



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: July 16, 2008 REPORT NO: 08-116

ATTENTION: Council President and Members of the City Council,
City Council Meeting of July 28, 2008

SUBJECT: UCAN Bill Inserts Related to *Shames v. City of San Diego* Settlement
Agreement

REFERENCE: Report to City Council No. 07-153

REQUESTED ACTION:

Approve the City's recommended Bill Insert Language, and not approve UCAN's language in its 5 proposed bill inserts.

STAFF RECOMMENDATION:

Approve the City's recommended Bill Insert Language, and not approve UCAN's language in its 5 proposed bill inserts.

SUMMARY:

On December 6, 2006, the San Diego City Council approved a settlement of *Shames v. City of San Diego*, a class action lawsuit initiated in 2005 seeking corrections for perceived rate imbalances. On May 18, 2007, the Superior Court for the County of San Diego approved an agreement to settle this class action lawsuit over the City's past wastewater service rates. As part of the settlement, the City of San Diego (City) agreed to include in the City's water and sewer bills, solicitations from a non-profit organization to raise funds to hire experts to review and evaluate the City's future sewer and water rate setting activities. A Superior Court Judge, (Judge Prager), selected UCAN as the non-profit to fulfill this role.

Paragraphs 12 and 13 of the Settlement Agreement state the following:

"12. The City agrees to permit an independent and qualified 501(c)(3) non-profit organization to place a solicitation insert into SFR Account Holder billing statements no more than three times a year for five years. The purpose of these inserts will be to allow the organization to raise funds to be used to hire experts to review and evaluate the City's future sewer and water rate setting activities. The language of the inserts shall be limited to that which is reasonably necessary to raise such funds, and shall be subject to approval by the Mayor of San Diego and City Council, which shall not be unreasonably withheld.

No later than twenty (20) days prior to the Fairness Hearing, Plaintiff, on the one hand, and the Mayor of San Diego and City Council, on the other, will exchange up to three recommendations for the non-profit organization. In the event of a dispute over the choice of a non-profit organization or the language of the inserts, then Judge Prager will be tasked with arbitrating the dispute. Access to the City's billing packets will be granted within 60 days of Judge Prager's approval of the non-profit organization. The City also agrees to make information and data relating to the rate setting activities reasonably available to the experts retained by the non-profit organization. The cost of the solicitation inserts will be borne by the non-profit organization, however, attendant postage and insertion costs will not be charged to the organization."

13. Within 120 days after the entry of the Final Order, the City shall place \$20,000 of the Settlement Revenues into an interest-bearing account for the benefit of the non-profit organization described in paragraph 12. The non-profit organization shall be entitled to utilize those funds solely for the purpose of organizing and funding its efforts to retain the experts contemplated in paragraph 12. If no non-profit organization is selected within twelve months of the Final Order or the selected non-profit organization declines to engage in these activities, the funds shall be returned to the Settlement Revenues and distributed in accordance with paragraph 10."

Pursuant to the terms of the settlement agreement, the language of the inserts is subject to the approval by the Mayor and City Council.

UCAN provided the City with 5 proposed bill inserts, and requested that the Mayor and City Council approve all 5 versions for UCAN to have the freedom to use any of them. The Mayor's staff and the Office of the City Attorney met with and dialogued with UCAN regarding the language in UCAN's proposed bill inserts. Although agreement was reached on some language, disagreement remains on the most critical bill insert language.

Following are recommended principles to be adhered to when approving final versions of the UCAN bill inserts:

1. The insert content should be accurate and factual
2. Content should not misrepresent the City, nor the Water and/or Wastewater Departments
3. Language in the solicitation should be limited to, and adhere to the terms and purpose expressed in the settlement agreement, specifically:
4. The content should not mislead the customer/ratepayer

FISCAL CONSIDERATIONS:

Per the settlement agreement, the cost of the solicitation inserts will be borne by the non-profit organization (UCAN), however, attendant postage and insertion costs will not be charged to the organization. UCAN has agreed that the bill inserts will be limited to one page, double sided, to ensure that there are no additional mailing costs incurred as part of the regular water/wastewater billing process. However, additional costs may be incurred if the City should need to include additional bill inserts during the same billing cycle that a UCAN insert is included.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

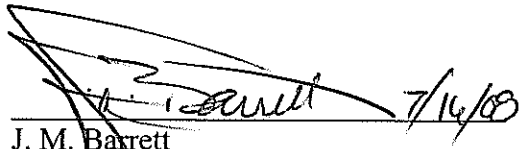
On December 6, 2006, the San Diego City Council approved a settlement of *Shames v. City of San Diego*. On October 8, 2007, the San Diego City Council approved the rate increase needed to provide sufficient revenue to meet the court settlement revenue. The proposed bill insert language and principles were presented to IROC.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

City of San Diego water and wastewater customers will receive the UCAN inserts in their water and sewer bills.



J. M. Barrett
Director of Public Utilities

Attachments:

1. City's Proposed Language for UCAN Bill Inserts
2. UCAN's Proposed UCAN Bill Inserts
3. Shames Settlement Agreement