

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, FEBRUARY 2, 2009
AT 2:00 P.M.
IN THE COUNCIL CHAMBERS - 12TH FLOOR

Table of Contents

CHRONOLOGY OF THE MEETING.....	2
ATTENDANCE DURING THE MEETING	2
ITEM-1: ROLL CALL.....	3
ITEM-10: INVOCATION	3
ITEM-20: PLEDGE OF ALLEGIANCE.....	3
COUNCIL COMMENT	4
CITY ATTORNEY COMMENT	4
CLOSED SESSION ITEMS.....	5
ITEM-200: Fire Sprinkler Retrofitting for High Rise Buildings	9
ITEM-201: American Tower Corporation-Aviation. Appeal of the Planning Commission decision to deny a Conditional Use Permit (CUP) and Planned Development Permit (PDP) for an existing, expired CUP for a 130-foot high monopole and a 550 square foot equipment building located at 6770 Aviation Dr	12
ITEM-250: The list of ticket users for the City Suites at Qualcomm Stadium and Petco Park will be posted on the City Clerk’s website quarterly. This information will also be available for viewing by the public in the Office of the City Clerk.....	16
ITEM-251: Notice of Pending Final Map Approval – 5014 Auburn Driv	16
REPORT OUT OF CLOSED SESSION	17
NON-DOCKET ITEMS	17
ADJOURNMENT.....	17

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Hueso at 2:00 p.m. Council President Hueso recessed the meeting at 3:44 p.m. to convene the Redevelopment Agency. Council President Hueso reconvened the regular meeting at 3:44 p.m. with all Council Members present. The meeting was adjourned by Council President Hueso at 3:44 p.m.

ATTENDANCE DURING THE MEETING:

- (1) Council Member Lightner-present
 - (2) Council Member Faulconer-present
 - (3) Council Member Gloria-present
 - (4) Council Member Young-present
 - (5) Council Member DeMaio-present
 - (6) Council Member Frye-present
 - (7) Council Member Emerald-present
 - (8) Council Member Hueso-present
- Clerk-Maland (sr)

FILE LOCATION: MINUTES

ITEM-1: ROLL CALL

Clerk Maland called the roll:

- (1) Council Member Lightner-present
- (2) Council Member Faulconer-present
- (3) Council Member Gloria-present
- (4) Council Member Young-present
- (5) Council Member DeMaio-present
- (6) Council Member Frye-present
- (7) Council Member Emerald-present
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES



ITEM-10: INVOCATION

Invocation was given by Pastor Adrian Ewings of Faith Tabernacle Church.

FILE LOCATION: MINUTES



ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Emerald.

FILE LOCATION: MINUTES

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member Gloria congratulated City staff in their win in the City-County football game over the weekend.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:09 p.m. - 2:09 p.m.)

COUNCIL COMMENT-2:

Council Member Emerald encouraged those in need to apply for aid.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:09 p.m. - 2:14 p.m.)

CITY ATTORNEY COMMENT:

City Attorney Goldsmith commented on an article regarding the authority of the City Attorney to file lawsuits.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 2:05 p.m. - 2:09 p.m.)

CLOSED SESSION ITEMS:

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

CS-1 Agency negotiators: William Kay, Timothy Davis, Scott Chadwick, Judy von Kalinowski, Thom Harpole, Kim Nguyen, Woo-Jin Shim, Lourdes Silva, Valerie VanDeweghe, Javier Mainar, Brian Fennessy, David Ramirez, Robert Kanaski, Paul Cooper, Jan Goldsmith, Tanya Tomlinson, Joan Dawson, William Gersten, Lori Thacker

Employee organizations: Local 145 International Association of Firefighters AFL-CIO, San Diego Police Officers Association, Municipal Employees Association, AFSCME Local 127 AFL-CIO and Deputy City Attorney Association

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 3, 2009

DCA Assigned: J. Dawson

Discussion with the Mayor and City Council pending contract negotiations with employee unions (Police Officers Association, International Association of Firefighters Local 145, Municipal Employees Association, AFSCME Local 127 and the Deputy City Attorney's Association).

Closed Session Comment 1:

Hud Collins commented on fair negotiations.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:40 p.m. - 3:43 p.m.)

Council President Hueso closed the hearing.

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

CS-2 *City of San Diego v. MBM Associates, et al.*
San Diego Superior Court Case No. 878013

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 3, 2009

DCA Assigned: J. Cordileone

The City must evaluate options with regard to further appeal of the Appellate Court's sustaining of demurrers granted by the trial Court to City's complaint against certain landowners and developers in Mission Valley. In closed session, the City Attorney will brief the Mayor and City Council on this matter.

Closed Session Comment 1:

Hud Collins commented on bringing forward all the lawsuits.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:40 p.m. - 3:43 p.m.)

Council President Hueso closed the hearing.

CS-3 *Citizens for Responsible Equitable Environmental Development, et al. v. City of San Diego*
San Diego Superior Court Case No. GIC871259

Citizens for Responsible Equitable Environmental Development, et al. v. City of San Diego
San Diego Superior Court Case No. GIC876017

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 3, 2009

DCA Assigned: M. Dickenson

These matters involve California Environmental Quality Act challenges to the City Council's approvals of condominium conversions. The City Attorney will update the Mayor and the City Council on the status of litigation in closed session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:43 p.m. - 3:44 p.m.)

Council President Hueso closed the hearing.

CS-4 *Christine Leiendecker v. City of San Diego, et al.*

San Diego Superior Court Case No. 37-2007-00083066-CU-PO-CTL

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 3, 2009

DCA Assigned: K. Snyder

Christine Leiendecker v. City of San Diego is a personal injury action arising from Plaintiff's trip and fall on a public sidewalk. 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: 3:43 p.m. - 3:44 p.m.)

Council President Hueso closed the hearing.

CS-5 *San Diego Gas & Electric Company v. City of San Diego*

San Diego County Superior Court Case No. 37-2007-00071604-CU-EI-CTL

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 3, 2009

DCA Assigned: G. Spitzer

This matter is an eminent domain action brought by San Diego Gas & Electric Company against the City of San Diego to condemn an easement for utility purposes. The City Attorney will provide a status of the litigation and discuss settlement issues.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:43 p.m. - 3:44 p.m.)

Council President Hueso closed the hearing.

CS-6 *Estate of Jacob Faust, et al. v. City of San Diego*
San Diego Superior Court Case No. GIC 80142

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 3, 2009

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.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:43 p.m. - 3:44 p.m.)

Council President Hueso closed the hearing.

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

CS-7 Number of Potential Cases: One

REFERRED TO CLOSED SESSION OF TUESDAY, FEBRUARY 3, 2009

DCA Assigned: J. Dawson

This matter involves an agreement between the City and the San Diego Police Officers Association and a tentative agreement between the City and Local 145, International Association of Fire Fighters, AFL-CIO, to file litigation to determine whether or not the Deferred Retirement Option Plan [DROP] and purchase of service credits are vested benefits.

Closed Session Comment 1:

Hud Collins commented on updates of lawsuits.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:40 p.m. - 3:43 p.m.)

Council President Hueso closed the hearing.



ITEM-200: Fire Sprinkler Retrofitting for High Rise Buildings. (Centre City Community Area. District 2.)

STAFF'S RECOMMENDATION:

Introduce the following ordinance:

(O-2009-92) CONTINUED TO TUESDAY, FEBRUARY 24, 2009

Introduction of an Ordinance amending Chapter 5, Article 5, Division 9, of the San Diego Municipal Code by amending Section 55.0903, pertaining to Fire Protection and Prevention, to read as follows:

It is unlawful for any owner of a high-rise building to allow any person to occupy any portion of a high-rise building after January 1, 2011, where occupancy has been authorized pursuant to this section, except where: (1) the occupant is performing minimal maintenance to prevent the high-rise building from being in an unsafe condition; or (2) the occupant is performing construction or maintenance to the building related to the installation or maintenance of an automatic fire sprinkler system; or (3) an approved fire sprinkler system has been completely installed.

STAFF SUPPORTING INFORMATION:

In 1986, the Mayor and City Council passed Ordinance Number O-17172 requiring fire sprinkler retrofitting for high-rise buildings. Specific exemptions were granted including all Government buildings except for those owned by the City of San Diego. In 1991, the Council extended the deadline for compliance from 1996 to 1999, unless the owner declared their intent to demolish the building by January 1, 2000. In 1995 the City passed Resolution Number R-286760 declaring the City's intent to demolish the City Administration Building (CAB) prior to January 1, 2000.

On June 5, 2001, Ordinance Number O-18946 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofit Ordinance until January 1, 2004. In addition, the City Council authorized a phase-funded design build contract to continue with the installation of a fire sprinkler system.

On January 13, 2004, Ordinance Number O-19254 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofitting Ordinance until January 1, 2008.

On January 8, 2008, Ordinance Number O-19696 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofitting Ordinance until January 1, 2009.

On December 2, 2008, an ordinance to extend the compliance deadline for the Fire Sprinkler Retrofitting Ordinance was heard, but not approved by the City Council.

The current Fire Sprinkler system includes the: backflow valve, pump, transfer switches, standpipe, alarm system, and sprinklers in the basement and on the 10th, 11th, 13th, 14th, and 15th floors. Remaining work includes the: emergency backup generator, additional upgrades to the alarm system, and fire sprinklers in all the elevator lobbies and on the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th, 9th, and 12th floors. The cost of this remaining work is estimated to be in excess of \$5,000,000.

On July 31, 2007, CCDC issued a request for qualifications to redevelop the Civic Center Complex. The proposed redevelopment of the Civic Center Complex has proceeded with the peer review and financial analysis which was estimated to be complete in December. Presentations to the Centre City Development Board (CCDC), the Rules Committee and the City Council are anticipated in early 2009. If this project were to move forward the completion of the fire sprinkler system in CAB would not be necessary. Should the proposed redevelopment of the Civic Center Complex not take place, the completion of the final phase of the sprinkler system project would need to be completed. Extending the deadline for compliance with the Fire Protection and Prevention Ordinance to 2011 will allow time for the completion of the evaluation of the redevelopment process for Civic Center Complex.

FISCAL CONSIDERATIONS:

No funding is currently necessary for this action; however, if City Council does not approve the extension \$5,000,000 will need to be added to this year's Capital Improvement Program Budget in order to complete the fire Sprinkler System at CAB. Funding for this project has not been identified.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

- 1986, the Mayor and City Council passed Ordinance Number O-17172 requiring fire sprinkler retrofitting for high rise buildings.
- 1991, the Mayor and City Council extended the deadline for compliance from 1996 to 1999, \$1,200,000 appropriation for the South Course Renovation through the FY 2006 budget process.
- 2001, Ordinance Number O-18946 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofit Ordinance until January 1, 2004.
- 2004, Ordinance Number O-19254 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofitting Ordinance until January 1, 2008.
- 2008, Ordinance Number O-19696 was adopted extending the deadline for compliance with the Fire Sprinkler Retrofitting Ordinance until January 1, 2009.
- On December 2, 2008, an ordinance to extend the compliance deadline for the Fire Sprinkler Retrofitting Ordinance was heard, but not approved by the City Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The City of San Diego's City Administration Building is one of the few remaining high rise building without complete fire sprinkler protection in the City of San Diego.

Oskui/Jarrell

Staff: Darren Greenhalgh - (619) 533-6600
Nina Fain - Deputy City Attorney

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:14 p.m. - 3:01 p.m.)

Motion by Emerald to reject the waiver and ask the Mayor to formulate a plan to come into compliance with the Municipal Code, that the Mayor issue a Request for Proposal for the sprinkler retrofit, and present costs as part of the 2010 budget. Second by Frye. No vote taken.

Motion by Emerald to continue to Tuesday, February 24, 2009, for further review; direct the City Attorney to return with an opinion regarding the City's liability. Second by Frye. Failed. Lightner-nay, Faulconer-nay, Gloria-yea, Young-nay, DeMaio-nay, Frye-yea, Emerald-yea, Hueso-yea.

Motion by DeMaio to introduce the ordinance as amended by changing the extension of the waiver from two years to one year. Second by Faulconer. Failed. Lightner-yea, Faulconer-yea, Gloria-nay, Young-nay, DeMaio-yea, Frye-yea, Emerald-nay, Hueso-nay.

MOTION BY DEMAIO TO RECONSIDER THE MOTION TO CONTINUE TO FEBRUARY 24, 2009. Second by Emerald. Passed by the following vote: Lightner-nay, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

MOTION BY FAULCONER TO CONTINUE TO FEBRUARY 24, 2009, FOR FURTHER REVIEW. Second by Emerald. Passed by the following vote: Lightner-nay, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.



ITEM-201: American Tower Corporation-Aviation. Appeal of the Planning Commission decision to deny a Conditional Use Permit (CUP) and Planned Development Permit (PDP) for an existing, expired CUP for a 130-foot high monopole and a 550 square foot equipment building located at 6770 Aviation Dr. The project requires both a CUP and a PDP because it is a major telecommunication facility and because it exceeds the height limit of 30 feet.

Matter of approving, conditionally approving, modifying, or denying an application for a wireless communication facility consisting of an existing 130 foot high monopole and a 550 square foot equipment shelter, originally approved by CUP No. 84-0472, which expired on November 20, 2004. The facility is located at 6770 Aviation Drive between Benson Avenue and Cielo Drive

(Conditional Use Permit (CUP) No. 296155/Planned Development Permit (PDP)
No. 296156/Project No. 92076.)

STAFF'S RECOMMENDATION:

Take the following action:

(R-2009-881) DENIED APPEAL AND UPHELD THE DECISION OF
THE PLANNING COMMISSION TO DENY
CONDITIONAL USE PERMIT NO. 296155 AND
PLANNED DEVELOPMENT PERMIT NO. 296156;
ADOPTED AS RESOLUTION R-304624

Granting or denying the appeal and upholding or overturning the decision of the
Planning Commission denying Conditional Use Permit (CUP) No. 296155 and
Planned Development Permit (PDP) No. 296156, with appropriate findings to
support Council action;

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

OTHER RECOMMENDATIONS:

Planning Commission on October 9, 2008, voted 4-0-3 to recommend denial.

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

The Skyline-Paradise Hills Community Planning Group has recommend denial of this
project.

STAFF SUPPORTING INFORMATION:

REQUESTED ACTION:

Deny the appeal and Deny Conditional Use Permit No. 296155 and Planned Development Permit
No. 296156 for an existing 130 foot high monopole and a 550 square foot equipment building.

STAFF RECOMMENDATION:

Approve Requested Action.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

On November 20, 1984, the City Council approved a CUP for a 130 foot high monopole and a 550 square foot equipment building located on a hilltop at the end of Aviation Drive. Since the wireless industry was in its infancy at that time, the Council imposed a 20 year limit on the life of the CUP. This allowed the facility to be constructed, the technology to be implemented and a review to occur in the future, which would allow an evaluation of technology and/or regulation changes. The Land Development Code does not have provisions to extend expired CUP's. Section 141.0405 of the Land Development Code (Communication Antennas) requires wireless facilities to be integrated into the landscape or camouflaged from public view.

The project site is located in the RS-1-7 zone, which has a 30 foot maximum height limit. The facility is considered a major telecommunication facility and as it exists, complies with the development regulations for the zone with the exception of the 30 foot height limit, thus the requirement for the PDP. The intent of a PDP is to encourage imaginative and innovative planning and that it would be preferable to what would be achieved by strict conformance with the regulations. This monopole is a significant visual impact on the horizon of the community. Neither the findings for the CUP nor the findings for the PDP could be made by staff in the affirmative; therefore, staff recommended denial of the permits to the Planning Commission.

The 130 foot tall monopole is situated prominently on a hilltop surrounded by single unit residential homes. The site supported a city water tank at one time, but now is home to three monopoles, including the American Tower facility. The City currently has a 105 foot high monopole supporting City communication antennas, including T-Mobile as a tenant. The third monopole belongs to Sprint Nextel and it is 90 feet high. That pole expired June 1, 2005 and Sprint Nextel recently went through the discretionary review process to switch the monopole out for a 50 foot high faux tree. The Planning Commission approved the project on February 21, 2008. The monopole has not yet been replaced with the faux tree.

The Planning Commission reviewed this project at several hearings over the past 18 months and the primary concern expressed at those hearings focused on the visual impacts created by the three monopoles. Various American Tower generated designs were evaluated and a master plan was discussed as well, however, the applicant has declined to reduce the height of their facility, which, staff believes defeats the purpose of the regulations to integrate the facility into the landscape. Further, the idea of a master plan would not be warranted because the City has no plans to modify their tower and Sprint Nextel already has approval to replace their tower with a shorter, more integrated design: a faux tree. That leaves the non-compliant American Tower monopole.

It is important to make a critical distinction between the City's tower and the American Tower facility and that is the City's tower is non-profit used for the purposes of public safety communications and American Tower and Verizon, their tenant, are realizing considerable revenue from their commercially used tower. Please see City of San Diego Memorandum to the Planning Commission, dated January 18, 2008 for further discussion of these issues.

The Land Development Code requires telecommunication facilities to be minimally visible through the use of architecture, landscape architecture and siting solutions. Staff believes, maintaining the height of this facility would directly conflict with this requirement. The original CUP has been expired for over four years and in order to justify the findings for a new CUP, the project must comply with the regulations and policies in effect today. American Tower has not provided any acceptable solutions. On October 9, 2008, the Planning Commission unanimously denied CUP No. 296155 and PDP No. 296156.

Broughton/Goldstone/KLA

NOTE: This project is categorically exempt from CEQA pursuant to State CEQA Guidelines Section 15301.

Staff: Karen Lynch-Ashcraft – (619) 446-5351

Testimony in favor of the appeal by Robert Jystad.

Testimony in opposition of the appeal by Mary Coakley.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 3:02 p.m. - 3:39 p.m.)

MOTION BY YOUNG TO DENY THE APPEAL AND UPHOLD THE DECISION OF THE PLANNING COMMISSION DENYING CONDITIONAL USE PERMIT NO. 296155 AND PLANNED DEVELOPMENT PERMIT NO. 296156 INCLUDING THE COMMENTS AND FINDINGS STATED ON THE RECORD BY THE COUNCIL MEMBERS; REFER THE ISSUE OF THE CITY'S POLICY REGARDING MONOPOLES TO THE PUBLIC SAFETY AND NEIGHBORHOOD SERVICES COMMITTEE. Second by Frye. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

ITEM-250: The list of ticket users for the City Suites at Qualcomm Stadium and Petco Park will be posted on the City Clerk's website quarterly. This information will also be available for viewing by the public in the Office of the City Clerk.

ITEM-251: **Notice** of Pending Final Map Approval – 5014 Auburn Drive.

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 "5014 Auburn Drive" (T.M. No. 306904/PTS No. 148575), located on Auburn Drive, south of Ontario Avenue in the Mid-City: City Heights Community Plan Area in Council District 3, 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 Hueso at 3:44 p.m.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 3:44 p.m. - 3:44 p.m.)