

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR SPECIAL COUNCIL MEETING
OF
MONDAY, NOVEMBER 24, 2008
AT 6:00 P.M.
AT THE BALBOA PARK CLUB (BALLROOM)
2150 PAN AMERICAN ROAD WEST

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CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Peters at 6:08 p.m. Council President Peters recessed the meeting at 7:37 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 7:46 p.m. with Council Member Maienschein not present. The meeting was adjourned by Council President Peters at 9:17 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-not present
 - (6) Council Member Frye-present
 - (7) Council Member Madaffer-present
 - (8) Council Member Hueso-present
- Clerk-Maland (sr)

FILE LOCATION: MINUTES

ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Peters-present
- (2) Council Member Faulconer-present
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-not present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES

ITEM-200: Community Planning Groups Indemnification Ordinance.

CITY ATTORNEY'S RECOMMENDATION:

Introduce the following ordinance in **either Version A or Version B:**

Version A: (O-2009-22 Cor. Copy 9) NOTED AND FILED

Introduction of an Ordinance declaring by the Council of the City of San Diego as follows:

Except as hereinafter provided, the Office of the City Attorney shall represent and defend, and the City of San Diego shall indemnify, the Community Planners Committee (CPC) established by Council Policy 600-9, and any community planning group established pursuant to Council Policy 600-24, both entities hereafter referred to as "group," and the duly elected or appointed members thereof against any claim or action against such group, member, or former member, if all of the following circumstances exist:

- A. The person is a duly-elected or appointed member of a group recognized and operating in accordance with Council Policy 600-9 or Council Policy 600-24, and the person has attended prior to participating in the activity which gave rise to the claim or action against the group or member, or, in the case of newly-elected or appointed members, will attend within 12 months of being elected or appointed, a community planners' training course conducted by the City of San Diego; and
- B. The alleged act or omission occurred or was authorized during a lawful meeting of the group or subcommittee thereof;
- C. The alleged act or omission was within the reasonable scope of duties of a committee as described in Council Policies 600-5, 600-6, 600-9 and 600-24, and was not in violation of any of those Council Policies, or any provision of the bylaws adopted by the group and approved and/or adopted by the appropriately-designated City officials or City entities;
- D. The member or group has made a request in writing to the City Attorney for defense and indemnification no later than within ten (10) working days of having been served or notified of such legal papers; and
- E. The member or group has performed its duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances.

Non-members, duly-appointed by planning groups as members of subcommittees, may satisfy the requirements for indemnification under this ordinance, provided they satisfy any and all requirements of Section 1 above, with the exception of group membership requirements of Subsection A. The training requirements for non-member subcommittee members shall be enumerated within the Council Policy 600-24 Administrative Guidelines;

Upon the request of a member, former member, or group, the City of San Diego shall provide for the defense of any civil action or proceeding brought against the member or group on account of an alleged act or omission within the scope of the member or group's official duties as described in Council Policies 600-5, 600-6, 600-9, and 600-24. This duty shall apply unless it is determined, after a thorough investigation by the City of the facts surrounding the allegations, transaction or incident, that:

- A. The act or omission by the member or group was not undertaken within the scope of the official duties of recognized groups or their members; or
- B. The member or group intentionally acted or failed to act because of actual fraud, corruption, direct economic interest (as defined in the City's Administrative Guidelines) in the matter before it, or actual malice; or
- C. The defense of the action or proceeding by the City would create a conflict of interest between the City and the member or group; or
- D. The request for defense is determined, after a thorough investigation, to be a request for the defense of a criminal action or proceeding, including a criminal proceeding for the removal of a member or members.

In the event that the Office of the City Attorney determines that a member or a group is not entitled to or should not receive a defense and indemnification under this ordinance, the Office shall promptly advise the City Council and the member or group;

Nothing in this Ordinance shall relieve the City Attorney or any attorney employed with the Office of the City Attorney from his or her obligations under the California Rules of Professional Conduct;

Representation and indemnification shall not be provided by the City of San Diego in any administrative or judicial proceeding initiated by a group or its members against the City of San Diego, its agencies or representatives or any other party or organization nor shall representation and indemnification be

provided to a group or its members against damages to any person or organization which are alleged to have resulted from the initiation of any administrative or judicial proceeding by a group or its members. This Section shall not limit a recognized group's rights, as an interested party, to appeal a land use decision as enumerated in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code, regarding the City's decision-making process;

The provisions of this ordinance apply only to members of groups established and recognized by the City Council pursuant to Council Policy 600-9 and Council Policy 600-24, or duly-appointed members of subcommittees of recognized groups, provided they satisfy the requirements of this ordinance and the Council Policy 600-24 Administrative Guidelines;

In no event shall representation or indemnification be provided against a judgment for punitive damages;

This ordinance does not constitute an admission or a waiver of the position of the City of San Diego that groups and the members thereof are not officers, employees or servants of the City of San Diego.

OR

Version B: (O-2009-22 Cor. Copy 9)

**INTRODUCED, TO BE ADOPTED
TUESDAY, DECEMBER 9, 2008**

Introduction of an Ordinance declaring by the Council of the City of San Diego as follows:

Except as hereinafter provided, the Office of the City Attorney shall represent and defend, and the City of San Diego shall indemnify, the Community Planners Committee (CPC) established by Council Policy 600-9, and any community planning group established pursuant to Council Policy 600-24, both entities hereafter referred to as "group," and the duly elected or appointed members thereof against any claim or action against such group, member, or former member, if all of the following circumstances exist:

- A. The person is a duly-elected or appointed member of a group recognized and operating in accordance with Council Policy 600-9 or Council Policy 600-24; and the person has attended prior to participating in the activity which gave rise to the claim or action against the group or member, or, in the case of newly-elected or appointed members, will attend within 12 months of being elected or appointed, a community planners' training course conducted by the City of San Diego; and
- B. The alleged act or omission occurred or was authorized during a lawful meeting of the group or subcommittee thereof;
- C. The alleged act or omission was within the reasonable scope of duties of a committee as described in Council Policies 600-5, 600-6, 600-9 and 600-24, and was not in violation of any of those Council Policies, or any provision of the bylaws adopted by the group and approved and/or adopted by the appropriately-designated City officials or City entities;
- D. The member or group has made a request in writing to the City Attorney for defense and indemnification no later than ten (10) working days of having been served or notified of such legal papers; and
- E. The member or group has performed its duties in good faith and with such care, including reasonable inquiry, as an ordinarily prudent person or persons in a like position would use under similar circumstances.

Non-members, duly-appointed by planning groups as members of subcommittees, may satisfy the requirements for indemnification under this ordinance, provided they satisfy any and all requirements of Section 1 above, with the exception of group membership requirements of Subsection A. The training requirements for non-member subcommittee members shall be enumerated within the Council Policy 600-24 Administrative Guidelines;

Upon the request of a member, former member, or group, the City of San Diego shall defend and indemnify each and every member and/or group through and until final adjudication in the court, tribunal, or administrative body of proper jurisdiction for any and all claims, actions, litigation and/or lawsuits arising from the member's or group's official capacity and duties, regardless of whether the claim, action, litigation and/or lawsuit may plead and/or allege claims including, but not limited to, actual fraud, corruption, direct economic interest, malice, actual malice, and/or bad faith.

- A. In the event that actual fraud, corruption, direct economic interest, actual malice, and/or bad faith is/are alleged in any pleading and/or document in the claim, action, litigation, and/or lawsuit, the City Council may in writing reserve a right of reimbursement from the member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for actual fraud, corruption, direct economic interest, actual malice, and/or bad faith has been made.
- B. In the event that a claim, action, litigation, and/or lawsuit arises from the member's or group's intentional violation of group bylaws or policies and either Council Policy 600-24, the Council Policy's Administrative Guidelines, or other City rules regarding planning groups, the City Council may in writing reserve a right of reimbursement from said member or group for attorney fees and costs directly and exclusively resulting from defending and/or indemnifying the member or group, against whom a jury or bench trial verdict of liability and/or guilt for the intentional violation has been made.
- C. In the event that a member and/or group demonstrates a pattern and practice of refusal to cooperate with the City Attorney in the defense of the claim, action, litigation, and/or lawsuit, the City Attorney may, with written approval from the City Council, withdraw from defending and/or indemnifying the member and/or group.

In the event that the Office of the City Attorney determines that a member or a group is not entitled to or should not receive a defense and indemnification under this ordinance, the Office shall promptly advise the City Council and the member or group;

Nothing in this Ordinance shall relieve the City Attorney or any attorney employed with the Office of the City Attorney from his or her obligations under the California Rules of Professional Conduct;

Representation and indemnification shall not be provided by the City of San Diego in any administrative or judicial proceeding initiated by a group or its members against the City of San Diego, its agencies or representatives or any other party or organization nor shall representation and indemnification be provided to a group or its members against damages to any person or organization which are alleged to have resulted from the initiation of any administrative or judicial proceeding by a group or its members. This Section shall not limit a recognized group's rights, as an interested party, to appeal a land use decision as enumerated in Chapter 11, Article 2, Division 5 of the San Diego Municipal Code, regarding the City's decision-making process;

The provisions of this ordinance apply only to members of groups established and recognized by the City Council pursuant to Council Policy 600-9 and Council Policy 600-24, or duly-appointed members of subcommittees of recognized groups, provided they satisfy the requirements of this ordinance and the Council Policy 600-24 Administrative Guidelines;

In no event shall representation or indemnification be provided against a judgment for punitive damages;

This ordinance does not constitute an admission or a waiver of the position of the City of San Diego that groups and the members thereof are not officers, employees or servants of the City of San Diego.

SUPPORTING INFORMATION:

Since March 2007, the City Attorney's office has worked with the Community Planners Committee (CPC) on a comprehensive update of the ordinance providing defense and indemnity for community planning groups (CPGs).

The present indemnification ordinance, Ordinance No. O-17086, was adopted by the Council on April 28, 1999. The present ordinance provides for defense and indemnification of community planning committees against claims for damages.

After the La Jolla Community Planning Association (LJCPA) was sued in May 2006, many CPGs and CPG leaders, serving as members of the CPC, became concerned that, in their view, Ordinance No. O-17086 did not provide sufficient protections to community members volunteering to serve on CPGs. In response to these concerns, the City Attorney agreed to assign a Deputy City Attorney to work with a subcommittee of the CPC in order to draft a new indemnification ordinance.

After a number of subcommittee meetings and several presentations at CPC, the CPC voted to have two versions of the ordinance forwarded to the City Council for consideration.

Both versions, Version A and Version B, are before the Council in clean as well as strikeout-underline format. The City Attorney recommends the Council adopt Version A. The CPC subcommittee felt strongly that Version B should be presented to Council, as well.

SUPPORTING INFORMATION:

Both versions of the newly-drafted indemnification ordinance substantially tighten up the wording of the recitals in the ordinance, consolidating text and references to Council Policies 600-5, 600-9 and 600-24. The new ordinance clarifies that legal services and representation shall be provided by the City Attorney's Office and that such representation should be provided against "any and all claims." Ordinance No. O-17086 more narrowly provides for indemnification against "damages resulting from a judgment."

The implementation sections of the ordinance are broadened to acknowledge that indemnification can be provided even in the event that newly-elected members have not yet had the opportunity to attend a Community Orientation Workshop (COW). In addition, these sections provide for indemnification of non-members of CPGs who serve on subcommittees, as long as the duly-appointed non-members have satisfied training requirements as enumerated within the Council Policy 600-24 Administrative Guidelines.

A new implementation Section 3 provides for the City to defend CPGs against any civil action or proceeding brought against the group, so long as the alleged act or omission is within the scope of a member's or group's official duties. This section also provides for the City to be excused, after a thorough investigation, from this obligation under certain circumstances.

The CPC subcommittee's recommendation, as presented in Version B of the ordinance, provides for an alternative implementation Section 3 that would require the City to defend and indemnify CPGs "through and until final adjudication" in a court, tribunal or administrative body. Such an obligation would exist, regardless of whether a claim includes allegations of "actual fraud, corruption, direct economic interest, malice, actual malice, and/or bad faith." Version B would provide protection to the City's interests through a written "reservation of rights" for reimbursement of defense costs in the event that a group's or CPG member's actions are found, after final adjudication, to have merited the City's defense and/or indemnification.

Finally, both Versions A and B make clear that, should the City Attorney determine that a member or group is not entitled to or should not receive a defense, the City Attorney's Office is to promptly advise the City Council and the member or group.

FISCAL CONSIDERATIONS: N/A

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: N/A

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Meetings with an Ad Hoc Subcommittee of the Community Planners Committee as well as presentations at several meetings of the full Community Planners Committee.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Duly-elected and/or appointed members of the 43 recognized community planning groups (CPGs) and members of the Citywide Community Planners Committee (CPC).

Heumann/Anderson

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 6:20 p.m. - 6:49 p.m.)

MOTION BY FAULCONER TO INTRODUCE VERSION B AND TO NOTE AND FILE VERSION A. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maisenschein-not present, Frye-yea, Madaffernay, Hueso-yea.

ITEM-201: Community Planning Group Bylaws Updates Inconsistent with Council Policy 600-24. (Carmel Valley, City Heights, La Jolla, Linda Vista, Midway-Pacific Highway, Mission Valley, Ocean Beach, Pacific Beach, Rancho Bernardo, Rancho Peñasquitos, San Pasqual Valley, and Serra Mesa Community Areas. Districts 1, 2, 3, 5, 6, and 7.)

(See Report to the City Council No. 08-177.)

STAFF'S RECOMMENDATION:

Take the following actions:

(R-2009-712) ADOPTED AS AMENDED AS RESOLUTION R-304448

Approve, deny or approve with modifications the Carmel Valley Community Planning Board Bylaws;

Approve, deny or approve with modifications the City Heights Area Planning Committee bylaws;

Approve, deny or approve with modifications the La Jolla Community Planning Association Bylaws;

Approve, deny or approve with modifications the Linda Vista Community Planning Committee Bylaws;

Approve, deny or approve with modifications the Midway Community Planning Advisory Committee Bylaws;

Approve, deny or approve with modifications the Mission Valley Unified Planning Organization Bylaws;

Approve, deny or approve with modifications the Ocean Beach Planning Board bylaws;

Approve, deny or approve with modifications the Pacific Beach Community Planning Committee Bylaws;

Approve, deny or approve with modifications the Rancho Bernardo Community Planning Board Bylaws;

Approve, deny or approve with modifications the Rancho Peñasquitos Planning Board bylaws;

Approve, deny or approve with modifications the San Pasqual/Lake Hodges Planning Group Bylaws;

Approve, deny or approve with modifications the Serra Mesa Planning Group Bylaws;

Review deviations from Council Policy 600-24 on a case-by-case basis. The staff analysis indicates whether a deviation is potentially erosive to the Council Policy or unique to the circumstances of the particular community planning group;

Deny the two Council Policy deviations that conflict with state law (Ralph M. Brown Act). Staff does not have a recommendation for the twenty-four deviations that do not conflict with state law;

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

STAFF SUPPORTING INFORMATION:

An update to Council Policy 600-24 titled “Standard Operating Procedures and Responsibilities of Recognized Community Planning Groups” was approved by the City Council on May 22, 2008. Approval of the Council Policy update required each community planning group to update its bylaws. Council Policy 600-24 specifies that bylaws will be reviewed and approved by the Offices of the Mayor and City Attorney unless there are inconsistencies with the Council Policy. In such cases, the bylaws will be forwarded to the City Council President who shall docket the matter for Council consideration.

Staff from the City Planning and Community Investment Department and Office of the City Attorney has reviewed the forty-one community planning group bylaws submitted between August 2007 and October 2008. Of these, twenty-nine are consistent with Council Policy 600-24 and have been approved, or are pending approval with minor corrections. Twelve bylaws contain inconsistencies with the Council Policy and require City Council review.

The bylaws were previously scheduled for City Council action, July 22, 2008. The Council directed staff to provide additional information as recommended by the Independent Budget Analyst (reference IBA Report Number 08-82).

The specific information requests from the IBA report are:

1. *Memorandum to the City Council from either City staff or the planning groups outlining the reasons for requesting deviations from Council Policy 600-24.*

A request was made August 1st to each community planning group to provide justification in writing for any proposed deviations to be included in a staff memorandum. CPC was advised of the request at their July and September meetings. Staff received one written response, therefore a comprehensive memorandum cannot be prepared and each community planning group will have to respond separately.

2. *Policy analysis from City staff on the ramifications of approving the deviations.*

The previous staff analysis has been updated to include considerations for the City Council to review in order to understand potential ramifications of each bylaws deviation to the Council Policy. The deviations have been categorized as either unique to the respective community (or planning group), or as erosive to the Council Policy as a whole.

3. *Legal analysis by the City Attorney's Office on the legality of the deviations.*

Deviations that violate the Brown Act violate state law, and approving such deviations would be tantamount to approving a violation of state law. Deviations that do not violate the Brown Act, but deviate from Council Policy 600-24, do not violate any laws. Such deviations are a matter of policy only, and may be approved or denied, or conditionally approved by Council.

Since the Council meeting, staff encouraged the planning groups to reconsider their bylaws deviations, particularly those that also conflict with the Brown Act. As a result, the number of bylaws currently with deviations has been reduced from 19 to 12; the total number of deviations is reduced from 50 to 24; and the number with Brown Act conflicts reduced from 6 to 2. The report includes a copy of Council Policy 600-24 and a summary of each bylaw deviation from the Council Policy.

FISCAL CONSIDERATIONS:

None with this action; ongoing costs associated with providing administrative assistance to all recognized community planning groups are funded as part of the CPCI Department work program.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

At the July 22, 2008, meeting, the City Council returned to staff for additional information as recommended by the Independent Budget Analyst (reference IBA Report Number 08-82).

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Staff has worked with individual planning groups during their bylaws update process.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders are existing and prospective community planning group members whose bylaws contain inconsistencies with Council Policy 600-24 and require City Council review. Approval of certain deviations could set precedent for all community planning groups on standard policy (such as compliance with the Brown Act) and would impact the community planning program as a whole.

Wright/Anderson

Staff: Bernie Turgeon - (619) 533-6575

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 6:50 p.m. - 7:36 p.m.)

MOTION BY FAULCONER TO ADOPT STAFF'S RECOMMENDATIONS WITH THE FOLLOWING AMENDMENTS: APPROVE THE DEVIATIONS SUGGESTED FOR LA JOLLA ADDING A REQUIREMENT THAT SPECIAL MEETINGS ONLY BE CALLED BY THE CHAIR OR A MAJORITY OF THE TRUSTEES; APPROVE ONLY DEVIATION NUMBER 1 IN CITY HEIGHTS WHICH HAS TO DO WITH THE DEVIATION FROM A SIMPLE MAJORITY TO A SUPER MAJORITY, REFER THE DEVIATIONS ON TIMING OF VACANCIES, CANDIDATE ELIGIBILITY, ARTICLE 6, SECTION 2, BACK TO THE NEW CITY ATTORNEY FOR FURTHER STUDY. Second by Atkins. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-not present, Frye-yea, Madaffer-yea*, Hueso-yea.

*Nay on the portion related to super majority in City Heights.

ITEM-202: Mills Act Program Reforms and Cost Recovery Fees. (Communities with structures over 45 years old. Citywide.)

(See Report to the City Council No. 08-176.)

STAFF'S RECOMMENDATION:

Adopt the following resolutions:

Subitem-A: (R-2009-681 Cor. Copy) ADOPTED AS AMENDED AS
RESOLUTION R-304449

Approving the amendments to Council Policy 700-46 titled "Mills Act Agreements for Preservation of Historic Property," with the following amendments listed below:

- Add a fiscal threshold of \$100,000 new tax revenue reduction to general fund on an annual basis;
- Authorize exceeding the threshold as part of the annual budget process, based on findings made by the City Council that the fiscal health of the City is such that additional reduction in tax revenue can be supported;
- Require a formal application process with a deadline of March 31st of each year for properties designated by December 31st of previous year;
- Require the property owner to demonstrate substantial investment of the tax savings into the designated historic property through a 10-year tailored work plan which may include costs of rehabilitation or restoration of the historic property necessary to achieve historic designation; and
- Establish an inspection schedule for monitoring of Mills Act Program properties prior to a new agreement and every 5 years thereafter prior to the renewal date to assure compliance with contract requirements.

Instructing the City Clerk to add the aforesaid to the Council Policy Manual.

Instructing the City Clerk to add the aforesaid to the Council Policy Manual.

Subitem-B: (R-2009-682 Cor. Copy)

(R-2009-682 Rev.) ADOPTED AS AMENDED AS RESOLUTION R-304450

Approving the Fee Schedule for Individual Historical Resource Nomination, Mills Act Program Agreement, Mills Act Program Monitoring, and Mills Act Program Enforcement;

Authorizing the City Manager to adjust the Fee Schedule from time to time to recover increases in the administrative costs of the program.

STAFF SUPPORTING INFORMATION:

The current Mills Act Program was adopted by the City Council in July 1995 (Council Policy 700-46) as way to provide an incentive to historic property owners and bring historically significant properties under the City's authority for preservation, at time when there were no historical resources regulations. The current program is very informal with all designated historic properties located outside Redevelopment Areas eligible for Mills Act tax reduction. Specific requirements apply within Redevelopment Areas.

Only a limited number of agreements include additional preservation or rehabilitation requirements and there is no requirement that the tax savings realized through this program be invested in the historic property.

There is no formal inspection schedule or monitoring of agreements for compliance with the contract requirements. The Mills Act Program has not been updated or modified since its initial adoption and there is a desire on the part of the City to improve accountability of the overall program and to understand and manage the fiscal impacts of the program. Staff recommends adopting several reform measures to the Mills Act Program that would allow the fiscal impacts to be managed, improve the accountability of the Program and provide cost recovery fees for the processing of designation requests, a Mills Act Program Agreement, monitoring program, and enforcement. Staff recommends the reforms and fees be applied to pending applications and that the fee be required prior to work on each aspect of the program. Additionally, a Mills Act Agreement monitoring program would be established to ensure compliance with individual contracts and the state enabling legislation for the benefit of the public.

FISCAL CONSIDERATIONS:

Without enacting the requested fees, the General Fund is paying for optional services sought by individual property owners. The requested fees will recover the staff costs of this function.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

In December 2003, Planning Department staff asked the Land Use and Housing (LU&H) Committee to support a moratorium on processing voluntary nominations while staff prepared a fee for the service. While the committee did not approve a moratorium, it did authorize staff to develop a fee proposal. During review of the Planning Department's Fiscal Year 2006 budget, the City Council directed staff to prepare a fee proposal to recover costs associated with nominations of historical resources. On June 21, 2006, the LU&H Committee forwarded the issue of fees for nominations of historical resources and Mills Act Program Agreements to the full City Council with direction for staff to develop options related to the timing of a fee and a way to accommodate those property owners who cannot afford to pay the fee.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Staff met with preservation stakeholders several times between 2004 and 2006 to discuss the fee proposal and need for more formal inspections of Mills Act properties. Historic consultants and community representatives expressed concern that any fee, other than a nominal one, would deter property owners from coming forward for historical designation. Staff presented information comparing the City's overall Mills Act program with other jurisdictions' programs and the potential for changes to the HRB Policy Subcommittee during 2006 and 2007, with a draft proposal for changes presented in January 2007. There was much public interest and concern about the proposed changes expressed at this meeting and to staff and the Mayor's Office following the meeting.

The HRB held two workshops, in April and June 2008 and a hearing in July 2008 on the issue of Mills Act reforms. Every owner of a designated historic property or of a nominated property was notified by mail of these workshops. A very significant number of people attended the workshops and hearing. Many individuals expressed opposition to some or all of the changes being proposed and there was particularly strong opposition to any change in the program that would limit the number of new contracts or add eligibility requirements for new contracts.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders are owners of historical properties who are seeking designation and Mills Act agreements who will be subject to revised policy and regulations and will be charged new or revised fees.

Anderson

Staff: Cathy Winterrowd - (619) 235-5217

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 7:46 p.m. - 9:16 p.m.)

MOTION BY MADAFFER TO ADOPT THE INDEPENDENT BUDGET ANALYST'S RECOMMENDATION BUT REMOVE THE WORD "SUBSTANTIAL," AND BE SURE TO INCLUDE THE ECONOMIC HARDSHIP WAIVER; CONTINUE THE ISSUES OF THE ANNUAL THRESHOLD AND PROJECT IN THE PIPELINE TO DECEMBER 2, 2008, TO ALLOW FOR MORE DISCUSSION. DIRECT THE MAYOR'S STAFF TO PROVIDE THE NUMBER OF PROJECTS IN THE PIPELINE, HOW LONG THE PROJECTS HAVE BEEN IN THE PIPELINE, AND ADDRESS THE ISSUE OF WARNING OF POSSIBLE FEE INCREASES TO THOSE IN THE PIPELINE. DIRECT THE IBA AND/OR MAYOR TO PROVIDE ANY ADDITIONAL INFORMATION BEFORE DECEMBER 2, 2008. ALSO, REFER TO LAND USE AND HOUSING COMMITTEE THE DISCUSSION OF THE POSSIBILITY OF ADDITIONAL FUNDING FROM REDEVELOPMENT, HOUSING COMMISSION OR CDBG TO BE USED TO CREATE AN ADDITIONAL INCENTIVE PROGRAM FOR APPLICANTS TO PARTICIPATE IN HISTORIC RESTORATION PROGRAMS. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-not present, Frye-yea, Madaffer-yea, Hueso-yea.

ITEM-203: Reconsideration of City Council Resolution regarding As-Needed Agreement for Community Outreach Services with Katz and Associates vetoed by the Mayor on October 30, 2008.

(See Veto Memorandum from Mayor Sanders dated October 30, 2008.)

Pursuant to San Diego Charter Section 285, the Council shall reconsider Resolution R-2009-251, passed by City Council with a Unanimous vote on October 14, 2008, Item 102, which was vetoed by the Mayor on October 30, 2008. If after such reconsideration, at least five members of the Council vote in favor of passage, the resolution shall become effective notwithstanding the Mayor's veto.

(Continued from the meeting of November 18, 2008, Item 331, at the request of Councilmember Hueso, for further review.)

STAFF'S RECOMMENDATION:

Adopt the following resolution:

(R-2009-251) RECONSIDERED/VETO STANDS

Authorizing the Mayor, or his designee, to execute, for and on behalf of the City, an Agreement with Katz and Associates, for As-Needed Consultant Services related to community outreach services for the Engineering and Capital Projects Department in an amount not to exceed \$500,000, under the terms and conditions set forth in the Memorandum of Agreement (MOA);

Authorizing the expenditure of an amount not to exceed \$1,000 from Capital Outlay Fund 302453, CIP-37-064.0, Annual Allocation - Americans with Disability Act (ADA) Improvements for services to Bird Rock Elementary School ADA Upgrades, solely and exclusively, for the purpose of providing funds for the above MOA and related costs, provided that the City Comptroller first furnishes one or more certificates certifying that the funds are, or will be, on deposit with the City Treasurer;

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

Declaring that this activity is not a "project" and is therefore not subject to the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Sections 15060(c)(3) and 15378(b)(5).

STAFF SUPPORTING INFORMATION:

The City currently does not have the capacity to perform community outreach services for various projects. A qualified and licensed consultant is being retained to provide this service. The City advertised the Contract and issued the Request for Proposal for As-Needed Community Outreach Services Agreement on August 20, 2007 in the San Diego Daily Transcript and in the City's website for bid and contract opportunities. Six (6) firms were short-listed to be interviewed by the interview/selection panel based on their proposal and evaluation criteria in the request for proposal.

On January 28-30, 2008, the short-listed firms were interviewed by the interview/selection panel. Katz and Associates was selected as one of two firms highly qualified following a competitive selection and procurement process completed in accordance with the policies, procedures and guidelines in the City Council Policy 300-7, Consultant Services Selection, and the City's Administrative Regulation 25.70 on hiring of consultants other than Architects and Engineers. The City will utilize the expertise of Katz and Associates in construction relations, media relations, community outreach, informational materials, in a timely and efficient manner. Katz and Associates has the expertise, experience and personnel necessary to provide the professional services on an as-needed, hourly fee basis. The City will pay Katz and Associates for performance of all Professional Services rendered in accordance with the Agreement, in an amount not to exceed \$500,000. Katz and Associates have no Subconsultants.

EQUAL OPPORTUNITY CONTRACTING:

Funding Agency: City of San Diego
Goals: 15% Voluntary (MBE/WBE/DBE/DVBE/OBE)
Subconsultant Participation: \$000,000 Certified Firms (00.0%)
\$000,000 Other Firms (00.00%)
Other: Workforce Report Submitted - Equal Opportunity Plan required. Staff will monitor plan, and adherence to the Nondiscrimination Ordinance.

FISCAL CONSIDERATIONS:

The City will pay Katz and Associates for performance of all professional services rendered in accordance with this Agreement, in an amount not to exceed \$500,000. The City agrees to issue at least one Task Order with a minimum aggregate value of \$1,000 to Katz and Associates.

Funding for the minimum guarantee amount of \$1,000 will come from CIP-37-064.0, Annual Allocation - Americans with Disability Act (ADA) Improvements, Fund 302453, Capital Outlay, for the purpose of executing this Agreement. Future tasks will be funded from various City Department's budget.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTIONS:

On October 14, 2008, City Council passed Resolution R-2009-251, Item 102, with a Unanimous vote. The item was vetoed by the Mayor on October 30, 2008.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Katz and Associates is being retained to provide these services for the Engineering and Capital Projects Department.

KEY STAKEHOLDERS AND PROJECTED IMPACTS (if applicable):

Upon approval of the Agreement, Katz and Associates could receive up to \$500,000.

Boekamp/Jarrell

Aud. Cert. 2900150.

Staff: James Nagelvoort - (619) 533-5110
Pedro De Lara, Jr. - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 6:09 p.m. - 6:18 p.m.)

MOTION BY FAULCONER NOT TO OVERRIDE THE MAYOR'S VETO. Second by Young. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-not present, Frye-yea, Madaffer-yea, Hueso-yea.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Peters at 9:17 a.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 9:17 p.m. - 9:17 p.m.)