

**CITY COUNCIL OF THE CITY OF SAN DIEGO
THE CLOSED SESSION MEETING REPORT
FOR MONDAY AND TUESDAY, JANUARY 14 and 15, 2008
CITY ADMINISTRATION BUILDING
COMMITTEE ROOM – 12TH FLOOR
202 “C” STREET
SAN DIEGO, CA 92101**

REPORTING RESULTS OF CLOSED SESSION MEETINGS

Only items that can be disclosed are reported out in the Open Session of the regular City Council Meeting. Public comment on Closed Session items are taken in Open Session. Please refer to the City Clerk’s minutes for Open Session for more information. Assistant City Attorney Karen Heumann reports the results of the Closed Session Meetings of January 14 and 15, 2008, as follows:

CLOSED SESSION MEETING FOR MONDAY, JANUARY 14, 2008

Closed Session Items were heard on Tuesday, January 15, 2008.

CLOSED SESSION MEETING FOR TUESDAY, JANUARY 15, 2008

ROLL CALL:

Present: Mayor Jerry Sanders, Council President Peters, Council President Pro Tem Madaffer and Councilmembers Faulconer, Atkins, Frye, Maienschein

Absent: Councilmember Young - Dist. 4 (Absent for Items CS-1, 2, 3, 4, 5, and 6)
Councilmember Hueso - Dist 8 (Absent for the meeting.)

CLOSED SESSION ITEMS:

**CS-1 *La Jolla Alta Master Council v. City of San Diego*
San Diego Superior Court Case No. GIC 822281**

DCA Assigned: J. Boardman

Nothing to report

CS-2 *Friends of Rose Canyon et al v. City of San Diego*
San Diego Superior Court Case No. GIC 874140 and
San Diego Superior Court Case No.37-2007-00082383-CU-WM-CTL

Las Palmas Condominium Owners' Association et al v. City of San Diego
San Diego Superior Court Case No GIC 872000

DCA Assigned: C. Brock

Nothing to report

CS-3 *Affordable Housing Coalition of San Diego County, Citizens for Responsible Equitable Environmental Development, and Aida Reyes v. City of San Diego*
San Diego Superior Court Case No. 37-2007-00075629-CU-TT-CTL

DCA Assigned: M. Dickenson

Nothing to report

CS-4 *James M. Chapin and Penny Castleman v. Michael Aguirre and City of San Diego*
United States District Court Case No. 05CV1906R (POR)

DCA Assigned: W. Chung

Nothing to report

CS-5 *George Corrales, et al. v. City of San Diego et al.*
San Diego Superior Court, Central Case No. GIC 879359

DCA Assigned: A. Jones

Nothing to report

CS-6 *Taxpayers for Responsible Land Use, et al. v. City of San Diego, et al.*
San Diego Superior Court Case No. GIC867378

DCA Assigned: C. Brock

Nothing to report

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

CS-7 Agency Negotiator: Steven Berliner, Richard Kreisler, Lisa Briggs, Scott Chadwick, Tanya Tomlinson, Thom Harpole, Abby Jarl, Hadi Dehghani, Val VanDeweghe, Jessica Falk Michelli, William Gersten, and Nooria Faizi

Employee Organizations: Local 145 International Association of Firefighters AFL-CIO, San Diego Police Officers Association, Municipal Employees Association, AFSCME Local 127 AFL-CIO and Deputy City Attorney Association

DCAs Assigned: W. Gersten / J. Falk Michelli / N. Faizi

Nothing to report

Conference with Legal Counsel – anticipated litigation – significant exposure to litigation, pursuant to California Government Code Section 54956.9(b):

CS-8 In the matter of Internal Revenue Service Voluntary Correction Program Compliance Statement

Nothing to report

REPORT OUT FOR PRIOR CLOSED SESSION MEETINGS MADE IN OPEN SESSION

Assistant City Attorney Karen Heumann reported out the result of the January 8, 2008 Closed Session Meeting for Item CS-5, *Philip Paulson v. City of San Diego*, that is now reportable.

January 8, 2008, Closed Session Meeting
Item CS-5: *Philip Paulson v. City of San Diego*
United States District Court Case No. 89cv00820 GT (POR),

On January 8, 2008, the City Council voted in Closed Session on Item CS-5, *Philip Paulson v. City of San Diego*, United States District Court Case No. 89cv00820 GT (POR), to authorize settlement in the amount of \$750,000 in return for dismissal of the City's pending appeal. If payment is not made before February 1, 2008, the agreement requires payment of interest on the \$750,000 at the rate of 10 per cent compounded annually. In order to meet this interest penalty contingency, the City Council authorized in Closed Session total payment of up to \$760,000. This item was not reportable on the date the City Council took action because the matter was not settled.

The item is reportable now because it has been agreed to by the parties. The motion was made by Council President Peters and seconded by Councilmember Hueso. The motion passed 6 to 2 with Councilmembers Maienschein and Madaffer voting "No." More details of the settlement are posted on our report at sandiego.gov/city-clerk/closedsession reports.

NOTE: As referenced in the above Closed Session Report Out in Open Session, the following gives a history and more details of the *Philip Paulson v. City of San Diego* settlement.

The United States District Court awarded attorneys' fees and costs to the Plaintiff's counsel, James McElroy, in the amount of \$962,691.28. This is on settlement of that judgment

MOUNT SOLEDAD CROSS LITIGATION

The City of San Diego has been the subject of protracted litigation involving the Mount Soledad cross since 1989. There have actually been three lawsuits filed against the City. Two of the three lawsuits were filed during City Attorney Michael Aguirre's tenure as City Attorney and the City prevailed in those two lawsuits. The following is a concise summary of the three lawsuits.

1. ***Paulson v. City of San Diego,***
United States District Court Case No. 89cv00820 GT (POR):

In 1989, the late Philip Paulson filed a lawsuit against the City in federal court. In the lawsuit, Mr. Paulson contended that the presence of the Mount Soledad cross on City property violated his constitutional rights.

In December 1991, the federal court ruled that the presence of the cross on City property violated the California Constitution's "No Preference Clause" which prohibits a government, including a City, from providing, or appearing to provide, preferential treatment to a religion. The federal court issued a permanent injunction "forbidding the permanent presence of" the Mount Soledad cross on City property. Repeated efforts by the City to later divest itself of the cross were invalidated in the federal courts. This phase of the lawsuit happened before Michael Aguirre became the City Attorney.

In May 2006, the same federal court granted a motion filed by Mr. Paulson's lawyer requiring the City to remove the cross from City property within 90 days or face a fine of \$5,000 a day. City Attorney Aguirre and his staff were successful in persuading the United States Supreme Court to stay that order while the City appealed the order. During the City's appeal, however, the United States Congress passed a law which transferred the Mount Soledad Veteran's Memorial, including the memorial cross, from the City to the United States Government.

Because the City no longer owns the memorial property, the appeals court dismissed the City's appeal of the injunction requiring removal of the cross as moot. The appeals court, however, directed the lower federal court that issued the injunction to determine if Mr. Paulson's lawyer should be awarded attorney's fees. When the case went back to the lower federal court, the City Attorney's Office vigorously opposed the motion filed by Paulson's lawyer for fees because Mr. Paulson had failed in his efforts to have the cross removed. The federal court ruled that Paulson's lawyer was entitled to fees and costs totaling \$963,000 because Paulson had succeeded in obtaining a court order to remove the cross. The federal court found that federal legislation transferring the property to the federal government should not preclude Paulson's lawyer from recovering his attorney's fees and costs.

The City appealed this award of attorney's fees. During this appeal, the award was accruing interest at the rate of approximately \$4,000 a month. After court-sponsored mediation, the City Council voted to accept a settlement offer by Mr. Paulson's lawyer for payment of \$750,000, rather than the court-ordered \$963,000, in return for dismissal of the City's appeal of the fees award. As part of the settlement agreement, Paulson's lawyer has agreed to waive all interest accrued on the original court-ordered fees award.

2. **Paulson v. Abdelnour, San Diego Superior Court Case No. GIC 849667**

As noted above, repeated efforts by the City to divest itself of the Mount Soledad memorial property were invalidated by the federal courts. The City Council therefore placed on the ballot of the Special Municipal Election of July 26, 2005 Proposition A. Proposition A asked the electorate, "Shall the City of San Diego donate to the federal government all of the City's rights, title, and interest in the Mt. Soledad Memorial property for the federal government's use of the property as a national memorial honoring veterans of the United States Armed Forces?"

The voters passed Proposition A with 76 percent of the voters voting in favor of the ballot measure. A state court judge, however, invalidated the ballot measure in a new lawsuit filed by the late Philip Paulson in state court. The state court judge found that the proposed transfer of the memorial property to the federal government demonstrated an unconstitutional preference for religion in violation of the No Preference Clause of the California Constitution.

Under the leadership of City Attorney Michael Aguirre, the City Attorney's Office successfully appealed this invalidation of Proposition A to a state appeals court and successfully defended the appeal decision before the California Supreme Court. The City has not donated the memorial property to the federal government because Congress passed the law transferring the property to the federal government before the state appeal decision upholding Proposition A became final.

3. **Trunk, et al. v. City of San Diego, et al.,
United States District Court Case No. 06cv1597 LAB (WMc):**

After Congress passed the law transferring the Mount Soledad Veterans Memorial to the federal government, Mr. Paulson and another citizen, Steve Trunk, sued the City and United States Government in federal court. In the lawsuit, Trunk and Paulson argued that the law transferring the property from the City to the federal government is unconstitutional.

Under the leadership of City Attorney Michael Aguirre, the City has been successful in defending the City in this lawsuit. The federal court dismissed the lawsuit against the City. This lawsuit against the federal government, however, remains pending at this time.

REPORTED BY: _____
Karen Heumann
Assistant City Attorney