

**CITY COUNCIL OF THE CITY OF SAN DIEGO
SPECIAL REPORT FOR CLOSED SESSION AND OPEN SESSION
WAIVER OF ATTORNEY CLIENT PRIVILEGE
JUNE 9, 2006
CITY ADMINISTRATION BUILDING
COMMITTEE ROOM – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

CLOSED SESSION WAIVERS:

1. March 30, 1999

CS Item: San Diego Padres- East Village SD/Qualcomm Stadium

Motion: Release minutes to Grand Jury
Vote: 9/0 [Passed]

2. July 25, 2000

CS Item: Number of Cases: One (Councilmember Stallings'- Moores' stock transaction)

Motion: Waive attorney client privilege as it related to Federal Grand Jury for interviews pertaining to closed session notes and conversations and Counsel's 1090 analysis
Vote: 7/0 [Passed]

3. August 5, 2003

CS Item: Anticipated Litigation: Motion to Quash- Isabel

Motion: **NOT** waive privilege
Moved: Councilmember Frye – Dist. 6
Seconded: Councilmember Madaffer – Dist. 7
Vote: 5/0 [Passed]

4. September 2, 2003

CS Item: Barnes-Wallace, et al. v. City of San Diego

Motion: To waive privilege and disclose vote to not file or join in appeal
Moved: Councilmember Inzunza- Dist. 8
Seconded: Councilmember Atkins – Dist 3
Vote: 9/0 [Passed]

5. March 9, 2004

CS Item: SEC and U.S. Attorney Investigation

Motion: To waive attorney client privilege in responding to the SEC's request for documents

Moved: Councilmember Peters - Dist. 1

Vote: 6/0 [Passed]

6. May 24, 2004

CS Item: Securities and Exchange Commission [SEC] City of San Diego Bond Offerings

Motion: To waive all client privilege related to Vinson & Elkins Report

Vote: 7/0 [Passed]

7. July 12, 2004

CS Item: Anticipated Litigation/Significant Exposure: City of San Diego Bond Offerings

Motion: To waive attorney client privilege for Gleason settlement

Moved: Councilmember Maienschein – Dist. 5

Seconded: Councilmember Madaffer – Dist. 7

Vote: 7/0 [Passed]

8. June 27, 2005

CS Item: Anticipated Litigation/Initiation

Motion: To retain Heller Ehrman, full report on receivership at next closed session if no waiver on July 5, 2005

Moved: Councilmember Peters – Dist. 1

Seconded: Councilmember Atkins- Dist. 3

Vote: 6/0 [Passed]

9. September 13, 2005

CS Item 6: In re: United States Securities and Exchange Commission Investigation and United States Attorney Investigation into City's Finances

Motion: To waive attorney client privilege for June 30 subpoena except documents which release would compromise ongoing litigation negotiations

Moved: Councilmember Peters- Dist. 1

Seconded: Councilmember Frye – Dist. 6

Vote: 6/0 [Passed]

Reported out in Open Session on September 13, 2005:

The City Council waived the protections of the attorney client privilege and the work product doctrine with respect to all documents responsive to the subpoena issued by the SEC on June 30, 2005, except those documents created for litigation commenced on or after February 12, 2004, and that the provision of any such materials to the SEC shall be subject to the existing confidentially agreement between the City and the SEC.

The City Council voted that the protections of the attorney client privilege and the attorney work product doctrine be waived with respect to all documents responsive to the most recent subpoenas issued by the U.S. Attorney or U.S. Grand Jury, dated December 22, 2004, January 11, 2005, February 9, 2005, February 11, 2005, February 25, 2005, March 8, 2005, May 10, 2005, May 18, 2005, June 9, 2005, July 26, 2005, August 8, 2005, and August 16, 2005, to the extent those subpoenas request documents not previously requested by prior subpoenas issued by the same entity and except for those documents created for litigation commenced on or after February 12, 2004.

10. May 2, 2006

CS Item 3: SDCERS v. San Diego City Attorney Michael J. Aguirre, et al.

Motion: To waive attorney client privilege and authorize and direct the City Attorney to release transcripts from the closed sessions of July 25 and August 2, 2005, only as to those portions of the transcripts related to this case (not unrelated closed session agenda items) to the court only for in camera review
Moved: Councilmember Peters – Dist. 1
Seconded: Councilmember Madaffer- Dist 7
Vote: 6/1 [Passed]

Reported out in Open Session on May 2, 2006, by Karen Heumann:

The City Council met today, May 2, 2006, in Closed Session, over the objections of the City Attorney regarding Closed Session Item 3 - SDCERS v. San Diego City Attorney Michael J. Aguirre. I was present throughout the item discussion only for purposes of keeping a written record of attendees, motions, and votes taken.

The City Council voted to waive attorney-client privilege and authorize and direct the City Attorney to release transcripts from the closed sessions of July 25 and August 2, 2005, only as to those portions of the transcripts related to this case (not unrelated closed session agenda items), to the court only for in camera review.

The City Council discussed this item over objections of City Attorney Michael Aguirre.

City Attorney Michael Aguirre was not present for the discussion.

Executive City Attorney Don McGrath left when Counsel President Peters would not recuse and leave. I stayed only to keep record.

Council President Peters did not recuse and leave to allow City Attorney discussion. Council President Peters has a conflict of interest in this case.

This action taken today was not noticed. It was only noticed as an update on the status of the matter. City Attorney of the opinion this was a Brown Act violation.

(Note: Item redocketed for consideration due to the Brown Act violation)

11. May 23, 2006

CS Item 2: SDCERS v. San Diego City Attorney, et al.

Motion: To continue consideration of waiver until after summary judgment arguments June 26 with report on progress, no waiver of attorney client privilege

Moved: Councilmember Faulconer- Dist. 2

Seconded: Councilmember Frye – Dist. 6

Vote: 7/1 (Councilmember Madaffer (Dist. 7) – Nay) [Passed]

OPEN SESSION WAIVERS:

1. January 31, 2005:

Item S404: In the matter of waiving the attorney-client privilege with respect to communications between the City Attorney's Office, outside legal counsel, and officers and employees of the City regarding document production in response to production requests and subpoenas received from the Securities and Exchange Commission and the U.S. Attorney's Office.

Motion: To waive privilege

Moved: Councilmember Frye – Dist. 6

Seconded: Councilmember Zucchet – Dist. 2

Vote: 9/0 [Passed]

2. May 10, 2005:

Item S503: Requesting the Board of Administration of the San Diego City Employees Retirement System (SDCERS) to comply with the Disclosure Requests Made by the U.S. Securities Exchange Commission (SEC) and the U.S. Attorney's Office.

Motion: Adopt with direction to City Manager to send request to the Board to docket the issue for reconsideration to waive privilege

Moved: Councilmember Peters – Dist. 1

Seconded: Councilmember Atkins Dist. 3

Vote: 9/0 [Passed]

3. May 24, 2005

Item S507: Waiver of Attorney-Client Privilege and Work-Product Doctrine with Respect to a Report from Luce, Forward, Hamilton & Scripps Concerning Pension Benefits.

Moved: Councilmember Madaffer - Dist. 7

Seconded: Councilmember Frye - Dist. 6

Vote: 8/0 [Passed]

4. August 1, 2005

Item S408: Waiver of Attorney-Client Protections with Respect to Vinson & Elkins Documents.

Moved: Councilmember Peters – Dist. 1

Seconded: Councilmember Madaffer – Dist. 7

Vote: 6/0 [Passed]

5. August 2, 2005

Item S401: Waiver of Attorney-Client Privilege and the Work Product Doctrine.

Moved: Councilmember Peters – Dist. 1

Seconded: Councilmember Madaffer – Dist. 7

Vote: 6/0 [Passed]

REPORTED BY: _____

Karen Heumann
Assistant City Attorney