMD was approved By Council in December 2007 and became effective January 1, 2008.

**EQUAL OPPORTUNITY CONTRACTING:**

“This agreement is subject to Article 10, Sections 10.1 and 10.2 as stated in the Agreement for Operation of the San Diego Tourism Marketing District, the City’s Equal Opportunity Contracting (San Diego Ordinance No. O-18173, Section 22.2701 through 22.2702) and Non Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517)”.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

Multiple meetings and discussions occurred between representatives of the San Diego Tourism Promotion Corporation and representatives from the City Planning & Community Investment Department and the City Attorney’s Office.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

The key stakeholders are the hotels in San Diego with 70 or more rooms represented by the San Diego Tourism Promotion Corporation.

Kessler/Anderson

Staff: Scott Kessler - (619) 236-6405  
Kimberly K. Harris - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:43 p.m. – 4:15 p.m.)

MOTION BY FAULCONER TO ADOPT THE RESOLUTION AS AMENDED TO CORRECT A TYPOGRAPHICAL ERROR IN THE LAST SECTION TO READ, “APRIL 1, 2008 THROUGH MARCH 31, 2013”. Second by Maienschein. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-nay, Maienschein-yea, Frye-nay, Madaffer-yea, Hueso-yea.



ITEM-331: Two actions related to General Fund Deferred Maintenance Capital Improvement Projects Financing. (Citywide.)

(See Reports to the City Council No. 08-042, 08-041, and 08-30; memorandum from Lakshmi Kommi dated 3/17/2008; and PowerPoint regarding Deferred Maintenance Funding Lease Revenue Bonds, Series 2008A.)

(Continued from the meeting of April 1, 2008, Item 334, at the request of Councilmember Atkins, for further review.)

**STAFF’S RECOMMENDATION:**

Introduce the following ordinance in Subitem A and adopt the resolution in Subitem B:

Subitem-A: (O-2008-129) INTRODUCED AS AMENDED, TO BE  
ADOPTED TUESDAY, MAY 6, 2008

Introduction of an Ordinance approving the form of and authorizing the execution and delivery of a site lease, a lease, and a purchase agreement and authorizing the execution, delivery and performance of an assignment agreement and an indenture by the Public Facilities Financing Authority of the City of San Diego, and approving and authorizing the issuance and sale of not to exceed \$108,000,000 of the Authority’s Lease Revenue Bonds, Series 2008A (Various Capital Improvement Projects),

approving the form of and authorizing the execution and delivery of a financial advisory services agreement, authorizing the City Attorney to appoint bond counsel, and approving other documents and actions in connection therewith.

Subitem-B: (R-2008-778) ADOPTED AS RESOLUTION R-303622

Declaring the City Council's intention to reimburse expenditures for project costs from proceeds of tax-exempt obligations.

**STAFF SUPPORTING INFORMATION:**

The 2008A Bonds are an interim financing measure to address the funding needs identified for the General Fund deferred maintenance capital improvement projects in Fiscal Years 2008 and 2009. The proposed 2008A Bonds, with a 10-year maturity, will be privately placed with Bank of America, N.A.

The financing plan contemplates refunding the proposed private borrowing in two years (2010) with a 30 year traditional public offering. Therefore, instead of fixing an interest rate for the full 10 year borrowing term which would be higher than for a borrowing term for 2 years, working with the Purchaser, a two-tier pricing (described below) was structured: a lower fixed interest rate (based on a 2-year index plus fixed spread) for the first two year period and if the City is unable to refund the 2008A Bonds by 2010, a higher interest rate (based on an 8-year index plus fixed spread) for years 3-10. Note that under the financing structure, if the City is not able to refund the notes by the two year point, based on the market conditions at that time, and the levels of the 8-year index, the interest rate is fixed for 3-10 year period until the City can refund the Bonds could be a maximum of 12% (the maximum permitted legal rate). Based on current interest rate levels as of March 12, 2008, the interest rate for the 2 year term is 3.46% and the interest rate for the 3-10 year term will be 4.45% (See full staff report for discussion on pricing).

The issuing authority for the 2008A Bonds is the Public Facilities Financing Authority (the "Authority"). Financing documents being authorized for this transaction include - A Site Lease between the City and the Authority; a Lease Agreement between the City and the Authority; an Assignment Agreement between the Authority and the Trustee; an Indenture between the Authority and the Trustee; and a Purchase Agreement between the Purchaser and the Authority. It is anticipated that funding for certain capital expenditures related to the projects may need to be advanced by the City prior to the completion of the proposed financing. In order to reimburse capital expenditures with proceeds from the financing, the City must adopt a reimbursement resolution in accordance with Section 1.150-2 of Treasury Regulations.

The City's Financing Team for the 2008A Bonds consists of staff of the Chief Financial Officer, Debt Management, City Attorney's Office, Comptroller's Office, Treasurer's Office, Risk Management, General Services, and the Real Estate Assets Department. Outside consultants, include Montague DeRose and Associates, LLC ("Montague DeRose") as financial advisor, Hawkins Delafield & Wood LLP ("Hawkins") as the Bond Counsel, White & Case as the Purchaser's Counsel, and Wells Fargo Bank as Trustee.

Should the City Council approve the Ordinance and related financing documents, it is anticipated that the bonds would be priced during the last week of May 2008 with the closing and receipt of funds to occur during the first week of June 2008.

**FISCAL CONSIDERATIONS:**

**Sources and Uses (preliminary and subject to change):**

- Estimated Sources  
Par amount of 2008A Bonds \$102,552,000
- Estimated Uses  
Net Proceeds for the project (acquisition fund) \$102,250,000  
Costs of Issuance \$302,000

Based on the principal amount of approximately \$102.6 million, and pricing as of March 12, 2008, the annual interest payment is estimated at approximately \$3.5 million for years 1 and 2. Interest only payments during the first two years will be made on a semi-annual basis on December 1 and June 1. The estimated debt service has been incorporated in the 5-year outlook and will be brought forward for Council authorization during the FY 2009 budget process. If the bonds remain outstanding beyond 2 years, the annual debt service (principal and interest), based on the interest rate as of March 12, 2008, is projected at approximately \$15.5 million, FY 2011-FY 2018.

**EQUAL OPPORTUNITY CONTRACTING:**

The Funding Agency is the City. Montague DeRose will provide financial advisory services for an amount not to exceed \$42,500 for the proposed 2008A Bonds. Montague DeRose submitted a Work Force Report indicating less than 15 employees and is, therefore, exempt from employment category goals.

Hawkins will provide Bond Counsel services for an amount not to exceed \$75,000 for the proposed 2008A Bonds. Hawkins submitted a Work Force Report, EOC staff has requested, received and approved an EO Plan from Hawkins Delafield and Wood. Staff will continue to monitor the firm's efforts to implement their plans.

PREVIOUS COUNCIL MEETING and/or COMMITTEE ACTION: N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Business entities involved in this transaction are: Bank of America, N.A. (Purchaser); Hawkins Delafield & Wood LLP (Bond Counsel); White & Case, LLP (Purchaser's Counsel); Wells Fargo Bank, National Association (Trustee); and Montague DeRose and Associates LLC., (Financial Advisor).

Kommi/Lewis

Staff: Lakshmi Kommi - (619) 236-6928  
Mark D. Blake – Chief Deputy City Attorney

FILE LOCATION: SUBITEM A: NONE  
SUBITEM B: MEET

COUNCIL ACTION: (Time duration: 2:16 p.m. – 3:38 p.m.)

MOTION BY MADAFFER TO INTRODUCE THE ORDINANCE IN SUBITEM A AS AMENDED THAT BEFORE PROJECTS ON THE LIST ARE CHANGED, THEY SHALL COME BEFORE COUNCIL FOR APPROVAL WITH A STATUS UPDATE EVERY SIX MONTHS ON THOSE LISTED PROJECTS; AND TO ADOPT THE RESOLUTION IN SUBITEM B. 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-332:** Comprehensive Annual Financial Report for the Fiscal Year Ending June 30, 2006 and the Related Single Audit and Yellow Book Reports.

(See memorandum from Greg Levin dated 4/3/2008 and Independent Auditors Report from Macias Gini and O'Connell, LLP.)

**CITY AUDITOR AND COMPTROLLER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2008-930)            ADOPTED AS RESOLUTION R-303623

Receive and file the City's Fiscal Year 2006 Comprehensive Annual Financial Report (CAFR) with the City Council;

Receive and file the City's Fiscal Year 2006 Single Audit with the City Council.

**SUPPORTING INFORMATION:**

The City received an Audit Opinion from its Independent Auditor Macias Gini & O'Connell LLP dated March 21, 2008 on the 2006 Comprehensive Annual Financial Report and Yellow Book report. The City will receive the Single Audit Report from Macias Gini & O'Connell on April 16, 2008 and it will be distributed separately as soon as it is available.

**FISCAL CONSIDERATIONS:**

None with this action.

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

The Audit Committee is scheduled to consider these documents during the week of April 14, 2008.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:** N/A

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:** N/A

Levin/Lewis

<http://www.sandiego.gov/auditor/reports/index.shtml>

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:16 p.m. – 5:21 p.m.)

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



ITEM-333: Olivet Avenue Street Vacation, Project No. 128990. Application for a Coastal Development Permit and Right of Way Vacation, to vacate an approximate 524 square foot triangular shaped portion of excess right-of-way along the west side of the intersection of Olivet Avenue and Cabrillo Avenue. (La Jolla Community Plan Area. District 1.)

Matter of approving, conditionally approving, modifying or denying an application for a Coastal Development Permit and Right of Way Vacation, to vacate an approximate 524 square foot triangular shaped portion of excess right-of-way along the west side of the intersection of Olivet Avenue and Cabrillo Avenue. The property is located adjacent to the rear of the lot at 1215 Virginia Way, within the RS-1-7 Zone, Coastal Overlay Zone (non-appealable), Parking Impact Overlay Zone, Residential Tandem Parking Overlay Zone, and within La Jolla Community Planning Area.

(Continued from the meeting of April 1, 2008, Item 335, at the request of the applicant, for further review.)

**NOTE:** Hearing open. No testimony taken.

**STAFF'S RECOMMENDATION:**

Adopt the following resolutions:

Subitem-A: (R-2008-738) GRANTED COASTAL DEVELOPMENT  
PERMIT, ADOPTED AS RESOLUTION  
R-303624

Adoption of a Resolution certifying findings with respect to Coastal Development  
Permit No. 520542;

Granting Coastal Development Permit No. 520542 to Vincent and Heather  
Andreucetti, Owners/Permittees, under the terms and conditions as set forth in the  
attached Permit which is made a part of this resolution.

Subitem-B: (R-2008-741) ADOPTED AS RESOLUTION R-303625

Adoption of a Resolution certifying findings with respect to Public Right-of-Way  
Vacation No. 443998;

Vacating the street as more particularly described in the legal description marked  
as Exhibit "A," and as shown on Engineering Drawing No. 20711-B, marked as  
Exhibit "B," and on file in the Office of the City Clerk which are by this reference  
incorporated herein and made a part hereof;

Declaring that the City of San Diego as lead agency under the California  
Environmental Quality Act has determined the project to be exempt pursuant to  
California Code of Regulations Section 15305 because it is a minor alteration in  
land use;

Directing the City Clerk to file a Notice of Exemption (NOE) with the Clerk of  
the Board of Supervisors for the County of San Diego regarding the above  
project;

Directing 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.

**OTHER RECOMMENDATIONS:**

The La Jolla Community Planning Association has recommended denial of this project.

In favor: 0  
Opposed: 13

**STAFF SUPPORTING INFORMATION:**

**EXECUTIVE SUMMARY:**

The proposed Vacation is a portion of the public right-of-way along the east side of Olivet Avenue, between Exchange Place and Pearl Street, located to the rear of the lot at 1215 Virginia Way (Lot 11) and a small portion of the adjacent lot to the south at 1211 Virginia Way, Lot 12. The proposed area to be vacated is an approximately 524 square foot triangular shaped portion of excess right-of-way along the west side of the intersection of Olivet Avenue and Cabrillo Avenue. Approximately 142 square feet of the proposed vacated area fronts along the adjacent lot, Lot 12. The vacation of this portion of Olivet Avenue is required for the property owner/applicant to allow completion of a pending remodel of their existing residence. The area of the proposed vacation is excess right-of-way, and is improved with a landscaped area which appears as part of the property owner's rear and side yards. The portion to be vacated has never been utilized by public vehicular or public pedestrian activity.

The adjacent neighbor, south of the subject property, at 1211 Virginia Way has an existing gate at the rear of their property, which allows pedestrian access from their property across the public right-of-way to be vacated to Olivet Avenue. The adjacent neighbor has opposed the proposed project due primarily to their concern for the potential loss of pedestrian access. They expressed that they would prefer that the area continue to be retained by the City rather than converted to the applicant's private ownership. In response the applicant has offered to grant and record a private pedestrian easement to this adjacent neighbor to resolve this issue. However, to date, the adjacent neighbor has not accepted that proposed solution.

The proposed Vacation will not alter vehicular, pedestrian or bicycle use along this portion of Olivet Avenue. The area of the Vacation would be within the required setback for the existing residence, thus no structure, except for a fence/wall could be placed within this area. The Vacation does not need to include any reservation for General Utility, Public Pedestrian Access or Non-Motor Vehicular Easements.

The Street Vacation qualifies as a summary vacation and a Planning Commission Recommendation is not required for this action. A Street Vacation may be summarily vacated as it does not contain public facilities, and the portion of the street to be vacated is excess and is not required for present or future use.

The required findings to approve the Street Vacation as contained in Attachment 4, can all be made in the affirmative. The area of the proposed vacation is unimproved excess right-of-way and there is no present or prospective public use for a public right-of-way. The portion of Olivet Avenue to be vacated is not a part of the Transportation Element of the General Plan or La Jolla/La Jolla Shores Local Coastal Program, and will not be detrimentally affected by the vacation. Olivet Avenue has been constructed to its ultimate width and the reservation area is no longer needed.

**FISCAL CONSIDERATION:**

All costs associated with the processing of this project are paid by the applicant through a deposit account.

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

The street vacation qualifies as a summary vacation and a Planning Commission Recommendation is not required for this action.

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

The applicant presented this proposed project two different times to the La Jolla Community Planning Association. Both times the project was recommended for denial, due to the pedestrian access concerns raised by the adjacent neighbor. The second meeting was on December 6, 2007, and the La Jolla Community Planning Association voted 13-0-0 to recommend denial of the proposed action.

**KEY STAKEHOLDERS AND PROJECTED IMPACTS:**

Vincent and Heather Andreuccetti, Property Owner.

Broughton/Anderson/GG

**NOTE:** This project is exempt from the California Environmental Quality Act pursuant to State CEQA Guidelines Section 15305, minor alteration in land use.

Staff: Glenn Gargas – (619) 446-5142  
Nina M. Fain – Deputy City Attorney

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

FILE LOCATION: F-10222

COUNCIL ACTION: (Time duration: 2:13 p.m. – 2:14 p.m.)

Testimony in opposition by Greg Rodriguez.

MOTION BY MADAFFER TO ADOPT. 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-334: 4532 Felton Street Vesting Tentative Map, Project No. 97653. Appeal of the Planning Commission's decision approving a Vesting Tentative Map to convert seven existing apartments to condominiums, including a request to waive the requirement to underground existing overhead utilities. (Normal Heights neighborhood of the Mid-City Communities Plan Area. District 3.)

Matter of the appeal by D. Scott Peters, Sterling Land Services, Inc., Surveyor from the decision of the Planning Commission in approving Vesting Tentative Map to convert seven existing residential units to condominiums, including a request to waive the requirement to underground existing overhead utilities, on a 0.152-acre site located at 4532 Felton Street in the RM-1-2 Zone of the Central Urbanized Planned District and the Transit Area Overlay Zone, within the Normal Heights neighborhood of Mid-City Communities Plan Area.

**STAFF'S RECOMMENDATION:**

Take the following actions:

(R-2008-00) CONTINUED WITH DIRECTION TO TUESDAY,  
MAY 6, 2008

Granting or denying the appeal and granting or denying the Vesting Tentative Map 318386 to convert seven existing residential units to condominiums, including the request to waive the requirement to underground existing overhead utilities, with appropriate findings to support Council action;

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

**OTHER RECOMMENDATIONS:**

Planning Commission on February 14, 2008, voted 4-1-2 to approve this project.

Ayes: Smiley, Schultz, Ontai, Otsuji  
Nays: Griswold  
Not present: Naslund  
Vacancy: one

The Normal Heights Planning Committee has recommended approval of this project.

**REQUESTED ACTION:**

Appeal of the Planning Commission's decision to approve a Vesting Tentative Map to convert seven existing apartments to condominiums, including a request to waive the requirement to underground existing overhead utilities, at 4532-34 Felton Street, in the RM-1-2 Zone of the Central Urbanized Planned District and the Transit Area Overlay Zone, within the Normal Heights neighborhood of the Mid-City Communities Plan area.

The applicant is appealing the Vesting Tentative Map condition requiring that the physical improvements recommended in the Building Conditions Report be completed prior to the recordation of Final Map.

**STAFF RECOMMENDATION:**

Deny the appeal and approve Vesting Tentative Map No. 318386, including the waiver of the requirement to underground existing overhead utilities, with the current Vesting Tentative Map conditions requiring implementation of the Building Conditions Report and Landscape Concept Plan, prior to recordation of the Final Map.

**EXECUTIVE SUMMARY:**

The application for a Vesting Tentative Map and waiver from the requirement to underground existing overhead utilities was deemed complete on March 3, 2006. Although at that time the condominium conversion regulations did not require a Building Conditions Report or landscape improvements, this project is subject to the condominium conversion regulations effective June 13, 2006, with the exception of the parking regulations, based on the City Council's specific adoption language for the "new" condominium conversion regulations. At the June 13, 2006, hearing, the City Council adopted regulations for additional requirements for landscaping, a building conditions report, onsite inclusionary housing, noticing and parking. Based on the adopted language and project timing, all of these new regulations apply to this project, with the exception of the parking regulations. Accordingly, this project has been reviewed against the new regulations. In accordance with the current regulations, the applicant provided a Building Conditions Report and Landscape Concept Plan. Both of these documents have been reviewed for conformance with the applicable regulations within the Land Development Code (Chapter 14, Article 4, Division 5), and have been accepted by staff as conforming to the regulations.

The environmental determination for this project was made on March 15, 2006, and the opportunity to appeal that determination expired on April 5, 2006. This project's environmental determination was not appealed.

On February 14, 2008, the Planning Commission approved the project with a condition (Condition No. 22 of the Vesting Tentative Map Resolution, Attachment 6, page 7 of the Planning Commission Report) requiring building and landscape improvements as identified in the submitted Building Conditions Report and Landscape Plan to be completed prior to recordation of the Final Map.

The applicant has appealed the Planning Commission's decision, citing the following: *"The project was deemed complete on March 4, 2006. The owner/applicant requested a "Deferral of Private Building Improvements," the performance of which would be assured by a lien upon the Title/Policy."* This statement is true (although the project was deemed complete on March 3, 2006). The applicant requested the Planning Commission defer these improvements. However, the Planning Commission discussed this issue at length, both in relation to this project, and in general. Commissioner Griswold stated that "a Building Conditions Report created at one period of time becomes irrelevant at a future date," and asked the City Council to consider the Planning

Commission's position and recommendations on this issue. Additionally, the Condominium Conversion regulations were amended by City Council on July 5, 2006, making the new requirements applicable to this project.

In several previous appeals in 2007-2008, the City Council adopted a compromise which allows the condominium converter to execute the required physical improvements prior to the sale of the first unit. City staff does not recommend that approach as it does not provide a mechanism for the City Engineer to verify that the improvements have been completed.

In the latest appeal of the issue regarding the deferring of improvements for condominium conversions, the City Council rejected the compromise and adopted staff's recommendation (Item 335 on the March 4, 2008 docket).

City staff's recommendation is to deny the appeal and approve the project with the approved Vesting Tentative Map conditions.

**FISCAL CONSIDERATIONS:**

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

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

On February 14, 2008, the Planning Commission voted 4-1 to approve the project as presented by staff (Griswold opposed).

On March 6, 2007, the Normal Heights Planning Committee voted 12-0-1 to recommend approval of the project with specific recommendations.

**KEY STAKEHOLDERS & PROJECTED IMPACTS:**

4532 Felton Street LLC, Richard W. Mansur, Member (Applicant/Subdivider), Sterling Land Services, Inc. (Surveyor), and the property's tenants.

Broughton/Anderson/MS

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

Staff: Michelle Sokolowski – (619) 446-5278

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

**FILE LOCATION:** NONE

**COUNCIL ACTION:** (Time duration: 2:15 p.m. – 2:15 p.m.;  
6:44 p.m. – 6:54 p.m.)

Testimony in favor by Matt Peterson.

MOTION BY MADAFFER TO CONTINUE THE ITEM TO TUESDAY, MAY 6, 2008, WITH DIRECTION TO HAVE THE APPELLANT ENTER INTO NEGOTIATIONS WITH THE CITY ATTORNEY'S OFFICE REGARDING THE COVENANT AGREEMENT. Second by Faulconer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-not present, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-335: 5445 55<sup>th</sup> Street Tentative Map, Project No. 83624. Appeal of the Planning Commission's decision approving a Tentative Map including a waiver of the requirement to underground existing overhead utilities to convert twenty-five existing apartments to condominiums at 5445 55<sup>th</sup> Street in the RM-3-9 Zone and Parking Impact Overlay Zone. (College Community Plan Area. District 7.)

Matter of the appeal by D. Scott Peters, Sterling Land Services, Inc., Surveyor, of the decision by the Planning Commission approving an application for a Tentative Map to convert twenty-five existing residential units to condominiums and a waiver of the requirement to underground existing overhead utilities on a 0.667 acre site at 5445 55th Street in the RM-3-9 Zone and Parking Impact Overlay Zone within the College Area Community Plan Area.

**STAFF'S RECOMMENDATION:**

Take the following actions:

(R-2008-00) CONTINUED WITH DIRECTION TO TUESDAY,  
MAY 6, 2008

Granting or denying the appeal and granting or denying the Tentative Map No. 263259 including the request to waive the requirement to underground existing overhead utilities, with appropriate findings to support Council action;

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

**OTHER RECOMMENDATIONS:**

Planning Commission on February 14, 2008, voted 5-0-1 to approve Resolution for Tentative Map No. 263259 including the request to waive the requirement to underground existing overhead utilities.

Ayes: Schultz, Ontai, Otsuji, Griswold Smiley

Absent: Naslund

Vacant: one

The College Area Community Council has recommended denial of this project.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

Appeal of the Planning Commission's decision to approve a Tentative Map including a waiver of the requirement to underground existing overhead utilities to convert twenty-five existing apartments to condominiums at 5445 55th Street in the RM-3-9 Zone and Parking Impact Overlay Zone within the College Area Community Plan area. The applicant is appealing the Tentative Map condition requiring that the physical improvements recommended in the Building Conditions Report be completed prior to the recordation of Final Map.

**STAFF RECOMMENDATION:**

Deny the appeal and approve Tentative Map No. 263259 including a waiver of the requirement to underground existing overhead utilities, with the current Tentative Map conditions requiring implementation of the Building Conditions Report and Landscape Concept Plan, prior to recordation of the of the Final Map.

**EXECUTIVE SUMMARY:**

The application for a Tentative Map and waiver from the requirement to underground existing overhead utilities was deemed complete on September 13, 2005. Although at that time the condominium conversion regulations did not require a Building Conditions Report or landscape improvements, this project is subject to the condominium conversion regulations effective June 13, 2006, with the exception of the parking regulations, based on the City Council's specific adoption language for the "new" condominium conversion regulations. At the June 13, 2006, hearing, the City Council adopted regulations for additional requirements for landscaping, a building conditions report, onsite inclusionary housing, noticing and parking. Based on the adopted language and project timing, all of these new regulations apply to this project, with the exception of the parking regulations. Accordingly, this project has been reviewed against the new regulations. In accordance with the current regulations, the applicant provided a

Building Conditions Report and Landscape Concept Plan. Both of these documents have been reviewed for conformance with the applicable regulations within the Land Development Code (Chapter 14, Article 4, Division 5), and have been accepted by staff as conforming to the regulations.

The environmental determination for this project was made on September 20, 2005, and the opportunity to appeal that determination expired on October 11, 2005. This project's environmental determination was not appealed.

On February 14, 2008, the Planning Commission approved the project with a condition (Condition No. 21 of the Tentative Map, Attachment 6, page 7 of the Planning Commission Report) requiring building and landscape improvements as identified in the submitted Building Conditions Report and Landscape Plan to be completed prior to recordation of the Final Map. The appellant is objecting to this condition for the following reason as stated in their appeal with staff responses in italics;

The project was deemed complete on September 13, 2005, and the owner/applicant requested a "Deferral of Private Building Improvements," the performance of which would be assured by a lien upon the Title/Policy.

*That statement is true. However, the applicant requested the action after the project was approved on consent. Additionally, the Condominium Conversion regulations were amended by City Council on July 5, 2006, making the new requirements applicable to this project.*

In several previous appeals in 2007-2008, the City Council adopted a compromise which allows the condo converter to execute the required physical improvements prior to the sale of the first unit. City staff does not recommend that approach as it does not provide a mechanism for the City Engineer to verify that the improvements have been completed.

In the latest appeal of this issue on March 4, 2008, the City Council rejected the compromise and adopted staff's recommendation.

City staff's recommendation is to deny the appeal and approve the project with the approved Tentative Map conditions.

**FISCAL CONSIDERATIONS:**

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

**COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:**

On September 27, 2007, the Planning Commission voted 5-0-2 to approve the project.

On November 9, 2005, the College Area Community Council voted 12-4-1 to recommend denial of the proposed project.

**KEY STAKEHOLDERS & PROJECTED IMPACTS:**

M.S. Browar Development Corporation, Applicant/Subdivider, Sterling Land Services, Inc., Surveyor, and the property's tenants.

Broughton/Anderson/JT

**LEGAL DESCRIPTION:**

The site is located on a 0.667-acre site at 5445 55<sup>th</sup> Street in the RM-3-9 Zone within the College Area Community Plan Area, Parking Impact Zone, Council District 7 (Lot 110 and 111 of College View Unit 3, Map No. 3157/APN: 462-220-07-00).

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

Staff: Jeannette Temple – (619) 557-7908

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

**FILE LOCATION:** NONE

**COUNCIL ACTION:** (Time duration: 2:15 p.m. – 2:15 p.m.;  
6:21 p.m. – 6:54 p.m.)

Testimony in favor by Matt Peterson.

MOTION BY MADAFFER TO CONTINUE THE ITEM TO TUESDAY, MAY 6, 2008, WITH DIRECTION TO HAVE THE APPELLANT ENTER INTO NEGOTIATIONS WITH THE CITY ATTORNEY'S OFFICE REGARDING THE COVENANT AGREEMENT. Second by Faulconer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-not present, 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 Peters at 6:57 p.m. in honor of the memory of:

Ms. Helen Wear as requested by Council Member Faulconer.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:54 p.m. – 6:57 p.m.)