

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
TUESDAY, APRIL 29, 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 11:20 a.m. for the purpose of a break. Council President Peters reconvened the meeting at 11:25 a.m. with Council Member Young not 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 2:09 p.m. with Council President Pro Tem Madaffer not present. Council President Peters recessed the meeting at 3:29 p.m. to convene the Redevelopment Agency. Council President Peters reconvened the regular meeting at 3:35 p.m. with all Council Members present. Council President Peters reconvened the Redevelopment Agency at 3:35 p.m. Council President Peters reconvened the regular meeting at 3:41 p.m. with all Council Members present. Council President Peters reconvened the Redevelopment Agency at 3:42 p.m. Council President Peters reconvened the regular meeting at 3:42 p.m. with all Council Members present. Council President Peters convened the Special Joint Public Hearing with the Redevelopment Agency and Council at 3:42 p.m. Council President Peters reconvened the regular meeting at 3:48 p.m. with all Council Members present. Council President Peters convened the Special Housing Authority at 3:48 p.m. Council President Peters reconvened the regular meeting at 4:01 p.m. Council President Peters recessed the meeting at 4:01 p.m. for the purpose of a break. Council President Peters reconvened the regular meeting at 4:06 p.m. with all Council Members present. Council President Peters reconvened the Redevelopment Agency at 4:06 p.m. Council President Peters reconvened the regular meeting at 5:33 p.m. with Council Member Maienschein not present. The meeting was adjourned by Council President Peters at 6:48 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: 10:40 a.m. – 10:41 a.m.)

PUBLIC COMMENT-2:

Bob Kuzewski commented on the Torrey Pines Glider Port.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:41 a.m. - 10:44 a.m.)

PUBLIC COMMENT-3:

Phil Hart commented on Council salaries.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:44 a.m. - 10:46 a.m.)

PUBLIC COMMENT-4:

Ted Patrick commented on a drive-by killing.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:46 a.m. - 10:48 a.m.)

PUBLIC COMMENT-5:

Ron Boshun commented on the actions of Council.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:48 a.m. - 10:51 a.m.)

PUBLIC COMMENT-6:

Jarvis Ross commented on consent agenda.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:52 a.m. - 10:55 a.m.)

PUBLIC COMMENT-7:

Joy Sunyata commented on the budget.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:55 a.m. - 10:58 a.m.)

PUBLIC COMMENT-8:

Izean Rim, Jr., commented on public safety.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:58 a.m. - 11:01 a.m.)

PUBLIC COMMENT-9:

Jocelin Tarr commented on the Mayor.

FILE LOCATION: AGENDA

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

PUBLIC COMMENT-10:

Elinor Rector commented on the City viewpoint.

FILE LOCATION: AGENDA

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

PUBLIC COMMENT-11:

David Ross commented on the displaced in San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 11:06 a.m. - 11:09 a.m.)

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member Atkins invited all to attend the Adams Avenue Roots and Folks Festival Saturday, May 3, and Sunday, May 4, 2008.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:27 a.m. – 10:29 a.m.)

COUNCIL COMMENT-2:

Council Member Frye informed the public on the guidelines relating to San Diego City Funds and the City Employee Retirement Systems.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:29 a.m. – 10:32 a.m.)

COUNCIL COMMENT-3:

Council President Pro Tem Madaffer invited all to attend the Allied Gardens Springfest at the Allied Gardens Recreation Center, Friday, May 2 and Saturday, May 3, 2008.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 10:33 a.m. – 10:34 a.m.)

INDEPENDENT BUDGET ANALYST COMMENT:

None.

CITY ATTORNEY COMMENT:

None.



[ITEM-30:](#) Sea World of San Diego Penguin Encounter Anniversary Month.

**COUNCILMEMBER FAULCONER'S AND COUNCILMEMBER FRYE'S
RECOMMENDATION:**

Adopt the following resolution:

(R-2008-836) ADOPTED AS RESOLUTION R-303627

Proclaiming May 2008 to be "Sea World of San Diego Penguin Encounter Anniversary Month" in the City of San Diego and commending Sea World for its continued commitment to conservation, education, and entertainment for the residents and visitors of the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:04 a.m. – 10:10 a.m.)

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



[ITEM-31:](#) Mingei International Museum Day.

COUNCILMEMBER ATKINS' RECOMMENDATION:

Adopt the following resolution:

(R-2008-829) ADOPTED AS RESOLUTION R-303628

Commending and congratulating the Mingei International Museum for 30 years of success in providing our City with invaluable art and cultural awareness and education;

Proclaiming May 4, 2008, to be “Mingei International Museum Day” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:13 a.m. – 10:19 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-32: Bobo Henderson Day.

COUNCILMEMBER YOUNG’S RECOMMENDATION:

Adopt the following resolution:

(R-2008-894) ADOPTED AS RESOLUTION R-303629

Proclaiming April 29, 2008, to be “Bobo Henderson Day” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:20 a.m. – 10:26 a.m.)

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



* ITEM-50: Amending the San Diego Municipal Code Relating to the City of San Diego Election Campaign Control Ordinance.

(See Robert Walters' 1/4/2008 memorandum; Draft Strike-Out and Draft 1/8/2008 Election Campaign Control Ordinance; and Elizabeth Garrett's article "Democracy in the Wake of the California Recall".)

CITY COUNCIL'S RECOMMENDATION:

Adopt the following ordinance which was introduced on 4/14/2008, Item 150. (Council voted 8-0):

(O-2008-115) ADOPTED AS ORDINANCE O-19744 (New Series)

Amending Chapter 2, Article 7, Division 29 of the San Diego Municipal Code by amending Sections 27.2901, 27.2935, 27.2936, 27.2951, and 27.2953, relating to the City of San Diego Election Campaign Control Ordinance. This ordinance amends an ordinance entitled "San Diego Municipal Elections Campaign Control Ordinance" (ECCO). The ECCO ordinance limits the amount of contributions that an individual may give to a candidate or campaign committee to support or oppose a candidate in a single election, including a recall election. The primary reason for ECCO's contribution limits is to avoid corruption and the appearance of corruption in municipal elections. There is evidence that large contributions may bring about corruption or the appearance of corruption in any phase of a recall election, including the signature gathering phase of such an election. This amendment to ECCO will clarify that contribution limits apply to contributions that are made to support or oppose the recall of an individual holding elective City office, regardless of whether such contributions are made before, during, or after the circulation of a recall petition.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT MOTION BY MADAFFER TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. 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-100: Awarding Contract to Bonita Pipeline, Inc. for Sewer and Water Group 760 Project. (College Area and Mid-City: Eastern Community Areas. Districts 3 and 7.)

(See memorandum from Debra Fischle-Faulk, Patti Boekamp, and Hildred Pepper dated 3/24/2008; and Executive Summary Sheet from Engineering and Capital Projects Department dated 9/19/2007 [including Resolution No. R-2005-1148].)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2008-849) ADOPTED AS RESOLUTION R-303630

Authorizing the Mayor, or his designee, to award the contract for the Sewer and Water Group 760 (Project) to Bonita Pipeline, Inc. in an amount not to exceed \$774,578.14;

Authorizing the expenditure of an amount not to exceed \$754,665 from Sewer Fund No. 41506, CIP-44-001.0, Annual Allocation Sewer Main Replacement, and an amount not to exceed \$642,510 from Water Fund No. 41500, CIP-73-083.0, Annual Allocation - Water Main Replacement, solely for the construction, contingency, 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 funds, if any, to the appropriate reserves;

Declaring that this activity is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Section 15282(k) as the replacement of existing pipelines less than one mile in length.

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 760 is part of a program established by the City of San Diego and the California Department of Public Health mandating the replacement of all cast iron water mains currently in service. This project is located in College Area, Mid-City: Eastern Community Area. This project includes the construction of approximately 2,169 linear feet of replacing existing 6-inch sewer mains, and the replacement of approximately 1,705 linear feet of existing 8-inch water mains.

The advertising of this project was approved by the City Council on January 8, 2008. Bids were opened on February 6, 2008. There were (49) bid packages issued and (15) bid packages received. Bonita Pipeline, Inc. is the lowest bidder, with a bidding amount of \$774,578.14 which is lower than the engineer's estimate.

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP):

This project is subject to the SCOPE Program. As requested by Council on January 8, 2008, staff have summarized the EOCP requirements related to advertising and award of this project This information was collected after the bid opening.

FISCAL CONSIDERATIONS:

The total estimated cost of this project is \$1,429,762.20 (\$787,252.20 for the sewer portion and \$642,510 for the water side). Funding of \$32,587.20 for the sewer portion of the project was previously authorized by Council (R-300460) for CCTV inspection costs. Additional enterprise funding of \$754,665 is available in CIP-44-001.0, Annual Allocation - Sewer Main Replacements, Fund 41506, Sewer, and \$642,510 for the water portion of the project available in CIP-73-083.0, Annual Allocation - Water Main Replacements, Fund 41500, Water, for this purpose. The project costs for the sewer portion of \$754,665 may be bond reimbursed approximately 80 by current or future debt financing. Water Department revenue is dedicated for this project 80% will be bond financed. No future funding is anticipated.

PREVIOUS COUNCIL COMMITTEE ACTION:

- The advertising of Sewer & Water Group 760 was presented to the Committee on Natural Resources and Culture on September 26, 2007 and approved by a vote of 4 to 0.
- On January 8, 2008, Council R-303311 approved the plans and specifications regarding Sewer and Water Group 760.
- On May 23, 2005, Council R-300460 approved \$32,587.20 for CCTV inspection costs related to Hirsch and Company.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

This project was presented to the College Area Community on October 1, 2003. In addition, residents and businesses will be notified at least one (1) month before construction begins by the City's Engineering and Capital Projects Department and again, ten (10) days before construction begins by the Contractor through hand distribution of notices.

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

- Bonita Pipeline, Inc. will be awarded a contract in the amount of \$774,578.14 as result of this action.
- Residents in this area will encounter minor inconvenience during construction. After completion, residents will experience improved reliability of the sewer & water system.

Boekamp/Jarrell

Aud. Cert. 2800677.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-101: Inviting Bids for Trench Restoration of Various Streets Citywide Project.

(See memorandum from Jim Fisher dated 4/15/2008 and Water Department and Metropolitan Wastewater Department's Executive Summary Sheet dated 3/18/2008.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2008-761) ADOPTED AS RESOLUTION R-303631

Approving the plans and specifications for the Trench Restoration of Various Streets Citywide (Project) as advertised by the Contract Administrator, on Work Order Nos. Sewer-008315 and Water-535324;

Authorizing the Mayor, or his designee, after advertising for bids in accordance with law, to award and execute a construction contract with the lowest responsible and reliable bidder, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying 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 \$2,000,000 from Water Fund 41500, for the purpose of funding the contract and related costs for the Project in FY08, provided that the City Auditor first furnishes one or more certificates certifying 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 \$1,500,000 from Wastewater Sewer Fund 41506, for the purpose of funding the contract and related costs for this Project in FY08, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure 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;

Authorizing the Mayor, or his designee, to execute a contract extension option for one year if additional funding becomes available, provided that the City Auditor and Comptroller first furnishes one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer;

Declaring that this activity is categorically exempt from CEQA pursuant to State CEQA Guidelines, Section 15301. (BID-K084189C)

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 3/26/2008, NR&C voted 4 to 0 to approve, and direct staff to respond regarding: 1) how the City handles contracts in cases where the contractor has failed to comply with the contract and its work is inadequate; 2) what type of tracking is used to monitor such inadequate work; and 3) whether previous litigation with contractors is reviewed before awarding bids to them. (Councilmembers Peters, Faulconer, Atkins, and Frye voted yea.)

SUPPORTING INFORMATION:

Both the Water and Metropolitan Wastewater Departments have routine needs for trench restoration, as part of operating the water and wastewater systems. The General Services Department has hired 40 limited full-time employees to provide "baseline" trench and permanent street restoration and maintenance work. As there is still the need to perform any trench restoration over and above the "baseline" work performed by General Services Department, as well as to continue addressing the backlog of trench restoration work, there is a need for contractual assistance.

EQUAL OPPORTUNITY CONTRACTING PROGRAM (EOCP):

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.

FISCAL CONSIDERATIONS:

Funding for this project is available in the Fiscal Year 2008 operating budget, of which \$2,000,000 is from the Water Department Fund 41500, and \$1,500,000 is from the Metropolitan Wastewater Department Sewer Fund 41506.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This is the third year that the City is hiring a paving contractor. Last year, Resolution No. R-302046 approved by the City Council on November 22, 2006, allowed hiring Portillo Construction. Prior to that year, Resolution No. R-300755 approved by the City Council on August 8, 2005 allowed hiring Orion Construction.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Not applicable.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

To be determined.

Ruiz/Barrett

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-102: Consultant Agreement with RMC Water & Environment for North County Water Reclamation Plant Live Stream Discharge Feasibility Study Wet Weather Storage Facility Study. (University Community Area. District 1.)

(See Independent Budget Analyst Report No. 08-26; and Metropolitan Wastewater Department's 12/12/2007, Executive Summary Sheet.)

(Continued from the meeting of March 25, 2008, Item 105, at the request of Councilmember Frye, for further review.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2008-582) RETURNED TO MAYOR AND REFERRED TO
INDEPENDENT BUDGET ANALYST

Authorizing the Mayor, or his designee, to execute, for and on behalf of the City, an Agreement with RMC Water & Environment for professional consultant services in connection with the North City Water Reclamation Plant live stream discharge feasibility study, under the terms and conditions set forth in the Agreement;

Authorizing the expenditure of an amount not to exceed \$467,000 from Fund No. 41509, CIP-45-940.0, Wet Weather Storage Facility, solely and exclusively, to provide funds for the above Agreement;

Declaring that the above activity is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15060(c)(3) and 15262 because this activity is not a project and involves only feasibility or planning studies for possible future action.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 2/27/2008, NR&C voted 4 to 0 to approve with direction that the Independent Budget Analyst produce a report prior to going to Council. (Councilmembers Peters, Faulconer, Atkins, and Frye voted yea.)

The objective of this feasibility study is to investigate the possibility of discharging reclaimed water from the City of San Diego's North City Water Reclamation Plant (NCWRP) to live streams during peak wet weather periods and to provide sufficient data to support a National Pollutant Discharge Elimination System (NPDES) permit application to the Regional Water Quality Control Board (RWQCB).

The study will be divided into two phases: Phase I will involve a consultation meeting with the RWQCB and a fair estimate on the possibility of the Board's approval of the NPDES permit and Phase II will involve collecting data and developing analyses necessary to support the permit application.

Reclaimed water from the 30-mgd NCWRP is distributed to irrigation and industrial customers within the northern portion of the City via a reclaimed water distribution system. During periods of wet weather, there is much less demand for reclaimed water and most NCWRP flows are discharged back into the sewer system for transport to the City's Point Loma Wastewater Treatment Plant, where it is retreated prior to discharge to the Pacific Ocean via the Point Loma Ocean Outfall. Additionally, during such periods of wet weather, total system-wide inflows to the Point Loma plant are increased as a result of storm water inflow and infiltration into the Metropolitan Sewer System. Therefore, MWWD seeks to evaluate the potential for discharge to a stream as a method of offloading its collection, pumping and treatment facilities during extreme wet weather events.

Evaluation of such discharge potential is a necessary component of MWWD's facility master planning. A NPDES permit allowing such a live stream discharge during the extreme wet weather events will allow the City to re-phase the Wet Weather Storage Project and defer the construction of a large holding tank by at least five years.

To accomplish this task, Purchasing and Contracting Department advertised for professional engineering services in September 2007. Only one proposal was received; the small turn-out was largely attributed to the special expertise required for this comprehensive feasibility study. The presentation and interview for the selection of the consultant was conducted in October 2007. The selection panel included a representative from the EOCP. RMC Water and Environment was selected per Council Policy 300-07 to complete the feasibility study based on their expertise and prior experiences with both year-round and emergency live stream discharge studies and projects.

EQUAL OPPORTUNITY CONTRACTING:

Funding Agency: City of San Diego
Goals: 15% voluntary (MBE/WBE/DB E/DVBE/OBE)
Subconsultant Participation: \$84,000 Other Firms (18%)
Other: Work Force Report Submitted. RMC's local office has fewer than 15 employees and is therefore exempt from the employment category goals.

To support their Equal Opportunity Contracting commitment, as part of their outreach efforts, RMC sent a letter to San Diego Contracting Opportunities Center (SDCOC) inviting interested subconsultants to participate on the RMC team. SDCOC forwarded the letter to 68 contractors. RMC also attended the pre-proposal meeting held by the City in September 2007, to network with potential subcontractors. One of the RMC's subconsultants in this contract, Talavera & Richardson - 3% participation, is certified as a MBE by the County and City of San Francisco, but is not yet certified by the California Unified Certification Program.

FISCAL CONSIDERATIONS:

The total amount of this request is \$467,000. Funds are available from Sewer Fund 41509, CIP-45-940.0, Wet Weather Storage Facility. The project costs may be bond reimbursed approximately 80% by current or future debt financings.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This item was reviewed and approved by the Natural Resources and Culture Committee on February 27, 2008.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS & PROJECTED IMPACTS (if applicable):

RMC Water and Environment

Ferrier/Barrett

Aud. Cert. 2800496.

FILE LOCATION: MEET

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

MOTION BY COMMON CONSENT TO RETURN TO MAYOR'S OFFICE AND REFERRED TO INDEPENDENT BUDGET ANALYST. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

* ITEM-103: Memorandum of Understanding with San Diego Unified Port District, City of Oceanside, and County of Orange for Joint Regional Harbor Monitoring Program.

(See General Services Department's 2/12/2008 Executive Summary Sheet and Storm Water Division's 2/27/2008 Powerpoint.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2008-846) ADOPTED AS RESOLUTION R-303632

Authorizing the Mayor, or his designee, to execute, for and on behalf of the City, an agreement with the San Diego Unified Port District, the City of Oceanside, and the County of Orange for a Joint Regional Harbor Monitoring Program, under terms and conditions set forth in the Memorandum of Understanding;

Authorizing the expenditure of an amount not to exceed \$228,226 from General Fund No. 100, General Services, Storm Water Pollution Prevention Division, Dept. #533, Org. #2200, solely and exclusively, to provide funds for the first year of the above Memorandum of Understanding;

Declaring that the above activity is not a project and therefore is not subject to the California Environmental Quality Act pursuant to CEQA Guidelines Section 15060(c)(3).

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 2/27/2008, NR&C voted 4 to 0 to approve, with direction that staff report back to the Committee when projects are identified and need funding. (Councilmembers Peters, Faulconer, Atkins, and Frye voted yea.)

SUPPORTING INFORMATION:

In July 2003, the San Diego Regional Water Quality Control Board under Section 13225 of the California Water Code, required the San Diego Unified Port District, the City of Oceanside, the County of Orange, and the City of San Diego (Stakeholders) to work jointly to implement the mandated Regional Harbor Monitoring Program (RHMP). The intent of this program was to develop a coordinated monitoring effort of harbors in the San Diego Region to provide water quality status and trends information, as well as assess the surface water's abilities to support designated beneficial uses, as required by the San Diego Regional Water Quality Control Board.

In 2005, the City entered into a Memorandum of Understanding with the Stakeholders (R-301103). The 2005 MOU is in effect until June 30, 2008. This proposed MOU would serve to provide for further studies, monitoring and development of programs for a five-year period, expiring on June 30, 2013.

The general MOU cost sharing formula remains unchanged: 50% of the total RHMP cost shall be allocated for water area in each harbor, 35% of the total RHMP costs shall be allocated for determining the characteristics of the various layers within the waters of each harbor, and the remaining 15% of the total RHMP costs shall be allocated equally amongst all of the Stakeholders for data analysis, data management, and reporting.

Special cost-share formulas may be needed to fund special studies or other efforts required for RHMP compliance. All shared costs and special cost-sharing formulas must be voted on and unanimously approved by all Stakeholders participating in the cost.

In addition, the City will pay overhead expenses associated with the administration costs incurred in the amount of five (5%) of the total RHMP cost.

This agreement is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. O-1873, Sections 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

FISCAL CONSIDERATIONS:

Annual RHMP costs will vary over the life of the MOU. The MOU provides for the Stakeholders to propose annual budgets which will require each Stakeholder, including the City, to annually appropriate funds to pay its share. Therefore, the City staff will request City Council approvals for each future fiscal year's budget beginning in Spring of 2009 for the FY 2010 budget.

For FY 2009, the City's share of program cost has been identified by the Stakeholders at \$228,226. Staff is requesting authorization to expend FY 2008 funds in the amount not to exceed \$228,226 for the City's share of FY 2009 program cost. The source is from the General Services Department, Storm Water Pollution Prevention Division Operating Budget (Fund #100, Dept. #533).

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

In November 2005, City Council authorized the City Manager to enter into a three-year MOU (R-301103) for \$700,000 that was split between the four (4) Stakeholders as per the cost sharing formula.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include the City of San Diego, the San Diego Unified Port District, the City of Oceanside, and the County of Orange. These stakeholders will be sharing the financial burden of this MOU.

Sierra/Jarrell

Aud. Cert. 2800698.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-104: La Jolla Mesa Vista Undergrounding Utility District. Amends the Capital Improvement Program Fiscal Year 2008 Budget for the La Jolla Mesa Vista Undergrounding Utility Assessment District project. (La Jolla Community Plan Area. District 2.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-881) ADOPTED AS RESOLUTION R-303633

Adoption of a Resolution of the Council of the City of San Diego amending the Capital Improvement Program Fiscal Year 2008 Budget for the La Jolla Mesa Vista Undergrounding Utility Assessment District project in the La Jolla Community Planning Area.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTIONS:

1. Authorizing a \$690,412 increase in the Fiscal Year 2008 Capital Improvements Program Budget in CIP-37-027.0, La Jolla Mesa Vista Underground Utilities Assessment District, Fund 79736, La Jolla Mesa Vista Underground Utilities Assessment District; and
2. Authorizing the Auditor and Comptroller to appropriate and expend \$690,412 from CIP-37-027.0, La Jolla Mesa Vista Underground Utilities Assessment District, Fund 79736, La Jolla Mesa Vista Underground Utilities Assessment District for the purpose of utility undergrounding and associated activities as described in the Engineers Report for La Jolla Mesa Vista Underground Utility Assessment District No. 4098; and
3. Authorizing the City Auditor and Comptroller, upon advice from the administering department, to return excess funds, if any, to the owners of the assessed parcels within the La Jolla Mesa Vista Underground Utilities Assessment District.

EXECUTIVE SUMMARY:

On July 23, 2007, the City Council passed Resolutions creating the La Jolla Mesa Vista Underground Utility Assessment district No. 4098 for the purposes of undergrounding overhead utilities as indicated in the accompanying Engineers Report.

In addition, the Council passed Resolutions setting a public hearing date of September 10, 2007 to consider creating an Underground Utility District and authorizing the transfer, appropriation and expenditure of \$380,000 from the Underground Surcharge Fund.

The funds will be used in accordance with improvements as described in the Engineers Report for the La Jolla Mesa Vista Underground Utility Assessment District No. 4098, generally described as paying SDG&E, AT&T and Time Warner to underground their facilities, installation of new streetlighting and restoration of the roadway surface.

Any necessary agreements between the City and utility companies associated with this work are subject to all applicable California Public Utility Commission (CPUC) Equal Opportunity Contracting guidelines and mandates. Any work that does not all under the CPUC authority shall be subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. O-1873, Section 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

FISCAL CONSIDERATIONS:

The estimated construction cost of \$1,070,412 for work within the public right-of--way, will be financed through the proposed La Jolla Mesa Vista Assessment District No. 4098, per Council Resolution 302864 and a cost sharing component of the City of San Diego of \$380,000 from the Underground Surcharge Fund (30100), per Council Resolutions 300051, 300572 and 302865.

Property owners are solely responsible for all work on private property necessary to convert their property to underground utility systems.

PREVIOUS COUNCIL COMMITTEE ACTION:

1. Allocation of Underground Conversion Projects for Fiscal Year 2005, Resolution 300051, January 11, 2005, Managers Report 05-001, provided for \$280,000 in cost sharing for the LJMV project.
2. Allocation of Underground Conversion Projects for Fiscal Year 2006, Resolution R-300572, June 21, 2005, Managers Report 05-149, provided for \$100,000 in cost sharing for the LJMV project.
3. Approved City Council Resolutions of June 5, 2007 initiating proceedings to form the proposed La Jolla Mesa Vista Undergrounding Utilities Assessment District and setting a public hearing date of July 23, 2007 for formation of the proposed assessment district, and the commencement of the assessment ballot procedure.
4. Creation of the La Jolla Mesa Vista Assessment District No. 4098, July 23, 2007 per Council Resolution R-302864.
5. City Council Resolution R-302865, July 23, 2007, Authorizing the transfer, appropriation and expenditure of \$380,000 from the Underground Surcharge Fund.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

LJMV property owner representatives have worked with Engineering & Capital Projects / Undergrounding Program staff to coordinate with the various utilities to define the project and estimate the costs. At the request of district proponents, Debt Management staff and the City Attorney's Office helped formulate the Petition that was circulated by a primary district proponent.

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

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

KEY STAKEHOLDERS:

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

Jarrell/Boekamp

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

Staff: Nathan Bruner – (619) 533-7426
Ryan Kohut – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-105: Settlement of Litigation Entitled Beacon Electric Supply v. Saturn Electric, Inc. et al.

CITY ATTORNEY'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-916) ADOPTED AS RESOLUTION R-303644

A Resolution approved by the City Council in Closed Session on Tuesday, April 15, 2008, by the following vote: Council President Peters-yea; Faulconer-yea; Atkins-yea; Young-yea; Maienschein-yea; Frye-yea; Council President Pro Tem Madaffer-not present; Hueso-yea.

Authorizing the Mayor, or his designee, to release the amount of \$1,618,143.25 in funds earned by Orion Construction but retained by the City, and to pay an additional amount of \$900,000 in the settlement of each and every claim of Orion Construction against the City, its agents and employees, arising from the Rehabilitation of Pump Stations 77A and 77B Project as set forth in San Diego Superior Court Case No. GIC 849095, Beacon Electric Supply v. Saturn Electric, Inc., et al;

Authorizing the City Auditor and Comptroller to appropriate and issue one check in the amount of \$900,000 payable to Orion Construction in full settlement of all claims arising from the Rehabilitation of Pump Stations 77A and 77B Project;

Declaring that said funds are to be payable from Sewer Fund No. 41506.

SUPPORTING INFORMATION:

This litigation arises from delays associated with the project known as the Rehabilitation of Pump Stations 77A & 77B. Sewer Pump Stations 77A and 77B are the sewer pump stations that convey wastewater from the Rancho Bernardo area of San Diego to the City of Escondido's treatment facility.

Various issues arose during construction that led to significant delays in the completion of the project. The project was essentially completed in July 2006 and the pumps have been operating for nearly two years. After preparation and analysis of an as-built critical path schedule for the project, the City determined that Orion was entitled to an extension of contract time of 421 days due to events beyond its control.

The City also determined that Orion and/or its subcontractors were responsible for 241 days of delay, for which liquidated damages have been assessed in the amount of \$361,500.

This settlement results in a net payment to Orion of \$2,518,143.25, which reflects additional costs incurred by Orion less the liquidated damages assessed by the City. Payment will be made to Orion by releasing the contract balance earned by Orion but being held by the City in the amount of \$1,618,143.25, plus an additional payment of \$900,000 above the current contract price. Both parties agreed to sign a release of all claims and Orion agreed it would defend and indemnify the City for any claims by its subcontractors.

FISCAL CONSIDERATIONS:

\$900,000 is available in Sewer Fund No. 41506.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

This settlement and payment was considered by the City Council in Closed Session on April 15, 2008. On motion of District 8 and second by District 1, the City Council, by the following vote: Yeas, Districts 1, 2, 3, 4, 5, 6, and 8; Nays, none; Not Present, District 7; approved the settlement of all claims of Orion Construction Company against the City in Beacon Electric Supply v. Saturn Electric, Inc., et al, San Diego Superior Court Case No. GIC 849095, for release of the contract balance of \$1,618,143.25 to Orion and the payment of an additional \$900,000.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

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

Kalinowski

NOTE: The Auditor's Certificate was not requested prior to Closed Session. The vote taken in Open Session shall be the official vote.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:38 a.m. – 12:03a.m.;
2:09 p.m. – 2:26 p.m.)

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

ITEM-106: Appointment to the San Diego Water Authority Board of Directors.

(See memorandum from Mayor Sanders dated 4/3/2008, with resume attached.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2008-885) ADOPTED AS RESOLUTION R-303634

Council confirmation of the following appointment by the Mayor of the City of San Diego, to serve as a member of the San Diego County Water Authority Board of Directors, for a term ending as indicated:

<u>NAME</u>	<u>TERM ENDING</u>
Elsa Saxod (Mission Hills, District 2) (Replacing Joseph Craver, who has resigned)	February 7, 2010

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-107: Reappointments to the Board of Building Appeals and Advisors.

(See memorandum from Mayor Sanders dated 3/28/2008.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2008-883) ADOPTED AS RESOLUTION R-303635

Council confirmation of the following reappointments by the Mayor of the City of San Diego, to serve as members of the Board of Building Appeals and Advisors, for terms ending as indicated:

<u>NAME</u>	<u>CATEGORY</u>	<u>TERM ENDING</u>
Kelly Eisenstein (Ocean Beach, District 2) (Reappointment)	Consulting Engineer	March 1, 2010
Frank Landry (Talmadge, District 3) (Reappointment)	Architect	March 1, 2010
Kenneth Oh (Poway) (Reappointment)	Fire Protection Engineer	March 1, 2010

Ali Sadre
(La Jolla, District 1)
(Reappointment)

Structural Engineer

March 1, 2010

Stating that pursuant to Council Policy 000-13, for purposes of deliberation and consideration of appointment, it is determined that Kenneth Oh is a resident of San Diego County, but not the City of San Diego, and has unique qualifications to serve as a member of the Board; therefore, a conscious exception to Council Policy 000-13 is hereby declared.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-108: Reappointments to the Park and Recreation Board.

(See memorandum from Mayor Sanders dated 3/24/2008.)

MAYOR SANDERS' RECOMMENDATION:

Adopt the following resolution:

(R-2008-884) ADOPTED AS RESOLUTION R-303636

Council confirmation of the following reappointments by the Mayor of the City of San Diego, to serve as members of the Park and Recreation Board, for terms ending as indicated:

<u>NAME</u>	<u>TERM ENDING</u>
Bruce Brown (Mira Mesa, District 5) (Reappointment)	March 1, 2010
Rick Bussell (Linda Vista, District 6) (Reappointment)	March 1, 2010
Norman Greene (College Area, District 7) (Reappointment)	March 1, 2010
Wilbur Smith (Clairemont, District 6) (Reappointment)	March 1, 2010
Michael Stepner (Mission Hills, District 2) (Reappointment)	March 1, 2010

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-109: Educational Enrichment Systems Jeff and Deni Jacobs Child Development Center Day.

COUNCILMEMBER FRYE'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-904) ADOPTED AS RESOLUTION R-303637

Proclaiming April 29, 2008, to be "Educational Enrichment Systems Jeff and Deni Jacobs Child Development Center Day" and commending the many individuals who help make this organization and center a dedicated and positive service for our communities.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-110: Declaring a Continued State of Emergency Regarding the Wildfires.

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2008-699) ADOPTED AS RESOLUTION R-303638

Declaring a continued state of emergency to exist in the City of San Diego due to the wildfires which began on October 21, 2007, pursuant to California Government Code Section 8630;

Declaring that the measures previously taken by the City Council in Resolution No. R-303098 shall continue to have full force and effect.

FILE LOCATION: GEN'L – State of Emergency Regarding the Wildfires

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-111: Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City.

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2008-812) ADOPTED AS RESOLUTION R-303639

Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego.

FILE LOCATION: GEN'L – State of Emergency Due to Severe Shortage of Affordable Housing

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-112: Declaring a Continued State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico. (District 8.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2008-752) ADOPTED AS RESOLUTON R-303640

Declaring a Continued State of Emergency regarding the discharge of raw sewage from Tijuana, Mexico.

FILE LOCATION: GEN'L – State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-113: State of Local Emergency Declaration Regarding the Landslide on Mount Soledad.

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2008-861) ADOPTED AS RESOLUTION R-303641

Declaring a continued state of emergency to persist relative to the landslide on Mount Soledad, pursuant to California Government Code Section 8630;

Declaring that the measures previously authorized by the City Council in Resolution No. R-303041 shall continue to have full force and effect.

FILE LOCATION: GEN'L – State of Emergency Regarding the Landslide on Mount Soledad

COUNCIL ACTION: (Time duration: 10:39 a.m. – 10:40 a.m.)

CONSENT 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-330: Kroll Remediation Status Report Number 6 and Project Charter – Assessment and Documentation of Policies and Procedures Demonstrating Internal Control Over Financial Reporting.

(See Kroll Remediation PowerPoint dated 3/10/2008; Jay Goldstone's 3/10/2008 memorandum; Mayor Sanders' 1/28/2008 memorandum; Assessment and Documentation of Policies and Procedures-Project Charter (undated); RTCIP Projects chart (undated); 2007 Regional Transportation Plan-Technical Appendices; and memorandum from Mayor Sanders dated 3/19/2008 [not available at Committee].)

(Continued from the meeting of April 1, 2008, Item 333, at the request of Council, due to lack of time.)

TODAY'S ACTION IS:

Take the following actions:

HEARING HELD; REPORT RECEIVED

Accept the Kroll Remediation Status Report Number 6;

File the Project Charter;

Directing the City Attorney to prepare the appropriate resolutions and/or ordinances in accordance with Charter Section 40.

AUDIT COMMITTEE'S RECOMMENDATION:

On 3/10/2008, Audit voted 2 to 0, to forward this item to the full City Council.
(Councilmembers Faulconer and Young voted yea. Councilmember Atkins not present.)

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:27 p.m. – 3:29 p.m.)



ITEM-331: Amendments to the San Diego Municipal Code Eliminating the Surplus Undistributed Earnings (“Waterfall”) Relating to the City Employees’ Retirement System. (Citywide.)

(See memoranda from Council President Peters dated 4/8/2008, 11/8/2007, 8/27/2007, and 6/19/2007.)

COUNCIL PRESIDENT PETERS' RECOMMENDATION:

Take **one** of the following actions:

Version A: SDCERS Draft Ordinance CONTINUED TO TUESDAY,
MAY 27, 2008

Amending the San Diego Municipal Code eliminating the Surplus Undistributed Earnings (“Waterfall”) as codified in San Diego Municipal Code Section 24.1502 and as referred to in Section 24.1501, 24.1503, 24.1504, and 24.1507, all relating to the City Employees’ Retirement System;

Directing the City Attorney to prepare the appropriate resolutions and/or ordinances in accordance with Charter Section 40.

OR

Version B: City Attorney Ordinance

CONTINUED TO TUESDAY,
MAY 27, 2008

Amending the San Diego Municipal Code eliminating the Surplus Undistributed Earnings (“Waterfall”) as codified in San Diego Municipal Code Section 24.1502 and as referred to in Section 24.1501, 24.1503, 24.1504, and 24.1507, all relating to the City Employees’ Retirement System.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:26 p.m. – 2:27 p.m.)

MOTION BY YOUNG TO CONTINUE TO TUESDAY, MAY 27, 2008, BY THE CITY ATTORNEY’S OFFICE FOR FURTHER REVIEW. 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-332: Marketing Partnership Agreement Between the City of San Diego and Cardiac Science Corporation to Fund the San Diego Project Heart Beat.

(See Report to the City Council No. 08-007.)

STAFF’S RECOMMENDATION:

Adopt the following resolution:

(R-2008-562) ADOPTED AS RESOLUTION R-303642

Authorizing the Mayor to enter into a Marketing Partnership Agreement with Cardiac Science to fund the San Diego Project Heart Beat.

STAFF SUPPORTING INFORMATION:

The purpose of this Executive Summary is to provide an overview of the requested action and background regarding the Marketing Partnership Agreement (Agreement) which has been negotiated between the City of San Diego (City) and Cardiac Science. Under the Agreement, Cardiac Science will pay \$185,000 per year to sustain San Diego's Public Access Defibrillation (PAD) Program, San Diego Project Heart Beat (SDPHB). The total value of the Agreement is \$925,000 over five years. In exchange, Cardiac Science will receive marketing rights and benefits which are fully explained in the Report to City Council and Marketing Partnership Agreement. The proposed Agreement was developed through the standard procurement process in conjunction with a Request for Proposal for Automatic External Defibrillators, Replacement Parts, Accessories and Upgrades.

FISCAL CONSIDERATIONS:

San Diego Medical Services Enterprise, LLC (SDMSE) through the AED Operating Memorandum with the City, will receive \$185,000 per year from Cardiac Science. The total potential value of the Agreement over 5 years is \$925,000. A copy of the AED Operating Memorandum is included in this Report as Attachment C. See funding breakdown below:

- \$110,000 marketing rights fee to be paid by Cardiac Science to SDMSE for each year of the Agreement. The term of the Marketing Partnership Agreement is two-years with option to renew three additional one-year terms.
- A \$150 sales stipend per AED sold and a \$25 sales stipend per wall mount sold to be paid by Cardiac Science to the City on all sales that occur within certain agreed upon zip codes in San Diego County. A minimum of \$50,000 to be paid by Cardiac Science to SDMSE for each year of the Agreement regardless of the volume of sales of AEDs and wall mounts.
- A \$25,000 annual promotional budget to be paid by Cardiac Science to SDMSE for each year of the Agreement.

SDMSE will pay The Pathfinder Group \$11,000 per year commission for the first 3 years for development. In the first and second year of the Agreement, a transaction fee of \$11,000 annually will be paid to The Pathfinder Group, the City's consultant, as per the Marketing Consultant Agreement. An additional \$11,000 will be paid to The Pathfinder Group in the third year if the Marketing Partnership Agreement is extended. No commission fees apply to the fourth or fifth year of the Marketing Partnership Agreement (Document No. C-13038).

In the event SDMSE does not win the award to provide emergency medical services to the City in future years, the City will be responsible for all aspects of the San Diego Project Heart Beat. The City's Fire-Rescue Department (Fire Department) will be responsible for managing and operating San Diego Project Heart Beat. The revenue negotiated in the Marketing Partnership Agreement between the City and Cardiac Science will be directed to the Fire Department to be used to manage and operate San Diego Project Heart Beat.

Also in the event SDMSE does not win the award to provide emergency medical services to the City in future years, the City will be responsible for paying a transaction fee of \$11,000 annually to The Pathfinder Group for each year of the initial two year term, and \$11,000 in the third year, if the option on the third year is exercised. The City is responsible for paying the fee because the consultant contract is between the City and The Pathfinder Group. The fee is based strictly on the money that comes in through the Marketing Partnership Agreement.

The consultant fee will be deposited into the Corporate Partnership Program budget while the remaining revenue is deposited in the department where the Executive Team feels San Diego Project Heart Beat is best placed. That decision will be determined at a later date.

The net additional revenues will range from \$348,000 to \$892,000 depending on the renewal of the Agreement.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Cardiac Science, San Diego Medical Services Enterprise, LLC, and The Pathfinder Group.

Wolff/Goldstone

Staff: Jenny Wolff - (619) 236-7002
William J. Gersten - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 11:31 a.m. – 11:36 a.m.)

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-333: Acceptance of Repayment of a Portion of the HUD Section 108 Loan #B-96-M-06-0542-A on Behalf of Council District Four. (Southeastern San Diego Community Area. District 4.)

(See Southeastern Economic Development Corporation Report SEDC-08-001.)

**SOUTHEASTERN ECONOMIC DEVELOPMENT CORPORATION'S
RECOMMENDATION:**

Adopt the following resolution:

(R-2008-748) ADOPTED AS RESOLUTION R-303645

Authorizing the acceptance of \$450,000 from the Agency (Central Imperial Redevelopment Project Area);

Appropriating these funds into CDBG Fund #18514 for the FY 09 payment of a portion of the HUD Section 108 Loan #B-96-MC-06-0542-A on behalf of Council District Four;

Authorizing the appropriation and expenditure of funds, contingent upon certification of funds availability of the FY 2007 tax allocation bonds by the City Auditor and Comptroller for the aforementioned said FY 09 payment of a portion of the HUD Section 108 Loan #B-96-MC-06-0452-A on behalf of Council District Four (4);

Declaring that this activity is not a "project" and is therefore not subject to the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(3).

SUPPORTING INFORMATION:

On May 6, 1996, Resolution Number R-287278 was adopted by the San Diego City Council authorizing the submission of an application for a Section 108 loan guarantee (B-96-MC-06-0542-A) to the United States Department of Housing and Urban Development (HUD) for the development of Potter Tract, Chollas Creek and Mountain View Community Center. The aforementioned resolution also authorized repayment of the Section 108 Loan to be repaid from a portion of the Fourth Council District Community Development Block Grant annual allocation.

In addition, the application to HUD and the Cooperation and Pledge Agreement between the Redevelopment Agency and the City of San Diego authorized the use of SEDC Tax Increment Revenues and/or land sale for the repayment of the Section 108 loan payments.

On May 15, 2007, the Agency approved FY08 Program budget for SEDC which included the proceeds anticipated from the taxable FY 07 Tax Allocation Bond proceeds in the Central Imperial Redevelopment Project Area.

On June 12, 2007, and reaffirmed on July 10, 2007, the City authorized issuance of the FY 2007 tax allocation bonds which included the budgeted bond proceeds amount of \$450,000 (net of the cost of issuance) proposed for the FY09 payment of a portion of the HUD Section 108 Loan #B-96-MC-06-0542-A on behalf of the Council District Four.

Authorizing the acceptance of the \$450,000 FY 09 payment from the Agency for the portion of the HUD Section 108 Loan on behalf of the Council District Four will assist in the repayment of the Agency loan to the City.

SEDC may budget additional annual payments on the Agency loan from the City contingent on the availability of funds from future bond issuances and tax increment revenues generated by the Central Imperial Redevelopment Project Area.

FISCAL CONSIDERATIONS:

The \$450,000 repayment is available from the FY 2007 taxable bond proceeds of Central Imperial Redevelopment Project Area.

PREVIOUS COUNCIL ACTIONS:

Approval of the FY 2007 tax allocation bonds on June 12, 2007 and reaffirmed on July 10, 2007 by the City Council which included the \$450,000 for the repayment of a portion of the Section 108 Loan.

KEY STAKEHOLDERS:

The Fourth Council District.

Dayacap/Smith

Aud. Cert. 2800587.

NOTE: See the Redevelopment Agency Agenda of April 29, 2008, for a companion item.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:42 p.m. – 3:42 p.m.)

MOTION BY YOUNG 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-334: Accepting Loan Repayment from Redevelopment Agency, North Park Redevelopment Project Area and Authorizing a Loan to Lyric Opera. (Greater North Park Community Area. District 3.)

(See Redevelopment Agency Report No. RA-08-10/RTC-08-043.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-913) ADOPTED AS RESOLUTION R-303646

Accepting a Sales Tax loan repayment from the Redevelopment Agency of the City of San Diego in the amount of \$352,500 from the North Park Redevelopment Project Area to the City Sales Tax Fund No. 10227;

Authorizing the transfer of \$352,500 from City Sales Tax Fund No. 10227 to Lyric Opera San Diego as a forgivable loan to provide working capital to sustain operations upon the execution of a promissory note in favor of the City of San Diego;

Directing the City Auditor and Comptroller to record the aforementioned transfer from the City of San Diego as an interest bearing 10-year loan to Lyric Opera San Diego with any outstanding principal and/or accrued interest to be due at maturity;

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

STAFF SUPPORTING INFORMATION:

Lyric Opera San Diego (Lyric Opera), a 501(c)3 not for profit organization, is the owner and manager of the Birch North Park Theatre, which underwent extensive rehabilitation with assistance from the Redevelopment Agency (Agency). The Agency also owns the parking structure adjacent to the theatre which was constructed to provide parking for theatre patrons.

In 2004, Lyric Opera vacated its former location in anticipation of a February 2005 theatre opening.

However, construction of the parking structure was not completed in time for the planned opening of the theatre. Without sufficient parking, Lyric Opera's theatre opening was delayed a season, which created a budget shortfall with no revenue generated to cover fixed operating costs. Lyric Opera has been unable to eliminate the shortfall and is threatened with insolvency.

Due to the considerable resources the Agency and the City provided to the preservation and revitalization of the North Park Theatre and the construction of the parking structure, and the desire to assist in the success of the resident operator of the theatre, staff proposes to provide a loan to Lyric Opera in an amount not to exceed \$352,500. The loan would be in the form of a ten year promissory note at 3% interest with all principal and interest payments accrued until maturity (Attachment 1). A condition of the loan requires Lyric Opera to offer events or services free, or at a discounted rate, to students that attend public school within the Greater North Park Community, low-income children residing in the Greater North Park Community, and/or not for profit organizations. Such events or services include theatre productions, Summer Academies, use of the theatre space, or other similar events and services. Quarterly reports must be submitted to the City to verify that these conditions have been satisfied. If, at the end of the ten year term, Lyric Opera has satisfied all conditions, all or a portion of the proposed loan may be forgiven.

FISCAL CONSIDERATIONS:

The proposed loan to Lyric Opera will be provided by the repayment of existing debt to the City from the North Park Redevelopment Project Area. The North Park Redevelopment Project Area will repay \$352,500 of debt owed to Fund 10227 (Sales Tax Revenue). This fund transfer will have no impact on the Project Area's work plan because tax increment revenue is expected to exceed the budget forecast. Based on the February 2008 assessed valuation from the County of San Diego, the revised projection for Fiscal Year 2008 tax increment revenue for the North Park Redevelopment Project Area is \$7.16 million, or \$1.10 million higher than the FY 2008 budget projection of \$6.06 million.

After required deductions for the Low and Moderate Income Housing Fund (\$220,000) and taxing agencies reserves (\$220,000), a net surplus of \$660,000 is available.

PREVIOUS AGENCY, COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The North Park Project Area Committee, at their regularly scheduled meeting of January 8, 2008, voted to recommend that the Redevelopment Agency direct sufficient Agency funds for payment of the costs incurred by Lyric Opera due to the delayed completion of the parking structure.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

- No projected impacts.
- Stakeholders: Lyric Opera San Diego, Leon Natker, General Director, and Sherwood Montgomery, Artistic Director.

Weinrick/Anderson

Aud. Cert. 2800706.

Staff: Michael Lengyel - (619) 236-6269
Huston Carlyle – Chief Deputy City Attorney

NOTE: See the Redevelopment Agency Agenda of April 29, 2008, for a companion item.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:35 p.m. – 3:35 p.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-335: Ten Fifty B Affordable Housing Project – Amended and Restated Owner Participation Agreement and Amended and Restated Ground Lease with Affirmed Housing Group. (East Village Redevelopment District of the Expansion Sub Area of the Centre City Redevelopment Project. District 2.)

(See Centre City Development Corporation Report No. CCDC-08-09/
CCDC-08-05.)

CENTRE CITY DEVELOPMENT CORPORATION'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2008-872) ADOPTED AS RESOLUTION R-303647

Recognizing that it has received and heard all oral and written objections to the proposed Amended and Restated Ground Lease and to other matters pertaining to this transaction, and that all such oral and written objections are hereby overruled;

Approving the Amended and Restated Ground Lease, which establishes the terms and conditions for the lease of the real property to be owned by the Agency;

Acknowledging that the Executive Director of the agency, or his designee, is hereby authorized to execute the Amended and Restated Ground Lease on behalf of the City. A copy of the Agreement, when executed, shall be placed on file in the Office of the Secretary of the Agency;

Acknowledging that the Executive Director of the Agency, or his designee, is hereby authorized, on behalf of the City, to sign all documents necessary and appropriate to carry out and implement the Amended and Restated Ground Lease and to administer the Agency's obligations, responsibilities and duties to be performed under said Amended and Restated Ground Lease.

Subitem-B: (R-2008-911) ADOPTED AS RESOLUTION R-303648

Declaring that the Council has previously reviewed and considered information contained in the EIR for the San Diego Downtown Community Plan, Centre City Planned District Ordinance and Tenth Amendment to the Plan, as well as the Final Secondary Study relating to the development of the

Ten Fifty B Project and hereby finds that there are no changes to the Project that would have any additional or significant effect on the environment, except those previously identified and considered in the EIR and accounted for in the Mitigation Monitoring and Reporting Program for the Project;

Declaring that a Notice of Determination shall be filed with the Clerk of the Board of Supervisors for the County of San Diego regarding the development contemplated by the Amended and Restated Owner Participation Agreement and related activities.

SUPPORTING INFORMATION:

The original OPA and Ground Lease with Affirmed Housing Group were approved by the Agency and Council on October 9, 2007. Subsequent to approval, the Developer's tax credit counsel deemed the approved OPA and Ground Lease terms inconsistent with syndicators' standard underwriting criteria for tax credit financing in circumstances when a ground lease is a component of the transaction. As a consequence, the Developer has requested material changes to the OPA and ground lease terms; however, the proposed changes will not impact the Agency's total subsidy or subsidy per unit. The OPA provides for construction of a 23-story, 229-unit affordable housing project consisting of 68 studio, 57 one-bedroom, 34 two-bedroom, and 70 three-bedroom units on the 21,780 square-foot site located on the north side of B Street between 10th and 11th Avenues in downtown's East Village Redevelopment District. The proposed Project will add to the range of downtown housing opportunities, and expand the much-needed supply of affordable-rental housing, especially for families with children.

FISCAL CONSIDERATIONS:

Funds are available in the amount of \$33,975,000 in the Redevelopment Agency FY 2008 Low and Moderate Income Housing Fund.

CENTRE CITY DEVELOPMENT CORPORATION RECOMMENDATION:

On March 26, 2008, the Corporation Board of Directors approved the staff recommendation by a vote of 6-0.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECT IMPACTS:

Developer/General Partner: Affirmed Housing Group (privately owned)
Tax Credit Investor/Limited Partner: Boston Capital Finance, LLC (privately owned)
Property Manager: Solari Enterprises (privately owned)
Architect: Martinez & Cutri Architects (privately owned)

Graham/Graham

NOTE: This is a Special Joint Public Hearing with the Redevelopment Agency and Housing Authority. See the Redevelopment Agency and Housing Authority Agenda of April 29, 2008, for a companion item.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:48 p.m. – 3:48 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-yea, Madaffer-yea, Hueso-yea.

ITEM-336: San Diego Regional Revolving Loan Fund. (Peninsula (NTC), North Park, and San Ysidro Community Areas. Districts 2, 3, and 8.)

(See Redevelopment Agency Report No. RA-08-12/RTC-08-053.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2008-874) ADOPTED AS RESOLUTION R-303649

Accepting a General Fund Loan Repayment from the North Park Redevelopment Project Area to the City of San Diego in the amount of \$403,308;

Accepting a General Fund Loan Repayment from the San Ysidro Redevelopment Project Area to the City of San Diego in the amount of \$60,000;

Accepting a General Fund Loan Repayment from the Naval Training Center (NTC) Redevelopment Project Area to the City of San Diego in the amount of \$375,000;

Applying the aforementioned General Fund loan repayments totaling \$838,308 to the City's San Diego Regional Revolving Loan Fund (SDRRLF) and expend monies thereof for the established purposes of the fund;

Declaring that this activity is not a "project" and is therefore exempt from CEQA pursuant to State CEQA Guidelines Section 15060(c)(3).

STAFF SUPPORTING INFORMATION:

In 2002, the City established the SDRRLF for the purpose of providing loans for small business and development projects. (Reference City Manager's Report # 02-152 and City Council Resolution R-296757). The fund was established by a \$1.2 million grant from the Department of Commerce, Economic Development Administration (EDA). As part of the terms of the EDA grant, the City is obliged to provide matching funds. The City Council satisfied this requirement by authorizing the City Manager to accept loan repayments from the Redevelopment Agency to the City. (Refer to Council Resolution R-296757, Adopted July 8, 2002.) The Redevelopment Agency allocated funds for this purpose in the Fiscal Year 2003 budget. Today's proposed action calls for specific loan repayments of the Redevelopment Agency and the utilization of these repayments by the City for specific SDRRLF projects.

FISCAL CONSIDERATIONS:

The City matches required for these projects are being funded via debt repayments from the Redevelopment Agency to the City's General Fund. Upon receipt of the Agency repayments the City in turn will transfer the monies to the SDRRLF to satisfy the EDA funding requirement and facilitate the activation of the project loans.

The Agency and City benefit from this action in that monies are provided to fund the small business loans. This proposed action satisfies EDA requirements.

PREVIOUS AGENCY, COUNCIL and/or COMMITTEE ACTION:

In 2002, the City established the SDRRLF for the purpose of providing loans for small business and development projects. (Reference City Manager's Report # 02-152 and City Council Resolution R-296757). The same action authorized the City to accept debt repayments from the Redevelopment Agency as a source of matching funds.

The respective projects that will receive funding as a result of this action were approved by the San Diego Regional Revolving Loan Fund Advisory Board on August 15, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Loan program marketing has been conducted by City Planning & Community Investment (CPCI) at workshops and community meetings, and with community groups. Program Fact Sheets are kept current and modified via template as requested for specific groups and/or project area.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The community and Redevelopment Agency will benefit from this action as the projects that will receive funding are aligned with the goals of redevelopment. The City will benefit from the availability of these leveraged funds for the intended projects.

Kessler/Weinrick/Anderson

Staff: Scott Kessler - (619) 236-6405
Brent C. Will – Deputy City Attorney

NOTE: See the Redevelopment Agency Agenda of April 29, 2008, for a companion item.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:41 p.m. – 3:42 p.m.)

MOTION BY HUESO 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-337: Authorizing Transfer and Appropriation of \$4,500,000 to the Public Liability Fund from Unallocated Reserves.

STAFF'S RECOMMENDATION:

Hold the first public hearing of the ordinance:

(O-2008-139) HEARING HELD

An Ordinance amending Ordinance No. O-19652 (New Series) entitled "An Ordinance Adopting the Annual Budget for the Fiscal Year 2008 and Appropriating the Necessary Money to Operate the City of San Diego for Said Fiscal Year" by authorizing the appropriation and transfer of \$4,500,000 from the General Fund Unallocated Reserve to the Public Liability Fund for the purposes of paying costs resulting from damage claims and lawsuits against the City;

Amending the Appropriation Ordinance to appropriate \$4,500,000 from the General Fund Unallocated Reserve to Fund 100, Dept. 601, Citywide Program Expenditures (Org. 2900);

Authorizing the City Auditor and Comptroller to transfer \$4,500,000 from Fund 100, Dept. 601 Citywide Program Expenditures (Org. 2900) to the Public Liability Fund 81140.

STAFF SUPPORTING INFORMATION:

The purpose of the Public Liability Fund is the payment of costs resulting from damage claims and lawsuits against the City. At the beginning of Fiscal Year 2008 there was \$20.3 million available in the Fund. However, this funding has been exhausted and there are insufficient funds to meet future obligations through the end of this fiscal year. For the last several years, the City has been involved in significant and complex litigation that has resulted in unanticipated cost increases to the Public Liability Fund. It is projected that an additional \$4.5 million will be required by June 30, 2008 for various claim related expenses incurred this fiscal year.

FISCAL CONSIDERATIONS:

\$4,500,000 for this action is available in the Unallocated Reserves for transfer to Public Liability Fund 81140 via Fund 100, Dept. 601 Citywide Program Expenditures.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: Not applicable.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not applicable.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: Not applicable.

Bych/Lewis

Aud. Cert. 2800726.

Staff: Greg Bych - (619) 236-6651
Brant Will - Deputy City Attorney

NOTE: Today's action is the first public hearing. See the docket of Monday, May 5, 2008, for the second public hearing and the introduction and adoption of the Ordinance.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 6:43 p.m. – 6:48 p.m.)



ITEM-338: Public Hearing on the proposed expansion of the Adams Avenue Business Improvement District to permit testimony in support of or opposition to the expansion of the Adams Avenue Business Improvement District and the levying of assessment on such business in the proposed expanded area of the Adams Avenue BID. Amending the Adams Avenue Business Improvement District ordinance to expand the District and include the Kensington-Talmadge business core. (Normal Heights, Mid-City, Kensington and Talmadge Community Plan Areas. District 3.)

(First Public Hearing held on March 4, 2008, Item 108; Public Meeting was held on April 1, 2008, Item S500.)

STAFF'S RECOMMENDATION:

Introduce the following ordinance:

(O-2008-138) INTRODUCED TO BE ADOPTED
TUESDAY, MAY 13, 2008

Introduction of an Ordinance of the Council of the City of San Diego amending Ordinance No. O-18087 to expand the Adams Avenue Business Improvement District to include the Kensington-Talmadge business core.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

At the first Council date (Council meeting of March 4, 2008):

1. Declare intent to expand the Adams Avenue Business Improvement District (and to levy assessments), set April 1, 2008 as the noticed public meeting date, and set April 29, 2008 as the noticed public hearing date for considering protests.

At the second Council date (Council meeting of April 1, 2008)

2. Hold public meeting and permit testimony in support of or opposition to the expansion of the Adams Avenue Business Improvement District and the levying of assessments on such business in the proposed expanded area.

At the third Council date (Council meeting of April 29, 2008)

3. Hold the public hearing and permit testimony in support of or opposition to the expansion of the Adams Avenue Business Improvement District and the levying of assessments on such business in the proposed expanded area.
4. Introduce the Ordinance expanding the Adams Avenue Business Improvement District.

EXECUTIVE SUMMARY:

An effort to expand the Adams Avenue Business Improvement District (AABID) to include the Kensington-Talmadge commercial area has been ongoing for a number of months under the auspices of the Kensington-Talmadge Business Association. The purpose of the expansion is to build on the synergy between the commercial areas along Adams Avenue and to leverage the available resources to better benefit the businesses in the area. This expansion also has the support of the Adams Avenue Business Association, which manages the AABID, an area encompassing Adams Avenue from the 2400 block to I-15 and the adjoining side streets for one block north and south of Adams Avenue. The expansion would add the area along Adams

Avenue between I-15 and 4248 Adams Avenue, and the adjoining side streets in the 4600 and 4700 blocks of Biona Drive, Edgeware Road, Kensington Drive, Marlborough Drive, Terrace Drive, Vista Street, and 42nd Street, and the 4100 block of Park Place.

A Business Improvement District (BID), as authorized by California law, is a government-designated assessment area formed with the support of businesses to improve their business conditions. Assessment means a levy for the purpose of acquiring, constructing, installing, or maintaining improvements and promoting activities, which will benefit the businesses located and operating within a parking and business improvement area. All BID assessments are returned to the district for improvement programs operated by the business membership. BID programs can include promotional advertising and marketing programs, special events, technical assistance programs and others as designated by the needs of the district's businesses. San Diego currently has 19 designated districts located from La Jolla to San Ysidro, and Ocean Beach to the College Area.

The City Council has adopted Council Policy 900-07 on Business Improvement Districts to clarify the process by which BIDs may be established or expanded. The policy states that a proposed expansion of BID boundaries should be supported by 20% of eligible businesses within the expansion area as demonstrated by a petition. In January 2007, City staff received a number of petitions in support of expanding the AABID and verified that the 20% threshold had been met. In accordance with Council Policy 900-07, City staff then conducted a mailed ballot procedure to determine the level of support among the affected businesses in the expansion area.

Council Policy 900-07 also provides that City Council may proceed with a public hearing process to amend the BID ordinance and increase the assessment where: "an assessed value and numerical majority of those responding support the increase in the levels of assessment". A majority of the responding businesses, when counted numerically (74.5%) and when weighed by the amount of the proposed assessment (80.4%), supported the expansion of the AABID and the levying of an annual assessment.

Given the support of the affected businesses, staff is bringing the expansion to City Council for approval as required by the Parking and Business Improvement Area Law of 1989. Since this expansion of the AABID would allow the City to levy an annual assessment on the newly included businesses, a multi-step hearing and noticing process is required by the 1989 Law and the Ralph M. Brown Act and is outlined above.

FISCAL CONSIDERATIONS:

Approximately \$6,500 of additional annual assessments will be collected from the businesses of the expanded area. It is anticipated that assessments would be levied and collected starting in FY2009 once approved by Council as part of the BID Annual Appropriation Process.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

The AABID was established by Ordinance No. O-16479, adopted on July 29, 1985. It was amended by Ordinance No. O-18087 on July 11, 1994, to create a third zone and increase the assessments in certain central areas of the AABID to support landscape maintenance activities.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Kensington Talmadge Business Association held community meetings on the proposed expansion and then coordinated a petition drive to have the commercial core included in the Adams Avenue BID. All businesses proposed to be assessed also received a ballot and information concerning the proposed expansion.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

Businesses within the BID and the Kensington Talmadge area, along with their respective business organizations, are the key stakeholders of this action. The Kensington Talmadge businesses would be impacted by the levying of the annual assessment in the amount of \$40 to \$70 per year depending on the location of the business and the business category.

Kessler/Anderson/MDB

Staff: Meredith Dibden Brown – (619) 236-6485
Kimberly K. Harris – Deputy City Attorney

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 5:33 p.m. – 6:43 p.m.)

Testimony in favor by Richard Hanford, John Garrison, Jim Schneider, Larry Teves, Michael Rammelsberg, David McPheeters, and Sherry Hopwood.

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

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Peters at 6:48 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 6:48 p.m. – 6:48 p.m.)

Elizabeth S. Maland, City Clerk
City of San Diego