

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
MONDAY, MAY 12, 2008  
AT 2:00 P.M.  
IN THE COUNCIL CHAMBERS - 12TH FLOOR

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**CHRONOLOGY OF THE MEETING:**

The meeting was called to order by Council President Peters at 2:05 p.m. Council President Peters recessed the meeting at 2:47 p.m. to convene into Closed Session. Council President Peters reconvened the meeting at 4:23 p.m. with all Council Members present. Council President Peters recessed the meeting at 5:48 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 5:56 p.m. with Council Member Maienschein and Council President Pro Tem Madaffer not present. Council President Peters recessed the meeting at 7:51 p.m. to reconvene into Closed Session. Council President reconvened the meeting at 9:58 p.m. with all Council Members present. The meeting was adjourned by Council President Peters at 10:27 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 (sr)

FILE LOCATION:                    MINUTES



ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Peters-present
- (2) Council Member Faulconer-present
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES



ITEM-10: INVOCATION

Invocation was given by City Clerk Liz Maland.

FILE LOCATION: MINUTES



ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council President Pro Tem Madaffer.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

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

**CS-1 *Save Our Heritage Organization v. City of San Diego, et al.*  
San Diego County Superior Court Case No. 37-2007-00081313-CU-WM-CTL**

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 13, 2008**

DCA Assigned: G. Spitzer

This matter involves litigation arising from the approval of the construction of a portion of the Bayshore Bikeway, a bike path that loops around the San Diego Bay. The City Attorney will provide a status of the litigation and discuss settlement issues.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

**CS-2 *Lepine v. City of San Diego*  
San Diego Superior Court Case No. 37-2007-00064048-CU-OE-CTL**

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 13, 2008**

DCA Assigned: W. Chung

This matter pertains to an employment lawsuit filed by former Deputy City Attorney Amy Lepine. In Closed Session, Walter Chung of the City Attorney's Office and Rich Paul of Paul, Plevin, Sullivan & Connaughton, will brief the City Council on the litigation's status and bring to the Council a settlement offer made by the Plaintiff to the City of San Diego.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

**CS-3** *Cal Johnson, et al. v. Thomas Distabile, et al.*  
**San Diego County Superior Court Case No. GIC 782977**

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 13, 2008**

DCA Assigned: B. Walters

This matter involves a claim for reimbursement or contribution for a property owner's removal of a hazardous substance, burn ash, under the California Hazardous Substances Accountability Act and/or under a nuisance cause of action. There also is a fraud claim against certain City employees. In Closed Session, the City Attorney will provide a status report of the litigation.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

**CS-4** *City of San Diego v. Sunroad Enterprises et al.*  
**San Diego Superior Court Case No. GIC 877054**

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 13, 2008**

DCA Assigned: C. Brock

Case No. GIC 877054 was initiated by the City Attorney to abate the public nuisance created by Sunroad Enterprises' construction of a 12 story, 180 foot building which has been declared a "hazard" to air navigation at the City's Montgomery Field Airport by the Federal Aviation Administration ("FAA") Sunroad Enterprises cross-complained against the City claiming the City issued permits for the building and is responsible for any monetary loss Sunroad may incur. The City Attorney and outside counsel, Latham & Watkins, will discuss the status of the pending litigation, settlement, and associated costs.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

**CS-5** *Friends and Concerned Citizens of University City v. City of San Diego, Costa Verde, LLC., San Diego Superior Court Case No. 37-2007-00078058 CU-TT-CTL*

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 13, 2008**

DCA Assigned: M. Dickenson

This matter is a challenge under the California Environmental Quality Act and the Public Streets, Highways, and Service Easements Vacation Law relating to the City's approval of Environmental Impact Report No. 6563; associated approvals including the Mitigation Monitoring and Reporting Program, Findings and Statement of Overriding Consideration, amendments to the Progress Guide and General Plan, the University Community Plan, and the Costa Verde Specific Plan; Vesting Tentative Map. No. 372429; Easement Vacation No. 372423; Public Right-of-way Vacation No. 372426; Planned Development Permit No. 10761; Site Development Permit No. 372422; and Public Right of Way Permit No. 464724. The City Attorney will update the Mayor and City Council on the status of the litigation in Closed Session

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

**Conference with Legal Counsel - anticipated litigation - significant exposure to litigation, pursuant to California Government Code Section 54956.9(b):**

**CS-6** **Number of Potential Cases: Up to 50 (Voluntary Compliance Program Filing)**

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 13, 2008**

DCA Assigned: W. Chung

In closed session, the Mayor requests that Outside Counsel provide advice relating to proposed Pension System Changes included in the Voluntary Compliance Program Filing that may affect the pension benefits of employees, retirees and their beneficiaries.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

**Conference with Labor Negotiator, pursuant to Government Code Section 54957.6:**

**CS-7 Agency Negotiator:** Steven Berliner, Richard Kreisler, Lisa Briggs, Scott Chadwick, Tanya Tomlinson, Thom Harpole, Abby Jarl, Hadi Dehghani, Val VanDeweghe, Rod Betts, Jessica Falk Michelli, William Gersten, Lori Thacker, and Alan Hersh

Employee Organizations: Municipal Employees Association, AFSCME Local 127 AFL-CIO, and Deputy City Attorney Association

DCAs Assigned: W. Gersten/J. Falk Michelli/L. Thacker/A. Hersh

The Mayor and City Council will be updated on the status of the labor negotiations.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**

**CS-8 Agency Negotiator:** Steven Berliner, Richard Kreisler, Lisa Briggs, Scott Chadwick, Tanya Tomlinson, Thom Harpole, Abby Jarl, Hadi Dehghani, Val VanDeweghe, Rod Betts, Jessica Falk Michelli, William Gersten, Lori Thacker, and Alan Hersh

Employee Organizations: Municipal Employees Association, AFSCME Local 127 AFL-CIO, and Deputy City Attorney Association

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 13, 2008**

DCAs Assigned: W. Gersten/J. Falk Michelli/L. Thacker/A. Hersh

Discussions regarding impasse on contract negotiations, if necessary.

FILE LOCATION: AGENDA

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

**Council President Peters closed the hearing.**



ITEM-200: Authorizing the Appropriation and Transfer of \$5,000,000 from the General Fund Unallocated Reserve to the General Fund Appropriated Reserve.

**STAFF'S RECOMMENDATION:**

Hold the first public hearing of the ordinance:

(O-2008-149 Cor. Copy) HEARING HELD/DIRECTION GIVEN

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 appropriating \$5,000,000 from the General Fund Unallocated Reserve to Fund 100, Dept. 602, General Fund Appropriated Reserve;

Amending the Appropriation Ordinance to authorize the City Auditor and Comptroller, upon approval by Council resolution, to transfer and expend appropriations from the General Fund Appropriated Reserve to other General Fund departments and to General Fund contributions to the CIP;

Ratifying and approving the following Council resolutions and the actions taken:

- a) Transfer up to \$2,219,500.18 from General Fund Appropriated Reserve (Dept. 602) to General Fund Citywide Program Expenditures (Dept. 601) then transfer to the Public Liability Fund (81140) and other enterprise funds based upon the FTE allocation. This transfer is for payment of court ordered legal fees relating to SDCERS litigation. R303276 passed on December 12, 2007.

- b) Transfer \$2,000,000 from Appropriated Reserve (Dept. 602) to General Fund Contributions to the CIP (Fund 630221) for emergency repair of Soledad Mountain Road. R-303265 passed on December 18, 2007.
- c) Transfer \$800,000 from General Fund Appropriated Reserve (Dept. 602) to the City Planning and Community Investment Department (Dept. 065) and authorize to expend up to \$800,000 for the completion of the Otay Mesa Community Plan Update. R-303275 passed on December 18, 2007.
- d) Transfer \$792,181 from General Fund Appropriated Reserve (Dept. 602) to the City Planning and Community Investment Department (Dept. 065) for the Grantville Master Plan consulting contract. R-303550 passed on April 1, 2008.
- e) Transfer \$184,750 from General Fund Appropriated Reserve (Dept. 602) to the General Fund Citywide Program Expenditures (Dept. 601) for the first amendment to the Agreement with Liebert Cassidy Whitmore for professional services. R-303500 passed on April 8, 2008.

**STAFF SUPPORTING INFORMATION:**

The General Fund Reserve Policy (O-19679), adopted on November 13, 2007, established the General Fund Appropriated Reserve Department (Dept. 602) and appropriated \$7,000,000 to this department from the General Fund unallocated reserves. It was the intention of the policy to allow for transfers from the Appropriated Reserve Department to other General Fund Departments be authorized by Council resolution. However, O-19679 did not include the language necessary to amend the Fiscal Year 2008 Appropriation Ordinance (O-19652) to provide this authority. Therefore, in order to allow the City Comptroller to carry out the intended purpose of the Reserve Policy and fund unanticipated operational needs during Fiscal Year 2008, it is necessary to amend the Appropriation Ordinance to allow transfers to be authorized by Council resolution. Ratification of the following listed actions that have been previously approved via Council resolution is necessary to allow these actions to be completed.

1. Transfer up to \$2,219,500.18 from General Fund Appropriated Reserve (Dept. 602) to General Fund Citywide Program Expenditures (Dept. 601) then transfer to the Public Liability Fund (81140) and other enterprise funds based upon the FTE allocation. This transfer is for payment of court ordered legal fees relating to SDCERS. R-303276 passed on December 12, 2007.
2. Transfer \$2,000,000 from Appropriated Reserve (Dept. 602) to General Fund Contributions to the CIP (Fund 630221) for emergency repair of Soledad Mountain Road. R-303265 passed on December 18, 2007.

3. Transfer \$800,000 from General Fund Appropriated Reserve (Dept. 602) to the City Planning and Community Investment Department (Dept. 065) and authorize to expend up to \$800,000 for the completion of the Otay Mesa Community Plan Update. R-303275 passed on December 18, 2007.
4. Transfer \$184,750 from General Fund Appropriated Reserve (Dept. 602) to the General Fund Citywide Program Expenditures (Dept. 601) for the First Amendment to the Agreement with Liebert, Cassidy Whitmore for professional services. R-303500 passed on April 8, 2008.

The following actions to transfer appropriations from the General Fund Appropriated Reserve were approved by City Council by Ordinance and no further action is needed.

5. Transfer up to \$369,500 from General Fund Appropriated Reserve (Dept. 602) to General Fund Citywide Program Expenditures (Dept. 601) for services provided by Hawkins, Delafield & Wood. O-19695 passed on December 18, 2007.
6. Transfer \$40,000 from General Fund Appropriated Reserve (Dept. 602) to Council Administration (Dept. 029) for the addition of 1.0 committee consultant to the Ad Hoc Committee on Fire Prevention. O-19703 passed on January 22, 2008.
7. Transfer \$50,000 from General Fund Appropriated Reserve (Dept. 602) to Office of the Independent Budget Analyst (Dept. 030) for the addition of 1.0 Office of the Independent Budget Analyst staff member. O-19702 passed on January 28, 2008. To replenish depleted reserves in the General Fund Appropriated Reserve, it is requested that Council Approve and Authorize the City Auditor and Comptroller to appropriate \$5,000,000 from the General Fund Unallocated Reserves to the Appropriated Reserve, Fund 100, Dept. 602 for Fiscal Year 2008.

**FISCAL CONSIDERATIONS:**

The amount of \$5,000,000 will be appropriated from the General Fund Unallocated Reserve, reducing the General Fund Unallocated Reserve.

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

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

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

Tirandazi/Lewis

Aud. Cert. 2800732.

Staff: Nader Tirandazi - (619) 236-6060  
Brant Will - Deputy City Attorney

**NOTE:** Today's action is the first public hearing. See the docket of Monday, May 19, 2008 for the second public hearing and the introduction and adoption of the Ordinance.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:06 p.m. – 2:11 p.m.)

Motion by Madaffer to have Mayor's office respond to the issues presented by the Independent Budget Analyst. Second by Hueso. Not vote taken.



ITEM-S400: Impasse Procedure, if necessary, for Management and Labor Organizations currently involved in contract negotiations.

**MAYOR SANDERS' RECOMMENDATION:**

HEARING HELD

Carry out an Impasse Procedure, if necessary, for Municipal Employees Association, AFSCME Local 127, and the Deputy City Attorney Association. Staff recommends that the Council take separate votes on each labor organization.

**SUPPORTING INFORMATION:**

The current Memoranda of Understanding and Council Policy 300-6 provide that the City's Labor Organizations have a right to a Council hearing on any issues at impasse at the conclusion of contract negotiations. The purpose of the impasse hearing shall be to identify and specify in writing the issue or issues that remain in dispute according to Council Policy 300-6.

Briggs/Chadwick

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:12 p.m. - 2:47 p.m.;  
4:23 p.m. - 5:48 p.m.;  
5:56 p.m. - 7:51 p.m.;  
9:58 p.m. - 10:27 p.m.)

Motion by Madaffer to impose the terms of the Mayor's Last, Best, and Final offer on the Municipal Employee's Association which includes MEA's counterproposal on the Pension, the Mayor's proposal on health care and no salary increase. Second by Faulconer. Failed: Peters-nay, Faulconer-yea, Atkins-nay, Young-nay, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-nay.

Motion by Madaffer to impose the terms of the Mayor's Last, Best, and Final offer on AFSCME Local 127. Second by Faulconer. Failed: Peters-nay, Faulconer-yea, Atkins-nay, Young-nay, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-nay.

Motion by Madaffer to impose the terms of the Mayor's Last, Best, and Final offer on the Deputy City Attorney's Association. Second by Faulconer. Failed: Peters-nay, Faulconer-yea, Atkins-nay, Young-nay, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-nay.

**REPORT OUT OF CLOSED SESSION:**

None.

**NON-DOCKET ITEMS:**

None.

**ADJOURNMENT:**

The meeting was adjourned by Council President Peters at 10:27 p.m..

FILE LOCATION: MINUTES

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