

THE CITY OF SAN DIEGO, CALIFORNIA  
MINUTES FOR REGULAR COUNCIL MEETING  
OF  
MONDAY, OCTOBER 20, 2008  
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

CLOSED SESSION ITEMS.....4

ITEM-150: Amending the San Diego Municipal Code relating to the Living Wage Ordinance  
and Contractor Standards.....7

ITEM-200: Ordering Foreclosure Actions Against Delinquent Parcels of Land ..... 11

ITEM-201: Park Boulevard Promenade, Project No. 128148.....14

ITEM-202: Verizon Murphy Canyon .....18

ITEM-203: Appeal of Mesa College Amendment.....22

REPORT OUT OF CLOSED SESSION.....26

NON-DOCKET ITEMS.....26

ADJOURNMENT.....26

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Peters at 2:08 p.m. Council President Peters recessed the meeting at 2:58 p.m. for the purpose of a break. Council President Peters reconvened the meeting at 3:04 p.m. with all Council Members present. The meeting was adjourned by Council President Peters at 5:56 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-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-present
- (6) Council Member Frye-present
- (7) Council Member Madaffer-present
- (8) Council Member Hueso-present

FILE LOCATION: MINUTES



[ITEM-10:](#) INVOCATION

Invocation was given by Reverend John Demaree of Rolando United Methodist Church.

FILE LOCATION: MINUTES



[ITEM-20:](#) PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council Member Young.

FILE LOCATION: MINUTES

CLOSED SESSION ITEMS:

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

**CS-1 *Deputy City Attorney Association v. City of San Diego*  
LA-CE-359**

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 21, 2008**

DCA Assigned: A. Hersh

The *Deputy City Attorney Association v. City of San Diego* matter is an action filed by the Deputy City Attorney Association for bad faith bargaining and prematurely declaring an impasse. In closed session, the City Attorney will brief the Mayor and the City Council on the status of this matter and request the continued retention of outside counsel to handle this litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:13 p.m. - 2:13 p.m.)

**Council President Peters closed the hearing.**

**CS-2 *Valerie O'Sullivan v. City of San Diego*  
San Diego Superior Court Case No. GIC 826918; Court of Appeal Case No. 826918**

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 21, 2008**

DCA Assigned: G. Schaefer

Following a court trial, a Superior Court Judge rendered a judgment against the City and ordered the City to dredge Children's Pool Beach. The City unsuccessfully appealed the dredging order and the City is in the process of acquiring the necessary federal and state permits to dredge. The City Attorney needs to discuss in closed session with the City Council and the Mayor compliance with the Superior Court's dredging order and related legal issues.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:13 p.m. - 2:13 p.m.)

**Council President Peters closed the hearing.**

**CS-3 *Todd Sabin, Stacy Sabin, Stephen Games, Sandra Games v. City of San Diego*  
(San Diego Superior Court Case No. 37-2008-00090721-CU-PA-CTL;  
*City of San Diego v. Todd Sabin, et al.*  
San Diego Superior Case No. 37-2008-00081284-CU-OR-CTL)**

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 21, 2008**

DCA Assigned: M. Dickenson

These matters concern certain property owners' encroachments on a City street and a related settlement agreement resulting from prior litigation. The City Attorney will update the Mayor and City Council on the status of the litigation.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:13 p.m. - 2:13 p.m.)

**Council President Peters closed the hearing.**

**CS-4 *Christopher Stavros v. City of San Diego*  
Claim No. LP05-0534-2204**

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 21, 2008**

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 Council on this matter and recommend settlement.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:13 p.m. - 2:13 p.m.)

**Council President Peters closed the hearing.**

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

**CS-5 Agency Negotiator:** Scott Chadwick, Jay Goldstone

**Employee Organizations:** Municipal Employees Association

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 21, 2008**

DCAs Assigned: A. Hersh/B. Gersten

Conference with Labor Negotiators regarding negotiated settlement of language and remedy contained in City-MEA Memorandum of Understanding, Article 22, Section 2.B.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:13 p.m. - 2:13 p.m.)

**Council President Peters closed the hearing.**

**Conference with Real Property Negotiator, pursuant to California Government Code Section 54956.8:**

**CS-6 Property:** World Trade Center Building, 1250 6th Avenue

**Agency Negotiator:** Jim Barwick, Director, Real Estate Assets Department

**Negotiating Party:** Chhatrala Group

**Under Negotiation:** Price and terms of the sale of City property

**REFERRED TO CLOSED SESSION OF TUESDAY, OCTOBER 21, 2008**

Discussion of negotiations regarding the sale of the World Trade Center Building and the offers received from The Chhatrala Group (the recommended buyer), Frank Wong and Affirmed Housing.

FILE LOCATION: AGENDA

COUNCIL ACTION: (Time duration: 2:13 p.m. - 2:13 p.m.)

**Council President Peters closed the hearing.**



ITEM-150: Amending the San Diego Municipal Code relating to the Living Wage Ordinance and Contractor Standards.

(See Reports from the City Attorney dated 10/6/2008 and 7/3/2008; 7/3/2008 Power Point; and 7/3/2008 Summary of Living Wage Ordinance.)

**TODAY'S ACTIONS ARE:**

Introduce the ordinance in Subitem A; and introduce **one** of the **alternate** ordinances in Subitem B:

Subitem-A: (O-2009-49 Cor. Copy)                      INTRODUCED AS AMENDED,  
TO BE ADOPTED MONDAY,  
NOVEMBER 10, 2008

Introduction of an Ordinance amending Chapter 2, Article 2, Division 32 of the City of San Diego Municipal Code by amending Section 22.3224 relating to Contractor Standards. These amendments are designed to enhance the effectiveness of the City's various Ordinances related to contracting by establishing procedures for public determinations of non-responsibility and other mechanisms for ensuring contractor compliance with all local, state and federal laws.

Subitem-B: (O-209-50-a Cor. Copy)                      INTRODUCED AS AMENDED,  
TO BE ADOPTED MONDAY,  
NOVEMBER 10, 2008

Introduction of an Ordinance amending Chapter 2, Article 2, Division 42 of the San Diego Municipal Code by amending Sections 22.4205, 22.4215, 22.4225, 22.4230, and 22.4235 relating to the Living Wage Ordinance. The City's Living Wage Ordinance has been in force since 2005, and the Council has studied its implementation. The Budget and Finance Committee has held multiple hearings on Living Wage Ordinance implementation issues, and has forwarded proposed revisions for consideration of the full Council. These amendments are designed to enhance enforcement and clarify provisions of the Living Wage Ordinance, in order to advance the purposes it was intended to serve. This Ordinance would generally remove all service workers in professional fields from the professional services exemption.

**OR**

Subitem-B: (O-209-50-b Cor. Copy)

NOTED AND FILED

Introduction of an Ordinance amending Chapter 2, Article 2, Division 42 of the San Diego Municipal Code by amending Sections 22.4205, 22.4215, 22.4225, 22.4230, and 22.4235 relating to the Living Wage Ordinance. The City's Living Wage Ordinance has been in force since 2005, and the Council has studied its implementation. The Budget and Finance Committee has held multiple hearings on Living Wage Ordinance implementation issues, and has forwarded proposed revisions for consideration of the full Council. These amendments are designed to enhance enforcement and clarify provisions of the Living Wage Ordinance, in order to advance the purposes it was intended to serve. This Ordinance would specifically remove paramedic and emergency medical technicians from the professional services exemption.

**BUDGET AND FINANCE COMMITTEE'S RECOMMENDATION:**

On 7/9/2008, Budget voted 4 to 0 to forward the City Attorney's Report with recommendations A, B, and C to the full City Council for further discussion. Also, direct the City Attorney's Office to begin analysis on Redevelopment Agency impacts and report back to the Budget and Finance Committee at a later date.



In addition, request the City Attorney's Office to provide a full analysis and draft an Ordinance that incorporates Center on Policy Initiative's proposal regarding enforcement of the Living Wage Ordinance and Contractor's Standards as part of the San Diego Municipal Code and to specifically include:

1. A comprehensive analysis of economic impact;
2. The role of the Internal Auditor;
3. Input from stakeholders and contractors that currently do business with the City;
4. An analysis and impact of including the Civic Theatre;
5. An analysis and impact of including Emergency Medical Services; and
6. An analysis from the Independent Budget Analyst and Mayor's Office.

(Councilmembers Faulconer, Atkins, Frye, and Madaffer voted yea. Councilmember Hueso not present.)

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 3:04 p.m. - 5:31 p.m.)

MOTION BY ATKINS TO INTRODUCE THE ORDINANCE IN SUBITEM A BY AMENDING SECTION 22.3224 RELATING TO THE CONTRACTOR STANDARDS AS AMENDED BY CHANGING FROM AUDIT COMMITTEE TO BUDGET COMMITTEE IN SECTION 22.3224(F); AND TO INTRODUCE THE ORDINANCE IN SUBITEM B WITH THE FOLLOWING ADDITIONAL AMENDMENTS: UNDER SECTION 22.4205, UNDER THE DEFINITION OF "CITY FACILITY AGREEMENT," RESTORE THE 90 DAYS VERSUS THE 30 DAYS LISTED. ADD LANGUAGE TO SECTION 22.4215 (7) FOLLOWING THE WORDS "CONTRACTS FOR," ADD "PROFESSIONAL SERVICES, AS DESCRIBED IN CALIFORNIA LABOR CODE SECTION 515 (A)," AND DELETE THE PORTION THAT SAYS, "THIS EXTENSION SHALL NOT BE INTERPRETED TO EXEMPT NONPROFESSIONALS PROVIDING SUPPORT SERVICES TO PROFESSIONALS UNDER SUCH CONTRACTS TO THE EXTENT SUCH NONPROFESSIONALS WOULD OTHERWISE BE ENTITLED TO RECEIVE THE WAGES REQUIRED BY THE DIVISION." THAT WHOLE SECTION WOULD BE DELETED SO THAT WHAT YOU HAVE LEFT IS, "CONTRACTS FOR PROFESSIONAL SERVICES AS DESCRIBED IN CALIFORNIA LABOR CODE SECTION 515 (A) SUCH AS DESIGN, ENGINEERING, FINANCIAL, TECHNICAL, LEGAL, BANKING, MEDICAL, MANAGEMENT, OPERATING, ADVERTISING, OR OTHER SERVICES." SO, WE ALSO DELETED THE WORD "PROFESSIONAL." ADD SECTION (E) TO SECTION 22.4225 UNDER "REPORTING AND NOTIFICATION,"

“BUSINESSES SHALL POST A NOTICE TO EMPLOYEES INFORMING THEM OF THEIR RIGHTS UNDER THIS DIVISION AND ANY APPLICABLE EXEMPTIONS FROM THE WAGE RATES. THE POSTER MUST BE AT THE SITE OF WORK OR A SITE FREQUENTLY ACCESSED BY WORKERS IN A PROMINENT AND ACCESSIBLE PLACE WHERE IT CAN EASILY BE SEEN BY WORKERS.” ADD LANGUAGE TO SECTION 22.4230(C) FOLLOWING THE WORD “REQUIREMENTS.” “AND SHALL CONVEY THE RESULTS OF THE INVESTIGATION TO COMPLAINANT WITHIN 60 DAYS WITH REASONABLE 30 DAY EXTENSIONS.” IN SECTION 22.4225(D), THE “REPORTING AND NOTIFICATION REQUIREMENTS,” DELETE THE FOLLOWING LANGUAGE, “AT A MINIMUM THE REPORT SHALL INCLUDE EACH COVERED EMPLOYEE’S NAME, ADDRESS, DATE OF HIRE, JOB CLASSIFICATION, RATE OF PAY, COST AND AMOUNT PAID FOR HEALTH BENEFITS, HOURS WORKED IN EACH PAY PERIOD, AND PAID AND UNPAID TIME OFF (ACCRUED AND USED.)” AMEND TO SECTION 22.4225(D) TO READ, “THE COVERED EMPLOYER WILL MAINTAIN RECORDS DOCUMENTING COMPLIANCE FOR THREE YEARS, NOT TO EXCEED SEVEN YEARS, AFTER THE CITY’S FINAL PAYMENT IN THE CONTRACT AND SHALL BE MADE AVAILABLE TO THE CITY UPON REQUEST. THE RECORDS TO BE MAINTAINED SHALL INCLUDE ALL WAGE RECORDS, PROOF OF PAYMENT FOR HEALTH BENEFITS AND EMPLOYEE NAME, ADDRESS, DATE OF HIRE, JOB CLASSIFICATION, RATE OF PAY, COST AND AMOUNT PAID FOR HEALTH BENEFITS, HOURS WORKED IN EACH PAY PERIOD, AND PAID AND UNPAID TIME OFF (ACCRUED AND USED.)” THE AMENDMENTS TO SECTION 22.4230 REGARDING ENFORCEMENT SHALL TAKE EFFECT AND BE IN FORCE ON THE 30<sup>TH</sup> DAY FROM AND AFTER ITS FINAL PASSAGE. THE REMAINDER OF THE AMENDMENTS SHALL TAKE EFFECT AND BE IN FORCE ON JANUARY 1, 2010. IN “ENFORCEMENT,” SECTION 22.4230, THE PART THAT SAYS, “HOWEVER, CITY’S FAILURE TO INVESTIGATE AN ALLEGED VIOLATION OR OTHERWISE ENFORCE ANY OF THE PROVISIONS OF THIS DIVISION SHALL NOT CREATE ANY RIGHT OF ACTION OR RIGHT TO RECOVER DAMAGES,” REMOVE, “OR RIGHT.” EXTEND THE 10 DAY RESPONSE PERIOD TO 30 DAYS. DIRECT THE CITY ATTORNEY’S OFFICE TO OPINE IN WRITING TO MR. HAHN AND THE CITY COUNCIL AS TO THE REASONS THAT THE SPORTS ARENA WAS INCLUDED WITHIN 30 DAYS. DIRECT THAT THE ISSUE OF RAISING TICKET PRICES BE RAISED IN CONJUNCTION WITH THE RENEWAL OF THE CONTRACT FOR THE CIVIC

CENTER IN 2009. REMOVE SECTION 22.4230(G) AND REFER THE RELATED ISSUES OF COST RECOVERY AND THE IDEA OF AN EMPLOYEE ORIENTATION PROGRAM DISSEMINATING INFORMATION TO EMPLOYEES THAT IS PERTINENT TO THE CONTRACT BACK TO THE BUDGET COMMITTEE AND FINANCE COMMITTEE. Second by Hueso. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-200: Ordering Foreclosure Actions Against Delinquent Parcels of Land. (Black Mountain Ranch and Otay Mesa Community Areas. Districts 1 and 8.)

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-442)            ADOPTED AS RESOLUTION R-304266

Finding that the Mello-Roos Act, the 1915 Act, and the 1984 Act, authorizes the filing of judicial foreclosure lawsuits to collect delinquent special tax special assessment installments, and hereby orders that the delinquent special tax and special assessment installments listed on Exhibit A, and all future delinquent special tax and special assessment installments as to such parcels, be collected by action brought in the appropriate Superior Court to foreclose the liens thereof;

Finding that the Mello-Roos Act, the 1915 Act, and the 1984 Act, provides for the payment of the costs and attorneys fees for prosecution of the foreclosure lawsuits authorized by the Council, and hereby authorizes Special Counsel to require payment of all costs and all attorneys fees incurred in the applicable foreclosure lawsuit as a condition of such redemption;

Authorizing and directing City personnel in conjunction with Special Counsel and other City consultants to: 1) record applicable notices of intent to remove the delinquent special tax and assessment installments from the tax rolls, and 2) request that the County Auditor remove current and future delinquent special tax and assessment installments from the tax rolls.

**STAFF SUPPORTING INFORMATION:**

Certain property owners have become delinquent with respect to the payment of special taxes or assessments associated with Reassessment District 1999-1, Assessment District No. 4096 (Piper Ranch), and Community Facilities District No. 2 (Santaluz)-Improvement Area No. 1. Bonds have been issued in connection with these districts, and such bonds are secured solely by special taxes or assessments levied upon individual properties within the districts. The City is compelled under the bond covenants contained within the bond financing documents authorized in connection with the districts to commence foreclosure actions against delinquent parcels when certain thresholds are reached, as set forth in the bond documents.

The delinquent amounts for each of the parcels listed below and subject to this proposed action have exceeded the delinquency thresholds established under the applicable bond documents.

<u>Special District</u>	<u>Assessor's Parcel No.</u>	<u>Tax Year . Periods <sup>(1)</sup></u>	<u>No. of Delinquent Installments</u>	<u>Total Delinquent Amount <sup>(2)</sup></u>
Reassessment District No. 1999-1	646-180-37-00	2006-2008	6	\$13,781.89
Assessment District No. 4096 (Piper Ranch)	646-240-57-00	2006-2008	4	\$13,735.54
CFD No. 2 (Santaluz) Improvement Area No. 1	269-232-03-00 303-114-40-00	2006-2008 2006-2008	4 3	\$14,054.12 \$10,461.76
TOTAL				\$52,033.31

(1) A Tax Year Period is from July 1, to June 30, and consists of two installment payment deadlines: December 10, and April 10.

(2) Total Delinquent Amounts do not include late payment penalties.

The City has provided each property owner of record of the subject parcels with delinquency notices and has advised each property owner of the City's intention to begin the foreclosure process if payment is not forthcoming. Delinquent amounts remain outstanding for each parcel; therefore, approval of this proposed action to order the filing of a judicial foreclosure lawsuit against each such parcel is recommended. If approved, the City in conjunction with outside foreclosure counsel (or, if no outside foreclosure counsel is available, the City Attorney's Office) would file the appropriate judicial foreclosure lawsuits and take such other associated actions necessary to collect the delinquent special taxes or assessments. A foreclosure lawsuit is terminated at any time before a parcel is sold at a judicial foreclosure sale so long as the delinquent amounts, penalties, and attorneys fees are paid.

FISCAL CONSIDERATIONS:

There will be no fiscal impact to the City as a result of this action. However, this action will facilitate recovery of the delinquent amounts to the Debt Service Funds of the subject districts. All costs related to the foreclosure actions would be reimbursed as part of the delinquency recovery or would be funded by the City's Special Assessment District Delinquency Fund.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

None related to this proposed action. However, the City Council has approved similar actions in the past, most recently Resolution R-303298, dated January 18, 2008, approving foreclosure lawsuits involving other previously delinquent parcels of land within certain of the City's Assessment Districts.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

No outreach required to the general public. However, as described above, subject property owners have been provided with notices regarding their delinquent status and advising them of the City's intention to begin the foreclosure process if payment is not forthcoming.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

- Property owners within the above referenced districts who are delinquent in the payment of the associated special taxes or assessments and therefore subject to this foreclosure action.
- Other property owners within Community Facilities District No. 2 (Santaluz) Improvement Area No. 1 whose annual special taxes could potentially be increased to cover the delinquencies, as contemplated under the Mello-Roos Community Facilities Act of 1982.

- Investors who hold the associated bonds of the districts who receive principal and interest payments on the bonds payable from the annual special taxes or assessments. The City has covenanted with the bondholders, through the bond documents, to foreclose on properties when delinquent amounts meet certain established thresholds.

Kommi/Lewis

Staff: Alex Bragado - (619) 533-6477  
Brant C. Will - Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:48 p.m. – 5:52 p.m.)

MOTION BY HUESO TO ADOPT. Second by Peters. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-201: Park Boulevard Promenade, Project No. 128148. Application for an Extension of Time for Site Development Permit No. 48083 for a period of three years and, a Stay (“tolling”) on the expiration of Site Development Permit No. 48083 for an additional five-year period (for a total of eight years to expire in April 2015) for the Park Boulevard Promenade Project originally approved by the City Council in April 2004. (Balboa Park Community Plan Area. District 3.)

Matter of approving, conditionally approving, modifying or denying an application for an Extension of Time for Site Development Permit No. 48083 for a period of three years and, a Stay (“tolling”) on the expiration of Site Development Permit No. 48083 for an additional five-year period (for a total of eight years to expire in April 2015) for the Park Boulevard Promenade Project originally approved by the City Council in April 2004. The Park Boulevard Promenade Project included amendments to the Central Mesa Precise Plan and the Balboa Park Master Plan to implement future improvements to Balboa Park including but not limited to a four-level underground parking structure, new Zoo exhibit space, relocation of the historic Carousel and Miniature Train, modifications to historic boundaries and, a new surface parking lot for employees.

**STAFF'S RECOMMENDATION:**

Adopt the following resolution:

(R-2009-306)                    ADOPTED AS RESOLUTION R-304267

Adoption of a Resolution stating for the record the approval of the extension of time and the stay on the expiration of Site Development Permit (SDP) No. 48083 is a subsequent discretionary approval of the Project addressed in Environmental Impact Report (EIR) No. 99-0031 and therefore not a separate project under the California Environmental Quality Act (CEQA) Guideline Section 15060(c)(3);

Declaring that the information contained in EIR No. 99-0031, including any comments received during the public review process, has been previously reviewed and considered by this City Council and it is determined that this subsequent discretionary approval of the extension of time and stay on the expiration of SDP No. 48083 does not involve change in circumstances, project changes, or new information of substantial importance which would warrant any additional environmental review;

Declaring that a three-year extension of time for SDP No. 48083, as originally approved and without any new conditions, will not place the occupants of the Project site or the immediate community in a condition dangerous to their health or safety and no new condition is required to comply with state or federal law;

Declaring that no further City Council action is necessary to permit the City to lift the stay on the expiration of SDP No. 48083 on April 13, 2015;

Granting the three year extension of time on SDP No. 48083, to begin on April 13, 2007, and end on April 13, 2010, and granting a subsequent five-year stay on the expiration of SDP No. 48083, to begin on April 6, 2010, and end on April 13, 2015.

**OTHER RECOMMENDATIONS:**

Planning Commission recommendation was not required.

The Balboa Park Committee has been notified of this project and has not submitted a recommendation. The chair of the community planning group requested the applicant present the project as an information item only on August 7, 2008.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

Extension of Time and a request to stay (toll) the expiration date for a total of seven years for the approved Site Development Permit for the Park Boulevard Promenade Project.

**STAFF RECOMMENDATION:**

Adopt a resolution to approve the Extension of Time request and to stay (toll) the expiration date for the Park Boulevard Promenade project for a seven year period.

**EXECUTIVE SUMMARY:**

The Zoological Society of San Diego has requested that City Council consider a resolution to allow an Extension of Time for an approved Site Development Permit to April 13, 2010, and a request to stay (toll) the Site Development Permit for an additional five year period to April 13, 2015. The Park Boulevard Promenade Project consists of expansions to the San Diego Zoo and modifications to public areas within the North Prado area of the Central Mesa Precise Plan of Balboa Park. The property is owned by the City of San Diego and leased to the Zoological Society.

The proposed improvements include additional zoo exhibit space, a landscaped pedestrian promenade and greenbelt on Park Boulevard, modifications to historic resources and, a four-level, below grade parking structure. The original project approvals consisted of Community Plan Amendments to the Balboa Park Master Plan and the Central Mesa Precise Plan and a Site Development Permit. The Site Development Permit was required for impacts to historic resources, specifically, the relocation of two historically designated structures, the miniature train and the carousel, and for modifications to the boundaries of an historic district. The project was approved by the City Council on April 13, 2004. No portion of the development has been initiated therefore, the Site Development Permit expired 36 months after the approval date on April 13, 2007. The Plan Amendments do not expire.

Toward the end of the Park Boulevard Promenade entitlement process, the Park and Recreation Department received funding to begin a study of parking space needs in Balboa Park entitled *The Balboa Park Land Use, Circulation and Parking Study*. This proposal was initiated by the Planning Commission in November 2004. In light of the timing of this endeavor, the City Council determined that the Park Boulevard Promenade project should be approved with conditions that the project not be implemented until such time as the Study was completed and a broader financing plan was approved for a comprehensive range of park improvements that were identified in the Study including the Park Boulevard Promenade project (Reference Attachment 1 Site Development Permit No. 48083, Page 019375, Standard Requirement No. 1, and



Attachment 2, Community Plan Amendment Resolution No. 299084, Page 2 of 3). As a result of these conditions, the Zoological Society is precluded from utilizing the permit and implementing the project until a park-wide financing plan is approved by the City Council.

San Diego Municipal Code Section 126.0111 stipulates that one Extension of Time may be granted by a decision maker for a maximum of three years provided that two findings can be made:

1. That the project as originally approved and with no new conditions, would not place the occupants of the proposed development or the immediate community in a condition dangerous to their health or safety, and there are no new conditions required to comply with state or federal law.
2. The requested Extension of Time is consistent with these findings. Staff also supports the request to allow the stay (tolling) of the Site Development Permit for the additional five-year period.

This requested resolution is adequately addressed in the environmental document and there is no change in circumstance, additional information, or project changes to warrant additional environmental review. Therefore, the activity is not a separate project for purposes of the California Environmental Quality Act (CEQA) review pursuant to State CEQA Guidelines Section 15060(c)(3).

FISCAL CONSIDERATIONS:

All costs associated with the processing of this project are recovered by a deposit account maintained by the applicant.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION: None.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On August 7, 2008, the Balboa Park Committee heard the request as an information item.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The Zoological Society of San Diego, Permittee.

Broughton/Anderson

Staff: Sandra Teasley – (619) 446-5271  
Shirley R. Edwards – Deputy City Attorney

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 5:31 p.m. – 5:48 p.m.)

Testimony in opposition by Juliann e Peters-Hyde and Jay Hyde.

Testimony in Opposition by Neil Hyytinen.

MOTION BY ATKINS TO ADOPT. Second by Madaffer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-202: Verizon Murphy Canyon. Appeal of the Planning Commission’s July 10, 2008, decision to approve an existing 55-foot high monopole (with antennas reaching 65-foot tall) with conditions requiring that the monopole be retrofitted as a faux palm tree or “monopalm” stealth wireless facility. This structure supports wireless communication antennas and is located at 9323 Chesapeake Drive. (Kearny Mesa Community Plan Area. District 6.)

Matter of the appeal by John Bitterly, the Planning Consortium, Inc., agent for Verizon Wireless of the Planning Commission’s decision of July 10, 2008, in approving an application for a Planned Development Permit (PDP) and a Conditional Use Permit (CUP) for an existing 55-foot high monopole that was previously permitted with CUP No. 96-0172, approved by the Planning Commission on May 30, 1996. The facility is located at 9323 Chesapeake Drive, in the Kearny Mesa Community Plan Area.

The Planning Commission approved this Project, with conditions requiring that Verizon Wireless retrofit the pole to resemble a “monopalm” stealth wireless facility.

(See Report to Planning Commission No. PC-08-067/Conditional Use Permit No. 379109/Planned Development Permit No. 542264/Project No. 112854.)

**STAFF'S RECOMMENDATION:**

Take the following actions:

Subitem-A: (R-2009- ) CONTINUED TO MONDAY, JANUARY 12, 2009

Granting or denying the appeal and granting or denying Conditional Use Permit CUP No. 379109, with appropriate findings to support Council action;

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

Subitem-B: (R-2009- ) CONTINUED TO MONDAY, JANUARY 12, 2009

Granting or denying the appeal and granting or denying Planned Development Permit (PDP) No. 542264, with appropriate findings to support Council action;

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

**OTHER RECOMMENDATIONS:**

Planning Commission on July 10, 2008, voted 4-1-2, to approve with conditions to retrofit the existing monopole as a faux palm tree, or "monopalm."

Ayes: Naslund, Ontai, Otsuji, Golba

Nay: Schultz

Not present: Griswold, Smiley

The Kearny Mesa Planning Group has recommended approval of this project.

**STAFF SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

Appeal of the decision of the Planning Commission approving an existing 65-foot tall monopole supporting wireless communication antennas at 9323 Chesapeake Drive within the Kearny Mesa Community Planning Area.

STAFF RECOMMENDATION:

**DENY** the appeal and **DENY** Conditional Use Permit No. 379109 and Planned Development Permit No. 542264.

EXECUTIVE SUMMARY:

Verizon Wireless was issued a Conditional Use Permit in 1996 to construct and operate a monopole with communication antennas. The approval was issued for a period of 10 years. After the 10 years, Verizon was required to apply for a new permit, subject to the current regulations in effect. Verizon is proposing no changes to the existing 65 feet tall monopole antenna structure, however the facility no longer complies with the Communication Antenna Regulations of the Land Development Code, Section 141.0405.

This project requires the processing of both a Conditional Use Permit (CUP), because this is a “Major Telecommunications Facility,” and a Planned Development Permit (PDP), because a portion of the structure encroaches into the side setback. Staff cannot make the findings for either the CUP or the PDP and is recommending denial of this project.

Verizon has numerous monopole communication antenna facilities throughout the City. While these facilities are important linkages as part of Verizon’s existing network, time limits were imposed on the CUP’s associated with these facilities, because of improvements to the technology. Today new technology exists to better integrate these facilities into the community by utilizing architecture, landscape material, and other applications. Approval of the monopole as-is would set a precedent for Verizon and other telecommunication providers that these outdated facilities are acceptable to San Diego.

If Verizon submitted a project that complied with today’s regulations (LDC 141.0420) and was not in the setback, the facility could be approved as a Process 1, Limited Use, staff-level decision.

The Planning Commission first heard this project June 5, 2008. The Commission continued the item for one month in order to give Verizon an opportunity to comply with the regulations. At the July 10, 2008, hearing, Verizon proposed no changes to the design. As a last attempt to bring the project into compliance, Planning Commission approved the project by adding conditions that the monopole and antennas be retrofitted to resemble a “monopalm” (faux palm tree). Staff would support a monopalm, however strongly recommends that a pole specifically designed as a monopalm be installed, as opposed to retrofitting the existing pole. Existing *retrofitted* monopoles actually have *more* of a visual impact than an originally manufactured monopole.

Verizon decided not to accept the Planning Commission’s conditional approval and has appealed that decision to the City Council.

FISCAL CONSIDERATIONS:

Verizon Wireless is the financially responsible party for this project and is paying for costs associated with processing this application. If the project is denied, the City's Neighborhood Code Compliance Division of the Development Services Department would take code enforcement action because the original CUP has expired. The code enforcement action would be funded by the general fund.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

The Planning Commission first heard this item June 5, 2008. The project was continued to July 10, 2008, and conditionally approved.

KEY STAKEHOLDERS:

Verizon Wireless

Broughton/Anderson/AH

Staff: Alexander Hempton – (619) 446-5349

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

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 2:11 p.m. – 2:12 p.m.)

Testimony in favor of the appeal by Donna Erickson, Craig Sherman, and Wayne Bamford.

Testimony in opposition of the appeal by Dave Potter, Dave Umstad, Ted Shaw, and Brooke Peterson.

MOTION BY HUESO TO CONTINUE TO MONDAY, JANUARY 12, 2009, FOR FURTHER REVIEW. Second by Atkins. Passed by the following vote: Peters-recused, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.



ITEM-203: Appeal of Mesa College Amendment, to Site Development Permit 324476 to delete a mitigation requirement for an eastbound left turn lane on Mesa College Drive at Ashford Street. (Clairemont Mesa and Linda Vista Community Plan Areas. District 6.)

Matter of the appeal by the Grandmothers, of the Planning Commission's decision to approve Site Development Permit No. 485233 an amendment to Site Development Permit No. 324476, which modify previously adopted mitigation measures by removing the requirement of a left turn lane on Mesa College Drive at Ashford Street.

(See Report to Planning Commission No. PC-08-023/Site Development Permit (SDP) No. 485233 Amendment to Site Development Permit No. 324476/Addendum to Mitigated Negative Declaration State Clearing House 2005121106/MMRP/Project No. 139300.)

(Continued from the meeting of July 21, 2008, Item 201, and September 15, 2008, Item 202; last continued at the request of Councilmember Frye, for further review.)

**NOTE:** Hearing open. Testimony taken on 7/21/2008. Hearing open. No testimony taken on 9/15/2008.

**STAFF'S RECOMMENDATION:**

Take the following actions:

Subitem-A: (R-2009-577) DENIED APPEAL; ADOPTED AS RESOLUTION  
R-304268

Granting or denying the appeal and upholding or overturning the decision by the Planning Commission that the City of San Diego as a Responsible Agency, certifies that the information contained in Addendum to Mitigated Negative Declaration State Clearing House No. 2005121106 has been completed in compliance with the California Environmental Quality Act of 1970 and State guidelines, and that said Addendum has been reviewed and considered by the Council and adopting appropriate findings of mitigation, pursuant to California Public Resource Code Section 21081; and adopting Mitigation Monitoring and Reporting Program;

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

Subitem-B: (R-2009-595) DENIED APPEAL; GRANTED SITE DEVELOPMENT PERMIT NO. 485233; ADOPTED AS RESOLUTION R-304269

Granting or denying the appeal and upholding and overturning the decision by the Planning Commission in approving the project; and granting or denying Site Development Permit (SDP) No. 485233, with appropriate findings to support Council action;

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

**OTHER RECOMMENDATIONS:**

Planning Commission on March 6, 2008, voted 6-0-1 to approve.

Ayes: Schultz, Grizwald, Ontai, Otsuji, Nasland, Smiley  
(One vacancy)

The Clairemont Mesa Community Planning Group has recommended approval of this project.

The Linda Vista Community Planning Group has recommended denial of this project.

**STAFF'S SUPPORTING INFORMATION:**

**REQUESTED ACTION:**

Appeal of the Planning Commission's decision to approve Site Development Permit No. 485233 an amendment to Site Development Permit No. 324476, which modified mitigation measures to remove the requirement of a left turn lane on Mesa College Drive at Ashford Street.

**STAFF RECOMMENDATION:**

Deny the appeal and uphold the Planning Commission's decision to approve Site Development Permit No. 485233.

EXECUTIVE SUMMARY:

On January 8, 2007, the City Council approved Site Development Permit No. 324476 in association with the Mesa College Street Vacation. Subsequent to the City Council's approval of the project, a study determined that implementation of the proposed left turn lane within the existing Mesa College Drive right-of-way would result in substandard lane widths and the removal of the existing curbside parking. Furthermore, it was determined that an expansion of the right-of-way to accommodate standard lane widths would impact the Kearny Mesa High Educational Complex.

In researching the source of the mitigation measure, it was determined that the following language appeared in the revised traffic study, dated September 28, 2005, (Section VIII) that was not included in the April 15, 2005, study.

*In order to provide more capacity and improved circulation on Mesa College Drive for the interim and future conditions, it is recommended that the project provide an eastbound left turn lane on Mesa College Drive at Ashford Street. This improvement would increase capacity and safety at this intersection.*

This language was carried forward in subsequent traffic study revisions and was also included in subsequent MND's dated June 28, 2006, and September 1, 2006, as a mitigation measure. According to the traffic study prepared for the Mesa College Facilities Master Plan by Darnell & Associates, dated June 27, 2006, the intersection of Mesa College Drive and Ashford Street currently operates and will continue to operate at Level of Service "A" during both AM and PM peak hours. The analysis includes data for existing and future conditions with and without the parking structure project.

Also, according to the traffic study, Mesa College Drive between Armstrong Street and Ashford Street currently operates as Level of Service "B" under existing conditions. The roadway segment is expected to operate at Levels of Service "B" and "C" in the 2010 and 2030 scenarios with or without the proposed parking structure.

The San Diego Community College District and City staff concur that the mitigation measure could be deleted from the MND and the MMRP based on the analysis in the traffic study using the City's CEQA thresholds for significant impacts.

On March 6, 2008, the Planning Commission voted to approve Site Development Permit No. 485233, an amendment to Site Development Permit No. 324476 and modify the mitigation to remove the requirement of a left turn lane on Mesa College Drive at Ashford.



On March 17, 2008, the Planning Commission's decision was appealed by the "Grandmothers" on the basis of new or different impacts not reviewed or considered by the environmental document.

FISCAL CONSIDERATIONS:

All costs associated with the project including this appeal are being paid for by the applicant, the San Diego Community College District.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On January 8, 2007, the City Council approved Site Development Permit No. 324476, a Multi-Habitat Planning Area Boundary Line Adjustment, Street Vacation of the western end of Mesa College Drive and the sale of 2.69-acres of land to the San Diego Community College District to construct a parking garage.

On March 6, 2008, the Planning Commission voted to approve Site Development Permit No. 485233.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

On October 16, 2007, the Clairemont Mesa Planning Committee voted 10-3-0 to recommend approval of the amendment to delete the requirement for a dedicated left turn lane.

On November 26, 2007, the Linda Vista Planning Committee voted 9-2-1 to recommend denial of the amendment to delete the mitigation requirement, however specific reasons were not provided in their meeting.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

The San Diego Community College District, Students of Mesa College, the Clairemont Mesa and Linda Vista Communities, Kearny Villa Park, Kearny Mesa High Educational Complex, and the City of San Diego.

Broughton/Anderson/HD

**NOTE:** Stating for the record that the City of San Diego as the responsible agency under the California Environmental Quality Act (CEQA) has reviewed and considered the Addendum to Mitigated Negative Declaration prepared by the City of San Diego Community College District, and recommend adopting the Mitigation, Monitoring and Reporting Program.

**LEGAL DESCRIPTION:**

The project site is located at the head of a canyon at the western terminus of Mesa College Drive, south of the Mesa College campus proper, and north of Kearny Mesa Park in the Clairemont Mesa and Linda Vista communities in the City of San Diego.

Staff: Helene Deisher - (619) 446-5223

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

FILE LOCATION: MEET

COUNCIL ACTION: (Time duration: 2:13 p.m. – 2:58 p.m.)

MOTION BY FRYE TO DENY THE APPEAL AND UPHOLD THE PLANNING COMMISSION'S DECISION TO APPROVE SITE DEVELOPMENT PERMIT NO. 485233. Second by Faulconer. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-yea, Hueso-yea.

**REPORT OUT OF CLOSED SESSION:**

None.

**NON-DOCKET ITEMS:**

None.

**ADJOURNMENT:**

The meeting was adjourned by Council President Peters at 5:56 p.m. in honor of the memory of:

Gary Glover at the request of Council Member Faulconer; and  
Frederico Borjas at the request of Council Member Hueso.

FILE LOCATION:

AGENDA

COUNCIL ACTION:

(Time duration: 5:52 p.m. – 5:56 p.m.)