



THE CITY OF SAN DIEGO
M E M O R A N D U M

DATE: November 18, 2008
TO: City Councilmembers
FROM: Nader Tirandazi, Financial Management Director
SUBJECT: Response to Budget Inquires

A handwritten signature in black ink, appearing to read "Nader Tirandazi", positioned to the right of the "TO:" and "FROM:" fields.

On Wednesday, November 12, 2008 the City Council's Budget and Finance committee met to review and discuss the budget adjustments recommended in the Fiscal Year 2009 Budget Amendment Report (#08-166). During the meeting, several Councilmembers requested additional information. The responses to those inquiries are included below.

Question:

Councilmember Faulconer –What is the process, timing and steps for implementing a mandatory furlough? Can negotiations be opened just for one item?

Response:

Under MMBA (California Government Code sec. 3504, et seq.), a mandatory furlough would impact both wages and hours, thereby being subject to negotiation prior to implementation, and as such mandatory furlough cannot be imposed on the unions during the current contract year (FY09). Terms and conditions of employment in a collective bargaining agreement are fixed for the duration of the agreement, unless the parties agree otherwise (*Glendale City Employees' Assn., Inc. v. City of Glendale*, (1975) 15 Cal.3d 328). Therefore, the City could not implement the proposed changes prior to the expiration of the current contract(s), which is June 30, 2009. The City could invite the labor unions to negotiate over mandatory furlough during the current fiscal year, but cannot impose it. If the unions refuse to negotiate, the City must wait until the next fiscal year to raise the issue again.

Yes, upon mutual agreement of both the City and the labor union(s) negotiations can be opened for one item. The City would need to contact the labor unions and ask them to open negotiations for mandatory furlough during the current fiscal year. If they agree, we proceed to the meet and confer process which would take approximately one month.

Question:

Councilmember Faulconer – What are the impacts on CCDC projects from the increase of the Petco Park repayment to \$11.3 million and the original \$7.5 million budgeted? Can CCDC projects be put on hold?

Response:

Please refer to the attached memorandum from Center City Development Corporation (Attachment I) detailing the impacts to the Agency.

Question:

Councilmember Faulconer – What new facilities are being built and can any be postponed to mitigate future the operating budget impacts?

Response:

The City has the ability to terminate design and construction contracts at any point in the work process. However, terminations of contracts for convenience generally have significant cost impacts that would have to be evaluated.

Library:

The only Library facility under construction is the new Logan Heights Branch scheduled to open in September 2009 and will require approximately \$498,000 in annual non-personnel expense. Additionally, 4.95 FTE (\$374,456) is required for operating the new branch. This is a joint-use project with San Diego City Schools and additional funding has been provided through State grants.

The Mission Hills, Kensington-Normal Heights, San Carlos and Skyline branches are in the earlier stages of planning and design, but no construction has begun on these projects. Both the Mission Hills Branch and the Skyline Branch have donations to assist with construction, although the donor for the Skyline Hills Branch has indicated that the \$5 million donation will expire at the end of the year if progress is not made on that library. Fund raising activities are ongoing for the New Central Library.

Additional information regarding Park & Recreation facilities will be provided as soon as it becomes available.

Question:

Councilmember Faulconer –What are the up-coming BPR's and associated cost savings.

Response:

The following table provides the current status of BPRs underway or being initiated.

BPR	Status
Reservoir Recreation	Targeting the December 2, 2008 docket for Council review/approval of recommendations
Publishing Services	In Meet & Confer

Facilities Maintenance	In Meet & Confer
Environmental Services: Collections	Pending Meet & Confer
Park Maintenance	Pending Meet & Confer
Streets	Pending Meet & Confer
Custodial Services	Pending Meet & Confer
Airports Division	BPR underway
Communications Division	BPR report being finalized
City-wide Delivery	BPR effort expected to kick off soon

Question:

Councilmember Faulconer – Define a temporary reduction versus a long term budget cut.

Response:

All the Fiscal Year 2009 proposed budget reductions have been included in the Five-Year Financial Outlook. The Outlook provides a financial projection of the impact of the budget cuts but is not a policy document. Approximately \$16.7 million in personnel reductions and \$17 million in non personnel reductions are assumed in the Outlook from Fiscal Years 2010 to 2014.

The Outlook is revised as economic conditions change, as revenue projections are modified and when the Council makes budgetary and appropriation decisions. The closing of parks and libraries in the short-term is a policy decision and is based on the City receiving additional revenues. Those additional revenues have not been identified.

Question:

Councilmember Hueso – What is the accounting information for the blue level swim program? What other funds could be used for this purpose (such as RZH and EDCO)?

Response:

The estimated annual personnel cost for the blue level swim program is \$39,911 with the associated revenue estimated at \$4,500. The competitive level swim team operated at Memorial Pool is eligible for restoration through the use of EDCO fund monies, which are currently estimated at \$435,000. However, the program at City Heights is not eligible for EDCO funds. All other eligible park bond funds have been allocated and are not available.

Question:

Councilmember Hueso – What are the rules on use of Council Infrastructure Funds? Can Infrastructure Funds be used to keep maintain services and programs?

Response:

As part of the Mayor's proposed budget amendments, the total balance of unallocated Infrastructure Funds has been incorporated in the corrective actions. For additional information on the guidelines for the use of these funds, please refer to the memorandum issued by the Office of the Comptroller.

Question:

Councilmember Hueso – What is the possibility of entering into agreements with tenants (partnership) to keep community service centers open?

Response:

Due to the fact that this work has been traditionally done by Civil Service Employees, the only opportunity to legally contract the work with outside vendors would be through the Managed Competition Program. It is recommended that the City Attorney analyze the legal requirements related to contracting out and provide the City with options.

Question:

Councilmember Madaffer – What are the potential savings for contracting out of criminal prosecution to the district attorney's office?

Response:

This request has been referred to the City Attorney for response.

Question:

Councilmember Frye – What is the status of May 07, 2008 Memo from Jay Goldstone regarding cost recovery for services (i.e. Contracts with Qualcomm Stadium, Aztec Games, Petco Park, and Fire/EMS services provided to Universities). How much money is currently being recovered and how much is planned on being recovered in FY10?

Response:

Cost recovery for all eligible services will be evaluated and presented to Council as part of the User Fee Policy.

Question:

Councilmember Frye – What is the cost of the beach grooming program?

Response:

Elimination of the beach grooming function would discontinue the year-round functions of raking and screening of sand as well as kelp removal. Reduction in these services would eliminate 5.00 Equipment Operator II's (\$394,688), 4.00 Heavy Truck Driver I's (\$307,162) and non-personnel costs (\$355,607) annually, for a total of \$1.0 million.

Question:

Councilmember Frye – What projects would be impacted by waiver of the Mission Bay Ordinance?

Response:

Projects impacted by waiving the Mission Bay Ordinance are reflected in Table 1. This table details the projects that were programmed for the Mission Bay Improvement Fund and the Regional Park Improvement Fund for Fiscal Year 2009.

Question:

Councilmember Young – What is the status of the Tourism Marketing District (TMD)? Can they increase funding to organizations and offset City funds?

Response:

The Council does not have the authority to alter the TMD budget in order to offset City expenses.

Question:

Councilmember Young –How much could regionalizing Fire Academies save the City?

Response:

Currently there are no county-wide standards for providing a basic fire academy and ongoing training to new fire recruits. The State of California has basic requirements for accredited fire academies or ongoing training, but the standards are broad and are delivered quite differently statewide. These differences affect even the college based academies that currently take place in San Diego County. Unlike the Peace Officer Standards and Training (POST) training designed and delivered by the State for police agencies, the state curriculum for fire academies is neither transportable nor accepted state-wide. The department is moving towards a regionalized approach, but it will take time without a county fire agency.

In order to keep the San Diego Fire-Rescue Department (SDFD) high standards in place, we would need direct influence on any new regional fire academy curriculum and the testing process. SDFD has conducted several fire academies where new recruits from other fire departments have participated and graduated.

In regards to cost savings, preliminary discussions indicate there would be minimal savings from a regionalized training approach; however, there is merit in the regionalized concept but primarily as a method to work and train more inter-dependently with other agencies.

Question:

Councilmember Young – Is the Beckwourth Library on college property and could a joint-use arrangement be achieved with the college?

Response:

The Mountain View/Beckwourth Branch is on San Diego Community College property at the Educational Cultural Complex (ECC). A joint use agreement exists requiring the City pays operational expenses including but not limited to utilities, supplies, maintenance, personnel, and books and periodicals for public use; however, this is subject to budgetary limitations as may be imposed by the City.

Question:

Councilmember Young - What would be the cost savings if the Administrative Leave Program was eliminated for directors?

Response:

Administrative leave is designed to be used in the year it is granted and is not eligible in for pay-in-lieu. The annual allotment of hours does not carry forward from one year to another. As such, there are no direct savings by eliminating the benefit.

Question:

Councilmember Young – What is the cost associated with vehicles that public safety executives take home?

Response:

The Police and Fire-Rescue Departments provide personally assigned vehicles to senior officers due to the requirement to respond to incidents and emergencies 24 hours a day. The General Services Department charges the departments per month per vehicle for the operation and maintenance expense of the vehicles. Regardless of whether the vehicles are taken home, the departments will always realize a usage charge.

Question:

Councilmember Young – Is it possible for non-profit organizations to operate facilities that are proposed for closure?

Response:

Due to the fact that this work has been traditionally done by Civil Service Employees, the only opportunity to legally contract the work with outside vendors would be through the Managed Competition Program. It is recommended that the City Attorney analyze the legal requirements related to contracting out and provide the City with options.

Question:

Councilmember Young –What is the General Fund’s obligation regarding the Local 127 settlement?

Response:

The Fiscal Year 2009 expense is estimated to be \$1 million in the General Fund.

Question:

Council president Peters – Why close both Clairemont and South UC Libraries considering their proximity to each other?

Response:

There are a number of libraries in the areas of the Clairemont and University communities. Circulation and patron counts have been dropping significantly since the opening of the new North University Community Branch, indicating that many previous patrons and residents of University Community (South) prefer to visit the new, larger branch located within the Nobel Athletic Field. The North University Community Branch Library provides library users with ample parking, more computers, and a meeting room.

The Clairemont Branch Library is located three miles from the North Clairemont and Balboa Branch Libraries, and four miles from the Pacific Beach Branch. The Clairemont Branch is the smallest in terms of building and collection size, has limited parking, and has no meeting room.

Question:

Council president Peters – What fee structure is required to make the Jr. Lifeguard Program fully cost recoverable?

Response:

At current funding levels, the Junior Lifeguard program is not fully cost recoverable. After researching the Junior Lifeguard Program fee structure, it was learned that overhead costs were not part of the structure.

Within the Junior Lifeguard Program, there are on average 920 paying students and 130 scholarship students. The current tuition of \$400 covers most of the costs associated with personnel expenses and non-personnel expenses, as well as the costs of providing scholarships.

The Fire-Rescue Department is prepared to modify the program to reflect current financial guidelines and has identified the necessary changes needed to make the Junior Lifeguard program fully cost recoverable. The list below summarizes the changes:

- New model based on the same number of paying students and scholarships
- Overhead costs are now part of this model
- Tuition increase to \$500
- Decrease of one week of instructor time assigned to the program
- Decrease of the length of the program (currently 4 weeks) by two to four days – still TBD
- Organization Effectiveness Specialist III position overlooking the program will be transformed from “full time” to “limited” status
- Non-personnel expenses decrease by \$64,745 to a total of \$60,000

These changes will accomplish the full savings identified in the reduction of the Organization Effectiveness Specialist III by eliminating its cost for one-half year and adding revenue for one-half year.

Question:

Council president Peters – What is the cost to maintain a library each year if a sponsor became available?

Response:

This information was provided in the addendum to the Fiscal Year 2009 Budget Amendment Report (Attachment IX).

Question:

Councilmember Atkins – How many people are in the DROP Program; how many people are going to retire in the next 5 years; how will the reduction in the academies impact staffing?

Response:

Police:

Currently the Department has 60.00 civilian personnel and 204.00 sworn personnel enrolled as Deferred Retirement Option Program (DROP) participants, (not including command staff). The number of sworn personnel required to leave each year based on their respective DROP agreements are as follows.

- FY 2009 – 21.00 – monthly average remaining for Fiscal Year 2009 = 3.00
- FY 2010 – 52.00 – monthly average = 4.30
- FY 2011 – 44.00 – monthly average = 3.60
- FY 2012 – 37.00 – monthly average = 3.10
- FY 2013 – 50.00 - monthly average = 4.20

The Department has used an average monthly attrition rate of 9.00 sworn personnel to calculate the impact of lowering academy enrollment to 25.00. The attrition rate of 9.00 personnel includes DROP participants, medical retirees, academy and training attrition and losses to other agencies.

Based on these assumptions, the Department will have a net loss of approximately 7.00 sworn positions each of the next three fiscal years. The Department will analyze options to mitigate the net loss which could include increasing the enrollment numbers in one class each fiscal year, hiring graduates directly from other public safety academies throughout California or hiring transfers from other police departments within the State.

Fire-Rescue:

Based on available information from the Retirement Office, the following is a snapshot of sworn employees who are currently in the DROP and those eligible to enter currently and by fiscal year.

	Currently In DROP	Eligible to Enter by FY- Estimate	Totals
Eligible Now		50	50
FY 2009	26	25	51
FY 2010	43	40	83
FY 2011	32	30	62
FY 2012	30	20	50
FY 2013	20	20	40
FY 2014	4	30	34
Totals	155	215	370

Recent reports reflect that Fire-Rescue has approximately 155 sworn employees within DROP and 75 sworn employees eligible to enter the program or retire in Fiscal Year 2009.

In relation to fire academies, the department typically conducts two academies per year and enrolls approximately 30 recruits for each academy. Due to current fiscal constraints, it has been proposed to conduct one academy per year through Fiscal Year 2010. In Fiscal Year 2009, one academy will cover expected attrition; however, in Fiscal Year 2010 one academy will not quite cover the anticipated attrition of 43 sworn employees. The department will utilize overtime to cover minimum staffing requirements. This will result in savings to the department due to the lower costs of using overtime versus hiring employees. Lastly, attrition rates could increase depending on the current economic climate and possible changes to future retirement or DROP benefit levels.

Question:
Councilmember Atkins – What are some of the future State budget impacts?

Response:
Please refer to the attached memorandums from Jay Goldstone, COO and Job Nelson, Director of Intergovernmental Relations (Attachment II and III) describing the anticipated State budget impacts on the City.

Question:
Councilmember Atkins – What are the impacts of Customer Service Department reductions on route slip responses?

Response:
There are approximately 2,000 Route Slips processed each year. This service will be absorbed by existing staff in the Administration Department and the response time to process requests will be initially delayed until the staff acquires familiarity with the process.

Question:
Councilmember Atkins – What are the liability impacts from unsupervised skate parks?

Response:
Please refer to the attached memorandum which contains the City Attorney's opinion (Attachment IV) on the liability assumed should the City skate parks become unsupervised.

Question:
Councilmember Atkins – What are the impacts from the State and federal mandates for the Storm Water positions? What are the penalties to the City for not meeting requirements?

Response:
The primary impacts associated with the elimination of the ten (10.00) vacant Storm Water department positions are reductions in:

- Storm Water pollution prevention public outreach and education activities

- Inspections of industrial facilities
- Policy development and collaboration capability with agencies that regulate the City
- Capability to promptly respond to storm water pollution prevention hotline calls and email inquiries

The City will remain in compliance with the Municipal Storm Water Permit issued by the California Regional Water Quality Control Board- San Diego Region (Regional Board) despite these reductions. The Regional Board is the State agency charged with the responsibility to enforce federal and State mandated water quality programs and regulations and could fine the City up to \$10,000 per day for municipal permit violations.

Attachments: I. Center City Development Corporation Memorandum
II. & III. State Budget Impacts on the City of San Diego
IV. City Attorney Opinion on Unsupervised Skate Park Liability

cc: Mayor Sanders
Members of the City Council
Jay M. Goldstone, Chief Operating Officer
Mary J. Lewis, Chief Financial Officer
Andrea Tevlin, Independent Budget Analyst

Table 1

Fiscal Year 2009 Projects Funded by Mission Bay Lease Revenue

The following list reflects projects that were allocated in Fiscal Year 2009. Expenditures or project status is not listed. Prior year funding allocations or project status is also not included.

Mission Bay Park Improvement Fund Allocations for FY 2009

22-965.0	Annual Allocation - Mission Bay Improvements	\$76,802
22-968.0	Mariner's Point Road Curbs and Parking Lot – Improvements	\$400,000
22-969.0	Mission Bay Park Drinking Fountains – Replacement	\$150,000
22-970.0	Mission Point/Bayside Walk Security Lighting – Upgrade	\$275,000
22-976.0	Sunset Point Parking Lot - Security Lighting	\$150,000
22-977.0	Vacation Isle North Cove Parking Lot - Security Lighting	\$150,000
22-978.0	Vacation Isle North Cove Road Improvements	\$150,000
22-979.0	Vacation Isle Northeast Parking Lot Security Lighting	\$150,000
22-980.0	West Bonita Cove Children's Play Area Upgrades	\$200,000
22-966.0	West Ski Island - Shoreline Stabilization	\$500,000
22-972.0	North Crown Point Gazebo Replacement	\$265,000
	Total Mission Bay Improvement Fund	\$2,466,802

Regional Park Improvement Fund Allocations for FY 2009

21-876.0	Balboa Park - Florida Canyon Evaluation and Repair of Broken Storm Drain	\$1,000,000**
21-877.0	Balboa Park - Marston Point Evaluation and Repair of Collapsed Storm Drain	\$50,000
27-875.0	Balboa Park - Morley Field Evaluation and Repair of Collapsed Storm Drain	\$50,000
21-870.0	Balboa Park - Myrtle Way Pergola	\$350,000
29-975.0	Crest Canyon Resource Management Plan *	\$75,000
29-974.0	Gonzalez Canyon Resource Management Plan *	\$200,000
29-966.0	Mission Trails Regional Park Cowles Mountain Trail Rehabilitation *	\$400,000
29-967.0	Mission Trails Regional Park Trail Realignment	\$300,000
29-909.0	Regional Park Improvements	\$41,803
	Total Regional Park Improvement Fund	\$2,466,803

* The Park and Recreation Department requests that these projects remain funded.

** The Park and Recreation Department requests that \$275,000 of this \$1,000,000 remain funded

November 18, 2008

Mr. William Anderson
Assistant Executive Director
The Redevelopment Agency of the City of San Diego
1200 Third Avenue, Suite 1400, MS 56D
San Diego, CA 92101-4110

Subject: Redevelopment Petco Park Payment

Dear Mr. Anderson:

In response to the question raised at the November 12, 2008 Special Joint Meeting regarding the Corporation increasing Agency payments to the City from \$7.5 million to \$11.3 million for the payment of debt service on the Ballpark Bonds, the following will be proposed to facilitate the payment and mitigate the impacts to Agency. Several actions will be required by the CCDC Board, the Redevelopment Agency and the City Council including:

- A. Approval of an Amendment to the Ballpark Cooperation Agreement between the Redevelopment Agency and the City of San Diego to provide for payments for the debt service on the Ballpark Bonds.
- B. Approval of a Repayment Agreement on the outstanding debt owed to the City. The agreement would outline scheduled payments to be made over the next thirteen years.
- C. Adoption of findings by the Redevelopment Agency and the City Council that a) determine the Ballpark is a benefit to the Project Area; b) that there is no reasonable means to finance the debt service on the Ballpark Bonds; c) that the payments to be made will assist in the continuation of eliminating one or more blighting conditions within the project area; and d) that the expenditures to be made by the Agency is consistent with the Five Year Implementation plans for the Centre City Redevelopment Project Area.
- D. Approval of a budget amendment to the Fiscal Year 2009 Budget to provide for an increase in the payments to the City from \$7.5 million to \$11.3 million.

The project activities in Fiscal Year 2009 will not be directly impacted. However, in Fiscal Years 2012 through 2016 current projections estimate a deficit of approximately \$17 million which may be mitigated with short term financing and or a deferral of certain projects.

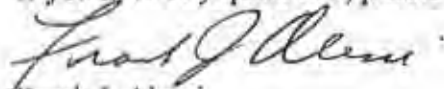
Mr. William Anderson

November 18, 2008

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It is anticipated that the above referenced documents will be brought forward to the CCDC Board and the Redevelopment Agency in January 2009. A public hearing associated with the findings and the Amendment to the Ballpark Cooperation Agreement will be required with the appropriate two week advanced advertising, and the availability of documents pertaining to the Ballpark Bond payments.

If you have any questions, please advise.



Frank J. Alessi

Vice President and Chief Financial officer

cc: Jay Goldstone, Chief Operating Officer

Mary Lewis, Chief Financial Officer

Nader Tirandazi, Financial Management Director

Janice Weinrick, Deputy Executive Director

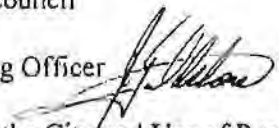
Councilmember Kevin Faulconer, City Council District 2

Fred Maas, Chair – CCDC Board

THE CITY OF SAN DIEGO
M E M O R A N D U M

DATE: November 18, 2008

TO: Honorable Members of the City Council

FROM: Jay M. Goldstone, Chief Operating Officer 

SUBJECT: Possible State Budget Impacts on the City and Use of Reserves and One-Time Options to Cover Budget Deficit

On Wednesday November 12, 2008, the City Council held the first of two scheduled budget meetings to discuss the Mayor's recommended amendments to balance the City's Fiscal Year 2009 Budget. At that meeting I was asked by Councilmember Toni Atkins to report back to the Council on the likely impact the California budget deficit could have on the City budget deficit, and how the city might prepare for that eventuality.

The State is dealing with a budget deficit that is projected to grow to \$28 billion, a record amount. This deficit has led state officials to consider raising the state sales tax, the state income tax and the Vehicle License Fee. Those revenue-enhancement proposals, which face strong opposition from Republican legislators, would not be enough to close the deficit and would also require across-the-board spending cuts. If history is any guide, the probabilities are high that the State will also seek to enhance its position at the expense of cities and counties.

San Diego's exposure to raids by the State is significant and presents potentially dire consequences this fiscal year, with the most probable scenarios being:

- a) A loss of Prop 1A money. Theoretically, the state could "borrow" approximately \$35 million from City sales tax and property tax revenues and repay the "loan" with interest, after three years. The state could then turn right around and borrow this money again for an additional three years.
- b) A loss of Prop 42 money, which would not affect the General Fund, but could take approximately \$11.1 million in Capital Improvement Programs. That would be a direct hit to our deferred maintenance programs for city streets in the amount of \$2.2 million for slurry sealing and \$8.9 million for overlay work.
- c) A loss of various state grants and funds, such as COPS funds for Police Department positions. The City could also be impacted if the State withholds jail booking fee revenues the County now receives. This could change the financial relationship between the City and County, to the City's detriment.
- d) No impact. This is the least anticipated scenario.

Given the State's predicament, the City cannot assume that it will not face another round of budget cuts prior to the end of this fiscal year. Such cuts, in response to State action, would be on top of the cuts

needed to close the current \$43 million budget deficit and those needed to close the anticipated \$44 million deficit in the Fiscal Year 2010 budget.

For that reason, it is crucial that the City Council does not delay implementation of the current round of budget cuts. The current projected savings was based upon a November 19th City Council decision and a January 1, 2009 implementation. It is estimated that staff will need approximately six weeks to go through the “reduction in force” and “meet and confer” processes. Each week of delay will require us to make an additional \$330,000 in cuts this fiscal year.

In addition to the threats from the state, San Diego, as with many cities throughout the State and nation, is dealing with the effects of an economy most of us have never had to face before. The recession has compounded the problem pointed out in the Five Year Financial Outlook: that for the foreseeable future the City is projected to spend more than it receives in revenues. For this reason, the City by increasing efficiencies has been able to cut costs in each of the past three fiscal years and has been discreet in how it spends its limited revenues to slowly right the ship. The Office of the Independent Budget Analyst has acknowledged this projected structural deficit that was outlined in the first Five Year Outlook and has suggested that the City must solve this problem.

Unfortunately this structural imbalance has been exacerbated by the current worldwide economic meltdown and unlike the terrorist attack of September 11th or the dot.com bust at the turn of the century, this meltdown is deeper and more widespread and it will take the national and world economics much longer to recover. During the last two economic slowdowns, the economy was boosted by consumer spending and thus the recoveries were fairly rapid. As we have now learned more people were lent money to buy homes than should not have been, the prices of the homes were growing at an unusually rapid pace and consumers were using the equity in their homes as check books and spending the equity to make big purchases. Now that the bubble has exploded consumer confidence has been shaken, spending is trending downward and the recovery will be slow.

It is for these core reasons that the Mayor had to look to long term solutions to balance this budget in ways that has not been looked at before by this City. There are no quick fixes or magic tricks that will get this City through these times and still position the City to live within its means. In the past, that is exactly what the City did. The City would look for one-time solutions for a long term problem and hope that it could grow its way out to recovery. It cut its pension payments, ignored its infrastructure, “borrowed” from the enterprise funds, spent down reserves and did whatever it took in order to not cut programs or services. For a while this strategy worked, but eventually the house of cards fell and we are all now having to deal with it.

Cutting services and closing facilities is never an easy decision and should not be made lightly. The Mayor recognizes this and met with Department Directors to explore many alternative solutions to the City’s problems. At last Wednesday’s budget meeting, there was some discussion regarding the possibility of using one-time sources to preserve libraries and recreation centers. Now is not the time.

The City Council recently adopted a long term Reserve Policy which has received favorable comments from all three rating agencies. This Policy calls for the gradual but responsible building of City reserves in many of the City’s core funds. Given the long term uncertainty of this “recession” and the unknown timing for the fiscal recovery as well as factoring in the uncertainty of other variables such as the State’s budget and future pension payments that could put additional pressure on the City’s budget these

conditions suggest that it would be imprudent for the City to tap reserves now or turn to too many one-time sources. This will not solve the City's budget deficit only put off dealing with it to next fiscal year.

Reserves should only be considered to fund expenditures when you are trying to solve a short-term fiscal problem or when you have a one-time problem that needs a one-time solution. These circumstances do not apply in this case. Even by solving the current year deficit through the closure of facilities and elimination of some services, the Five Year Financial Outlook reflects a \$44 million deficit in fiscal year 2010 and that grows by an additional \$24 million in fiscal year 2011. While the projected fiscal year 2011 deficit assumes some impact on the Annual Required Contribution (ARC) from the current market losses, it does not take into consideration a scenario where there is no market recovery through the end of this fiscal year and no other changes to the current pension plan and/or assumptions. As noted in the Five Year Financial Outlook report, this could increase the fiscal year 2011 ARC payment substantially.

In this vain, I also do not believe it is prudent to use the \$2.4 million in one-time reserves in the Transient Occupancy Tax fund, which is projected to run a \$4 million deficit in fiscal year 2010.

Finally, it is important to also note that the City's independent auditors have pointed out in each of the recent CAFRS that the City has a large unfunded deficit in the self-insurance fund, which includes the liabilities related to Public Liability, Workers Compensation and Long-Term Disability. In fiscal year 2007, the liability amount was \$178,700,000 which represent unfunded estimated claims and claims settlements. The auditors have requested that the City demonstrate a funding plan that will reduce this liability and the City's response has been that the Reserve Policy is in now in place and progress has been made over the past two years to begin to build up the reserves in these funds according to the targets set forth in the Reserve Policy. In particular, the additional amount collected in the Workers Compensation Fund in fiscal year 2008 should remain in reserves to demonstrate the City's commitment to achieving a 50% funding ratio by 2014.

Jay M. Goldstone

cc: Honorable Mayor Jerry Sanders
Mary Lewis, Chief Financial Officer
Andrea Tevlin, Independent Budget Analyst
Nader Tirandazi, Finance Department Director

**OFFICE OF MAYOR JERRY SANDERS****M E M O R A N D U M**

DATE: November 13, 2008

TO: Honorable Mayor Jerry Sanders
Honorable City Council
Jay Goldstone, Chief Operating Officer
Deputy Chief Operating Officers
Andrea Tevlin, Independent Budget Analyst

FROM: Job Nelson, Director of Intergovernmental Relations

RE: State Special Session- Governor's Budget

This past week the Governor called a special session of the California Legislature. The main topic for this special session is the struggling state economy and its impact on the state budget. In fact recent economic statistics show that the state's unemployment rate is higher than the national unemployment rate. This weak employment has resulted in the loss of almost 80,000 jobs in the first three quarters of 2008, including losses in seven of the eleven major industry sectors for the state. The Department of Finance estimates that the state's unemployment rate could reach double figures during some months of 2009 and possibly extending into 2010.

As is also the case locally, the slumping economy has significantly impacted state revenues. The negative economy has a magnified effect on the state budget due to the structure of California's revenue system. Nearly 15% of state revenues come from capital gains taxes making California much more dependent upon Wall Street than other states across the country. Additionally, half of California's personal income tax revenue comes from only 1% of residents. These top 150,000 wage earners derive more of their income from volatile investment income and real estate than most taxpayers.

Department of Finance estimates that the state faces a revenue shortfall of \$11.2 billion this fiscal year and \$13 billion next year. This shortfall means that unless substantial changes are made in the FY 08/09 budget the state will face cash flow problems as early as February. The Legislative Analyst concurs with this assessment projecting a \$28 billion short fall this year and next, followed by \$20-\$25 billion shortfalls through FY 2013-14. The Governor has

proposed spending reductions totaling \$4.5 billion (49% of the proposed solution) and revenue increases totaling \$4.7 billion (51% of the proposed solution). As proposed now, there are very few impacts to local governments in the Governor's budget adjustments. This is subject to change as result of negotiations with legislative leadership. The Legislative Analyst predicts that the Governor's proposed budget package would close the budget gap for this year and next.

Program Reductions:

Public Safety Grant Programs

The proposal includes \$51.7 million in cuts for public safety grants including cuts to grants for counties that operate juvenile camps, Office of Emergency Service (OES) directed public safety grants and grants to county sheriffs of smaller rural counties. The OES cuts will impact Vertical Prosecution Block Grants, Multi-jurisdictional Methamphetamine Enforcement Teams and Sexual Assault Felony Enforcement Teams.

Corrections and Rehabilitation

The Governor's office proposes restructuring parole procedures for non-violent or non-sexual crime offenders. These offenders would not receive parole supervision after their release. Additionally, the administration recommends statutory changes that would increase the amount of earned credit inmates could accrue and adjustment of statutory threshold values for property crimes to reflect inflation. These proposals would result in \$85 million in savings in the current fiscal year.

State Transit Assistance Program

The administration recommends elimination of the portion of the State Transit Assistance program that is paid from the Public Transportation Account. This change will result in a savings of \$229.9 million in this fiscal year. Locally this will result in a funding impact to MTS of approximately \$18 million. This is on top of cuts in prior years and sales tax revenue falling which also impacts local transit programs.

Proposition 98 (K-14)

The Governor's office is proposing \$2.5 billion in reductions in education spending. It should be noted that this is still over a \$100 million higher than the minimum guarantee under Prop 98. These cuts are proposed to be spread out over all of K-14 education spending including child care programs, local education agencies and community colleges.

Higher Education

The administration recommends \$132 million in reductions for higher education including \$65.5 million to the UC system and \$66.3 million to CSU system. Both cuts represent approximately 10% reductions.

Supplemental Security Income (SSI)/State Supplementary Payment (SSP)

The Governor's Office proposes reducing SSI/SSP grants to the federal minimum effective March 1, 2009 resulting in \$348.9 million in savings in this fiscal year.

CalWORKS

The administration proposes reducing CalWORKS grants by 10% effective March 1, 2009 and modifying the Safety Net program by making benefits consistent with other CalWORKS programs and requiring face-to-face reviews every six months. These changes will save \$273.9 million in this fiscal year.

In-Home Supportive Services (IHSS)

The administration proposes changes to the IHSS program including modifying domestic and related services, limiting the state buyout program for the persons with the most severe needs and limiting state participation to the state minimum wage plus \$.60 for health benefits for IHSS workers. These modifications will result in savings of \$118.3 million in this fiscal year.

Medi-Cal

The proposal is to reduce California benefits to levels provided in most states and halting some of the optional benefits for adults. These changes will result in \$41 million in savings in the current fiscal year.

California Food Assistance Program (CFAP)

The Governor's Office proposes eliminating the CFAP effective July 1, 2009 resulting in \$30 million in savings in the next fiscal year. CFAP provides food benefits to low-income legal non-citizens.

Williamson Act

The administration recommends eliminating \$34.7 million in state reimbursements to local taxing agencies that offset the loss of revenue with landowners who limit the use of their agricultural land under the Williamson Act.

Employee Compensation Changes

The proposal would require state employees to take a one day furlough each month starting December, 1, 2008 and ending June 30, 2010. Additionally, the plan would eliminate two state holidays, eliminate premium pay for all other remaining holidays and compute overtime based on actual time worked. The Governor also recommends establishing alternative work schedules of ten hour days/four days a week. These changes would result in \$319.9 million in savings this fiscal year.

Funding Realignments

Local Law Enforcement Grants

The administration proposes eliminating general fund support for local law enforcement grants such as COPS and Booking Fees. Instead they will be funded with the Vehicle License Fee (VLF) funds that are currently used to support the Department of Motor Vehicles. In turn DMV operations will be funded by increased revenue from a \$12 increase in the annual vehicle registration fee. This fee had already been increased \$11 as part of this year's budget. Overall funding for COPS will be reduced by \$28.6 million in 2008-2009. This is an approximately 25% decrease in COPS funding. The City of San Diego received \$2.5 million in COPS funding in Fiscal Year 2008. The overall funding for the Booking Fees Program will not be impacted. Juvenile probation activities will be treated in the same way and will be cut by \$20.2 million in this fiscal year. The benefit to all of these programs is that they move from funding within the general fund to a permanent statutory funding stream. It is anticipated that these changes will save the general fund \$198.8 million in this fiscal year.

Alcohol Excise Tax

The Governor proposes raising the alcohol excise tax by five cents a drink on January 1, 2009 (a drink is defined as 1.5 ounces of distilled spirits, 12 ounces of beer or 5 ounces of wine). Revenues created by this increase will be used to fund drug and alcohol abuse prevention and treatment programs that are currently being paid for out of the state's general fund. This change will save the state \$293 million in the current fiscal year.

Revenue Increases

Temporary Sales Tax Increase

The proposal contains a 1.5% increase in the sales tax for three years starting January 1, 2009. The increase is anticipated to generate \$3.54 billion in FY 2008-09 and \$7.32 billion in FY 2009-10. Under Proposition 42 it is estimated that an addition \$322 million would be transferred to the Transportation Investment Fund. This number will increase to \$676 million in FY 2009-10. A portion of these Prop 42 funds are used by local governments to fund local streets and roads projects.

Broaden Sales Tax to New Services

The administration also proposes applying the sales and use tax to furniture repair, vehicle repair, golf green fees and veterinarian services starting February 1, 2009. A month later the sales and use tax will also be extended to apply to amusement parks and sporting events. It should be noted that the 1% local governments receive in sales tax now would also apply to these new services. In fact, it is estimated that local government agencies would see an additional \$151 million statewide in this fiscal year. This expansion would also benefit public safety monies collected through sales tax. The Department of Finance estimates that

expanding to these new areas will generate \$357 million in new revenues this year and \$1.156 billion the next.

Oil Severance Tax

The Governor proposes a 9.9% oil severance tax upon any oil production happening in California with certain minor exclusions starting January 1, 2009. This tax would bring California into line with taxes imposed by other states. It is estimated that this tax will generate \$528 million in this fiscal year and \$1.195 billion in the next.

Process and Outlook

While there are minor impacts to local government in the Governor's proposal, they are more than offset by the increased revenues that will be generated by the expansion of the sales tax base. It should be noted that the LAO believes the Department of Finance may be underestimating the increase revenue generated by approximately \$1 billion over this year and next. Ultimately, this package still needs sign off by the state legislature. If the legislature is unwilling to take action during the lame duck session, the Governor will most likely call for another special session with the new legislature. Republican leadership is sending strong indicators that they are unlikely to sign off on any tax increase particularly in the lame duck session. The number of Republican seats has decreased in the new legislature making passage of revenue increases more likely in a second special session. That said, even with the dire economic situation the state is facing, agreement on a mix of cuts and revenue increases will be difficult to achieve.

**ATTORNEY TO CLIENT
CORRESPONDENCE**

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**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: April 30, 2008
TO: Honorable Mayor and City Council
FROM: City Attorney
SUBJECT: Unsupervised Skate Parks

INTRODUCTION

The Council has requested an opinion from the City Attorney regarding the legal implications of changing operations at City skate parks from staff-supervised to unsupervised activities.

QUESTION PRESENTED

Will the City expose itself to greater liability if it changes its operations at City skate parks from staff-supervised to unsupervised activities?

SHORT ANSWER

Yes. Without staff supervision, it will be difficult for the City's skate parks to come within the limited statutory protection allowed hazardous recreational activities under California statute. Lack of supervision will make it more difficult for the City to guard against or warn of dangerous conditions, and to limit activities to those that pose only the normal risks associated with the sport.

BACKGROUND

The Park and Recreation Department is considering changing its method of operation for its four skate parks (and for the two additional parks expected to open in the future). Currently, the skate parks are operated by City staff and are not open unless supervisory staff is on-site. Staff collects fees and liability waivers from participants. Staff also monitors skate park activities and enforces City rules and policies.

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Honorable Mayor and City Council

The Department is now considering operating some or all of the skate parks as unsupervised. The only staff present during operating hours (daytime) would be maintenance staff (accepting fees and issuing passes, processing waivers, and performing custodial duties). The parks would be closed and locked at night.

ANALYSIS

I. The City's Limited Liability to Participants in "Hazardous Recreational Activities"

The California Tort Claims Act, California Government Code sections 810-996.6 governs actions at law for civil liability against public entities and their officers and employees. A public entity is not generally liable for an injury except as otherwise provided by statute. Cal. Gov't Code § 815, *Iverson v. Muroc Unified School District*, 32 Cal. App. 4th 218, 227 (1995). A public entity may be held liable for a dangerous condition of its property that creates a "reasonably foreseeable risk," if the dangerous condition was created by the negligent act of an employee or the public entity had actual or constructive notice of the dangerous condition. Cal. Gov. Code § 835.

California Government Code section 831.7(a) provides specific immunity from liability for injuries suffered on public property when the injuries arise out of a "hazardous recreational activity," where the person "knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury."

The issue is whether the City is immune from liability under the terms of section 831.7 for injuries arising from skateboarding at City skate parks, and whether the City's immunity is affected by the skate parks being supervised or unsupervised. We conclude that depending on the particular facts, the City may be immune from liability under this section, but that eliminating supervision will lessen that immunity.

The first question is whether skateboarding constitutes a "hazardous recreational activity" for purposes of section 831.7. We conclude that it does.

Section 831.7(b) contains a two-pronged definition of "hazardous recreational activity". The first paragraph defines the term as "...a recreational activity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury..." The second paragraph identifies certain activities that meet the definition (e.g., diving, animal riding, skiing). The two definitions are independent of one another. Although skateboarding is not specifically identified in the statute, caselaw has found, in effect, that skateboarding can be a hazardous recreational activity, depending on the circumstances. *Bartell v. Palos Verdes Peninsula Sch. Dist.*, 83 Cal. App. 3d 492 (1978)(12-year-old boy killed when he fell off his skateboard while playing a game similar to "crack the whip"); *Iverson, supra*, 81 Ops. Cal. Atty. Gen. 331 (1998). The public entity would have to prove in each case that the particular activity created a substantial risk of injury to the participant.

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However, even if skateboarding at a skate park is considered a hazardous recreational activity, the public entity would still have to rebut any allegations that it failed to guard against or warn of a known dangerous condition that was not reasonably assumed by the participant as inherently part of the activity. Cal. Gov. Code § 831.7(c)(1). Caselaw has interpreted the phrase “reasonably assumed” as based on an objective standard. *Perez v. Los Angeles*, 27 Cal. App. 4th 1380, 1386 (1994). The phrase takes into consideration the lower standard of care that is expected of children. *Id.* The question is whether a reasonable person, or reasonable child of a given age, would assume that the dangerous condition at issue was part of normal skate park activity.

Finally, the public entity’s liability would not be limited in cases where it failed to properly construct or maintain the structure, equipment, etc., causing the injury, or in cases of gross negligence by the public entity. Cal. Gov’t. Code § 831.7(c)(3) and (4).

Whether the City supervises skate parks or not would have no bearing on whether skateboarding is a hazardous recreational activity under section 831.7; however, lack of supervision will make it more difficult to guard against or warn of dangerous conditions not assumed to be part of the normal skate park activity -- such as violent games (e.g., “crack the whip”), extreme contests, or fighting.

II. The City’s Conditional Immunity for Operating a Skateboard Park

In addition to the conditional immunity allowed for hazardous recreational activities discussed above, the Legislature has provided a special immunity for skateboard parks in Health and Safety Code section 115800. Under this section, skateboarding at skateboard parks operated by the City on City property will *automatically* be protected as a “hazardous recreational activity” under the immunity of Government Code section 831.7, if all of the three requirements of section 115800 are met: (1) the person skateboarding is 12 or older; (2) the activity was stunt, trick, or luge skateboarding; and (3) either the skate park requires the wearing of a helmet, elbow pads, and knee pads, or, with respect to a park run by a municipality that is not supervised on a regular basis, there is an ordinance requiring the wearing of a helmet, elbow pads, and knee pads, and posted signs to that effect.¹

Given that the nature of skateboarding activities at City skate parks falls within the “stunt, trick or luge” definition, given that existing SDMC sections require protective gear and signage,² and,

¹ Health and Safety Code section 115800 was amended in 2006 by SB 1179 (effective January 1, 2007). This bill extended the sunset provision by four years (from January 1, 2008 to January 1, 2012) and lowered the minimum age for skateboarders in public skateboard parks from 14 to 12 years of age.

² San Diego Municipal Code section 63.0107 requires skateboarders at City skate parks to wear helmets, elbow pads, and knee pads, and requires signs at City skate

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finally, assuming proper signage, skateboarding at City skate parks would fall under the conditional immunity of this section for skateboarders over 12 who are injured.

Changing the operation of skate parks to unsupervised will not significantly lessen the immunity conferred by this statute (it specifically covers unsupervised skate parks), so long as someone is present to check skateboarders' identification to ensure they are over twelve.

There is the argument that if the City provides supervision at its skate parks, it may expose itself to more liability if an injury is caused by negligent supervision. In order to be liable under this theory, the City's actions or inactions would have to be grossly negligent. Cal. Gov. Code section 831.7(c)(5). While this is a valid argument, we believe the City is better protected from liability by operating skate parks that are as safe as possible.

III. The Defense of Assumption of the Risk

Finally, changing the operation of City skate parks to unsupervised may also lessen the protection offered by the doctrine of assumption of the risk and the legal effect of the Agreement and Release of Liability participants are required to sign. Assumption of the risk is the voluntary and knowing exposure of oneself to obvious dangers incident to certain activities. *See Morton v. Cal. Sports Car Club*, 163 Cal. App. 2d 685, 688 (1958). Skateboarders at City skate parks are sufficiently warned of the risks by common knowledge of the sport, and by the warnings contained in signage and in the Agreement and Release of Liability. *Neinstein v. L.A. Dodgers, Inc.*, 185 Cal. App. 3d 176, 184 (1986). However, the defense only covers normal risks inherent in the activity, not particular dangers of which participants would have no knowledge. *See Celli v. Sports Car Club of America*, 29 Cal. App. 3d 511, 522 (1972). Participants would presumably be aware of normal skateboarding tricks; however, they may not know of the dangers posed by extreme contests or games such as "crack the whip." Supervision could ensure that skate park activities would be restricted to those posing only the normal risks inherent in the sport.

Also, where negligent maintenance or supervision permits an unusually dangerous condition to continue, liability may arise. *See Hairston v. Studio Amusements, Ltd.*, 86 Cal. App. 2d 735, 739 (1948)(plaintiff fell while skating at defendant's roller skating rink, lay for several minutes without attention by guards, and was struck by a reckless patron skating backwards).

CONCLUSION

The City will expose itself to greater liability if it changes operations at its skate parks to unsupervised. Although conditional, limited immunity is conferred under California Government Code section 831.7 for hazardous recreational activities and Health and Safety Code section

parks indicating that skateboarders failing to wear helmets, elbow pads and knee pads are subject to citation.

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Honorable Mayor and City Council

115800 for skateboard parks in particular, the City remains liable for failure to guard or warn against known dangerous conditions or other hazardous recreational activities not reasonably assumed by the participant as inherently a part of skate park activities. Without staff supervision, it will be difficult for the City's skate parks to come within the limited statutory protection of these California statutes. Further, by making it more difficult to limit the nature of the skate park activities to those that pose risks normally associated with the sport, eliminating supervision may restrict the applicability of the defense of assumption of the risk.

MICHAEL J. AGUIRRE, City Attorney

By _____
Kimberly Ann Davies
Deputy City Attorney

KAD:ca

cc: Andrea Tevlin, Independent Budget Analyst
Stacey LoMedico, Director, Park & Recreation Department
Karen Heumann, Assistant City Attorney
Kathryn Burton, Managing City Attorney

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City of San Diego

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JUL 2 2007

Park And Recreation Department
Management Division

MEMORANDUM
MS 59

(619) 533-5800

DATE: June 18, 2007
TO: Stacey LoMedico, Park and Recreation Director
FROM: City Attorney
SUBJECT: Unsupervised Skate Parks

INTRODUCTION

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June 18, 2007
Stacey LoMedico, Park and Recreation Director
Park and Recreation Department

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Stacey LoMedico, Park and Recreation Director
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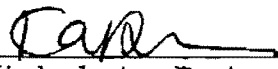
CONCLUSION

The City will expose itself to greater liability if it changes operations at its skate parks to unsupervised. Although conditional, limited immunity is conferred under California Government Code section 831.7 for hazardous recreational activities and Health and Safety Code section 115800 for skateboard parks in particular, the City remains liable for failure to guard or warn against known dangerous conditions or other hazardous recreational activities not reasonably assumed by the participant as inherently a part of skate park activities. Without staff supervision, it will be difficult for the City's skate parks to come within the limited statutory protection of these California statutes. Further, by making it more difficult to limit the nature of the skate park

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Stacey LoMedico, Park and Recreation Director
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MICHAEL J. AGUIRRE, City Attorney

By 
Kimberly Ann Davies
Deputy City Attorney

KAD:ca
cc: Patty Jenks, Supervising Management Analyst,
Park & Recreation Department