

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, SEPTEMBER 22, 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 Member Young at 2:04 p.m. Council Member Young recessed the meeting at 4:04 p.m. for the purpose of a break. Council Member Young reconvened the meeting at 4:11 p.m. with Council President Peters, Council Member Maienschein, and Council President Pro Tem Madaffer not present. The meeting was adjourned by Council Member Young at 5:37 p.m.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Peters-not 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-not present-Excused by R-304127, due to travel
- (8) Council Member Hueso-present

Clerk-Maland (sr)

FILE LOCATION: MINUTES



ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Peters-not 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-not present
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES



ITEM-10: INVOCATION

Invocation was given by Father Tom Phillips of St. Dunstan's Episcopal Church.

FILE LOCATION: MINUTES



ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Hueso.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

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

**CS-1 Lexington Insurance Company v. City of San Diego
San Diego Superior Court Case No. 37-2008-00075157-CU-CI-CTL**

REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 23, 2008

DCA Assigned: B. Hsu

Plaintiff claims damages as a result of flooding at its insured, the San Diego Unified School District's property at La Jolla High School on January 9, 2005, following a City water main rupture. The City Attorney will discuss possible settlement of the case in closed session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:36 p.m. - 5:36 p.m.)

Council Member Young closed the hearing.

CS-2 *Linda Woodbury v. City of San Diego, et al.*

San Diego Superior Court Case No. 37-2007-00068277-CU-WT-CTL

REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 23, 2008

DCA Assigned: K. Phillips

Plaintiff, a former City of San Diego employee, sued the City for wrongful termination including failure to accommodate her disability and retaliation for her numerous complaints about her lack of accommodations. In Closed Session, the City Attorney will present a settlement proposal.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:36 p.m. - 5:36 p.m.)

Council Member Young closed the hearing.

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

CS-3 Agency Negotiator: Steven Berliner, Scott Chadwick, Thom Harpole,
Alan Hersh, and Jessica Falk Michelli

Employee Organizations: Municipal Employees Association, AFSCME Local 127
AFL-CIO, Local 145 International Association of
Firefighters

REFERRED TO CLOSED SESSION OF TUESDAY, SEPTEMBER 23, 2008

DCAs Assigned: A. Hersh/J. Falk Michelli

Conference with Labor Negotiators regarding relationship between BPR and Managed
Competition in light of recent PERB decision.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:36 p.m. - 5:36 p.m.)

Council Member Young closed the hearing.



[ITEM-150:](#) Equal Opportunity Contracting Program-Final SCOPE Recommendations/
Bi-Annual Statistics.

(See Report from the City Attorney dated 7/3/2008; Administration Department's
7/9/2008, Power Point; and Report to the City Council No. 08-099.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2009-289) ADOPTED AS AMENDED AS RESOLUTION R-304143

Authorizing and accepting staff's final recommendations to implement changes to SCOPE without the bonus point element;

Adopting the proposed Council Policy for Equal Opportunity Contracting No. 300-_____;

Instructing the City Clerk to add Council Policy 300-_____ titled "Equal Opportunity Contracting" to the Council Policy Manual.

**PUBLIC SAFETY AND NEIGHBORHOOD SERVICES COMMITTEE'S
RECOMMENDATION:**

On 7/9/2008, PS&NS voted 3 to 0 to refer the item to the City Council. Councilmember Faulconer recommended that the Administration Department continue to work to resolve the few remaining terms in dispute prior to adoption by Council. Chair Young asked Ms. Fischle-Faulk to return to PS&NS in September with a report regarding what additional resources might be needed by the EOC Program. (Councilmembers Faulconer, Young, and Maienschein voted yea. Councilmember Hueso not present.)

SUPPORTING INFORMATION:

At the Public Safety and Neighborhood Services Committee meeting of July 9, 2008, staff presented an Equal Opportunity Contracting Program Update, final recommendations for improving SCOPE and revisions to Council Policy 300-10. The Committee accepted staffs recommendations, referred the item to City Council and Councilmember Faulconer recommended that staff continue to work to resolve the few remaining terms disputed by the Associated General Contractors of America (AGC) prior to adoption by Council.

Based on feedback received at an August 27, 2008, stakeholders meeting and input from Consultant Franklin Lee, the "bonus point" element of SCOPE is not being brought forward for consideration at this time. Additional discussion is required to further refine the parameters of the program, develop programmatic definitions and outline an implementation strategy. Several meetings will be held to prepare a final recommendation.

An updated statistical report for construction projects that identifies the gender and ethnicity of the “Not Indicated” totals included in the July 9, 2008, PS&NS Report. Letters were sent to prime contractors requesting the missing information. The majority of contractors responded to our request. However, a small number of contractors were unwilling to either obtain or provide this information. The Bidders Registration System has been redesigned to make ethnicity and gender required fields to address this issue. In addition, we will continue to explore options (including replacing CIMS) to further ensure data accuracy and an effective interface with the City’s ERP System. Additional outreach activities have been included as well. The purpose of our outreach is primarily to broaden the base of potential bidders on City contracts by: identifying potential bidders, encourage potential bidders to participate in City contracting opportunities, advising organizations of City requirements, and encourage businesses to register with the City and to apply for certification status, if appropriate. Staff recently met with representatives of the Architect and Engineering Associations to discuss how to improve our ability to proactively recruit and retain a diverse business base to compete and be awarded contracts with the City and assist with the recruitment and retention of a diverse workforce. Quarterly meetings will be established to develop a strategic plan beginning in late fall.

To address Councilmember Faulconer’s recommendation, staff met with Jim Ryan, Executive Vice President, AGC and Brad Barnham, Vice-President, Governmental Relations, AGC to discuss their three areas of concern which included:

1. Requiring the first five apparent low bidders to submit SCOPE documentation - The current program requires the first three apparent low bidders to submit documentation and consultant Franklin Lee recommended all bidders submit documentation. Staff’s recommendation to require the first five apparent low bidders to submit documentation represents a compromise. AGC representatives indicated they do not support any changes to the existing requirement of the first three apparent low bidders. Their position did not change at our meeting. Staff maintains the recommendation for the first five apparent low bidders to submit the documentation to ensure the integrity of good faith efforts/documentation. As an additional compromise, staff proposes requiring the first five apparent low bidders to submit SCOPE documentation for contracts valued at \$1 million or greater.

2. Requiring the submittal of SCOPE documentation within three working days until Bidders Registration Program is able to facilitate automatic notices. The current program requires documentation to be submitted within five working days and consultant Franklin Lee recommended requiring documentation submittal within one day once Bidders Registration Program is able to facilitate automatic notices. Staff's recommendation of requiring documentation within three working days until Bidders Registration Program is able to facilitate automatic notices represents a more rigorous immediate requirement and a compromise on the timeframe after the Bidders Registration Program facilitates automatic notices. AGC representatives indicated they do not support any changes to the existing requirement of documentation submittal within five working days. Their position did not change at our meeting. Based on an earlier discussion with a contractor who bids on City projects, staff is willing to compromise by requiring the documentation submittal within two working days once the Bidders Registration is able to facilitate automatic notices.
3. Provision for EOCP to authorize direct payment to subcontractors if retention is withheld solely for purposes of contractor failure to submit their Final Summary Report - While this was initially an issue, AGC representatives have indicated with the clarification provided they have no issues with this requirement. Staff recommends the City Attorney review and formally respond to consultant Franklin Lee's clarified recommendation.

FISCAL CONSIDERATIONS: None with this action.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Public Safety and Neighborhood Services Committee accepted staff's recommendations, referred the item to City Council at their July 9, 2008, meeting with Councilmember Faulconer's recommendation that staff continue to work to resolve the few remaining terms disputed by the Associated General Contractors of America (AGC) prior to adoption by Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

See Page 2 of Report No. 08-099.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include members of the business community and San Diego taxpayers.

Fischle-Faulk/Goldstone

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:07 p.m. – 4:02 p.m.)

MOTION BY HUESO TO ADOPT STAFF'S RECOMMENDATION WITH THE REQUIREMENT THAT ALL WAIVERS EXCEPT THOSE BASED ON AN EMERGENCY MUST COME BEFORE COUNCIL FOR APPROVAL; REFER THE WAIVER PROVISIONS TO THE INDEPENDENT BUDGET ANALYST AND EQUAL OPPORTUNITY CONTRACT DEPARTMENT TO COME BACK TO PUBLIC SAFETY & NEIGHBORHOOD SERVICES AND TO COUNCIL FOR FINAL APPROVAL. Second by Atkins. Passed by the following vote: Peters-not present, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-yea.



ITEM-200: Hanalei Hotel. Appeal of the Environmental Determination, requesting a Site Development Permit and Planned Development Permit to add a 10,000 square-foot meeting facility to the existing hotel. (Mission Valley Community Area. District 6.)

Matter of the appeal by Randy Berkman, River Valley Preservation Project (RUPP), Lynn Mulholland, Mission Valley Community Council (MVCC), James A. Pough, San Diego Audubon Society and Evelyn Shively, Sierra Club, of the Planning Commission's decision in approving an application for a Site Development Permit to construct an approximately 10,000 square-foot addition for an exhibit hall on the existing parking area of the Hanalei Hotel at 2270 Hotel Circle.

(See Report to Planning Commission No. PC-08-088/Mitigated Negative Declaration No. 114212/Site Development Permit No. 449629/Planned Development Permit No. 559063/Project No. 114212.)

STAFF'S RECOMMENDATION:

Take the following actions:

Subitem-A: (R-2009-) CONTINUED TO MONDAY, OCTOBER 6, 2008

Granting or denying the appeal and upholding or overturning the decision by the Planning Commission certifying Mitigated Negative Declaration (MND) No. 114212, and adopting Mitigation Monitoring and Reporting Program (MMRP);

Certifying that the information contained in Mitigated Negative Declaration No. 114212, has been completed in compliance with the California Environmental Quality Act of 1970 (California Public Resources Code Section 21000 et seq.) as amended, and the State guidelines thereto (California Administrative Code Section 15000 et seq.), that the report reflects the independent judgment of the City of San Diego as Lead Agency and that the information contained in said report, together with any comments received during the public review process, has been reviewed and considered by the City of San Diego City Council;

That the City of San Diego City Council finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that said Negative Declaration is hereby approved;

That pursuant to California Public Resource Code, Section 21081.6, the City of San Diego City Council hereby adopts the Mitigation Monitoring and Reporting Program, or alterations to implement the changes to the project as required by this body in order to mitigate or avoid significant effects on the environment, a copy of which is attached hereto and incorporated herein by reference;

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

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

Subitem-B: (R-2009-) CONTINUED TO MONDAY, OCTOBER 6, 2008

Granting or denying the appeal and granting or denying Site Development Permit (SDP) No. 449629, with appropriate findings to support Council action;

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

Subitem-C: (R-2009-) CONTINUED TO MONDAY, OCTOBER 6, 2008

Granting or denying the appeal and granting or denying Planned Development Permit (PDP) No. 559063, with appropriate findings to support Council action;

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

OTHER RECOMMENDATIONS:

Planning Commission on July 24, 2008, voted 5-0-2 to deny.

Ayes: Schultz, Naslund, Ontai, Otsuji, Golba
Not present: Griswold, Smiley

The Mission Valley Community Planning Group has recommended approval of this project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

This action is an appeal of the environmental determination (Mitigated Negative Declaration No. 114212). The environmental document was prepared for the 10,000 square foot expansion of a conference facility to the Hanalei Hotel project.

STAFF RECOMMENDATION:

DENY the appeal and **CERTIFY** MND No. 114212.

EXECUTIVE SUMMARY:

This item is an appeal of the environmental determination to prepare a Mitigated Negative Declaration (MND No. 114212) and accompanying Mitigation, Monitoring and Reporting Program for a conference room addition to the existing Hanalei Hotel. All other administrative appeals have been exhausted. The Hearing Officer approved the project and the Planning Commission upheld that decision by unanimously denying the subsequent appeal.

The Hanalei Hotel is requesting a 10,000 square foot expansion of their existing conference facility. The hotel property is located at 2270 Hotel Circle North in the Mission Valley Community Plan area (Attachment 1). The site is directly adjacent to both the Interstate 8 Freeway on the south and the San Diego River on the north. The 9.7 acre site is surrounded by commercial and visitor uses to the east and west within the Valley. The project requires a Site Development Permit because the property is within the floodplain which is identified in the Land Development Code as a Special Flood Hazard Area. The floodplain includes the floodway and the floodway fringe. The proposed addition is within the floodway fringe. The Land Development Code defines the floodplain as Environmentally Sensitive Lands (ESL) and establishes the applicable development regulations and entitlement process for development within the flood plain. The project also requires a Planned Development Permit to implement the applicable provisions of the Atlas Specific Plan. The proposed addition was reviewed by staff in accordance with State and Local regulations, and staff determined the addition to be a minor improvement to the previously developed site.

The appeal of the environmental determination is generally based on the consistency of the project with the Atlas Specific Plan and asserts that significant environmental impacts have not been addressed in the Mitigated Negative Declaration (Attachment 4). The appeal contends required improvements mandated by the Specific Plan have not been implemented. These improvements include the 100-year channelization of the adjacent San Diego River and a requirement that 75% of the project's required off-street parking is located within a parking structure. The appeal also contends that proposed surface parking should not be permitted within the 30-foot river buffer.

The appeal further states that the project reviews should have required a traffic study, a site specific cultural resource study and a floodwater displacement study. And lastly, the appeal contends that the project is inconsistent with City Council Policy 600-14: Development within Areas of Special Flood Hazards.

Staff disagrees with the appeal arguments and believes Mitigated Negative Declaration No. 114212 considered all potential impacts to the environment and that the Mitigation, Monitoring and Reporting Program (MMRP) provide the sufficient mitigation for the proposed project. Staff agrees with both FEMA and the State Water Resource Board, which considers river channelization an outdated method of flood protection. Channelization projects identified within the Atlas Plan will not be implemented with other Mission Valley projects in the future. Regarding the issue of structured parking, staff concluded there is no reasonable nexus between a relatively small improvement (10,000 square feet or 4% of the existing floor area) and the requirement to build a 400-car parking structure. Also, since no rooms are being added to the hotel, the intensity of the land use on the site is not increasing. As for parking within the 30-foot river buffer, staff considers that as an existing condition. The parking area was constructed in the existing configuration as part of the hotel expansion in 1974, while the buffer was placed over the site in 1988, when the Atlas Plan was adopted. No new pavement is proposed with this application and the property owner can re-stripe the existing pavement at will with no permit requirements.

Staff determined that no additional environmental studies were required for traffic, cultural resources and flood displacement as the appeal contends because the thresholds requiring such studies were not met with the minor addition. And finally, staff determined that the proposed noise mitigation outlined within the MND is adequate in that it was developed in coordination with the California Department of Fish and Game and the U.S. Fish and Wildlife Service pursuant to the 1997 Implementing Agreement between the City of San Diego and those agencies.

Lastly, staff determined that the proposed project is consistent with Council Policy 600-14. The policy does not restrict development in the Special Flood Hazard Areas, which includes the floodway fringe, but rather seeks to promote the public health, safety and general welfare, and to minimize public and private losses due to flooding and flood conditions. The project has been reviewed and conditioned for compliance with all FEMA standards for development within the flood plain and no deviations to the Environmentally Sensitive Lands Regulations of the Land Development Code are requested as a part of the project.

The Mitigated Negative Declaration was prepared, distributed and finalized in accordance with all applicable CEQA guidelines and City of San Diego land use regulations and policies. The environmental analysis focused on all potential impacts the proposed project might have on the surrounding community and determined the appropriate mitigation to reduce potential impacts below a level of significance.

FISCAL CONSIDERATIONS:

There are no fiscal considerations with this project. All costs associated with processing this application are paid for by the applicant.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On May 28, 2008, the Hearing Officer approved the project. That decision was appealed and on July 24, 2008, the Planning Commission voted 5-0-2 (Commissioners Griswold and Smiley absent) to deny the appeal and approve the project. On August 1, 2007, the Mission Valley Unified Planning Committee voted 15-1-0 to approve the proposed project as conditioned by the staff.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Dan Weber, Hanalei LLC (Owner) and Janay Kruger, Kruger Development (Applicant)

Broughton/Anderson/PH

LEGAL DESCRIPTION:

The project site is located at 2270 Hotel Circle North in the MVPD-MV/-M/SP and the OF-1-1 Zones of within Atlas Specific Plan and the Mission Valley Community Plan Area.

Staff: Patrick Hooper – (619) 557-7992

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 4:13 p.m. - 5:36 p.m.)

Testimony in favor of the appeal by Randy Berkman, Ellen Shively, Lynn Mulholland, and Barbara Winton.

Testimony in opposition of the appeal by Dan Weber and Joseph Wong.

Motion by Faulconer to continue to Monday, October 6, 2008, for further review.
Second by Young. Failed. Peters-not present, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-nay, Madaffer-not present, Hueso-yea.

MOTION BY FRYE TO CONTINUE TO MONDAY, OCTOBER 6, 2008, TO ALLOW APPELLANT TO BE PRESENT. Passed by the following vote: Peters-not present, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, Hueso-yea.

ITEM-250: **Notice** of Pending Final Map Approval – 7064 Fulton Street.

Notice is hereby given that the City Engineer has reviewed and will approve on this day the subdivision of land shown on that certain final map entitled “7064 Fulton Street” (T.M. No. 485209/PTS No. 156753), located on the north side of Fulton Street west of Linda Vista Road in the Linda Vista Community Plan Area in Council District 6, 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 Member Young at 5:37 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 5:37 p.m. – 5:37 p.m.)