

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, JUNE 16, 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 3:05 p.m. The meeting was adjourned by Council President Peters at 3:52 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-not 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 Member Young.

FILE LOCATION: MINUTES

COUNCIL COMMENT:

COUNCIL COMMENT 1:

Council Member Madaffer commented on the success of the U.S. Open at Torrey Pines.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 3:02 p.m. - 3:04 p.m.)

COUNCIL COMMENT 2:

Council Member Atkins commented on the U.S. Open at Torrey Pines; wished Council President Peters a happy birthday on June 17; and on drug paraphernalia being sold in smoke shops.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 3:04 p.m. - 3:07 p.m.)

CLOSED SESSION ITEMS:

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

**CS-1 *County of San Diego v. Redevelopment Agency of the City of San Diego, et al.*
San Diego County Superior Court Case No. GIC 850455
(Consolidated with San Diego County Superior Court Case No. GIC 850829)**

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 17, 2008

DCA Assigned: G. Spitzer

This litigation regards the validity of City Council's adoption of the Grantville Redevelopment Plan, Ordinance No. O-19380. The City Council and the Redevelopment Agency will confer with the City Attorney regarding settlement and the status of litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:07 p.m. - 3:07 p.m.)

Council President Peters closed the hearing.

CS-2 *Hoa Nguyen v. City of San Diego, et al.*
San Diego Superior Court Case No. 37-2008-00080921-CU-OE-CTL

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 17, 2008

DCA Assigned: K. Zlotnik

The matter involves a sexual harassment and discrimination lawsuit against the City and a former employee. The City Attorney requests that the Mayor and City Council consider the legal representation of the former employee and a settlement demand in Closed Session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:07 p.m. - 3:07 p.m.)

Council President Peters closed the hearing.

CS-3 *Steven A. Sloan, et al. v. City of San Diego*
San Diego Superior Court Case No. GIC 848641

Joseph A. Lopez, et al. v. City of San Diego
San Diego Superior Court Case No. GIC 869054

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 17, 2008

DCA Assigned: K. Zlotnik

The two matters are lawsuits against the City concerning the exclusion of Canine Care Pay (*Sloan*) and Motorcycle Care Pay (*Lopez*) from the calculation of retirement benefits for police officers assigned to the Canine and Motors Units. The City Attorney requests that the Mayor and City Council consider a proposed settlement of the matters in Closed Session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:07 p.m. - 3:07 p.m.)

Council President Peters closed the hearing.

**CS-4 City of San Diego v. Vinson & Elkins
Orange County Superior Court Case No. 06CC12932**

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 17, 2008

EACA Assigned: D. McGrath

In Closed Session, Executive Assistant City Attorney Don McGrath, II, and outside counsel, Bryan Vess will brief the City Council regarding the status of this matter filed in Superior Court and seek direction regarding an offer to settle this matter as a result of mediation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:07 p.m. - 3:07 p.m.)

Council President Peters closed the hearing.

Conference with Legal Counsel - anticipated litigation - initiation of litigation, pursuant to California Government Code Section 54956.9(c):

CS-5 Number of Cases: One

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 17, 2008

DCA Assigned: G. Spitzer

This matter involves potential litigation with CalTrans related to condemnation. The City Attorney will provide legal advice and a status of settlement discussions.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:07 p.m. - 3:07 p.m.)

Council President Peters closed the hearing.

Conference with Real Property Negotiator, pursuant to California Government Code Section 54956.8:

CS-6 Property: 5036-60 Sterling Court, San Diego (south end of Winona Avenue)

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 17, 2008

Agency Negotiator: Jim Barwick, Director, Real Estate Assets Department

Negotiating Party: Larry Zajonc

Under Negotiation: Price and terms of payment

DCA Assigned: K. Davies

Discussion of negotiations regarding the offer received from Larry Zajonc for the sale of his property to the City for a proposed park (Fox Canyon).

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:07 p.m. - 3:07 p.m.)

Council President Peters closed the hearing.

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

**CS-7 Stephen Cicero v. City of San Diego
San Diego Superior Court Case No. 37-2008-00085133-CU-PT-CTL**

REFERRED TO CLOSED SESSION OF TUESDAY, JUNE 17, 2008

This matter is a lawsuit filed by the above Plaintiff seeking to invalidate the City of San Diego Ordinance No. O-19747 which established the General Fund Deferred Maintenance Capital Improvement Financing. In Closed Session, the Mayor will request the retention of outside legal counsel to assist in this action.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:07 p.m. - 3:07 p.m.)

Council President Peters closed the hearing.



ITEM-200: Step VI Grievance from the San Diego Police Officers Association in
Regard to a Uniformed Officer.

STAFF'S RECOMMENDATION:

Take the following action:

RETURNED TO THE MAYOR

Hear the grievance and decide the outcome.

STAFF SUPPORTING INFORMATION:

The San Diego Police Officers Association (POA), on behalf of a Uniformed Officer, has appealed the Step 5 grievance response prepared by the Labor Relations Department on behalf of the Mayor to the full City Council. Step 6 of the Grievance Procedure, Article 24 of the Memorandum of Understanding (MOU) between the City and POA provides for this option.

The appealed aspect of the grievance alleges violations of the Public Safety Officers' Procedural Bill of Rights (POBR), Article 64 of the MOU, and San Diego Police Department Procedure 5.08 in that the POA asserts that the private notes on a supervisor's (Lieutenant) desk calendar/blotter qualify as a "personnel file" under the POBR and that the Uniformed Officer has the right to review and rebut any negative comments the desk calendar/blotter may contain. The grievance was initiated at Step 3 of the grievance procedure, where it was heard by a Police Captain and denied on March 16, 2007. This decision was appealed to Step 4 where it was heard by an Assistant Chief of Police and denied on April 17, 2007. The Step 4 decision was appealed to Step 5, where it was heard by Labor Relations Officer Thom Harpole and denied by letter dated June 8, 2007.

It is staff's view that no violations of POBR, Article 64 of the MOU, and San Diego Police Department Procedure 5.08 have occurred.

The notes in question are used solely as a memory aide, convey limited meaning without the interpretation of their author, are not centrally stored or generally accessible by others, and would not be used for any personnel purpose based on City policy and well-established practice. Staff is confident with their determination. To consider the personal/private notes of a supervisor a "personnel file" pursuant to POBR would be precedent setting and have broad implications with detrimental impact on Police Department operations, and ultimately significantly limit the ability of all supervisors (excepting those with extraordinary memory) to manage critical public safety personnel.

Please note that the names of all public safety officers involved in this grievance are kept confidential in order to ensure compliance with the POBR.

FISCAL CONSIDERATIONS: None.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

- San Diego Police Department
- San Diego Police Officers Association
- Police Department Personnel Procedures

EOC INFORMATION: Not Applicable.

Chadwick/Goldstone

Staff: Scott Chadwick - (619) 236-5587

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:07 p.m. – 3:07 p.m.)

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



ITEM-201: Fiscal Year 2008 Year-End Appropriation Adjustments.

(See Report to the City Council No. 08-080 Revised.)

TODAY'S ACTION IS:

Introduce and adopt the following ordinance:

(O-2008-161) INTRODUCED AND ADOPTED AS ORDINANCE
O-19760 (NEW SERIES)

Introduction and adoption of an Ordinance accepting the Mayor's Report;

Amending Ordinance O-19652 (NS) 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 City Auditor and Comptroller to:

- a) Reduce General Fund (100) expenditure appropriations by \$2,907,340 and reduce revenue budget by \$5,432,168 from \$2,524,828 of General Fund Unallocated Reserves, as follows:
 - i. Increase Fire-Rescue Department (120) expenditure appropriations by up to \$4,362,000 and increase revenue budget by \$2,900,000,
 - ii. Increase City Attorney Department (45) expenditure appropriations by up to \$498,000 and reduce revenue budget by \$3,400,000,
 - iii. Increase Library Department (310) expenditure appropriations by up to \$405,000,
 - iv. Increase Development Services Department, Neighborhood Code Compliance Division (75) expenditure appropriations by up to \$371,000 and increase revenue budget by \$102,000,
 - v. Increase Citywide Program Expenditures Department (601) expenditure appropriations by up to \$233,000 and transfer up to the same amount to the Recycling and Refuse Disposal Funds (41210 and 41200) for reimbursement of waste disposal and recycling fee waivers,
 - vi. Increase Family Justice Center Department (47) expenditure appropriations by up to \$37,000 and increase revenue budget by \$34,000,

- viii. Increase Special Events Department (80) expenditure appropriations by up to \$17,000,
 - ix. Reduce General Services Department (various) expenditure appropriations by \$3,000,000 and reduce revenue budget by \$1,200,000,
 - x. Reduce Citywide Program Expenditures Department (601) expenditure appropriations by \$1,980,339.60 and reduce prior transfer of same amount to the Public Liability Fund (81140),
 - xi. Reduce Office of the City Treasurer (52) expenditure appropriations by \$1,750,000 and reduce revenue budget by \$2,700,000,
 - xii. Reduce Engineering and Capital Projects Department (various) expenditure appropriations by \$900,000,
 - xiii. Reduce City Auditor and Comptroller Department (50) expenditure appropriations by \$600,000 and reduce revenue budget by \$450,000,
 - xiv. Reduce Financial Management Department (55) expenditure appropriations by \$600,000, and
 - xv. Reduce Major General Fund Revenues (1) revenue budget by \$718,168;
- b) Transfer appropriations between General Fund (100) departments as necessary where the net transfer does not result in an increase to either department's current budget;
- c) Adjust the City Planning and Community Investment Department (General Fund 100, Dept. 65) expenditure appropriation to Community Parking Districts as necessary and from appropriate sources;
- d) Increase Appropriated Reserves (General Fund 100, Dept. 602) expenditure appropriations by up to \$55,000,000 from the General Fund Unallocated Reserve and transfer up to \$55,000,000 to the General Fund Emergency Reserve Fund (101);
- e) Carryover up to \$1,200,000 of City Planning and Community Investments Department (General Fund 100, Dept. 65) expenditure appropriations to the allocated reserve to fund community plan updates;
- f) Increase the Special Promotional Programs (Transient Occupancy Tax Fund 10220, Dept. 924) expenditure appropriations by an amount not to exceed the 1 cent of Transient Occupancy Tax (TOT) discretionary funding from additional revenues and transfer up to the 1 cent of discretionary TOT funding to the General Fund;

- g) Increase Central Stores Internal Service Fund (50010) expenditure appropriations by up to \$4,815,000 from an equal amount of additional revenues;
- h) Increase Qualcomm Stadium Fund (10330) expenditure appropriations by up to \$450,000 from fund balance and transfer up to \$1,980,339.60 from the Qualcomm Stadium Fund (10330) to the Public Liability Fund (81140) for payment to the San Diego Chargers;
- i) Increase Redevelopment Fund (10275) expenditure appropriations by up to \$139,300 from an equal amount of additional revenues;
- j) Increase appropriations from appropriate available sources for any additional, unforeseen needs and to make any additional appropriation adjustments and fund transfers that may be necessary to reconcile revenues to expenditures; and
- k) Remove \$21,779,180 of TransNet I Commercial Paper (Fund 30306) appropriations in the Capital Improvements Program in the projects and amounts listed in Attachment V: TransNet I Commercial Paper Appropriations.

BUDGET AND FINANCE COMMITTEE'S RECOMMENDATION:

On 5/21/2008, Budget voted 4 to 0 to forward the report to the full City Council without recommendation and a request that the Independent Budget Analyst provide the Council with an analysis. (Councilmembers Faulconer, Atkins, Frye, and Hueso voted yea. Councilmember Madaffer not present.)

SUPPORTING INFORMATION:

The Year-End Budget Monitoring Report, #08-080, recommends additional authorities and appropriation adjustments, based on year-end projections, to balance the General and non-general funds prior to year-end closing.

- A. In the General Fund, it is requested that a total of \$2.9 million of expenditure appropriations and \$5.4 million of revenue budget be reduced. This will require \$2.5 million from the General Fund Unallocated Reserve.

- B. Departments with large projected positive expenditure variances are recommended for appropriation reductions in order to minimize the variance between year-end projections and actual year-end expenditures. Finally, a reduction in revenue budget in the Major General Fund Revenues is requested to bring the net year-end projection variance to zero.
- C. Authority is requested to transfer salary appropriations in one General Fund department for fringe and/or non-personnel appropriations in another General Fund department with no net increase to either departments' total budget. This will allow departments to remain balanced, within the Charter requirement that salary appropriations may not be used for any other purpose.
- D. Authority is requested to adjust the appropriated expenditure to the Community Parking Districts within the City Planning and Community Investment Department in order to comply with Council Policy 100-18.
- E. In order to establish the General Fund Emergency Reserve (per City Reserve Policy, O-19679), it is necessary to provide the authority to increase the Appropriated Reserve expenditure appropriations by the amount necessary, up to an additional \$55.0 million, to be transferred to the Emergency Reserve.
- F. It is requested to carryover up to \$1.2 million for the City Planning and Community Investments Department into the allocated reserve for the Uptown and Otay Mesa Community Plan updates.
- G. Authority is requested to increase the budgeted transfer to the General Fund from Special Promotional Programs, based on available Transient Occupancy Tax revenues, in an amount not to exceed the 1 cent of Council discretionary funding allowable by Municipal Code and Council Policy 100-03.
- H. The Central Stores Internal Service Fund requires a \$4.8 million increase in expenditure appropriations with an equal increase in revenue budget.
- I. It is requested to increase expenditure appropriations by \$450,000 from fund balance in the Qualcomm Stadium Fund and to transfer the \$2.0 million to the Public Liability Fund for payment to the San Diego Chargers.
- J. The Redevelopment Fund requires a \$139,300 increase in expenditure appropriations with an equal increase in revenue budget to fund unbudgeted rent expenses and the Southeastern Economic Development Corporation performance audit.

- K. The authority to increase appropriations from appropriate available sources is requested in order to allow the City Auditor and Comptroller to adjust appropriations as needed for unforeseen events in order to close Fiscal Year 2008 with funds in balance.
- L. The de-appropriation of \$21.8 million of TransNet I Commercial Paper from capital projects is necessary due to the completion of the TransNet I program at the end of this fiscal year.

FISCAL CONSIDERATIONS:

The net impact of the General Fund year-end projections and requested adjustments, including the carryover of \$1.2 million, is \$2.5 million from the General Fund Unallocated Reserve. The appropriation and transfer of up to an additional \$55.0 million from the General Fund Unallocated Reserve is necessary to establish the Emergency Reserve. Adjustments are also requested for the TOT Fund, Central Stores Internal Service Fund, Qualcomm Stadium Fund, and Redevelopment Fund. In addition, it is requested to de-appropriate of TransNet I Commercial Paper.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

Budget and Finance Committee review on May 21, 2008.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: None.

Tirandazi/Lewis

NOTE: Today's action is the second public hearing and introduction and adoption of the Ordinance. See Item 150 on the docket of Monday, June 9, 2008, for the first public hearing.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:08 p.m. - 3:08 p.m.)

MOTION BY ATKINS TO INTRODUCE, DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by Young. Passed by the following vote: Peters-yea, Faulconer-not present, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-202: Response of the City Council to the Grand Jury Report “History Hysteria: Historical Resources in the City of San Diego.”

(See Independent Budget Analyst’s Report No. 08-58.)

INDEPENDENT BUDGET ANALYST’S RECOMMENDATION:

Adopt the following resolution:

(R-2008-1134) ADOPTED AS AMENDED AS RESOLUTION R-303834

Approving and adopting as its own the response to the 2007-2008 San Diego County Grand Jury Report filed March 19, 2008, and titled “History Hysteria: Historical Resources in the City of San Diego,” as set forth in IBA Report No. 08-58 dated June 4, 2008;

Authorizing and directing the City Council President, on behalf of the San Diego City Council, to execute and deliver the above-described response to the Presiding Judge of the San Diego County Superior Court no later than June 27, 2008.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:14 p.m. – 3:49 p.m.)

MOTION BY HUESO TO ADOPT THE RESOLUTION ALONG WITH THE PROPOSED AMENDMENTS AND ADDITIONAL LANGUAGE AS STATED IN THE MEMORANDUM BY COUNCIL MEMBER HUESO REGARDING VILLA MONTEZUMA. Second by Frye. Passed by the following vote: Peters-yea, Faulconer-not present, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-250: SUBMISSION OF BALLOT PROPOSALS

City Council Policy 000-21 establishes the procedure for submittal of ballot proposals. The Council Policy states that members of the public shall submit proposals to the City Clerk, who shall then transmit them promptly to the Rules Committee for review and comment. The proposals must be submitted in time to allow the City Clerk to list on the Council Docket 127 days prior to the election the ballot proposals which have been referred to Council following Rules Committee review.

Therefore, the City Clerk's Office has established the following administrative guidelines for the November 4, 2008, election:

<u>DAY</u>	<u>DATE</u>	<u>DAYS BEFORE ELECTION</u>	<u>EVENT</u>
Friday	6/20/08	137	LAST DATE (10:00 a.m.) for public, departments and agencies to submit ballot proposals to City Clerk for review by Rules Committee
Wednesday	6/25/08	132	Rules Committee review
Monday	6/30/08	127	Council Docket (PUBLIC NOTICE) lists proposals referred by Rules Committee
Monday	7/7/08	120	Council adopts propositions for ballot; directs City Attorney to prepare ordinances
Monday	7/28/08	99	Council adopts ordinances prepared by City Attorney
Friday	8/8/08	88	Last day for City Clerk to file with Registrar of Voters all elections material
Thursday	8/21/08	75	Last day to file ballot arguments with City Clerk

If you have questions, please contact the Office of the City Clerk at (619) 533-4025.

ITEM-251: Notice of Pending Final Map Approval – Markey Mixed Use.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “Markey Mixed Use” (T.M. No. 203075/PTS No. 154014), located on the east side of Del Rey Street southerly of Garnet Avenue in the Pacific Beach Community Plan Area in Council District 2, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

ITEM-252: Notice of Pending Final Map Approval – San Juan Condominiums.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “San Juan Condominiums” (T.M. No. 377016/PTS No. 96769), located between Ocean Front Walk and Strand Way north of San Juan Place in the Mission Beach

Community Plan Area in Council District 2, a copy of which is available for public viewing at the Office of the San Diego City Clerk. Specifically, the City Engineer has caused the map to be examined and has made the following findings:

- (1) The map substantially conforms to the approved tentative map, and any approved alterations thereof and any conditions of approval imposed with said tentative map.
- (2) The map complies with the provisions of the Subdivision Map Act and any local ordinances applicable at the time of approval of the tentative map.
- (3) The map is technically correct.

Said map will be finalized and recorded unless a valid appeal is filed. Interested parties will have 10 calendar days from the date of this Council hearing to appeal the above findings of the City Engineer to the City Council. A valid appeal must be filed with the City Clerk no later than 2:00 p.m., 10 calendar days from the date of this Notice stating briefly which of the above findings made by the City Engineer was improper or incorrect and the basis for that conclusion. If you have questions about the approval findings or need additional information about the map or your appeal rights, please feel free to contact Anne Hoppe at (619) 446-5290.

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Peters at 3:52 p.m. in honor of the memory of:

Love! Waiters at the request of Council Member Atkins.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:49 p.m. – 3:52 p.m.)

Elizabeth S. Maland, City Clerk
City of San Diego