

THE CITY OF SAN DIEGO, CALIFORNIA
MINUTES FOR REGULAR COUNCIL MEETING
OF
MONDAY, MARCH 2, 2009
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 Hueso at 2:00 p.m. The meeting was adjourned by Council President Hueso at 3:51 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-not 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 Reverend Jim Seaton of United Methodist Chapel of the Valley.

FILE LOCATION: MINUTES



ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Gloria.

FILE LOCATION: MINUTES

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, MARCH 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).

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:48 p.m. - 3:49 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 *Christopher Stavros v. City of San Diego*
Claim No. LP05-0534-2204**

REFERRED TO CLOSED SESSION OF TUESDAY, MARCH 3, 2009

DCA Assigned: D. Shanahan

The *Christopher Stavros v. City of San Diego* matter is a non-litigated claim arising out of a failed City storm drain. The failed storm drain caused water intrusion into the lower level of the Stavros' residence and also caused severe soil erosion of the slope under and around the residence. 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: 3:48 p.m. - 3:49 p.m.)

Council President Hueso closed the hearing.

**CS-3 *Friends and Concerned Citizens of University City, et al. v. City of San Diego*
San Diego Superior Court Case No. 37-2007-00078058-CU-TT-CTL**

REFERRED TO CLOSED SESSION OF TUESDAY, MARCH 3, 2009

This litigation is regarding a proposed development at Costa Verde. Outside counsel requests that the Mayor and City Council consider a proposed settlement of the matter in closed session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:48 p.m. - 3:49 p.m.)

Council President Hueso closed the hearing.

**CS-4 *Michael T. Uberuaga v. City of San Diego*
United States District Court Case No. 08cv1960 MMA (BLM)**

REFERRED TO CLOSED SESSION OF TUESDAY, MARCH 3, 2009

DCA Assigned: D. Karlin

This matter involves a lawsuit filed by a former City employee requesting the City provide him a legal defense including payment of all attorney fees, costs and expenses with regard to the civil action brought by the United States Securities and Exchange Commission. The City Attorney will advise the Mayor and City Council on the status of the litigation, including a potential settlement, and discuss the possibility of making determinations under California Government Code section 995.2 in closed session.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:48 p.m. - 3:49 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-5 Number of Cases: One

REFERRED TO CLOSED SESSION OF TUESDAY, MARCH 3, 2009

DCA Assigned: C. Leone

Consideration of litigation against the San Diego Regional Airport Authority regarding the Authority's EIR on its Master Plan for the proposed airport expansion and a proposed resolution.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:48 p.m. - 3:49 p.m.)

Council President Hueso closed the hearing.

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

CS-6 *James M. Chapin and Penney Castleman v. Michael Aguirre and City of San Diego* United States District Court Case No. 05CV1906R (POR)

REFERRED TO CLOSED SESSION OF TUESDAY, MARCH 3, 2009

DCA Assigned: W. Chung

James M. Chapin and Penney Castleman v. Michael Aguirre and City of San Diego is a wrongful termination case arising from both of Plaintiffs prior employment as former deputy city attorneys. In closed session, the deputy city attorney and outside counsel retained by the City will brief the Mayor and City Council on the matter and present a settlement offer made by Plaintiffs.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 3:48 p.m. - 3:49 p.m.)

Council President Hueso closed the hearing.



ITEM-200: Amendments to the Permanent Rules of the Council.

(See memorandum from Councilmembers Frye, DeMaio, Lightner, and Emerald dated 2/3/2009; memorandum from Councilmember DeMaio dated 1/28/2009; memoranda from Council President Hueso dated 1/27/2009 and 1/14/2009; memorandum from Councilmembers Frye and DeMaio dated 11/13/2008, with accompanying documents; and Council District Eight's PowerPoint.)

TODAY'S ACTION IS:

Introduce the following ordinance:

(O-2009-104) INTRODUCED AS AMENDED WITH REFERRALS TO RULES COMMITTEE; TO BE ADOPTED TUESDAY, MARCH 24, 2009

Introduction of an Ordinance amending the San Diego Municipal Code by amending Chapter 2, Article 2, Division 1, Section 22.0101.5, entitled “Permanent Rules of the Council,” by amending Rule 2.2, Rule 4.2, and Rule 8.4, to read as follows:

Rule 2.2 Order of Business (Former Rule 3)

The order of business for Council meetings shall be as follows:

Monday at 2:00 p.m.

1. Roll Call
2. Invocation and Pledge of Allegiance
3. Requests for Continuances
4. Communications
5. Adoption Agenda
 - a) Committee Items
 - b) Other Legislative Items
 - c) Noticed Hearings (to be scheduled at various times throughout the day by the City Clerk based on the number of hearings and reasonable expectation of length) and Special Hearings
6. Public Comment on Closed Session Items
7. Public Notices
8. Non-Agenda Items
9. Adjournment

Tuesday at 9:00 a.m.

1. Closed Session

Tuesday at 10:00 a.m.

1. Roll Call
2. Pledge of Allegiance
3. Special Orders of Business
4. Non-Agenda Public Comment (limited to three minutes)
5. Requests for Continuance
6. Adoption Agenda
 - a) Consent Items
 - b) Noticed Hearings (to be scheduled at various times throughout the day by the City Clerk based on the number of hearings and reasonable expectation of length) and Special Hearings
 - c) Unfinished Business from Monday

7. Non-Agenda Items
8. Adjournment

Rule 4.2 Selection of the President

At the first regular Council meeting held after 10:00 a.m. the first Monday after the first day of December, the Council shall select a President from one of its members by majority votes of the Council. The President shall serve for a term of one year, commencing on the date set forth above, or until a successor is selected and qualified, whichever is later. The President may serve more than one term.

Rule 8.4 Transcription of Closed Sessions

Except for matter involving personnel decisions, all closed sessions shall be transcribed by a court certified reporter. All transcripts shall be retained.

**RULES, OPEN GOVERNMENT, AND INTERGOVERNMENTAL RELATIONS
COMMITTEE'S RECOMMENDATION:**

On 1/28/2009, Rules voted on the following:

ACTION: Motion by Councilmember Young, second by Chair Hueso, to make permanent temporary order changes and add Pledge of Allegiance to Tuesday agendas.

VOTE: 5-0; Hueso-yea, Faulconer-yea, Frye-yea, Gloria-yea; Young-yea.

ACTION: Motion by Councilmember Frye, second by Councilmember Young, to add timing of election of Council President to immediately after elections. Direction to City Attorney to report on legality of Permanent Rules 2.9 and 2.10. Direction to IBA to report on costs associated with evening meetings.

VOTE: 5-0; Hueso-yea, Faulconer-yea, Frye-yea, Gloria-yea; Young-yea.

ACTION: Motion by Councilmember Young, second by Chair Hueso, to amend Permanent Rules to exclude personnel discussions from transcription requirement.

VOTE: 4-1; Hueso-yea, Faulconer-yea, Frye-nay, Gloria-yea; Young-yea.

SUPPORTING INFORMATION:

- A. On January 14, 2009, the Rules Committee discussed and on January 28, 2009, the Rules Committee voted to recommend that the Council adopt the following amendments to the Permanent Rules of Council.

1. Order of Business: Make permanent the changes to Rule 2.2 regarding Order of Business approved by Council on January 30, 2006. These changes affect special orders of business, consent items, and noticed and special hearings. In addition to these changes, add the Pledge of Allegiance to each Tuesday's agenda.
2. Council Presidency: Include language in Rule 4.2 to require that the election of the Council President take place during the first meeting after incoming Councilmembers are sworn in.
3. Transcription of Closed Sessions: Change Rule 8.4 regarding the requirement for recording and transcribing of closed session meetings to exclude all personnel items.

The requested action is to adopt these amendments.

- B. On January 14, 2009, and January 28, 2009, the Rules Committee discussed but did not take action on the following proposed amendments, including two items referenced in a February 3, 2009, memorandum issued by Councilmembers Lightner, DeMaio, Frye, and Emerald, and other items referred to in my January 14, 2009, and January 27, 2009, memoranda. Of the items discussed but not forwarded to Council for action, the Rules Committee referred some to the City Attorney for further input so that the committee could take up all the remaining items at a subsequent committee meeting. Today, all related items are forwarded to the full Council for discussion, including but not limited to the following:
1. Time and Place of Meetings: Require that the Council convene on the first Monday of each month from 4:30-9:00 p.m. and that Non-Agenda Public Comment be included on this day.
 2. Procedure for Council Meetings: Specify that any item requested by three Councilmembers in writing shall be docketed within 45 days.
 3. Procedure for Debate: time management for Council meetings.

The requested action is that the Council determine whether to adopt these amendments and, as to those that the Council wishes to adopt, that Council direct the City Attorney to prepare the appropriate documents and return to Council within 30 days to effect those amendments and, as to those that Council deems require further discussion, that Council return them to the Rules Committee.

FISCAL CONSIDERATIONS: None.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On January 28, 2009, the Rules Committee voted to recommend to the Council changes to the Permanent Rules of Council as described above. On January 14, 2009, and January 28, 2009, the Rules Committee discussed and did not forward to Council several other amendments as described above.

Hueso/Rodriguez

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

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:03 p.m. - 3:46 p.m.)

MOTION BY FRYE TO INTRODUCE THE ORDINANCE AS AMENDED TO MAKE THE CHANGES PERMANENT TO RULE 2.2 REGARDING ORDER OF BUSINESS APPROVED BY COUNCIL ON JANUARY 30, 2006. THESE CHANGES AFFECT SPECIAL ORDERS OF BUSINESS, CONSENT ITEMS, AND NOTICED AND SPECIAL HEARINGS. IN ADDITION TO THESE CHANGES, ADD THE PLEDGE OF ALLEGIANCE TO EACH TUESDAY'S AGENDA. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

MOTION BY FRYE TO INCLUDE LANGUAGE IN RULE 4.2 TO REQUIRE THAT THE ELECTION OF THE COUNCIL PRESIDENT TAKE PLACE ON THE FIRST MONDAY AFTER THE FIRST DAY OF DECEMBER. THE COUNCIL PRESIDENT SHALL SERVE FOR A TERM OF ONE YEAR AND IS ELIGIBLE TO SERVE MORE THAN ONE TERM. Second by Faulconer. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

MOTION BY FRYE DIRECTING THE CITY ATTORNEY'S OFFICE TO PREPARE THE APPROPRIATE DOCUMENTS AND RETURN TO COUNCIL WITHIN 45 DAYS TO AMEND THE LANGUAGE IN RULE 1.3 FROM TWO TO FOUR EVENING MEETINGS PER 12-MONTH PERIOD TO SIX MEETINGS PER LEGISLATIVE CALENDAR YEAR, MEETINGS TO BEGIN NO EARLIER THAN 6:00 P.M. Second by Emerald. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-nay.

Motion by Frye directing the City Attorney's office to prepare the appropriate documents and return to Council within 45 days to specify in Rule 2.9.2 that any item requested by three Council Members in writing shall be docketed with 45 days. Second by Lightner. Failed. Lightner-yea, Faulconer-nay, Gloria-nay, Young-nay, DeMaio-yea, Frye-yea, Emerald-nay, Hueso-nay.

MOTION BY FRYE DIRECTING THE CITY ATTORNEY'S OFFICE TO RETURN TO THE RULES COMMITTEE WITH AN AMENDMENT TO RULE 2.10 TO ELIMINATE (A)1 AND (B)1 WHICH REQUIRES A MOTION AND SECOND BEFORE ANY PUBLIC TESTIMONY; AMEND RULE 6.4.4 TO INCLUDE THAT THE COUNCIL PRESIDENT WILL SELECT ALTERNATES FROM AMONG THE COUNCIL MEMBERS FOR EACH STANDING COMMITTEE TO ENSURE A QUORUM; REFER THE DISCUSSION OF THE CITY CLERK'S RESPONSES REGARDING PROCEDURE FOR DEBATE TO THE RULES COMMITTEE WITHIN 45 DAYS. Second by DeMaio. Passed by the following vote: Lightner-yea, Faulconer-yea, Gloria-yea, Young-yea, DeMaio-yea, Frye-yea, Emerald-yea, Hueso-yea.

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Hueso at 3:51 p.m. in honor of the memory of:

Linda Rice Schwenkmeyer at the request of Council Member Emerald.

FILE LOCATION: MINUTES

COUNCIL ACTION: (Time duration: 3:49 p.m. – 3:51 p.m.)