

**THE CITY OF SAN DIEGO, CALIFORNIA**  
**MINUTES FOR REGULAR COUNCIL MEETING**  
**OF**  
**MONDAY, MAY 17, 2010**  
**AT 6:00 PM**  
**MUSEUM OF CONTEMPORARY ART**  
**SHERWOOD AUDITORIUM**  
**LA JOLLA, CALIFORNIA**

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CLOSED SESSION ITEMS

ITEM-150: Seasonal Shared Use Policy for Children's Pool

REPORT OUT OF CLOSED SESSION

NON-DOCKET ITEMS

ADJOURNMENT

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Council President Hueso at 6:11 p.m. The meeting was adjourned by Council President Hueso at 10:26 p.m.

ATTENDANCE DURING THE MEETING:

(1) Council Member Lightner-present

(2) Council Member Faulconer-present

(3) Council Member Gloria-present

(4) Council Member Young-present

(5) Council Member DeMaio-present

(6) Council Member Frye-present

(7) Council Member Emerald-present

(8) Council Member Hueso-present

Clerk-Maland (gs)

ROLL CALL:

Clerk Maland called the roll:

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

INVOCATION:

Invocation was given by City Clerk Liz Maland.

PLEDGE OF ALLEGIANCE:

The Pledge of Allegiance was led by Council Member Lightner.

COUNCIL COMMENT:

COUNCIL COMMENT-1:

Council Member DeMaio thanked Council Member Lightner for requesting that the Children's Pool issue be heard at an evening meeting out in the community. He also acknowledged the City Clerk's staff for their hard work.

FILE LOCATION: MINUTES

COUNCIL ACTION: Start Time: 6:15 PM

COUNCIL COMMENT-2:

Council Member Lightner thanked the public for such a great turnout and recognized the City Clerk staff and City staff for a job well done.

FILE LOCATION: MINUTES

COUNCIL ACTION: Start Time: 6:16 PM

CLOSED SESSION ITEMS:

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

***CS-1 Relly v. City of San Diego***

San Diego Superior Court Case Number: 37-2009-00086682-CU-PO-CTL

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 18, 2010**

DCA Assigned: C. Richardson

Plaintiff claims damages as a result of a motor vehicle accident which occurred when his scooter hit a large defect in the road. The City Attorney will advise the Mayor, and City Council on the status and seek direction.

FILE LOCATION: AGENDA

COUNCIL ACTION: Start Time: 10:25 PM

**Council President Hueso closed the hearing.**

***CS-2 Patricia Frazier, et al v. City of San Diego***

San Diego Superior Court Case No. 37-20080-00091840

***Michael T. Uberuaga v. City of San Diego***

San Diego Superior Court Case No. 08cv1960 MMA (BLM)

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 18, 2010**

DCA Assigned: D. Karlin

In April 2008, the United States Securities and Exchange Commission (SEC) filed a civil enforcement action against five former City officials. The former officials initiated the above-entitled matters against the City after their defense requests were denied. The City Attorney will advise the Mayor, and City Council on the current litigation status, including proposed settlement offers.

FILE LOCATION: AGENDA

COUNCIL ACTION: Start Time: 10:25 PM

**Council President Hueso closed the hearing.**

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

**CS-3 Agency negotiators:** Scott Chadwick, Wally Hill, Judy von Kalinowski, Joan Dawson, William Gersten, and Lori Thacker

**Employee organizations:** San Diego Municipal Employees' Association and AFSCME

Local 127 AFL-CIO

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 18, 2010**

DCA Assigned: J. Dawson

The purpose of the discussion is to review the City's position, and instruct the City's designated representatives regarding the Managed Competition Guidebook and the implementing ordinance required by San Diego Charter Section 117(c).

FILE LOCATION: AGENDA

COUNCIL ACTION: Start Time: 10:25 PM

**Council President Hueso closed the hearing.**

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



***CS-4 AFSCME Local 127 and San Diego Municipal Employees Association v. City of San Diego***

Public Employees' Relations Board Case No. LA-CE-352-M

**REFERRED TO CLOSED SESSION OF TUESDAY, MAY 18, 2010**

DCAs Assigned: J. Cordileone, and J. Dawson

This closed session is to brief the Mayor, and the City Council on the status of the case pending before the State of California Public Employment Relations Board regarding implementation of San Diego Charter Section 117(c) and seek direction.

FILE LOCATION: AGENDA

COUNCIL ACTION: Start Time: 10:25 PM

**Council President Hueso closed the hearing.**

[ITEM-150: Seasonal Shared Use Policy for Children's Pool. \(La Jolla Community Area. District 1.\) \(Rev. 5/12/10\)](#)

(See Report to the City Council No. 10-069; Document Index Nos. 1-11; City Attorney's

March 26, 2010, memorandum; San Diego Police Department's Calls for Service record; Costs Associated with Adding Positions for Park Ranger or Life Guard; City Manager's Report No. 04-135; Minutes from the City Council Meeting dated September 14, 2004; Senate Bill No. 428; Councilmember DeMaio's March 18, 2010, memorandum; Councilmember Lightner's March 19, 2010, memorandum; Councilmember Lightner's March 25, 2010, memorandum; and Chief Operating Officer's March 29, 2010, memorandum.)

**TODAY'S ACTION IS:**

Adopt the following resolution:

(R-2010-794 Rev. Copy) ADOPTED AS AMENDED AS RESOLUTION R-305837

Directing the Mayor, or his designee, within 10 days of the date of final passage of this resolution, to seek an emergency amendment to Coastal Development Permit Number 701673 and Site Development Permit Number 701765 to keep the rope barrier up year round at Children's Pool;

Directing the Mayor, or his designee, as a required condition of a grant of an Emergency Coastal Development Permit, to amend Coastal Development Permit Number 701673 and Site Development Permit Number 701765 to keep the rope barrier up year round at Children's Pool and to timely submit the permit applications;

Directing the City Attorney to draft an ordinance amending Municipal Code Section 63.0102, Use of Public Parks and Beaches Regulated, to prohibit public access to the Children's Pool beach during harbor seal pupping season, from December 15 to May 15, and to make it illegal to allow a dog on the beach at Children's Pool at any time, for docketing at the City Council no later than June 30, 2010;

Directing the Mayor, or his designee, to amend the Local Coastal Program, if required, to prohibit the public from entering the beach during harbor seal pupping season, from December 15 through May 15, and to prohibit dogs on the beach at any time;

Directing the Mayor, or his designee, to seek grant or private funding for a Park Ranger or Lifeguard full-time position with expert qualifications whose primary duty is to patrol the Children's Pool, to create a Volunteer Docent Program led by this Park Ranger or Lifeguard, and to prepare a written report to present to the Natural Resources and Culture Committee within 45 days;

Directing the Mayor, or his designee, to propose appropriate signage based on the Council actions and provide a written report back to the Natural Resources and Culture Committee within 45 days.

**NATURAL RESOURCES AND CULTURE COMMITTEE'S RECOMMENDATION:**

On 4/5/2010, NR&C voted 4 to 0 to:

a) Seek an emergency amendment to the existing Coastal Development Permit to keep the guideline rope up year round.

Amendment to the motion by Councilmember Frye, to include direction to seek a Local Coastal Program amendment to prohibit the public from entering the beach during pupping season, 24 hours a day from December 15 through May 15.

Amendment to the motion by Councilmember Lightner, to include:

b) Prohibit dogs on the Children's Pool beach year round, 24 hours a day;

c) Seek private funding for a Park Ranger or Lifeguard full-time position with expert qualifications whose primary duty is to patrol the Children's Pool. Authorize the Park and Recreation Department or Lifeguard Services to create a Volunteer Docent Program led by this Park Ranger or lifeguard.

Amendment to the motion by Councilmember DeMaio, to request the Mayor's Office to return to this Committee in May of this year with information regarding a ranger or lifeguard and docent program and cost analysis, timeline for the permits, signage issues, merchandise tables, and any other issues the Committee members might have.

(Councilmembers Lightner, DeMaio, Frye, and Emerald voted yea.)

**SUPPORTING INFORMATION:**

In 1931, the State of California granted Children's Pool area tidelands to the City of San Diego upon certain trust conditions: "[t]hat said lands shall be developed exclusively to public park, bathing pool for children, parkway, highway, playground and recreational purposes, and to such other uses as may be incident to, or convenient for the full enjoyment of, such purposes;" as well as "[t]he absolute right to fish in the waters of the Pacific ocean over said tidelands or submerged lands, with the right of convenient access to said waters over said lands for said purpose is hereby reserved to the people of the State of California." Cal. Stats. 1931, Ch. 937.

On September 14, 2004, the City Council directed staff to implement a joint use policy at the Children's Pool. See San Diego Resolution R-299646 (September 14, 2004).

In April 2006, and December 2006, the City Council resolved that a rope barrier be placed at the Children's Pool during pupping season. A rope barrier was installed, authorized by an emergency

Coastal Development Permit (CDP). In each subsequent year, the rope barrier was installed for at least a portion of pupping season, as authorized by an emergency CDP.

On September 22, 2009, staff proposed a Site Development Permit (SDP), CDP, and Environmental Impact Report (EIR) for the removal of approximately 3,000 cubic yards of sand from the Children's Pool, to allow water to circulate, thereby reaching decontamination levels for human use of the beach. The City Council voted not to certify the EIR.

On December 2, 2009, the City Hearing Officer approved a CDP for annual placement of the rope barrier during pupping season, December 15 to May 15. This permit was appealed to the Planning Commission and California Coastal Commission; the appeal was denied by both bodies.

Effective January 1, 2010, the Trust was amended to list an additional use of the tidelands: a "marine mammal park for the enjoyment and educational benefit of children." California Senate Bill 428.

On March 17, 2010, the Natural Resources and Culture Committee considered several management options for the Children's Pool as presented by various community organizations. Two motions made at this hearing failed to obtain a majority vote of the Committee members.

On April 5, 2010, the Natural Resources and Culture Committee held a special hearing to consider various management options or combination of management options regarding the Children's pool during pupping season, December 15 to May 15, and non-pupping season, May 16 to December 14. The Committee took several actions at this hearing.

FISCAL CONSIDERATIONS:

Development Services Department staff estimate the cost to process the Emergency Coastal Development Permit to be in the range of \$1,000-\$3,000; the cost to process the Site Development Permit and a Coastal Development Permit amendments to be in the range of \$30,000-\$40,000 and the cost to amend the Local Coastal Program, if required, to be in the range of \$30,000-\$40,000. If the Site Development Permit, Coastal Development Permit and Local Coastal Program amendment, if required, are processed concurrently the cost for all three is estimated to be \$50,000.

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On April 5, 2010, the NR&C Committee voted 4-0 (Councilmembers Lightner, DeMaio, Frye, and Emerald voted yea) to:

1. Seek an emergency amendment to the existing Coastal Development Permit to keep the guideline rope up year round;
2. Direction to seek a Local Coastal Program amendment to prohibit the public from entering the beach during pupping season, 24 hours a day from December 15 through May 15;
3. Prohibit dogs on the Children's Pool beach year round, 24 hours a day;

4. Seek private funding for a Park Ranger or Lifeguard full-time position with expert qualifications whose primary duty is to patrol the Children's Pool. Authorize the Park and Recreation Department or Lifeguard Services to create a Volunteer Docent Program led by this Park Ranger or Lifeguard;

5. Request the Mayor's office to return to this Committee in May of this year with information regarding a ranger or lifeguard and docent program and cost analysis, timeline for the permits, signage issues, merchandise tables, and any other issues the Committee members might have.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

There have been several community meetings in La Jolla on this issue along with Committee and City Council meetings.

Kempczenski

Staff: Mary Ann Kempczenski - (619) 236-5996  
Shannon M. Thomas - Deputy City Attorney

FILE LOCATION: MEET

**COUNCIL ACTION: Start Time: 6:16 PM**

**MOTION BY DONNA FRYE TO ADOPT THE RESOLUTION AS AMENDED TO: 1) DETERMINE THAT A COASTAL EMERGENCY EXISTS REQUIRING THE IMMEDIATE YEAR-ROUND PLACEMENT OF THE ROPE BARRIER; AND DIRECT THE MAYOR OR HIS DESIGNEE FROM THE APPROPRIATE CITY DEPARTMENT TO APPLY FOR AN EMERGENCY COASTAL DEVELOPMENT PERMIT WITHIN 10 DAYS OF THE EFFECTIVE DATE OF THIS RESOLUTION TO MAINTAIN THE ROPE BARRIER AT CHILDREN'S POOL YEAR-ROUND TO PROTECT THE PUBLIC HEALTH AND SAFETY AND TO MITIGATE THE LOSS OF OR DAMAGE TO LIFE, HEALTH, AND ESSENTIAL PUBLIC SERVICES BASED ON THE FINDINGS CONTAINED HEREIN AND ANY OTHER INFORMATION OR ACTIONS REQUIRED TO PROCESS AND OBTAIN AN EMERGENCY COASTAL DEVELOPMENT PERMIT. A CITY COUNCIL REPORT DATED MAY 17, 2010, FROM THE NATURAL RESOURCES AND CULTURE COMMITTEE CHAIR, ON THIS ITEM WAS PROVIDED TO ASSIST IN MAKING THE DETERMINATION FOR THE COASTAL EMERGENCY AND EMERGENCY COASTAL DEVELOPMENT PERMIT. IT IS RECOMMENDED THAT IT BE INCORPORATED AS PART OF THE COASTAL EMERGENCY DETERMINATION; 2) DIRECT THE MAYOR OR HIS DESIGNEE, AS A REQUIRED CONDITION OF THE EMERGENCY COASTAL DEVELOPMENT PERMIT, TO AMEND COASTAL DEVELOPMENT PERMIT NUMBER 701673 AND SITE DEVELOPMENT PERMIT NUMBER 701765 TO KEEP THE ROPE BARRIER UP**

**YEAR-ROUND AT THE CHILDREN'S POOL AND TO TIMELY SUBMIT THE PERMIT APPLICATIONS; 3) DIRECT THE CITY ATTORNEY'S OFFICE TO DRAFT AN ORDINANCE AMENDING MUNICIPAL CODE SECTION 63.0102 TO PROHIBIT ANY PERSON TO BE ON THE BEACH DURING PUPPING SEASON, DECEMBER 15 TO MAY 15, AND TO COME BACK TO THE NATURAL RESOURCES AND CULTURE COMMITTEE AS AN INFORMATIONAL ITEM, NO LATER THAN JUNE 30, 2010; 4) DETERMINE IF THE PROPOSED YEAR-ROUND ROPE BARRIER PLACEMENT AT CHILDREN'S POOL AND MUNICIPAL CODE AMENDMENTS SECTION 63.0102 ARE CONSISTENT WITH THE LOCAL COASTAL PROGRAM AND CALIFORNIA COASTAL ACT, AND ONLY IF REQUIRED, DIRECT THE MAYOR OR HIS DESIGNEE TO AMEND THE LOCAL COASTAL PROGRAM ACCORDINGLY; AND 5) DIRECT THE MAYOR OR HIS DESIGNEE TO PROPOSE APPROPRIATE SIGNAGE BASED ON THE COUNCIL ACTIONS AND PREPARE A WRITTEN REPORT TO PRESENT TO THE NATURAL RESOURCES AND CULTURE COMMITTEE WITHIN 45 DAYS. Second by Carl DeMaio.**

**Passed by the following vote:**

**Yea: Kevin Faulconer, Todd Gloria, Carl DeMaio, Donna Frye, Marti Emerald, Ben Hueso;**

**Nay: Sherri Lightner, Tony Young;**

**Recused: (None);**

**Not Present: (None).**

(R-2010-837) ADOPTED AS RESOLUTION R-305862

A RESOLUTION WAS ADOPTED TO REFLECT THE FOLLOWING MOTION:

MOTION BY SHERRI LIGHTNER TO: 1) APPROVE THE CITY PARK RANGER AND CITY-SANCTIONED VOLUNTEER DOCENT PROGRAM FOR CHILDREN'S POOL; 2) DIRECT THE CITY ATTORNEY'S OFFICE TO DRAFT AN ORDINANCE AMENDING MUNICIPAL CODE SECTION 63.0102 TO PROHIBIT DOGS ON THE CHILDREN'S POOL BEACH AT ANY TIME; AND 3) DIRECT STAFF TO RETURN TO COUNCIL WITH

RECOMMENDATIONS ON WHETHER THE PUPPING SEASON DATES NEED TO BE ALTERED, AND WHAT PROCESS WOULD NEED TO BE FOLLOWED IN ORDER TO ALTER THESE DATES, ALONG WITH ANY ASSOCIATED COSTS. Second by DeMaio.

Passed by the following vote:

Yea: Sherri Lightner, Kevin Faulconer, Todd Gloria, Tony Young, Carl DeMaio, Donna Frye, Marti Emerald, Ben Hueso;

Nay: (None);

Recused: (None);

Not Present: (None).

REPORT OUT OF CLOSED SESSION:

None.

NON-DOCKET ITEMS:

None.

ADJOURNMENT:

The meeting was adjourned by Council President Hueso at 10:26 p.m.

FILE LOCATION: AGENDA

COUNCIL ACTION: Start Time: 10:26 PM