

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
MONDAY, OCTOBER 24, 2005  
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 Deputy Mayor Atkins at 2:04 p.m. Deputy Mayor Atkins recessed the meeting at 3:06 p.m. for the purpose of a break. Deputy Mayor Atkins reconvened the meeting at 3:15 p.m. with all Council Members present and District 2, District 8, and Mayor vacant. Deputy Mayor Atkins adjourned the meeting at 4:53 p.m. into Closed Session at 9:00 a.m. on Tuesday, October 25, 2005, in the twelfth floor conference room to discuss existing and anticipated litigation.

**ATTENDANCE DURING THE MEETING:**

- (M) Mayor-vacant
- (1) Council Member Peters-present
- (2) Council District 2-vacant
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council District 8-vacant
- Clerk-Maland (gs)

FILE LOCATION:                      MINUTES



ITEM-1:

ROLL CALL

Clerk Maland called the roll:

- (M) Mayor-vacant
- (1) Council Member Peters-present
- (2) Council District 2-vacant
- (3) Council Member Atkins-present
- (4) Council Member Young-present
- (5) Council Member Maienschein-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-not present
- (8) Council District 8-vacant

FILE LOCATION: MINUTES

ITEM-10: INVOCATION

Invocation was given by City Clerk Elizabeth S. Maland.

FILE LOCATION: MINUTES

ITEM-20: PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Peters.

FILE LOCATION: MINUTES



[ITEM-30:](#) Dustin-Leigh Konzelman Day.

**COUNCILMEMBER PETERS' RECOMMENDATION:**

Adopt the following resolution:

(R-2006-354) ADOPTED AS RESOLUTION R-300955

Recognizing the exceptional achievements of Dustin-Leigh Konzelman;

Proclaiming October 17, 2005, to be "Dustin-Leigh Konzelman Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:07 p.m. – 2:09 p.m.)

MOTION BY PETERS TO ADOPT. Second by Atkins. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.



[ITEM-31:](#) Teen Court Day.

**COUNCILMEMBER MAIENSCHIEIN'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-356) ADOPTED AS RESOLUTION R-300956

Proclaiming October 24, 2005, to be "Teen Court Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:10 p.m. – 2:15 p.m.)

MOTION BY MAIENSCHIEIN TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-32: Approval of Council Minutes.

**TODAY'S ACTION IS:** APPROVED

Approval of Council Minutes for the meetings of:

09/26/2005  
09/27/2005  
09/27/2005 - Special Meeting

**FILE LOCATION:** MINUTES

**COUNCIL ACTION:** (Time duration: 2:05 p.m. – 2:05 p.m.)

MOTION BY PETERS TO APPROVE. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-not present, District 8-vacant, Mayor-vacant.

**CLOSED SESSION ITEMS:**

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

CS-1 *La Jolla Alta HOA v. City of San Diego, et al.*  
San Diego Superior Court No. GIC822281

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 25, 2005**

DCA assigned: D. Karlin

This matter concerns a complaint for inverse condemnation alleging erosion damage to property due to City-owned storm drain facilities. In closed session, the City Attorney will update the City Council on the status of the litigation and seek appropriate direction.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:17 p.m. – 2:17 p.m.)

**Deputy Mayor Atkins closed the hearing.**

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

CS-2 Number of Cases: Two

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 25, 2005**

ACA assigned: D. McGrath

In closed session the City Attorney will advise the Council on the potential of the initiation of litigation and the retention of outside counsel Dan Stanford & Associates to pursue.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:17 p.m. – 2:17 p.m.)

**Deputy Mayor Atkins closed the hearing.**

\* ITEM-50: Multiple Joint Use Agreements with the San Diego Unified School District for Construction, Operation, Maintenance, and Lease of Joint Use Facilities for a Period of Twenty-Five Years.

(See City Manager Report CMR-05-189. Paradise Hills, Mira Mesa, Navajo, and Tierrasanta Community Areas. Districts 4, 5, and 7.)



**CITY COUNCIL'S RECOMMENDATION:**

Adopt the following ordinances which were introduced on 10/10/2005, Item 54. (Council voted 5-0. Councilmember Maienschein not present. District 2-vacant, District 8-vacant, and Mayor-vacant):

Subitem-A: (O-2006-11) ADOPTED AS ORDINANCE O-19421 (New Series)

Authorizing the City Manager to execute the Lease and Joint Use Agreement with San Diego Unified School District for the construction, operation, maintenance, and lease of joint use facilities at Dailard Elementary School, under the terms and conditions set forth in that agreement.

**NOTE:** 6 votes required pursuant to Section 99 of the City Charter.

Subitem-B: (O-2006-12) ADOPTED AS ORDINANCE O-19422 (New Series)

Authorizing the City Manager to execute the Lease and Joint Use Agreement with San Diego Unified School District for the construction, operation, maintenance, and lease of joint use facilities at Ericson Elementary School, under the terms and conditions set forth in that agreement.

**NOTE:** 6 votes required pursuant to Section 99 of the City Charter.

Subitem-C: (O-2006-13 Cor. Copy) ADOPTED AS ORDINANCE O-19423  
(New Series)

Authorizing the City Manager to execute the Lease and Joint Use Agreement with San Diego Unified School District for the construction, operation, maintenance, and lease of joint use facilities at Mason Elementary School, under the terms and conditions set forth in that agreement.

**NOTE:** 6 votes required pursuant to Section 99 of the City Charter.

Subitem-D: (O-2006-14) ADOPTED AS ORDINANCE O-19424 (New Series)

Authorizing the City Manager to execute the Lease and Joint Use Agreement with San Diego Unified School District for the construction, operation, maintenance, and lease of joint use facilities at Penn Elementary School, under the terms and conditions set forth in that agreement.

**NOTE:** 6 votes required pursuant to Section 99 of the City Charter.

Subitem-E: (O-2006-15) ADOPTED AS ORDINANCE O-19425 (New Series)

Authorizing the City Manager to execute the Lease and Joint Use Agreement with San Diego Unified School District for the construction, operation, maintenance, and lease of joint use facilities at Tierrasanta Elementary School, under the terms and conditions set forth in that agreement.

**NOTE:** 6 votes required pursuant to Section 99 of the City Charter.

Subitem-F: (O-2006-16) ADOPTED AS ORDINANCE O-19426 (New Series)

Authorizing the City Manager to execute the Lease and Joint Use Agreement with San Diego Unified School District for the construction, operation, maintenance, and lease of joint use facilities at Walker Elementary School, under the terms and conditions set forth in that agreement.

**NOTE:** 6 votes required pursuant to Section 99 of the City Charter.

Subitem-G: (O-2006-17) RETURNED TO THE CITY MANAGER

Authorizing the City Manager to execute the Lease and Joint Use Agreement with San Diego Unified School District for the construction, operation, maintenance, and lease of joint use facilities at Serra High School, under the terms and conditions set forth in that agreement.

**NOTE:** 6 votes required pursuant to Section 99 of the City Charter.

FILE LOCATION: SUBITEM A: LEAS-San Diego Unified School District,  
Dailard Elementary School  
SUBITEM B: LEAS-San Diego Unified School District,  
Ericson Elementary School  
SUBITEM C: LEAS-San Diego Unified School District,  
Mason Elementary School  
SUBITEM D: LEAS-San Diego Unified School District,  
Penn Elementary School  
SUBITEM E: LEAS-San Diego Unified School District,  
Tierrasanta Elementary School  
SUBITEM F: LEAS-San Diego Unified School District,  
Walker Elementary School  
SUBITEM G: MEET

COUNCIL ACTION: (Time duration: 2:15 p.m. – 2:15 p.m.  
2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCES IN SUBITEMS A, B, C, D, E, AND F. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-51: Reconsideration of Crescent Heights Rezone.

(Mira Mesa Community Plan Area. District 5.)

**CITY COUNCIL'S RECOMMENDATION:**

Adopt the following ordinance which was introduced on 10/11/2005, Item 330, Subitem A. (Council voted 6-0. District 2-vacant, District 8-vacant, and Mayor-vacant):

(O-2006-35) ADOPTED AS ORDINANCE O-19427 (New Series)

Changing 188.63 acres, north and south of Calle Cristobal, east and west of Camino Santa Fe in the Mira Mesa Community Plan Area, in the City of San Diego, California, from the AR-1-1 Zone (previously referred to as A-1-10 Zone) to the RX-1-2, RM-2-5 and OC-1-1 Zones, as defined by San Diego Municipal Code Sections 131.0404, 131.0406 and 131.0203.

FILE LOCATION: LUP-Crescent Heights, Reconsideration, 10/11/05 (65)

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO DISPENSE WITH THE READING AND ADOPT THE ORDINANCE. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-100: Memorandum of Understanding (MOU) with the San Diego Association of Governments (SANDAG) for the Hillcrest Corridor Mobility Plan Study.

(Uptown Community Area. Districts 2 and 3.)

**CITY MANAGER’S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-320) ADOPTED AS RESOLUTION R-300957

Authorizing or empowering the City Manager, or his representative, to enter into a Memorandum of Understanding (MOU) with San Diego Association of Governments (SANDAG) establishing the division of labor and cost sharing to complete mobility planning studies, including traffic calming, transit lanes, and pedestrian and parking improvements for the 4th, 5th, and 6th Avenue Corridors (Hillcrest Corridor Mobility Plan), which are required by the respective grants;

Authorizing or empowering the City Manager to execute all documents, including contracts, subcontracts, agreements, extensions, renewals, and/or amendments required by SANDAG, which may be necessary to carry out and administer all obligations, responsibilities and duties under these grants upon receipt of a fully executed Memorandum of Understanding;

Authorizing the City Auditor and Comptroller to establish a separate interest bearing grant fund account as needed for the MOU, if secured;

Authorizing the City Auditor and Comptroller to increase the Fiscal Year Capital Improvements Program CIP-52-757.0, Hillcrest Corridor Mobility Study, by \$120,000 in new SANDAG funding, upon receipt of a fully executed program supplements;

Authorizing the City Auditor and Comptroller to appropriate and to expend an amount not to exceed \$120,000 from CIP-52-757.0, Hillcrest Corridor Mobility Study, which is from the MOU with SANDAG for the purpose of preparing a study and related expenses, upon receipt of a fully executed MOU.

**CITY MANAGER SUPPORTING INFORMATION:**

Staff has prepared a Memorandum of Understanding (MOU) for financial assistance under the Federal Highway Administration and California Department of Transportation State-Wide Transit Planning Studies Grant program. The application is more specifically described below:

**Hillcrest Corridor Bus Rapid Transit Study** - The project would provide conceptual design for transit and pedestrian improvements on the 4th and 5th Avenue corridors, including bus lanes, stations, and pedestrian amenities. Capital cost estimates will be prepared based on the conceptual design plans. An opening-day operating plan will also be developed, which would re-program services using existing operating resources to improve service in the corridors. The plan will build upon the recently-completed traffic-calming plan, and will involve extensive community participation.

**FISCAL IMPACT:**

The total project cost is \$415,130. The additional funding source, \$245,130 from Caltrans and DIF, is currently awaiting authorization by the City Council. The City could receive up to \$120,000 in SANDAG funds through this action.

Oppenheim/Goldberg/LG

Staff: Lara Gates – (619) 533-6404  
David E. Miller – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

- \* ITEM-101: Grant Agreement with the State of California Business, Transportation and Housing Agency for Technical Exchange of Solid Waste Management Information Between the City of Hyderabad, India and the City of San Diego.

**CITY MANAGER’S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-331 Cor. Copy) ADOPTED AS RESOLUTION R-300958

Authorizing and directing the City Manager, or designee, to enter into a grant agreement, for and on behalf of the City, with the State of California Business, Transportation, and Housing Agency for purposes of facilitating a technical exchange of information related to solid waste management between the City of Hyderabad, India and the City of San Diego, under the terms and conditions outlined in the Agreement;

Authorizing and directing the City Manager, or designee, to accept, administer, and expend grant money from the State of California Business, Transportation, and Housing Agency to pay for expenses, in an amount not to exceed \$149,841, associated with facilitating a technical exchange of information related to solid waste management between the City of Hyderabad, India and the City of San Diego as described above;

Declaring this activity is not a project subject to CEQA pursuant to CEQA Guideline 15378(b)(5) because the agreement is an organizational or administrative activity of government that will not result in direct or indirect physical changes in the environment;

Authorizing the City Auditor and Comptroller to establish all required fund numbers, department numbers, and expense and revenue accounts to facilitate the recordkeeping associated with the grant.

**CITY MANAGER SUPPORTING INFORMATION:**

The federal Council of State Governments has selected San Diego's submittal entitled "A City to City Partnership Between Hyderabad and San Diego" for funding. This technical exchange will benefit both the Indian City of Hyderabad, and the City of San Diego.

The funds will be provided by the federal government to the State of California's Business, Transportation, and Housing Agency, which in turn will reimburse expenses, such as costs for development of technical studies, which are fronted by the Environmental Services Department's Refuse Disposal Enterprise fund. Money will be used to pay for technical studies and other needs of the exchange. Existing city staffing will implement the grant. No non-reimbursable expenses will be incurred.

Benefits to San Diego will include: Development of international relationships in solid waste management; learning new technologies and compare high technology and low technology solutions; learning to identify appropriate solutions given challenging situations.

**FISCAL IMPACT:**

This action is for authority to accept, appropriate and expend up to \$149,841 for execution of this grant, A City to City Partnership between Hyderabad and San Diego. All funds will be reimbursed by the Council of State Governments via the Business, Transportation and Housing Agency of the State of California. Required matching contribution can be met with existing staff.

Mendes/Heap/LFW

Staff: Lisa Wood – (858) 573-1236  
Grace C. Lowenberg – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-102: Payment of Attorney Fees for Legal Expenses Incurred by City Employee David Cowan in the Matter U.S. v. Cowan, et al.

**CITY ATTORNEY'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-340)                      ADOPTED AS RESOLUTION R-300959

Declaring based on the verdict in the action entitled U.S. v. Cowan, et al. United States District Court Case No. 03CR2434-JM, City employee David Cowan's attorney, Michael L. Crowley, be paid in the amount of \$136,028.84 for the cost of his defense;

Declaring the City Auditor and Comptroller furnish a certificate in the amount of \$136,028.84 to Michael L. Crowley setting aside such funds.

**SUPPORTING INFORMATION:**

City employee David Cowan (Cowan) was acquitted of all charges against him in the action entitled U.S. v. Cowan, et al. United States District Court Case No. 03CR2434-JM. Based on the verdict, Cowan has requested that his cost of defense in the amount of \$136,028.84 be paid to attorney Michael Crowley.

Irvine/Katz

Aud. Cert. 2600300.

FILE LOCATION:                      MEET

COUNCIL ACTION:                      (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.



\* ITEM-103: Settlement of Personal Injury Claim to Lisa Jones.

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-292)                      ADOPTED AS RESOLUTION R-300960

Authorizing the City Manager to pay up to the total sum of \$85,000 in the settlement of each and every claim against the City, its agents and employees, resulting from Personal Injury Claim of Lisa Jones;

Authorizing the City Auditor and Comptroller to issue one check in the amount of \$60,000 payable to trustee, Tom Grimmett, Chapter 7 Trustee;

Authorizing the City Auditor and Comptroller to pay up to Twenty Five Thousand Dollars (\$25,000), in the aggregate, for medical expenses incurred on or before July 12, 2020, resulting from the injury occurring to Lisa Jones on December 21, 2002.

**CITY MANAGER SUPPORTING INFORMATION:**

This constitutes the complete and final settlement of a litigated claim which arises from a trip and fall matter which occurred December 21, 2002.

This settlement and payment has been heard by the City Council in closed session.

Irvine/Lopez/JE

Aud. Cert. 2600217.

**NOTE:** The Auditor's Certificate was not requested prior to Closed Session. The vote taken in Open Session shall be the official vote.

Staff: Janice Ellis – (619) 236-7705  
John Riley – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-104: Drainage and Sewer Easement Vacations in Parcel 1 of Parcel Map No. 13069.

(Mid City Community Area. District 7.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-315) ADOPTED AS RESOLUTION R-300961

Vacating sewer easement as shown on Engineering Drawing No. 19433-B, to facilitate development of the site, under the summary vacation of public service easements, pursuant to California Streets and Highways Code Section 8333(c).

**CITY MANAGER SUPPORTING INFORMATION:**

City Council action is requested to vacate drainage and sewer easements in Parcel 1 of Parcel Map No. 13069 as shown on Engineering Drawing 19433-B. This property is located in the Mid City Eastern Area in Council District 7.

A new building has been constructed and the drainage and sewer facilities have been rerouted making the easements unnecessary. The vacation of these easements will relieve the City of the responsibility to maintain the easement area. The easements are on private property and no rights are granted to the public. The applicant's approved development requires that the easements be vacated. The Wastewater and Drainage Section of the Development Services Department has reviewed the abandonment request and recommends approval of the abandonment. These easements were acquired at no cost to the City.

**FISCAL IMPACT:**

None.

Ewell/Broughton/GRB

Staff: L. Hennes – (619) 446-5291  
David Miller – Deputy City Attorney

FILE LOCATION: DEED F-9969

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-105: Sewer Easement Vacations in Lots 1 and 2 Block 326 of Choates Addition Map No. 156.

(Southeastern San Diego Community Area. District 8.)

**CITY MANAGER’S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-314) ADOPTED AS RESOLUTION R-300962

Vacating sewer easement as shown on Engineering Drawing No. 19802-B, to facilitate development of the site, under the summary vacation of public service easements, pursuant to California Streets and Highway Code Section 8333(c);

**CITY MANAGER SUPPORTING INFORMATION:**

City Council action is requested to vacate a sewer easement in Lots 1 and 2 Block 326 of Choates Addition Map No. 156 as shown on Engineering Drawing 19802-B. This easement is located in the Southeastern San Diego area within Council District 8.

This easement is on private property and the only purpose for this public service easement is to allow the City to construct and maintain sewer facilities within the easement area. The sewer lateral was installed on the street and there is no present or anticipated future use for the easement in their present location. The Waste Water Section of the Development Services Department has reviewed the abandonment request and recommends approval of the abandonment. This easement was acquired at no cost to the City.

**FISCAL IMPACT:**

None.

Ewell/Broughton/GRB

Staff: L. Hennes – (619) 446-5291  
David Miller – Deputy City Attorney

FILE LOCATION: DEED F-9970

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-106: State Route 75 (Palm Avenue) Deficiency Plan.

(See SANDAG Congestion Management Program Deficiency Plan, State Route 75 (South) I-5 to 16<sup>th</sup> Street. Otay Mesa-Nestor Community Area. District 8.)

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-57) ADOPTED AS RESOLUTION R-300963

Adopting the State Route 75 (Palm Avenue) Deficiency Plan.

**CITY MANAGER SUPPORTING INFORMATION:**

The proposed action is the adoption of the State Route 75 (Palm Avenue, west of Interstate 5) Deficiency Plan, in the community of Otay Mesa-Nestor. State Proposition 111, passed by the voters in 1990, established a requirement that urbanized areas prepare and regularly update a Congestion Management Plan (CMP). The purpose of the CMP is to monitor the performance of our transportation system and develop programs to address near-term and long-term congestion. According to the CMP statute, Deficiency Plans are required for the roadways that do not meet the adopted level of service (LOS) standard. The adopted LOS standard in the San Diego region is "E". As described in the 2002 CMP Update, State Route 75 (Palm Avenue), between 1-5 and 16th Street, was identified as a deficient segment based on 2001 roadway traffic conditions. The Deficiency Plan was prepared by the San Diego Association of Governments (SANDAG), which is also the region's Congestion Management Agency, with participation of staff from Metropolitan Transit System (MTS), California Department of Transportation (Caltrans), City of Imperial Beach, San Diego Air Pollution Control District, and the City of San Diego's Planning Department. The Deficiency Plan evaluates current traffic conditions, identifies existing deficiencies, and proposes site-specific "Direct Fix" strategies. Implementation of the proposed improvements in the plan is expected to improve the level of service at the intersection of SR 75 (Palm Avenue) with Saturn Boulevard, from "F" to "E". A copy of "Congestion Management Program Deficiency Plan, State Route 75 (South) 1-5 to 16th Street" will be on file in the Office of the City Clerk.

**FISCAL IMPACT:**

None with this action. The proposed improvements are approved by Caltrans. The subject roadway is a state route and the costs of improvements are typically borne by Caltrans.

Oppenheim/Goldberg/STA

Staff: Shahriar T. Ammi – (619) 236-6576  
David Miller – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-107: Alberto Cortés Day.

**DEPUTY MAYOR ATKINS' RECOMMENDATION:**

Adopt the following resolution:

(R-2006-348)            ADOPTED AS RESOLUTION R-300964

Commending Alberto Cortés for his hard work, dedication, and commitment to San Diego's HIV/AIDS and San Diego Lesbian, Gay, Bisexual and Transgender (LGBT) communities and congratulating him on the celebration of his 50<sup>th</sup> birthday;

Proclaiming October 10, 2005, to be "Alberto Cortés Day" in the City of San Diego.

FILE LOCATION:            AGENDA

COUNCIL ACTION:            (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-108: National Black MBA Association, Inc. Week.

**COUNCILMEMBER YOUNG'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-349)            ADOPTED AS RESOLUTION R-300965

Proclaiming the week of October 9 - October 15, 2005, to be “National Black MBA Association, Inc. Week” in the City of San Diego, in recognition of their support and advocacy for the global African-American community.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-109: Boys and Girls Clubs Day.

**COUNCILMEMBER FRYE’S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-361) ADOPTED AS RESOLUTION R-300966

Commending the Boys and Girls Clubs for their continuous dedication to our youth;

Proclaiming October 27, 2005, to be “Boys and Girls Clubs Day” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-110: Linda Benson Day.

**COUNCILMEMBER FRYE'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-359)            ADOPTED AS RESOLUTION R-300967

Commending and thanking Linda Benson for her commitment to the sport of women's longboard surfing and promoting the achievement of women in sports;

Proclaiming October 21, 2005, to be "Linda Benson Day" in the City of San Diego.

FILE LOCATION:            AGENDA

COUNCIL ACTION:            (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-111: Gray Systems, Inc. Day.

**COUNCILMEMBER FRYE'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-358)            ADOPTED AS RESOLUTION R-300968

Commending Ms. Michelle Gray for her continuous contributions to the San Diego community and for accomplishing these feats with integrity and grace;

Proclaiming October 20, 2005, to be "Gray Systems, Inc. Day" in the City of San Diego.



FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-112: Richard A. Blackman Day.

**COUNCILMEMBER FRYE'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-360) ADOPTED AS RESOLUTION R-300969

Commending and thanking Richard Blackman for his commitment to serving the residents of San Diego throughout his career;

Proclaiming October 20, 2005, to be "Richard A. Blackman Day" in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-113: Epsilon System Solutions, Inc. Day.

**COUNCILMEMBER FRYE'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-357) ADOPTED AS RESOLUTION R-300970

Commending Mr. Bryan Min for his commitment and dedication to providing innovative solutions for public and private use;

Proclaiming October 20, 2005, to be “Epsilon System Solutions, Inc. Day” in the City of San Diego.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-114: Declaring a Continued State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico.

(District 8.)

**TODAY’S ACTION IS:**

Adopt the following resolution:

(R-2006-18) ADOPTED AS RESOLUTION R-300971

Declaring a Continued State of Emergency regarding the discharge of raw sewage from Tijuana, Mexico.

FILE LOCATION: GEN’L-State of Emergency Regarding the Discharge of Raw Sewage from Tijuana, Mexico

COUNCIL ACTION: (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

\* ITEM-115: Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City.

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2005-1247)            ADOPTED AS RESOLUTION R-300972

Declaring a Continued State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego.

FILE LOCATION:            GEN'L-State of Emergency Due to Severe Shortage of Affordable Housing in the City of San Diego

COUNCIL ACTION:            (Time duration: 2:16 p.m. – 2:17 p.m.)

CONSENT MOTION BY MADAFFER TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.



ITEM-200: Restructuring of Sewer System Interim Financing and Approval of Related Documents.

(See City Manager Report CMR-05-199.)

**CITY MANAGER'S RECOMMENDATION:**

Introduce the following ordinance:

(O-2006-54)            INTRODUCED AS AMENDED, TO BE ADOPTED ON MONDAY, NOVEMBER 14, 2005

Introduction of an Ordinance approving the Form and authorizing the execution and delivery of a First Supplemental Subordinated Indenture and a First Amendment to 2004 Supplement to Master Installment Purchase Agreement and approving certain other agreements and actions in connection therewith, pursuant to Section 99 of the Charter of the City of San Diego.

Staff: Dennis Kahlie – (619) 235-5832  
Mark D. Blake – Deputy City Attorney

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 3:16 p.m. – 4:44 p.m.)

MOTION BY MADAFFER TO INTRODUCE THE ORDINANCE AS AMENDED TO INCLUDE THE WORDS “RESTRICTED FOR OPERATIONS, MAINTENANCE, AND CAPITAL”. Second by Peters. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-201: Seven actions related to Authorization for Attorney’s Fees for the Mayor and City Council in Connection with Ongoing Financial Investigations.

**CITY MANAGER’S RECOMMENDATION:**

Adopt the following resolutions authorizing attorney’s fees for the Mayor and City Council in connection with the ongoing financial investigations, as follows:

Directing the City Attorney to prepare the necessary Resolutions.

Subitem-A: (R-2006- ) RETURNED TO THE CITY MANAGER

FY2006 increase for Mayor Murphy – Representation - \$50,000.

Subitem-B: (R-2006- ) RETURNED TO THE CITY MANAGER

FY2006 increase for Councilmember Peters – Representation - \$50,000.

Subitem-C: (R-2006- ) RETURNED TO THE CITY MANAGER

FY2006 increase for Councilmember Zucchet – Representation - \$50,000.

Subitem-D: (R-2006- ) RETURNED TO THE CITY MANAGER

FY2006 increase for Councilmember Atkins – Representation - \$50,000.

Subitem-E: (R-2006- ) RETURNED TO THE CITY MANAGER

FY2006 increase for Councilmember Maienschein – Representation - \$50,000.

Subitem-F: (R-2006- ) RETURNED TO THE CITY MANAGER

FY2006 increase for Councilmember Madaffer – Representation - \$85,000.

Subitem-G: (R-2006- ) RETURNED TO THE CITY MANAGER

FY2006 initial for Councilmember Inzunza – Representation - \$100,000.

**CITY MANAGER SUPPORTING INFORMATION:**

The Securities and Exchange Commission (SEC), U.S. Attorney's Office (USAO) and the District Attorney's Office are undertaking investigations into certain financial disclosure practices by the City. These investigations are ongoing and certain elected City Officials have been asked to participate in interviews and proceedings, including compliance with subpoenas.

In a report to the Mayor and City Council dated January 31, 2005, the City Attorney states "in our view it is appropriate for the Mayor and City Councilmembers to have separate counsel to advise them in anticipation of a civil proceeding by the SEC".

The City Manager engaged legal firms on behalf of the Mayor and City Council related to these investigations. Due to the complexity of the issues and the large number of documents involved, the City Council authorized \$851,000 on June 28, 2005, for Mayor and Council representation as follows: \$210,000 for Mayor Murphy, \$130,000 for Councilmember Peters, \$53,000 for Councilmember Zucchet, \$158,000 for Deputy Mayor Atkins, \$150,000 for Councilmember Maienschein, and \$150,000 for Councilmember Madaffer. At that time, authorization actions were not proposed on behalf of Council members Young, Frye and Inzunza.

The investigations are continuing; based on invoices received to date, and in order to ensure uninterrupted outside legal services, the Manager requests initial authorizations or increased authorizations totaling \$435,000 on behalf of Council members as follows:

- A. \$50,000 increase for Mayor Murphy - Sheppard Mullin Richter & Hampton, LLP - new total \$260,000 (Aud. Cert. 2600272)
- B. \$50,000 increase for Councilmember Peters - Sheppard Mullin Richter & Hampton, LLP - new total \$180,000 (Aud. Cert. 2600273)
- C. \$50,000 increase for Councilmember Zucchet - Coughlan, Semmer & Lipman, LLP - new total \$103,000 (Aud. Cert. 2600274)
- D. \$50,000 increase for Deputy Mayor Atkins - Morrison & Foerster, LLP - new total \$208,000 (Aud. Cert. 2600276)
- E. \$50,000 increase for Councilmember Maienschein - Morrison & Foerster, LLP - new total \$200,000 (Aud. Cert. 2600277)
- F. \$85,000 increase for Councilmember Madaffer - Akin Gump Strauss Hauer & Feld, LLP - new total \$235,000 (Aud. Cert. 2600279)
- G. \$100,000 initial authorization for Council member Inzunza - new total \$100,000 (Aud. Cert. 2600280)

Ewell/Plank

Staff: Ed Plank - (619) 236-6433

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:15 p.m. – 2:15 p.m.)



ITEM-202: Accepting the City Auditor and Comptroller's Monthly Financial Update Report.

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolution:

(R-2006-367) ADOPTED AS RESOLUTION R-300973

Accepting the City Auditor and Comptroller's Monthly Financial Update Report.

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:18 p.m. – 3:06 p.m.)

MOTION BY PETERS TO ADOPT. Second by Young. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-not present, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-203: Three actions related to Fifth Amendment to Agreement with Kroll, Inc. for Services Related to the Audit of the City's Comprehensive Annual Financial Report (CAFR); Fourth Amendment to Agreement with Willkie, Farr & Gallagher to Provide Independent Legal Counsel to Kroll and the Audit Committee on these Matters; and Acceptance of KPMG/Audit Committee Status Report.

**CITY MANAGER'S RECOMMENDATION:**

Adopt the following resolutions:

Subitem-A: (R-2006- ) CONTINUED TO TUESDAY, NOVEMBER 1, 2005

Authorizing a Fifth Amendment to the Agreement with Kroll Inc., in the amount of \$1,750,000 for continued provision of investigative services in their role as the City's Audit Committee, and consulting assistance in assessing internal control deficiencies affecting matters discussed in the Vinson & Elkins and City Attorney investigation reports, and directing the City Attorney to prepare applicable resolution.

Subitem-B: (R-2006- ) CONTINUED TO TUESDAY, NOVEMBER 1, 2005

Authorizing a Fourth Amendment to Agreement with Willkie, Farr & Gallagher LLP in the amount of \$1,250,000 for provision of independent legal counsel to the City Audit Committee and Kroll in connection with the above matters, and directing the City Attorney to prepare applicable resolution.

Subitem-C: (R-2006- ) CONTINUED TO TUESDAY, NOVEMBER 1, 2005

Accepting the status reports of the Audit Committee and KPMG; directing the City Attorney to prepare applicable resolution.

**CITY MANAGER SUPPORTING INFORMATION:**

In February of 2005, the City of San Diego ("City") entered into an agreement with Kroll, Inc. ("Kroll") to receive, review and evaluate the findings of the investigations performed by Vinson & Elkins ("V&E") and the City Attorney, and to provide consulting assistance in assessing internal control deficiencies affecting matters discussed in the investigation reports (see attached agreement with Kroll).

The original agreement was for a not-to-exceed amount of \$250,000. Four subsequent amendments increased the not-to-exceed amount to \$3,525,000, and another amendment is before the Mayor and City Council today requesting an additional amount of \$1,750,000, bringing the total not-to-exceed amount to \$5,275,000.

Kroll will also be utilizing independent legal counsel from the firm of Willkie, Farr & Gallagher LLP ("Willkie, Farr"). Willkie, Farr's role will be to provide counsel and assistance to Kroll and the Audit Committee in connection with the independent investigation into SDCERS finances and disclosure, as well as with other matters that, in the judgment of the Audit Committee, may require inquiry or investigation. Willkie, Farr will report exclusively to the Audit Committee, serving with complete independence from the Mayor and City Council, the City, and the City's departments, agencies and elected officials.

Funding for the retention of Willkie, Farr in the amount of \$500,000 was approved by the Mayor and City Council in May of 2005. Three subsequent amendments increased the not-to-exceed amount to \$2,650,000. An additional amendment is before the Mayor and City Council today, requesting an additional \$1,250,000 to cover estimated expenses for November through December of Fiscal Year 2006, and would bring the total not-to-exceed amount to 3,900,000.

The requested funding is consistent with information presented to the Mayor and City Council on October 10, at which time the City Manager's Office outline anticipated future spending requirements for the audit and financial investigations.

Ewell/Villa/LI

Aud. Certs. 2600304 and 2600305.



Staff: Lisa Irvine – (619) 236-6070

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:15 p.m. – 2:16 p.m.)

MOTION BY MADAFFER TO CONTINUE TO TUESDAY, NOVEMBER 1, 2005, FOR FURTHER REVIEW. Second by Peters. Passed by the following vote: Peters-yea, District 2-vacant, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, District 8-vacant, Mayor-vacant.

ITEM-250: **Notice** of Completion and Acceptance of Subdivision Improvement Agreement.

Notice is hereby given that the City Manager of the City of San Diego intends to file a “Notice of Completion and Acceptance of Subdivision Improvement Agreement” indicating that the improvements included in the Subdivision Improvement Agreement have been satisfactorily completed for the following subdivisions:

<u>SUBDIVISION</u>	<u>COMMUNITY AREA</u>
Torrey Pines Estates	Carmel Valley
Torrey Hills Unit No. 8B	Sorrento Hills
Westview Unit No. 10	Carmel Valley
Carmel Valley Neighborhood 8C	Carmel Valley
Sabre Springs 28-30 Unit No. 2	Sabre Springs

The certification shall be recorded with the County Recorder 15 days after the date this notice appears on the Council Docket or shortly thereafter. If any person wishes to object to the filing of this notice, such person should communicate the objection on or before that date to the Director of Development Services or to the Subdivision Engineer, City Operations Building, 1222 First Avenue (MS 507), San Diego, CA 92101.

