

THE CITY OF SAN DIEGO, CALIFORNIA
 MINUTES FOR REGULAR COUNCIL MEETING
 OF
 MONDAY, NOVEMBER 17, 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 4:35 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 4:41 p.m. with Council Member Frye not present. Council President Peters recessed the meeting at 5:51 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 6:03 p.m. with Council Member Maienschein and Council Member Frye not present. The meeting was adjourned by Council President Peters at 6:58 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-not present-(Excused by Resolution R-304576, no reason given)
- (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-not present
- (7) Council Member Madaffer-present
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES



ITEM-10: INVOCATION

Invocation was given by Wayne Wester of First Baptist Church of Mira Mesa.

FILE LOCATION: MINUTES



ITEM-20: PLEDGE OF ALLEGIANCE

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

FILE LOCATION: MINUTES

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member Atkins commented on the format of the Budget Committee meeting scheduled for November 19, 2008.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:11 p.m. - 2:12 p.m.)

COUNCIL COMMENT-2:

Council Member Young thanked Washington Mutual and Community Housing Works for participating in the Smart Money Summit Series.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:12 p.m. - 2:13 p.m.)

CLOSED SESSION ITEMS:

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

**CS-1 *Blackwater Lodge and Training Center, Inc. v. Broughton et al.*
United States District Court Case No. 08-CV-0926-H**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 18, 2008

CDCA Assigned: M. Severson

DCA's Assigned: C. Brock, R. Walters, and G. Schaefer

Plaintiff filed its complaint against the City of San Diego, Kelly Broughton, and Afsaneh Ahmadi in federal district court claiming Plaintiff would be irreparably harmed if it was not allowed to immediately occupy a leased industrial warehouse in the City's planned Otay Mesa Development District to conduct training programs. The City Attorney will discuss the status of the litigation and Plaintiff's proposal for resolution of the case.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:22 p.m. - 5:22 p.m.)

Council President Peters closed the hearing.

**CS-2 *Valerie O'Sullivan v. City of San Diego*
San Diego Superior Court Case No. GIC 826918; Court of Appeal Case No. 826918**

***La Jolla Friends of the Seals, et al v. National Oceanic and Atmospheric
Administration National Marine Fisheries Service, et al.*
U.S. District Court Case No. 08CV1847 WQH POR**

***Animal Protection Rescue League v. State of California, et al.*
United States District Court No. 07-cv-2320-JM-AJB; Ninth Cir. Case No. 08-55319;
United States Supreme Court Case No. 08-561**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 18, 2008

DCA Assigned: G. Schaefer

In the first case, a Superior Court Judge rendered a judgment against the City and ordered the City to dredge Children's Pool Beach. In the second case, a non-profit organization and a citizen recently sued the City and the Federal Government over whether a federal permit is necessary to remove a seal colony at Children's Pool and whether a rope barrier must be installed during the seal pupping season. In the third case, a similar lawsuit was brought against the City and the federal court dismissed the lawsuit. The Plaintiffs have filed an appeal to the United States Supreme Court. The City Attorney needs to discuss in closed session with the Mayor and the City Council the status of all three of these cases.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:22 p.m. - 5:22 p.m.)

Council President Peters closed the hearing.

**CS-3 *Marcus Abbe, et al. [190⁺ Individual Police Officers] v. City of San Diego [POA2]*
United States District Court Case No. 05 CV 1629 DMS; 06 CV 0538**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 18, 2008

EACA Assigned: D. McGrath

DCA Assigned: G. Schaefer

Over 1500 former and current San Diego police officers sued the City in federal court for unpaid wages, including overtime. The jury trial is set to commence on January 5, 2009. The federal court has scheduled a settlement conference for November 21, 2008. The City Attorney needs to brief the Mayor and City Council in closed session on the status of the litigation and confer in preparation for the settlement conference.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:22 p.m. - 5:22 p.m.)

Council President Peters closed the hearing.

**CS-4 *John Trunkey, et al. v. City of San Diego*
Claim No. LP07-0705-1147**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 18, 2008

DCA Assigned: R. Palmucci

This matter involves an un-litigated claim arising out of a water main break that caused extensive damage to the La Jolla home of claimant John Trunkey on December 17, 2006. The City Attorney requests that the Mayor and City Council be informed of a possible settlement of this claim in closed session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:22 p.m. - 5:22 p.m.)

Council President Peters closed the hearing.

**CS-5 *Grantville Action Group v. The City of San Diego, et al.*
San Diego County Superior Court Case No. 37-2008-0092628-CU-MC-CTL**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 18, 2008

DCA Assigned: G. Spitzer

This litigation relates to a challenge to the settlement of the Grantville Redevelopment Plan validation action, which settlement the Redevelopment Agency and City Council approved on July 29, 2008. City Council and the Redevelopment Agency will confer with the City Attorney regarding the litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:22 p.m. - 5:22 p.m.)

Council President Peters closed the hearing.

**CS-6 *Estate of Jacob Faust, et al. v. City of San Diego*
San Diego Superior Court Case No. GIC 880142**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 18, 2008

DCA Assigned: D. Shanahan

The *Estate of Jacob Faust, et al. v. City of San Diego* matter is an action filed by Richard and Lynn Faust for wrongful death-negligence and wrongful death-battery, resulting from the officer-involved shooting death of their son. In closed session, the City Attorney will brief the Mayor and City Council on this matter and recommend settlement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:22 p.m. - 5:22 p.m.)

Council President Peters closed the hearing.

**CS-7 *Chapin and Castleman v. Aguirre and City of San Diego, et al.*
Federal District Court Case No. 05CV1906 R (POR)**

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 18, 2008

DCA Assigned: W. Chung

The *Chapin and Castleman v Aguirre and City of San Diego, et al.*, matter is an action filed by James Chapin and Penny Castleman for wrongful constructive termination. In closed session, the City Attorney will brief the Mayor and the City Council on the status of this matter and discuss the continued retention of outside counsel to handle this litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:22 p.m. - 5:22 p.m.)

Council President Peters closed the hearing.

**CS-8 *Todd Sabin, Stacy Sabin, Stephen Games, Sandra Games v. City of San Diego*
(San Diego Superior Court Case No. 37-2008-00090721-CU-PA-CTL;**

City of San Diego v. Todd Sabin, et al.
San Diego Superior Case No. 37-2008-00081284-CU-OR-CTL)

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 18, 2008

DCA Assigned: M. Dickenson

These matters concern certain property owners' encroachments on a City street and a related settlement agreement resulting from prior litigation. The City Attorney will update the Mayor and City Council on the status of the litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:22 p.m. - 5:22 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-9 In re matter of City of San Diego filing bankruptcy proceedings for reorganization.

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 18, 2008

EACA Assigned: D. McGrath

In closed session, the City Attorney will discuss with the Mayor and the City Council the City of San Diego's possible Chapter 9 proceeding and the need to retain Orrick, Herrington, counsel for the City of Vallejo.

Closed Session Comment 1:

Joy Sunyata commented on the structural budget deficit.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:23 p.m. - 5:26 p.m.)

Council President Peters closed the hearing.

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

CS-10 Agency Negotiator: Scott Chadwick, Jay Goldstone

Employee Organization: AFSCME Local 127

REFERRED TO CLOSED SESSION OF TUESDAY, NOVEMBER 18, 2008

CDCA Assigned: Alan Hersh

DCA Assigned: Bill Gersten

Conference with Labor Negotiators regarding negotiated settlement of language and remedy contained in City-Local 127 MOU Article 44, A. 2, and the taking of possible action in connection therewith.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 5:22 p.m. - 5:22 p.m.)

Council President Peters closed the hearing.



ITEM-200: Two actions related to Special Promotional Programs Appropriation Change and Transient Occupancy Tax Use Waivers.

STAFF'S RECOMMENDATION:

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

Subitem-A: (O-2009-69) INTRODUCED, TO BE ADOPTED TUESDAY,
DECEMBER 2, 2008

Introduction of an Ordinance authorizing the Comptroller to transfer \$142,210 in expenditure appropriations within the Special Promotional Programs (Transient Occupancy Tax Fund 10220) from the Convention Center Expansion Project Fund TOT Transfer Allocation (Dept. 921, Org. 2008) to the entity San Diego World Trade Center/Local Access to Global Markets Allocation (Dept. 922, Org. 2019);

Authorizing the Comptroller to reduce the revenue budget of the Convention Center Expansion Project Fund (Fund 102212, Dept. 102212, Org. 1000) by \$142,210.

Subitem-B: (R-2009-551 Cor. Copy) ADOPTED AS RESOLUTION R-304358

Adoption of a Resolution waiving certain provisions of Council Policy 100-03 as follows:

1. Section B1 of Attachment A is waived for Horton Plaza Theatres Foundation (Horton Plaza) to allow for funding advances;
2. Section B2 of Attachment A is waived for Horton Plaza to allow the organization to incur expenses outside of the fiscal year;
3. Section B4 of Attachment A is waived for Horton Plaza to allow funding for capital or equipment outlay for repairs, maintenance, equipment replacement, equipment purchases and capital reserves to maintain the theatre in operable condition; and
4. Section B3 of Attachment A is waived for San Diego Regional Economic Development Corporation to allow funding for travel, meals, and lodging related to trade shows, conferences, and business meetings in order for the organization to perform the contractual scope of services to the City;

Declaring that nothing contained in this resolution shall be deemed to constitute a waiver of the ban prohibiting the use of TOT funds for the purchase of alcoholic beverages.

STAFF SUPPORTING INFORMATION:

Waivers are requested on certain provisions of Council Policy 100-03 which sets forth the policies and guidelines regarding the funding, budgeting and granting of TOT funds to private non-profit organizations. Waivers of certain provisions of this Policy have been requested in prior years in the Appropriation Ordinance and approved by Council. These waivers were not included in the Fiscal Year 2009 Appropriation Ordinance but are still essential to a few organizations. The provisions are highlighted below along with the organizations requiring the waivers:

Section B-1

Waiving Section B-1 of Council Policy 100-03 allows organizations contracted with the City to receive advances of City funding. With the waiver approved, and according to the contracts in place with these organizations, funding is distributed in advance of expenditures in prorated installments throughout the fiscal year. All financial reporting requirements of the policy must still be met, including monthly and annual reporting of expenditures subject to audit. A waiver to Section B-1 is requested for the following organization for the following purpose:

Horton Plaza Theatres Foundation (Horton Plaza)

Horton Plaza is funded solely by the City's TOT. This waiver is necessary for Horton Plaza to meet its cash flow obligations related to management and maintenance of the theatre. Horton Plaza was formed in 1983 by the City Council to oversee the Lyceum Theatre, which is owned by the City of San Diego's Redevelopment Agency.

Section B-2

Waivers to section B-2 of Council Policy 100-03 allow organizations to incur expenses outside of the City's fiscal year (July 1 - June 30) for which the program is funded. A waiver to section B-2 is requested by the following organization for the following purpose:

Horton Plaza Theatres Foundation (Horton Plaza)

Funding for repairs and maintenance of the theatre may carryover from one fiscal year to the next.

Section B-3

Council Policy 100-03 allows waivers to section B-3 for travel, meals, and lodging when travel, meals, or lodging are required in order for the organization to perform the contractual scope of services to the City. The policy does not allow waivers for alcoholic beverages and further states that alcoholic beverages consumed with meals are not reimbursable with City funds. Waivers to Section B-3 are requested by the following organization for these purposes:

San Diego Regional Economic Development Corporation

Funding is needed for travel, meals, and lodging related to trade shows, conferences, and business meetings in order to attract companies to San Diego.

Section B-4

Waivers to section B-4 of Council Policy 100-03 allow organizations to use City funding for capital or equipment outlay; for purchase of awards, trophies, gifts, or uniforms; and/or for the buildup of reserves. A waiver to section B-4 is requested by the following organization for the following purpose:

Horton Plaza Theatres Foundation (Horton Plaza)

Funding is needed for repairs, maintenance, equipment replacement, equipment purchases, and capital reserves in order to maintain the theatre in operable condition.

Additionally, due to a technical error during the Fiscal Year 2009 budget preparation, the San Diego World Trade Center only received \$69,790, of their fully allocated amount of \$212,000. It is requested that a transfer of \$142,210 in expenditure appropriations within Special Promotional Programs (Transient Occupancy Tax Fund 10220) from the Convention Center Expansion Project Fund TOT transfer allocation (Dept. 921, Org. 2008) to the entity San Diego World Trade Center/Local Access to Global Markets (Dept. 922, Org. 2019). This will also reduce the revenue budget of the Convention Center Expansion Project Fund (Fund 102212, Dept. 102212, Org. 1000) by \$142,210.

FISCAL CONSIDERATIONS:

There is no fiscal impact resulting from the waivers requested on specific provisions in Council Policy 100-03.

There is no fiscal impact to the Transient Occupancy Tax Fund due to the transfer of \$142,210 in expenditures. The Convention Center Expansion Project Fund would expend \$142,210 from fund balance to mitigate the revenue budget reduction.

PREVIOUS COUNCIL and/or COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: None.

Kessler/Murray

Staff: Scott Kessler - (619) 236-6421
Kimberly K. Kaelin - Deputy City Attorney

FILE LOCATION: SUBITEM A: NONE
SUBITEM B: MEET

COUNCIL ACTION: (Time duration: 2:13 p.m. - 2:18 p.m.)

MOTION BY FAULCONER TO INTRODUCE THE ORDINANCE IN SUBITEM A AND TO ADOPT THE RESOLUTION IN SUBITEM B. Second by Atkins. Passed by the following vote: Peters-yea, Falconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-not present, Madaffer-yea, Hueso-yea.



ITEM-201: Agreement with Burke, Williams, & Sorensen for Professional Consultant Services.

STAFF'S RECOMMENDATION:

Take the following actions:

(R-2009-) RETURNED TO THE MAYOR

Authorizing the Mayor, or his designee, to execute an Agreement between the City of San Diego and Burke, Williams & Sorensen (Firm) for consultant services pertaining to the FY2010 contract negotiations with the City's five recognized employee organizations and to provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply, in an amount not to exceed \$500,000, on behalf of the City of San Diego with the Firm;

Authorizing the City Comptroller to expend funds in an amount not to exceed \$500,000 from Citywide cost allocations for the Agreement between the City of San Diego and Burke, Williams & Sorensen (Firm);

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

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

STAFF SUPPORTING INFORMATION:

The City of San Diego (“City”) has approved Burke, Williams & Sorensen (Firm) as the sole source provider for consulting services pertaining to the FY2010 contract negotiations with the City’s five recognized employee organizations and to provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply.

This agreement is for a not-to-exceed amount of \$500,000, Burke, Williams & Sorensen will serve as an expert labor relations consultant to the City pertaining to the FY2010 contract negotiations with the City’s five recognized employee organizations: San Diego Municipal Employees Association (MEA); the San Diego Police Officers Association (POA); Local 127; American Federal of State, County and Municipal Employees, District Council 36, AFL-CIO (AFSME Local 127); Local 145, International Association of Firefighters (Local 145) and San Diego Deputy City Attorney’s Association (DCAA) and will provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply.

The scope of work and/or services to be provided by the Firm includes but is not limited to, labor negotiations, oral advice and communications, preparing collective bargaining proposals, counter proposals, briefing materials, presentation, correspondence, services related to employee relations matters for wages, hours, working conditions and other terms and conditions as applied, administrative and City proceedings and other issues as requested by the Office of the Mayor of the City of San Diego.

EQUAL OPPORTUNITY CONTRACTING:

Funding Source: City - Prevailing Wages do not apply to this contract.
Goal Requirement: 15% Voluntary
Contract Amount: \$500,000
Other: Work Force Report submitted.

This Agreement is subject to the City’s Equal Opportunity Contracting (San Diego Ordinance No. O-18173, Sections 22.2701 through 22.2702) and Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

FISCAL CONSIDERATIONS:

Expend funds in an amount not to exceed \$500,000 from Citywide cost allocations for the Agreement between the City of San Diego and Burke, Williams & Sorensen (Firm) pertaining to the FY2010 contract negotiations with the City's five recognized employee organizations and to provide services related to employment relations matters for wages, hours, working conditions, and other terms and conditions as they apply.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS: None.

Chadwick/Goldstone

Aud. Cert. 2900368.

Staff: Scott Chadwick - (619) 236-5587

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:07 p.m. - 3:39 p.m.)

MOTION BY COMMON CONSENT TO RETURN TO THE MAYOR'S OFFICE.
Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea,
Maienschein-yea, Frye-not present, Madaffer-yea, Hueso-yea.



ITEM-202: Extension of Emergency Medical Services (EMS) Agreements.

(See Report to the City Council No. 08-203.)

STAFF'S RECOMMENDATION:

Take the following actions:

(R-2009-685) ADOPTED AS AMENDED AS RESOLUTION R-304359

Authorizing the Mayor, or his designee, to execute an extension of the Emergency Medical Services (EMS) Agreements with the City's current provider, San Diego Medical Services Enterprise (SDMSE) for a period of eighteen (18) months with option to extend for an additional six (6) months if necessary to transition the contract. This time period is subject to approval by the County of San Diego as the local EMS Agency;

Directing the City attorney to prepare the required documents to extend the EMS Agreements;

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

Staff: Debra Fischle-Faulk - (619) 533-4541

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:39 p.m. – 4:34 p.m.)

MOTION BY MADAFFER TO ADOPT THE RECOMMENDATION WITH A THREE-YEAR CONTRACT EXTENSION; IN THE EVENT THAT THE APPROVALS FROM THE STATE OR COUNTY DON'T EXCEED 18 MONTHS THAT APPROVAL OF 18 MONTHS WOULD STILL BE VALID FROM THE CITY COUNCIL. REQUEST THE MAYOR'S OFFICE ISSUE AN RFP FOR A CONTRACT THAT HAS TWO FIVE-YEAR TERMS AND TWO THREE-YEAR EXTENSIONS; THE AWARD SHALL COME BACK TO THE CITY COUNCIL FOR APPROVAL. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-not present, Madaffer-yea, Hueso-yea.



ITEM-203: Authorization to Sell Excess City-Owned Property Located at 8110 Balboa Avenue, San Diego, and Approving Broker Commission. (Kearny Mesa Community Area. District 6.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-517) ADOPTED AS RESOLUTION R-304360

Declaring that certain real property (Property) owned in fee by the City, located at 8110 Balboa Avenue, San Diego, CA [APN 356-231-03], and further described in the "Property Information Summary" is excess City property and may be sold;

Declaring the Property may only be sold for a price equal to or greater than Three Million One Hundred Eighty-Six Thousand Dollars (\$3,186,000);

declaring the Mayor, or his designee, shall have the Property reappraised at least once every twelve months until sold, and the resulting fair market value of the Property shall become the minimum acceptable price, which the Mayor, or his designee, shall report to Council; provided, however, if a re-appraisal results in a fair market value below the minimum price set on the date of this Resolution, the Mayor shall seek Council approval prior to lowering the original minimum price;

Authorizing and directing the Mayor, or his designee, to sell the property through negotiation, public auction, sealed bids, or any combination of such methods, in his discretion;

Authorizing the Mayor, or his designee, in his discretion, to retain, on terms deemed by him to be reasonable and in the best interests of the City, the services of a real estate broker to represent the City and facilitate the sale of the Property, but real estate brokerage participation and brokerage fees shall not exceed 1.00% of the final sale price to CBRE (CB Richard Ellis);

Authorizing the payment of real estate brokerage commissions related to the sale of the Property in compliance with San Diego Municipal Code Section 22.0905, Broker's Fee and Registration;

Authorizing the Mayor, or his designee, to execute and deliver, on behalf of the City, a purchase and sale agreement, grant deed, and all other agreements and documents necessary and on terms and conditions deemed by the Mayor, or his designee, to be reasonable and in the best interests of the City to consummate the sale;

Authorizing and directing the City Comptroller to accept the proceeds of the sale of the Property, net of brokerage commissions and other costs of selling the Property, and deposit them into the Capital Outlay Fund;

Declaring if after attempting to sell the Property at the minimum price specified herein, the Mayor, or his designee, determines that the Property cannot be sold at or above the minimum acceptable price, the Mayor is directed to seek review and additional direction from the Council as to the disposition of the Property.

STAFF SUPPORTING INFORMATION:

In accordance with Council Policy 700-10 governing the sale and leasing of the City's Real Estate Assets, the Mayor's staff is reviewing the City's property inventory to determine which properties are no longer needed and whose disposition will provide a greater public benefit. A City-owned property may be designated for disposition if:

- The property is not currently used by a City department or supports a municipal function.
- The property is vacant and has no foreseeable use by the City.
- The property is a non-performing or under-performing asset and greater value can be generated by its sale.
- Significant economic development can be generated by selling the property.

The referenced property has been analyzed and determined by the Mayor's staff to be excess to City needs and would best serve the City and its citizens if sold. The Property Information Summary Package contains all pertinent information about the property including its value as determined by a current appraisal and the reason for recommending its sale. The benefits to the City of disposing of this surplus property are as follows:

- Property tax increment will be created by returning the properties to the tax rolls.
- Stimulation of the economy by providing opportunities for private sector investment.
- Generation of revenue for the Capital Outlay Fund.

A Request for Proposal (RFP) for commercial brokerage services was issued through the City's Purchasing Department.

Each proposal received was rated on its technical merit by an evaluation committee. The technical scores were then compared with the pricing proposal to select the brokerage firm to market this property.

This action requests approval of the best value proposal which reflects, in this case, the lowest commission percentage that was received through the bid process described above. CBRE (CB Richard Ellis) was selected as low bidder at a commission of 1% of the sale price.

FISCAL CONSIDERATIONS:

All proceeds from the sale of the properties, net of costs related to their sale, will be deposited in the Capital Outlay Fund as per City Charter Article VII. The total proceeds from these sales are estimated to be \$3,186,000.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders would be the City of San Diego which will benefit by: receipt of the sale proceeds; and additional property taxes from the return of these properties to the tax roles.

Barwick/Anderson

Staff: James F. Barwick - (619) 236-6145
Todd Bradley - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:19 p.m. – 2:20 p.m.)

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



ITEM-204: Authorization to Sell Certain Excess City-Owned Property Located at 10820 Torrey Pines Road, La Jolla, and Approving Broker Commission. (La Jolla Community Area. District 1.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-516) NOTED AND FILED

Declaring that certain real property (Property) owned in fee by the City, located at 10820 Torrey Pines Road, La Jolla, CA 92037 [APN 340-011-10], and further described in the "Property Information Summary" is excess City property and may be sold;

Declaring the Property may only be sold for a price equal to or greater than Sixteen Million Dollars (\$16,000,000);

Declaring the Mayor, or his designee, shall have the Property reappraised at least once every twelve months until sold, and the resulting fair market value of the Property shall become the minimum acceptable price, which the Mayor, or his designee, shall report to Council; provided, however, if a re-appraisal results in a fair market value below the minimum price set on the date of this Resolution, the Mayor shall seek Council approval prior to lowering the original minimum price;

Authorizing and directing the Mayor, or his designee, to sell the property through negotiation, public auction, sealed bids, or any combination of such methods, in his discretion;

Authorizing the Mayor, or his designee, in his discretion, to retain, on terms deemed by him to be reasonable and in the best interests of the City, the services of a real estate broker to represent the City and facilitate the sale of the Property, but real estate brokerage participation and brokerage fees shall not exceed 1.24% of the final sale price;

Authorizing the payment of real estate brokerage commissions related to the sale of the Property in compliance with San Diego Municipal Code Section 22.0905, Broker's Fee and Registration;

Authorizing the Mayor, or his designee, to execute and deliver, on behalf of the City, a purchase and sale agreement, grant deed, and all other agreements and documents necessary and on terms and conditions deemed by the Mayor, or his designee, to be reasonable and in the best interests of the City to consummate the sale;

Authorizing and directing the City Comptroller to accept the proceeds of the sale of the Property, net of brokerage commissions and other costs of selling the Property, and deposit them into the Capital Outlay Fund;

Declaring if after attempting to sell the Property at the minimum price specified herein, the Mayor, or his designee, determines that the Property cannot be sold at or above the minimum acceptable price, the Mayor is directed to seek review and additional direction from the Council as to the disposition of the Property.

STAFF SUPPORTING INFORMATION:

In accordance with Council Policy 700-10 governing the sale and leasing of the City's Real Estate Assets, the Mayor's staff is reviewing the City's property inventory to determine which properties are no longer needed and whose disposition will provide a greater public benefit. A City-owned property may be designated for disposition if:

- The property is not currently used by a City department or supports a municipal function.
- The property is vacant and has no foreseeable use by the City.
- The property is a non-performing or under-performing asset and greater value can be generated by its sale.
- Significant economic development opportunities can be generated by selling the property.

The referenced property has been analyzed and determined by the Mayor's staff to be excess to City needs and would best serve the City and its citizens if sold. The Property Information Summary Package contains all pertinent information about the property including its value as determined by a current appraisal and the reason for recommending its sale. The benefits to the City of disposing of this surplus property are as follows:

- Property tax increment will be created by returning the properties to the tax rolls.
- Stimulation of the economy by providing opportunities for private sector investment.
- Generation of revenue for the Capital Outlay Fund.

A Request for Proposal (RFP) for commercial brokerage services was issued through the City's Purchasing Department.

Each proposal received was rated on its technical merit by an evaluation committee. The technical scores were then compared with the pricing proposal to select the brokerage firm to market this property.

This action requests approval of the best value proposal which reflects, in this case, the lowest commission percentage that was received through the bid process described above. Grubb & Ellis BRE was selected as low bidder at a commission of 1.24% of the sale price.

FISCAL CONSIDERATIONS:

All proceeds from the sale of the properties, net of costs related to their sale, will be deposited in the Capital Outlay Fund as per City Charter Article VII. The total proceeds from these sales are estimated to be \$16,000,000.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders would be the City of San Diego which will benefit by: receipt of the sale proceeds; and additional property taxes from the return of these properties to the tax roles.

Barwick/Anderson

Staff: James F.Barwick - (619) 236-6145
Todd Bradley - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:41 p.m. – 4:44 p.m.)

Motion by Madaffer to adopt. Second by Hueso. Failed. Peters-yea, Faulconer-yea, Atkins-nay, Young-nay, Maienschein-nay, Frye-not present, Madaffer-yea, Hueso-yea.



ITEM-205: Seventh Amendment to the City of San Diego NonDisposal Facility Element.

(See memorandum from Beryl Bailey Rayford dated 9/26/2008)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-460) ADOPTED WITH DIRECTION AS RESOLUTION
R-304361

Adopting the Seventh Amendment to the City of San Diego's NonDisposal Facility Element adopted on July 25, 1994, in Resolution No. R-284332, as set forth in the Seventh Amendment;

Authorizing and directing the Mayor, or his designee, to submit the above Seventh Amendment to the California Integrated Waste Management Board in accordance with the California Public Resources Code;

Declaring that this activity is statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15282(p) because it constitutes the amendment of a nondisposal facility element as set forth in Section 41735 of the Public Resources Code.

STAFF SUPPORTING INFORMATION:

In 1989, the State Legislature adopted the Integrated Waste Management Act (AB 939) codified as Public Resources Code (PRC) Sections 40000 et seq. PRC Section 41780 requires the reduction of waste disposed of in landfills by 50% by the Year 2000 and thereafter. PRC Section 41730 also requires the preparation of NDFEs describing new or modified solid waste facilities that divert at least five percent of the material received by the facility and require solid waste facility or composting permits. NDFEs are intended to serve as planning documents for infrastructure needed to achieve waste diversion from landfill disposal.

This NDFE amendment was triggered by modification of the Allan Company MRF and Transfer Station. Allan Company has applied for a Full Solid Waste Permit for their expanded operations that now will not only involve processing clean loads of commingled recyclable materials, but will also include processing loads of commingled recyclables containing higher levels of contamination.

This amendment of the NDFE also deletes a previously proposed City Materials Recovery Facility that would have processed mixed construction and demolition debris because a suitable private sector option was developed and permitted, therefore development of this facility was no longer needed. Lastly, this version updates information on a planned City Resource Management Facility, adds planned recycling operations at Sycamore and Otay landfills, and includes four additional facilities that are located outside of the City, but process some waste generated inside the City: EDCO Waste and Recycling Services CDI, Escondido Resource Recovery Transfer, Ramona MRF and Transfer, and SANCO Resource Recovery.

On October 24, 2008, the San Diego Association of Governments (SANDAG), acting as the Local Task Force, recommended approval of these amendments to the City of San Diego NDFE.

FISCAL CONSIDERATIONS:

This is a planning document required by the State. No costs, other than those necessary for the preparation of the document itself, are associated with it.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Council Resolution R-301268/R-2006-617 adopting Sixth Amendment to the Non-Disposal Facility Element Regarding Waste Reduction; and Authorizing its Submittal to the California Integrated Waste Management Board.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The document has been submitted to the following organizations for review and comment:

- Integrated Waste Management Technical Advisory Committee
- Integrated Waste Management Citizens' Advisory Committee
- San Diego Association of Governments, acting as the Local Task Force for the San Diego Region.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

This is a planning document. No impacts are anticipated.

Gonaver/Heap

Staff: Amy Havens - (858) 627-3302
Grace C. Lowenberg - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:20 p.m. - 2:20 p.m.;
4:46 p.m. - 4:47 p.m.)

MOTION BY ATKINS TO ADOPT WITH DIRECTION TO STAFF TO ENSURE THE ADDITION OF FOOD-WASTER MATERIAL PROCESSING. Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-not present, Madaffer-yea, Hueso-yea.



ITEM-206: Awarding of Design Build Agreement to Bergelectric Corporation for Pump Station 1 and Pump Station 2 Electrical Upgrade and New Electrical Building at Pump Station 2 Project. (Barrio Logan and Reserve Community Areas. Districts 2 and 8.)

(See memorandum from Jose Luis Romo dated 9/14/2008 and Engineering and Capital Projects Department's 9/3/2008, Executive Summary Sheet.)

TODAY'S ACTION IS:

Adopt the following resolution:

(R-2009-481) ADOPTED AS RESOLUTION R-304362

Authorizing the City Comptroller to amend the Fiscal Year 2009 Capital Improvement Program to add CIP-41-931.6, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Electrical Building at Pump Station 2 Project (the "Project");

Authorizing the City Comptroller to transfer \$9,535,000 from CIP-41-926.0, Annual Allocation - Metropolitan System Pump Stations to CIP-41-931.6, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Electrical Building at Pump Station 2 Project, both within Sewer Fund 41509;

Authorizing the Mayor, or his designee, to award a design/build contract to Bergelectric Corporation, for the design and construction of the Project, in the amount of \$8,197,000;

Authorizing the expenditure of an amount not to exceed \$9,935,000 from CIP-41-931.6, solely and exclusively, to provide funds for the above contract, contingency, and related costs, provided the City Comptroller first furnishes one or more certificates demonstrating the funds necessary for expenditure are, or will be, on deposit in the City Treasury;

Authorizing the City Comptroller to transfer excess budgeted funds, if any, to the appropriate reserves on advice from the administering department;

Declaring that this activity is categorically exempt from the California Environmental Quality Act pursuant to CEQA Guidelines section 15301(b) as the repair, maintenance, or minor alteration of existing sewer facilities.

NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:

On 9/10/2008, NR&C voted 3 to 0 to move to the full City Council without a recommendation, and direct staff to provide a report addressing how the City is going to deal with Bergelectric Corporation not meeting the City's Equal Opportunity Contracting policy, and also address what recourse the City has if Bergelectric Corporation does not meet this policy after the contract is awarded. (Councilmembers Peters, Faulconer, and Frye voted yea. Councilmember Atkins not present.)

SUPPORTING INFORMATION:

A Power Reliability Study was conducted in 2003 to evaluate the electrical systems at Pump Station 1 and Pump Station 2, the two largest and the most critical pump stations in the Metropolitan Sewerage System. In this study, deficiencies with regards to compliance with current National Electric Code as well as Environmental Protection Agency (EPA) guidelines for Waste Water Treatment Facilities were evaluated. This project has evolved from the recommendations made to improve the overall power reliability of the entire electrical distribution system for these two pump stations.

Pump Station 1 auxiliary electrical distribution system utilizes the original installed hardware that was built in 1963 which does not provide automatic emergency transfer function from one utility feed to another if one of the utility feed fails. This project will replace the original electrical equipment with new equipment which would have the capability of providing automatic emergency transfer and eliminating single point failures. This capability is required by current EPA guidelines.

Pump Station 2 was also built in 1963. Numerous additions and modifications to the electrical system over the past 45 years have resulted in a very complicated system. Due to the age and lack of availability of the spare parts the original 1963 installed Main Switchgear will be replaced with new equipment which could accommodate a future new service from SDG&E and also accept the addition of on-site emergency generator.

This electrical upgrade will add a higher degree of reliability to the San Diego Metropolitan Wastewater System by ensuring reliable operations of the pump stations during on-site distribution outages or component failures and would go a long way in preventing costly sewer spills.

SUPPORTING INFORMATION:

EQUAL OPPORTUNITY CONTRACTING:

Funding Agency: City of San Diego
Sub consultant Participation: \$110,566 Certified Firms (1.35%)
\$3,813,607 Other Participation (46.52%)
Other: Workforce Report Submitted. Staff will monitor plan and adherence to Nondiscrimination Ordinance.

FISCAL CONSIDERATIONS:

The total cost of this project is \$9,935,000. Funding of \$9,935,000 will be available in the Enterprise Fund, CIP-41-931.6, Pump Station 1 and Pump Station 2 Electrical Upgrade and New Building at Pump Station 2, Fund 41509, Sewer, for this purpose. \$9,535,000 will be transferred from CIP-41-926.0, Annual Allocation - Metropolitan System Pump Stations because this project was originally budgeted as a sublet under this Annual Allocation. The total estimated costs of this project are over \$8,000,000, so it is being converted to a stand alone project. No future funding is anticipated for this project.

The project costs of \$ 9,935,000 may be reimbursed approximately 80% by current or future debt financing.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

Metro TAC Committee (8/20/2008) has voted to approve the project. The subject item was presented to Metro Commission on 9/11/2008 and was approved. The project was presented to Committee on Natural Resources and Culture on 9/10/08. They had some questions about EOC plan and referred the item to the Council for approval (See memo from EOCP Office dated September 14, 2008).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: Not applicable.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The key stakeholders are the City of San Diego and Bergelectric Corporation.

Boekamp/Jarrell

Aud. Cert. 2900283.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 4:48 p.m. - 5:03 p.m.)

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



ITEM-207: Two actions related to Proposed Water Rate Increases to Offset the Increase in Rates Charged by San Diego County Water Authority (CWA) and to Fund an Indirect Potable Reuse Demonstration Project.

(See Report to the City Council No. 08-167.)

STAFF'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2009-619) TRAILED TO TUESDAY, NOVEMBER 18, 2008

Declaring that the proposed water rate increases, as referenced in the water rate tables contained within the Proposition 218 Notice and consistent with the Report to City Council, are approved, as follows:

- a. A water rate increase of 8.50% applied to all customer classes and tiered consumption rates equally in order to offset the increase in the wholesale cost of water purchased by the City from CWA, effective January 1, 2009; and

- b. A water rate increase of \$0.20 per equivalent dwelling unit based upon meter size as related to the increase in the wholesale cost of water purchased by the City from CWA, effective January 1, 2009;
- c. A temporary water rate increase of 3.08% applied to all customer classes and tiered consumption rates equally in order to fund an Indirect Potable Reuse Demonstration Project.

Subitem-B: (R-2009-625) TRAILED TO TUESDAY, NOVEMBER 18, 2008

Declaring that based on the Report to the City Council, none of the revenue from the CWA pass through water rate increases will be used to fund capital projects for the expansion of the water system;

Declaring that the CWA pass-through water rate increases will allow the City to maintain cost/revenue neutrality and to maintain consistency with the City's previously approved 4-year water rate plan;

Declaring that water commodity rates will be temporarily increased for a period of approximately 18 months starting January 1, 2009 in order to raise \$10,711,000 of additional revenue required to pay for the Project;

Declaring based on the foregoing findings, the Council of the City of San Diego finds that the water rate increases approved pursuant to Resolution Number R-_____ are exempt from the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080(b)(8) and CEQA Guidelines Section 15273(a).

STAFF SUPPORTING INFORMATION:

On April 24, 2008, the CWA Board of Directors ("CWA Board") adopted the 2008 Long Range Financing Plan update, which included updates to CWA's cost of water, capital improvement program, and other economic assumptions which would affect water purchase rates being charged to their participating agencies. On June 26, 2008, CWA staff made a presentation to the CWA Board disclosing the need for a rate increase based on the additional infrastructure, operations, maintenance, and water purchase costs. At that meeting the CWA Board approved the rate increase recommendation. As a result, on January 1, 2009, CWA will be increasing the rates for water purchases to all their participating agencies, including the City of San Diego.

On January 1, 2009, the City intends to increase the currently effective Water system rates and fees across all customer classes in order to pass through the increased wholesale water purchase costs from CWA. The commodity fee will increase by 8.50% per HCF of water usage for all customer classes and the base fee will increase by \$0.20 per equivalent dwelling unit, based upon meter size. For the typical single family residence customer using 14 HCF per month, the fee increases due to the CWA pass-through costs will add approximately \$3.31 to the monthly water bill. This will be a 6.26% increase in the current water bill.

At the July 28, 2008, meeting of the City Council, staff was directed to develop the rate increase necessary to fund an Indirect Potable Reuse (IPR) Demonstration Project. On September 8, 2008, City staff returned to the City Council with a proposed Proposition 218 Notice which included both the rate increase associated with the CWA pass-through and a rate increase to fund the IPR Demonstration Project. At the September 8, 2008, City Council meeting, the City Council authorized the mailing of the Proposition 218 Noticing which outlined the proposed rate increases related to the CWA pass-through and the IPR Demonstration Project. The Proposition 218 Notices were mailed to property owners of record and City of San Diego water customers on October 1, 2008 and October 2, 2008. As outlined, the IPR demonstration project is estimated to cost \$11,811,000. This amount includes costs for project management; the establishment of an Independent Advisory Panel of scientific and technical experts to advise on the development and implementation of the project; cost of design, construction, and equipment; conceptual design of a conveyance pipeline; and a public outreach and education component. In order to fund the demonstration project, an increase in the commodity rate for all water customers equally would be required.

This increase would be 3.08% if the previously described CWA pass-through increase was also approved. In the event the CWA pass-through is not approved, a 3.26% increase to the commodity charge would need to be applied to all customers equally in order to provide the revenue necessary to support the IPR demonstration project. The proposed increase would generate \$10.7 million in revenue. The remaining \$1.1 million in project costs will be reimbursed through a grant provided by Proposition 50 funding.

FISCAL CONSIDERATIONS:

The increased revenue from the approval of these actions will offset the increase in the cost of purchased water from CWA and fund the IPR Demonstration Project.

PREVIOUS COUNCIL COMMITTEE ACTION:

CWA rate increase: At the July 28, 2008, City Council meeting, the Water Department presented information on the Proposition 218 Notice requirements for the CWA water rate increase. On September 8, 2008, staff presented a combined Proposition 218 notice to include the CWA rates and rates for the IPR/RA Demonstration Project.

Demonstration Project: The Water Reuse Study report was presented to the NR&C on July 26, 2006. An evening public workshop, sponsored by NR&C, was held on October 27, 2006. A presentation on the Water Reuse Study and Recycled Water Master Plan was made to the City Council on October 29, 2007. At this meeting, the Council voted to receive the Water Reuse Study Final Draft report and directed staff to develop a plan to implement the Reuse Study's NC-3 strategy. The Mayor vetoed this action, and the City Council's vote on this was reaffirmed on December 3, 2007.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Proposition 218 notices were mailed on October 1, 2008 and October 2, 2008.

KEY STAKEHOLDERS & PROJECTED IMPACTS:

The Water Department's customer base and property owners were mailed notice that the City Council will hold a public hearing on November 17, 2008, to consider adoption of the proposed increase to the existing water fees and rates.

This notice also informed the customers how to register a protest against these rate increases. If adopted, the adjusted fees and rates would become effective January 1, 2009.

Ruiz/Barrett

Staff: Rod Greek - (619) 980-5928
Raymond C. Palmucci - Deputy City Attorney

Testimony in opposition by Al Strohlein, Jeff Green, David Kennedy, Parker Platt, Adrian Marine, Dicken Hall, Kris Kaszuba, Jewell Hooper, Scott Rappoport, Benjamin Garfinkel, Cynthia Conger, and Andrew Bailey.

Testimony in favor by Hal Simon, Jim Peugh, Angelica Villagran, Bruce Reznick, Judith Swink, and Faith Picking.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 3:07 p.m. - 2:21 p.m.)



ITEM-208: 3650 Florida Tentative Map. Project No. 82092. Appeal of the Planning Commission's decision approving a Tentative Map to convert 24 existing residential units into condominiums and to waive the requirement to underground existing overhead utilities. The 0.60 acre site is located at 3650 Florida Street, on the northwest corner of Florida Street and Cypress Avenue. (Greater North Park Community Plan Area. District 3.)

Matter of the appeal by Cory J. Briggs, Briggs Law Corporation, on behalf of Affordable Housing Coalition of San Diego County and Citizens for Responsible Equitable Environmental Development, from the decision by the Planning Commission approving an application for a Tentative Map to convert 24 existing residential units into condominiums and to waive the requirement to underground existing overhead utilities. The 0.60 acre site is located at 3650 Florida Street, on the northwest corner of Florida Street and Cypress Avenue, in the MR-1000 Zone of the Mid-City Communities Planned District within the Greater North Park Community Plan Area.

Should the condominium conversion project be approved, tenants may be required to vacate the premises. No units may be sold in this building unless the conversion is approved by the City and until after a public report is issued by the Department of Real Estate. Each tenant has the exclusive right to contract for the purchase of his or her respective unit upon the same terms and conditions that such unit will be initially offered to the general public or terms more favorable to the tenant. The right shall run for a period of not less than 90 days from the date of issuance of the subdivision public report pursuant to Section 11018.2 of the Business and Professions Code, unless the tenant gives prior written notice of his or her intention not to exercise the right.

If you are an existing tenant within this project, you may have rights to certain benefits as outlined in San Diego Municipal Code Section 144.0503. To learn more information regarding these benefits, please contact the Housing Commission at (619) 578-7580, or find the details on their website at: <http://www.sdhc.net/haotherprog1h.shtml>.

This project was determined to be categorically exempt from the California Environmental Quality Act on September 27, 2005, and the opportunity to appeal that determination ended October 18, 2005.

(TM No. 257318/Waiver of Requirement to Underground Existing Overhead Utilities.)

STAFF'S RECOMMENDATION:

Take the following action(s):

(R-2009-) DENIED APPEAL; ADOPTED AS RESOLUTION
R-304363

Granting or denying the appeal and upholding or overturning the decision of the Planning Commission approving Tentative Map No. 257318; and approving the waiver to the requirement to underground existing overhead utilities.

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

OTHER RECOMMENDATIONS:

Planning Commission on August 7, 2008, voted 4-1-2 to approve.

Ayes: Otsuji, Golba, Naslund, Ontai

Nays: Griswold

Not present: Schultz, Smiley

The Greater North Park Community Planning Committee has recommended denial of this project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

Appeal of the Planning Commission's decision to approve Tentative Map No. 257318 and waive the requirement to underground existing overhead utilities to convert 24 existing residential units to condominiums at 3650 Florida Street within the Greater North Park Community Plan Area.

STAFF RECOMMENDATION:

Deny the appeal and uphold the Planning Commission's decision to **approve** the Tentative Map, including the request to waive the requirement to underground existing overhead utilities.

EXECUTIVE SUMMARY:

Tentative Map No. 257318, including the request to waive the requirement to underground existing overhead utilities, to convert 24 existing residential units to condominiums was approved by the Planning Commission and subsequently appealed by Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation (Attachment 1). This is a project appeal and not an environmental appeal; therefore, the environmental issues raised are not relevant to this appeal.

The project was determined to be exempt from review under the California Environmental Quality Act (CEQA) and the appeal period for that decision had expired October 18, 2005.

Although the majority of the concerns raised in the Appeal Application are environmental issues that have been previously addressed, there are references to several San Diego Municipal Code (SDMC) and California Government Code sections which are not CEQA-related and may be addressed through this project appeal. These code sections and Staff's responses are contained below:

SDMC Sections 125.0440(a)-(h): These sections describe the required findings for a Tentative Map. The State Map Act (SMA) restricts the scope of the City's review and limits the findings that apply to the conversion of existing buildings into condominiums. SMA Section 66427 precludes the City from reviewing the building design and the division of the airspace and SMA Section 66427.2 exempts condo conversions from six of the eight standard Tentative Map findings. Based on the above, only findings 125.0440 (b) and (h) apply to condominium conversion projects and the appellant's assertion that all of the findings listed in 125.0440 (a)-(h) apply is incorrect. The two findings that do apply are described below.

SDMC Section 125.0440(b): *"The proposed subdivision complies with the applicable zoning and development regulations of the Land Development Code."* This project has been reviewed by staff and determined to be in compliance with the applicable zoning and development regulations, including the new condominium conversion regulations, as appropriate. Although the project does not comply with the current requirements for new construction, the project is allowed to maintain their current configuration because no additional units or expansion are proposed and it is considered previously conforming for density and development standards.

SDMC Section 125.0440(h) and California Government Code Section 66412.3: *“The decisionmaker has considered the effects of the proposed subdivision on the housing needs of the region and that those needs are balanced against the needs for public services and the available fiscal and environmental resources.”* This condominium project was approved by the Planning Commission, who was the decisionmaker required to make this finding. Staff believes the intent of this required finding is to respond to “leapfrog” development and to provide necessary public facilities for additional housing in communities. In this instance there is no net loss or gain of housing units, therefore, staff believes this appeal point is not valid.

SDMC Sections 142.1304 and 142.1305: These sections describe the requirements for approving a variance or waiver from the City’s inclusionary housing requirements.

The project would comply with the City’s requirements either by paying an in-lieu fee or by providing onsite affordable housing. This project is not requesting a variance or waiver from the inclusionary housing requirements; therefore, these code sections are not relevant to this approved condominium conversion project.

The appeal also asserts that the Housing Element of the City’s General Plan has become invalid due to the City’s failure to revise it lawfully and in a timely manner. The current Housing Element was adopted by the City Council on December 5, 2006, and certified by the U.S. Department of Housing and Urban Development on February 5, 2007. This project was approved after the certification of the most recent Housing Element update. A 2007 California appeals court case addressed the question about whether a housing element updated beyond time periods identified in Government Code Section 65588 is invalid and determined that it was not. Therefore, the City’s Housing Element has never been considered invalid and would not be grounds for denial of this project.

FISCAL CONSIDERATIONS:

None. All costs associated with the processing of this project are paid by the applicant.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On August 7, 2008, Planning Commission voted on consent to approve Tentative Map No. 257318 and approve waiver to the requirement to underground existing overhead utilities, passed by a vote of 4-1-2 with Commissioner Griswold voting nay and Commissioner’s Schultz & Smiley not present.

On January 17, 2006, the Greater North Park Planning Committee voted 11-0-1 to recommend denial of the project. Denial was based on insufficient parking and no renderings presented to the committee.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Owners: Matthew Browar and Nancy Browar; Applicant: D. Scott Peters, Sterling Land Services, Inc.; Citizens for Responsible Equitable Environmental Development, c/o Cory J. Briggs, Briggs Law Corporation. Other key stakeholders include those associated with condominium conversions in the development industry, the housing industry, and residents.

Anderson/Broughton

LEGAL DESCRIPTION:

The project site is located at 3650 Florida Street, San Diego, Lots 41-46 of Virginia Square, Map No. 1597, County of San Diego, filed September 18, 1913; and also all that portion of the north 10 feet of Cypress Avenue lying south of and adjoining lots 41 to 46 inclusive as vacated and closed to public use on July 22, 1914 by Resolution No. 17809 of the City Council of the City of San Diego, County of San Diego.

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

Staff: Cherlyn Cac – (619) 446-5226
Karen Heumann – Deputy City Attorney

NOTE: This item is not subject to the Mayor’s veto.

Testimony in opposition by Jarvis Ross.

Testimony in favor by Matt Peterson.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:07 p.m. -5:21 p.m.)

MOTION BY ATKINS TO DENY THE APPEAL AND UPHOLD THE PLANNING COMMISSION’S DECISION TO APPROVE THE TENTATIVE MAP INCLUDING THE REQUEST TO WAIVE THE REQUIREMENT TO UNDERGROUND EXISTING OVERHEAD UTILITIES. Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-not present, Madaffer-yea, Hueso-yea.



ITEM-209: Plum Street Right-of-Way Vacation, Project No. 6360. An application for a Public Right of Way Vacation to vacate a portion of an unimproved paper street known as Plum Street. (Peninsula Community Plan Area. District 2.)

Matter of approving, conditionally approving, modifying, or denying an application for a Public Right of Way Vacation to vacate a portion of an unimproved paper street known as Plum Street. The Planning Commission of the City of San Diego previously recommended that the City Council approve an earlier project that included a full-width vacation and a Planned Development Permit for a deviation of the lot frontage requirements of the RS-1-7 Zone (allowing the two lots fronting the area to be vacated to have less frontage on a dedicated street than the 50-foot minimum) and recommended a Building Restriction Area within a portion of the proposed area to be vacated.

Should the City Council decide to approve a ½ width Vacation of the Right-of-Way adjacent to 1202 Plum Street, the Planned Development Permit would no longer be required because no deviation would be needed. The Building Restricted Area would still be required with the ½ width Vacation. All required easements for sewer, storm drainage, water and general utilities would be reserved to the City with the ½ width vacation. The property is located adjacent to 1202 Plum Street, south of Carlton Street in the RS-1-7 Zone within the Peninsula Community Plan Area, Coastal Height Limit, and Council District 2.

(Report to Planning Commission No. PC-05-227.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-578) ADOPTED AS AMENDED AS RESOLUTION R-304364

Adoption of a Resolution approving the Public Right-of-Way Vacation No. 39220, vacating a portion of Plum Street adjacent to 1202 Plum Street, Lot 1, Block 21, Subdivision Map 305;

That the City Clerk shall cause a certified copy of this resolution, with attached exhibits, attested by him under seal, to be recorded in the Office of the County Recorder.

OTHER RECOMMENDATIONS:

Planning Commission on January 27, 2005, voted 4-2 to approve.

Ayes: Steele, Ontai, Otsuji, Garcia

Nays: Schultz, Chase

The Peninsula Community Planning Board has recommended denial of this project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

This action is a request to vacate a partially improved portion of the Plum Street Public Right-of-Way.

STAFF RECOMMENDATION:

APPROVE Public Right-of-Way Vacation No. 39220.

EXECUTIVE SUMMARY:

The project proposes to vacate an unimproved segment of the Plum Street public right-of-way adjacent to 1202 Plum Street within the Peninsula Community Planning area (Attachment 1). The Plum Street right-of-way was established as part of the original subdivision pursuant to Map No. 305 and Map No. 165 recorded in the County of San Diego in 1914. Adjoining segments of Plum Street have been previously vacated by City Council resolution in 1926 and 1965. These actions have resulted in a remnant portion of Plum Street providing lot frontage for four properties and a right-of-way that terminates in a non-standard cul de sac.

In 2005, a proposal to vacate the full-width of the right-of-way was heard by the Planning Commission (Attachment 5). Since that time, the project has been revised to propose only a half-width vacation. The segment of Plum Street between Byron Street and Carleton Street is a partially improved public right-of-way. Approximately 35 feet, or half of the right-of-way width, has been improved to provide access to three of the four homes along this section of the street. The portion of the right-of-way proposed to be vacated has never been improved with the exception of the encroachment of a private drive way and ornamental landscaping (Attachment 2). A six-foot wide general utility and access easement will be reserved as a part of the vacation (Attachment 3).

The area to be vacated is within the single-family RS-1-7 Zone which is intended for development of one dwelling unit per legal lot.

The surrounding neighborhood is developed exclusively with single-family homes and the vacation would not result in any additional dwelling units. Staff has reviewed the requested right-of-way vacation and determined that the applicable findings can be affirmed to approve the vacation request.

Regulatory Framework

The Land Development Code establishes a process for approving applications to vacate public rights-of-way and includes the applicable findings that a decision maker must make to approve the requested vacation. The findings generally establish that there is no present or prospective use for the right-of-way, either for the use for which it was intended, or a public use of a similar nature; that the public will benefit from the vacation by the improved use of the land; that the vacation will not adversely affect the applicable land use plan; and that the public facility for which the right-of-way was originally acquired will not be detrimentally affected by the vacation. Staff has concluded that the purpose and intent for which the public right-of-way was originally dedicated has not been met. The area to be vacated was never fully improved or utilized as a street or for any other public use including pedestrian access. The proposed vacation would not adversely affect any existing access to surrounding properties. Nor would the vacated right-of-way provide a logical connection to adjacent streets or facilitate vehicle circulation as it terminates in a non-standard cul de sac. The proposed vacation meets all of the criteria that would allow a decision maker to affirm the required findings. The portion of the street proposed to be vacated does not provide access to any of the abutting properties and due to the adjacent right-of-way vacations approved by previous city councils, it is unlikely that the street would be improved in the future. The city would benefit by relinquishing the maintenance and liability associated with the easement and the abutting property owners would benefit from the closure by regaining the vacated portion of the right-of-way for which they own the underlying fee title. The proposed vacation would not adversely affect the Peninsula Community Plan and the proposed vacation would not affect on-street parking or existing access to adjacent properties.

FISCAL CONSIDERATIONS:

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

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On January 27, 2005, the Planning Commission voted 4-2 to recommend the City Council approve a full-width vacation, with the condition that a building restricted easement be applied to the area of vacated street. The property owner has agreed to the non-building easement. The Peninsula Community Planning Board considered the project at their meeting on August 21, 2003, and voted 11-1-1 to recommend denial of the project citing concerns about parking and a lack of public benefit. Both the Planning Commission recommendation and the Peninsula Community Planning Board recommendations were based on a previous proposal advocating a 70 foot full-width vacation. The project has been revised to request a 35 foot half-width vacation.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

William and Peggy Tilden, property owners.

NOTE: This activity was determined to be exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15301 – existing facilities.

Broughton/Anderson/PH

Staff: Patrick Hooper – (619) 557-7992
Keith Bauerle – Deputy City Attorney

NOTE: This item is not subject to the Mayor’s veto.

Testimony in opposition by Jarvis Ross, Cynthia Conger, Patricia Deck, Alyssa Brown, and Ross Campbell.

Testimony in favor by Tom Tourtellott, Matt Peterson, John O’Neil, Theodore Ward, and Paul Wehsener.

FILE LOCATION: J-2989(39)

COUNCIL ACTION: (Time duration: 5:26 p.m. - 5:50 p.m.)

MOTION BY FAULCONER TO ADOPT STAFF'S RECOMMENDATION AS AMENDED BY DELETING THE LANGUAGE AGREED TO BY THE PARTIES. ON CLERK'S PAGE 000499, SECOND PARAGRAPH, DELETE, "TO FACILITATE DEVELOPMENT OF THEIR PROPERTY, AND." ON CLERK'S PAGE 000502, PARAGRAPH 3, DELETE, "UPON ACQUISITION OF ENCROACHMENT PERMIT FROM THE CITY ENGINEER PURSUANT TO THE MUNICIPAL CODE OF THE CITY, THE OWNERS OF THE UNDERLYING FEE MAY UTILIZE THE ABOVE DESCRIBED PARCEL OF LAND FOR STRUCTURES, THE PLANTING OR GROWING OF TREES, OR THE INSTALLATION OF PRIVATELY OWNED PIPELINES." Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-not present, Frye-not present, Madaffer-yea, Hueso-yea.



ITEM-210: Palladium at Aero, Project No. 148904. A Rezone of the property, General Plan and Kearny Mesa Community Plan Amendment, Public Right-Of-Way Vacation, Vesting Tentative Map and Site Development Permit to subdivide and develop 412 multiple family dwelling units and 5,190 square feet of commercial development on a 7.52 acre site located at 8655 Aero Drive. (Kearny Mesa Community Plan Area. District 6.)

Matter of approving, conditionally approving, modifying or denying a Rezone of the property from the IP-2-1 Zone to the RM-3-9 Zone, General Plan and Kearny Mesa Community Plan Amendment, Public Right-Of-Way Vacation, Vesting Tentative Map and Site Development Permit to subdivide and develop 412 multiple family dwelling units and 5,190 square feet of commercial development on a 7.52 acre site located at 8655 Aero Drive within the Kearny Mesa Community Plan.

***Unless otherwise noticed or stated on the record at the hearing, if an ordinance is approved and introduced by the City Council, it will automatically be scheduled for a hearing by the City Council for final passage at 10:00 a.m. on the Tuesday two weeks after the subject hearing.**

STAFF'S RECOMMENDATION:

Take the following actions in Subitems A, C, D, and E, and introduce the ordinance in subitem B:

Subitem-A: (R-2009-) TRAILED TO TUESDAY, NOVEMBER 18, 2008

Certifying that the information contained in Mitigated Negative Declaration No. 148904 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 Administration 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 Council;

Declaring that the City Council of the City of San Diego finds that project revisions now mitigate potentially significant effects on the environment previously identified in the Initial Study and therefore, that said Mitigated Negative Declaration, a copy of which is attached hereto and incorporated by reference, is hereby approved;

Declaring that pursuant to California Public Resources Code, Section 21081.6, the 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 this project;

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

Subitem-B: (R-2009-) TRAILED TO TUESDAY, NOVEMBER 18, 2008

Changing 9.32 acres located at 8655 Aero Drive, within the Kearny Mesa Community Plan Area, in the City of San Diego, California, from the IP-2-1 Zone into the RM-3-9 Zone, as defined by San Diego Municipal Code Section 131.0406; and repealing Ordinance No. O-18478 (New Series), adopted April 7, 1998, of the Ordinances of the City of San Diego insofar as the same conflict herewith;

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

Subitem-C: (R-2009-) TRAILED TO TUESDAY, NOVEMBER 18, 2008

Declaring that the City Council of the City of San Diego adopts the amendments to the Kearny Mesa Community Plan, a copy of which is on file in the Office of the City Clerk;

Declaring that the City Council adopts and amends the General Plan for the City of San Diego to incorporate the above amended plan;

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

Subitem D: (R-2009-) TRAILED TO TUESDAY, NOVEMBER 18, 2008

Declaring that the City Council of the City of San Diego adopts the findings with respect to Vesting Tentative Map (VTM) No. 524641, including the waiver of the requirement to underground existing overhead utilities and Public Right-of-Way Vacation No. 524640;

Declaring that said findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference;

Based on the Findings hereinbefore adopted by the Council of the City of San Diego, VTM No. 524641 and Public Right-of-Way Vacation No. 524640, and granting to Westcore Sandrock, LLC, Subdivider;

Declaring that pursuant to California Government Code Section 66434(g), portions of Aero Drive and Sanrock Road, located within the project boundaries as shown in VTM No. 624641, shall be vacated, contingent upon the recordation of the approved final map for the project and that said Findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference;

Sustaining the recommendation of the Planning Commission, for VTM No. 524641 and Public Right-of-Way Vacation No 524640 and granting to Westcord Sandrock, LLC, subject to the conditions attached hereto and made a part hereof;

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

Subitem-E: (R-2009-) TRAILED TO TUESDAY, NOVEMBER 18, 2008

Declaring that the City Council of the City of San Diego adopts the findings with respect to Site Development Permit (SDP) No. 524637

Declaring that said findings are supported by the minutes, maps, and exhibits, all of which are herein incorporated by reference;

Sustaining the recommendation of the Planning Commission, for SDP No. 524637 and granting to Westcore Sandrock, LLC, Owner/Permittee, under the terms and conditions set forth in the permit attached hereto and made a part hereof;

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

OTHER RECOMMENDATIONS:

Planning Commission on October 23, 2008, voted 4-2-1 to approve this project with specific direction to improve the Streetscape Design Guidelines for Aero Drive.

Ayes: Schultz, Ontai, Otsuji, Nasland
Nays: Golba, Griswald
Not Present: Smiley

The Kearny Mesa Planning Group voted, on September 17, 2008, 7-1-1 to approve the proposed actions.

On September 18, 2008, the Serra Mesa Community Planning Group voted 10-1-0 to deny the project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

A Rezone, General Plan and Kearny Mesa Community Plan Amendment, Public Right-Of-Way Vacation, Vesting Tentative Map and Site Development Permit to develop 412 apartment units and approximately 5,190 square feet of retail development on a 7.52 acre site located at 8655 Aero Drive within the Kearny Mesa Community Plan.

STAFF RECOMMENDATION:

- 1. Certify** Mitigated Negative Declaration 148904, and **adopt** the Mitigation Monitoring and Reporting Program; and
- 2. Approve** Rezone No. 524639, General Plan and Kearny Mesa Community Plan Amendment No. 524638, Public Right-Of-Way Vacation No. 524640, Vesting Tentative Map No. 524641, and Site Development Permit No. 524637.

EXECUTIVE SUMMARY:

The General Plan and Kearny Mesa Community Plan Amendment would designate the site for multiple family unit residential use. The site, located immediately south of Montgomery Field along Aero Drive, is adjacent to commercial, industrial and residential uses.

The 7.52 acre site is at 8655 Aero Drive within the existing IP-2-1 Zone (proposed RM-3-9 Zone) of the Kearny Mesa Community Plan.

The proposed Palladium at Aero project would demolish the existing structures and develop a 412 apartment unit project with 5,190 square feet of retail development on a 7.52 acre site located at 8655 Aero Drive within the Kearny Mesa Community Plan. Forty-two units of the proposed 412 apartment units, or ten percent of the total dwelling units provided, would be set aside as affordable to persons earning no more than sixty-five percent of the area median income.

The project would add to the availability of affordable work-force housing in the community and in the City at large. The project proposes two deviations: 1) to allow installation of photovoltaic panels on structures on the roof deck of the parking garage to generate electricity and to shade the parking structure roof deck in lieu of planting trees in containers on the deck, and 2) to deviate from the street side yard setback along Aero Drive to allow a setback of thirty feet rather than forty-six feet six inches.

FISCAL CONSIDERATIONS:

No fiscal impact. All costs associated with the processing of the application are recovered through a deposit account funded by the applicant.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

The Kearny Mesa Community Planning Group voted, on September 17, 2008, 7:1:1 to approve the proposed actions. On September 18, 2008, the Serra Mesa Planning Group voted 10:1:0 to recommend denial. On October 16, 2008, the Planning Commission heard public testimony and discussed the project. The Commission continued the item to October 23, 2008, to allow the applicant time to revise the project design. On October 22, 2008, the Serra Mesa Planning Group voted a second time 5:2:0 to recommend denial.

Per the Commissioner's October 16th suggestions, the applicant revised the design which reduced the height of the building to eliminate the request for a height deviation, revised the Site Plan to open some of the courtyards to the street by creating visual and physical connections to the sidewalk, relocated the pool from the west to the east side of the site, and added photovoltaic panels to structures on the roof deck of the parking structure. Along the west elevation the building was revised to increase architectural interest by adding balconies and patios, created two architectural styles, and opened an interior courtyard to the west. Along the east elevation the building was lowered from four to three stories and lowered to two stories at the southeast corner, created two architectural styles by the use of detailing, and opened an interior courtyard to the sidewalk along Sandrock Road. Along the north elevation the building was altered to visually open an interior courtyard to the Aero Drive sidewalk. The south elevation was not altered.

The applicant also proposed evergreen and deciduous tree species for the plant palette along the southerly property line with an undulating tree placement to avoid a linear line of trees. On October 23, 2008, the Planning Commission again heard the item and took public testimony in favor and in opposition. At the conclusion of public testimony and discussion by the Commissioners, the Commission made a motion to move Staff's recommendation and to direct staff and the applicant to continue to improve the content of the Urban Design, Streetscape and

Streetyard Guidelines for Aero Drive. The improvements would address: entry points into Kearny Mesa and Serra Mesa communities; irrigation and plant palette coordination to assure compatibility; no monoculture tree species along Aero Drive to assure viability, health, interest, walkability and pedestrian experience. And lastly, medians in the right-of-way less than seven feet wide should explore materials more agreeable to the environment other than concrete and medians fourteen feet in width should integrate the design of the median and parkway planting to slow traffic to create a safer environment. The motion passed by a vote of 4:2:0.

KEY STAKEHOLDERS: Westcore Sandrock, LLC

Broughton/Anderson/JF

LEGAL DESCRIPTION:

The site is located at 8655 Aero Drive within the Kearny Mesa Community Plan Area (Lots 3, 4 and 5 of Research Park Subdivision Addition, Map No. 6386, filed June 12, 1969). The site is not included on any Government Code Listing of hazardous waste sites.

NOTE: October 2008 Update:

Several corrections/additions have been made to the environmental document that do not effect the analysis or conclusions. The changes are shown in standard strikeout/underline format.

Staff: John Fisher – (619) 446-5231
Nina Fain – Deputy City Attorney

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

Testimony in opposition by James Feinberg, Jarvis Ross, Linda Watts, Joseph McDonald, Dicken Hall, and Cindy Moore.

Testimony in favor by Marcela Escobar-Eck, Gary Cast, John Turpit, Jerry Livingston, Kristen Byrne, Chris Garrett, Jeffrey Sallen, and Russ Vallone.

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:09 p.m. - 2:10 p.m.;
6:03 p.m. - 6:57 p.m.)



ITEM-S400: San Diego Facilities and Equipment Leasing Corporation 2008 Bylaws.

(Continued from the meeting of 11/10/2008, Item 207, at the request of Councilmember Frye, due to lack of time.)

CITY ATTORNEY’S RECOMMENDATION:

Adopt the following resolution:

(R-2009-153) ADOPTED AS RESOLUTION R-304365

Declaring that the Original Bylaws are ineffective and of no further force and effect, and approving the 2008 Bylaws. The 2008 Bylaws shall, immediately upon the effective date of this Resolution, govern the operations of the Corporation for all purposes and the Corporation shall, at all meetings and in connection with all corporate actions taken after such effective date, operate pursuant to the provisions of the 2008 Bylaws;

Declaring that a copy of the 2008 Bylaws shall be filed by the City Clerk of the City with the California Secretary of State, together with a certified copy of this Resolution.

SUPPORTING INFORMATION:

The San Diego Facilities and Equipment Leasing Corporation, a California nonprofit charitable corporation (“Corporation”), was formed in 1998 to assist in the financing, acquisition, construction and improvement of certain capital facilities improvements for the City of San Diego (“City”). The City, as the sole Member of the Corporation, retained the power to amend the Corporation’s Bylaws through the City Council.

Those Bylaws originally contained cumbersome procedures, nonfunctional committees and audit requirements inconsistent with current law and practice. The original methodology for filling vacancies on the Board of the Corporation, for example, was described in two conflicting ways within the Bylaws; in one place, the Directors served ex officio during the term of their City position (City Attorney, City Auditor and City Manager), while in another, two remaining Directors were authorized to pick a third. The City Attorney’s Office retained the Law Firm of Fulbright & Jaworski L.L.P. to represent the Corporation and the attached revised new 2008 Bylaws are their recommendation to bring the Corporation into compliance with the

Corporations Code and City practice and to clarify the application of the Brown Act to the Corporation's meetings.

FISCAL CONSIDERATIONS: None.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

OTHER RECOMMENDATIONS:

None. The proposed changes to the Corporation's Bylaws are not subject to the review or approval of the Corporation's Board.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable): None.

Epley

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:03 p.m. - 5:05 p.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-not present, Madaffer-yea, Hueso-yea.

ITEM-250: **Notice** of Pending Final Map Approval – 559-565 61st 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 "559-565 61st Street." (T.M. No. 293842/PTS No. 157339), located on the east side of 61st Street between Brooklyn Avenue and Akins Avenue in the Encanto Neighborhoods, Southeastern Community Plan Area in Council District 4, 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-251: Notice of Pending Final Map Approval – Pacific Highlands Ranch Unit 21.

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 “Pacific Highlands Ranch Unit 21” (T.M. No. 4653/PTS No. 103481), located north of Carmel Valley Road east of Lopelia Meadows Place in the Pacific Highlands Ranch Community Plan Area in Council District 1, 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 – 901 Sapphire 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 “901 Sapphire Street” (T.M. No. 266233/PTS No. 163602), located on the south side of Sapphire Street between Mission Boulevard and Bayard Street 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-253: **Notice of Pending Final Map Approval – 835 Thomas Avenue.**

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 “835 Thomas Avenue” (T.M. No. 266188/PTS No. 165359), located on the south side of Thomas Avenue between Mission Boulevard and Bayard Street 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.

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Peters at 7:08 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 7:08 p.m. - 7:08 p.m.)