

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 20, 1996

The Council of the City of San Jose convened in regular session at 9:30 A.M. in City Council Chambers at City Hall.

Present: Council Members - Dando, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members - Diaz.

Upon motion unanimously adopted, Council recessed at 9:35 A.M. to a Closed Session in Room 600, to confer with Legal Counsel pursuant to Government Code Section 54956.9; under Subsection (a) to discuss Existing Litigation in the cases of *In re Mason* and *City of San José v. John Russo Industrial Sheet Metal, Inc., et al.*, to discuss Anticipated Litigation pursuant to Subsection (b) of Government Code Section 54956.9 in one matter involving Significant Exposure to Litigation and three matters regarding the Initiation of Litigation; to discuss Public Employment/Public Employee Appointment pursuant to Government Code Section 54957 regarding the title of Fire Chief; and to confer with Labor Negotiator Pursuant to Government Code 54957.6 - City negotiator: City Manager designee Darrell Dearborn - Employee organizations: San José Police Officers' Association and International Association of Firefighters.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:55 A.M. and reconvened at 1:37 P.M. in the Council Chambers.

Present: Council Members - Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members - None.

INVOCATION

Due to a cancellation, there was no invocation.
(District 7)

PLEDGE OF ALLEGIANCE

Mayor Hammer led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Johnson, seconded by Council Member Powers, and unanimously carried, Item 6e(2) was deferred to September 17, 1996, and the Orders of the Day and the Amended Agenda were approved. Vote: 11-0-0-0.

CEREMONIAL ITEMS

5a Presentation of commendation to Martha Carillo for her bravery and assistance during the InnVision Shelter fire. (Mayor)

Documents filed: None.

Discussion/Action: Mayor Hammer presented a commendation to Martha Carillo in recognition of her extraordinary bravery in rescuing the residents of the InnVision shelter which was on fire and thanked her on behalf of the City Council for her heroic efforts. InnVision Director Christine Burroughs commended Martha Carillo for the quick response in evacuating all residents safely.

5b Presentation by the Santa Clara County Housing Action Coalition on the findings of a UC Berkeley study on the housing shortfall. (City Manager)

Documents filed: (1) Memorandum from Council Member Diaz and Council Member Powers, dated August 20, 1996, requesting that the City Council refer the "No Vacancy Report" of the Santa Clara County Housing Action Coalition to the Housing and Community Services Committee for evaluation and possible implementation. (2) Report to the Santa Clara County Housing Action Coalition, entitled: *No Vacancy: How to Increase the Supply and Reduce the Cost of Rental Housing in Silicon Valley*, dated June 25, 1996, and prepared by the Fisher Center for Real Estate and Urban Economics at the University of California, Berkeley.

Discussion/Action: Terry Feinberg, Executive Director of the Tri-County Apartment Association, made a presentation on behalf of the Santa Clara County Housing Action Coalition, which commissioned the study, reported on the high cost of housing and the shortage of rentals in Silicon Valley, and thanked City Staff for their participation in the Steering Committee. Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, advised that 82% of all multiple housing built in Santa Clara County since 1995 was built in San José, and because the development boom which San José is currently experiencing includes housing, Staff expects to issue over 3000 housing residential permits this year--one-half multiple family--and anticipates several thousand housing units within a two-year period. He stressed the need for a County-wide effort relative to housing, and noted the report contains good ideas to encourage other communities in such a cooperative effort. Council Member Powers stated she would share the report with the Association of Bay Area Governments, which she currently

chairs, and recommended referring the study to the Transportation, Development and Environment Committee for review and recommendations, in addition to the Housing and Community Services referral recommended in the memorandum she co-authored with Council Member Diaz. Council Member Diaz stated that much has been accomplished but more still needs to be done relative to affordable housing, particularly in the area of regional cooperation, and supported a referral to the Transportation, Development & Environment Committee. Council Member Fernandes stated the report is relevant both to transit-oriented development--which the Santa Clara County Transportation Agency is supporting, to place higher density housing near light rail stations--and to the goal of the Downtown Implementation Group to attract people to the downtown. She noted that people are rarely attracted to high-density housing for its own sake, rather they value it because of nearby urban services, shopping, and work sites, and commented on the unique issues involved in placing housing in North San José in what was formerly an industrial area. Since the City has many housing policies in place, Mayor Hammer stressed the value of working through the existing coalition that published the report to address the issue of a cooperative effort with other cities. Upon motion by Council Member Diaz, seconded by Council Member Woody, and unanimously carried, the report was referred to the Housing and Community Services and the Transportation, Development and Environment Committees for review and recommendations. Vote: 11-0-0-0.

- 5c Presentation of a commendation to Chip Bronk, founder and president of Cableco, for being named Small Business of the Year for Northern California by the U.S. Small Business Administration. (Mayor)
(Rules Committee referral 8/14/6.)**

Documents filed: None.

Discussion/Action: This item was deferred to September 3, 1996.

CONSENT CALENDAR

Council Member Pandori reiterated his comments when the ordinances under Items 6b(4) and 6b(5) were approved, recommending the proposal be deferred to give Staff an opportunity to review changes made to the project. He noted that neither the Police nor Fire Departments had reviewed the project since changes were made, cited concerns about unanswered issues, and moved to defer the project for one week to give Staff the opportunity to review the proposal and prepare a Staff report, and to bring the project back for Council consideration. Council Member Dando seconded the motion for purposes of discussion. On a call for the question, the motion to defer Items 6b(4) and 6b(5) was defeated. Vote: 1-10-0-0. Noes: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Woody; Hammer. William J. Garbett addressed the Council in opposition to Item 6b(1) and 6b(6). Upon motion by Council Member Powers, seconded by Council Member Dando, and unanimously carried, the Consent Calendar was approved, and the below listed items taken as indicated. Vote: 11-0-0-0.

Minutes for Approval

6a(1) Regular Meeting of June 4, 1996

Documents filed: Minutes of June 4, 1996.

Discussion/Action: The minutes were approved. Vote: 11-0-0-0.

6a(2) Joint City Council/Redevelopment Agency Meeting of June 6, 1996

Documents filed: Minutes of June 6, 1996.

Discussion/Action: The minutes were approved. Vote: 11-0-0-0.

Ordinances for Final Adoption

6b(1) **ORD. NO. 25137 - Amends Part 5 of Chapter 15.04 of the San José Municipal Code by adding a new Section 15.04.1220 pertaining to the authority of the Director of Aviation to accept or amend avigation easements on behalf of the City.**

Documents filed: Proof of publication of title of Ordinance No. 25137, submitted by the City Clerk.

Discussion/Action: Ordinance No. 25137 was adopted. Vote: 11-0-0-0.

6b(2) **ORD. NO. 25143 - Rezones certain real property situated on the eastside of Lincoln Avenue, 480 feet southerly of Willow Street. C 96-05-025**

Documents filed: Proof of publication of title of Ordinance No. 25143, submitted by the City Clerk.

Discussion/Action: Ordinance No. 25143, was adopted. Vote: 11-0-0-0.

6b(3) **ORD. NO. 25144 - Rezones certain real property situated on the north side of Pleasant Knoll Drive, 100 feet easterly of Estate View Drive. PDC 96-03-012**

Documents filed: Proof of publication of title of Ordinance No. 25144, submitted by the City Clerk.

Discussion/Action: Ordinance No. 25144, was adopted. Vote: 11-0-0-0.

6b(4) **ORD. NO. 25145 - Prezones certain real property situated on the southwest corner**

of Cottle Road and State Route 85. PDC 95-05-027

Documents filed: Proof of publication of title of Ordinance No. 25145, submitted by the City Clerk.

Discussion/Action: Ordinance No. 25145, was adopted. Vote: 10-1-0-0. Noes: Pandori.

6b(5) ORD. NO. 25146 - Prezones certain real property situated on the west side of Cottle Road, 400 feet southerly of State Route 85. PDC 93-06-025

Documents filed: Proof of publication of title of Ordinance No. 25146, submitted by the City Clerk.

Discussion/Action: Ordinance No. 25146, was adopted. Vote: 10-1-0-0. Noes: Pandori.

6b(6) ORD. NO. 25147 - Rezones certain real property situated at the northwesterly corner of State Route 87 and Capitol Expressway Auto Mall. PDC 96-04-015

Documents filed: Proof of publication of title of Ordinance No. 25147, submitted by the City Clerk.

Discussion/Action: Ordinance No. 25147, was adopted. Vote: 11-0-0-0.

Plans and Specifications

6d(1) TRACT NO. 8782 - Within the Evergreen Specific Plan (ESP) on the south side of Quimby Road, opposite Marston Way, intersecting Rue Mirassou - Evergreen 82 Partners, L.P., a California Limited Partnership (Developer) - 22 single family detached residential lots. Adoption of resolutions approving the plans, final map, contract, and water main extension agreement for Tract No. 8782. CEQA: Resolution No. 63179. District 8. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 8, 1996, recommending the adoption of said resolutions.

Discussion/Action: Resolution No. 66846, entitled: "A Resolution of the Council of the City of San Jose Fixing Official Curb Grades and Position of Curbs, and Adopting Plans for Tract No. 8782"; Resolution No. 66847, entitled: "A Resolution of the Council of the City of San Jose Approving and Accepting Final Map of Tract No. 8782"; Resolution No. 66848, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8782"; Resolution No. 66849, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Agreement for the Water Main Extension, Tract No. 8782", were adopted. Vote: 11-0-

0-0.

Contracts/Agreements

- 6e(1) Approval of a third amendment to the consulting agreement with Inventa Corporation to provide additional technical support for the Utility Billing Services (UBS) System Conversion project, and increasing the amount by \$75,000, from \$79,900 to \$154,900. (Finance)**

Documents filed: Memorandum from Director of Finance, John V. Guthrie, dated August 2, 1996, recommending approval of a third agreement to said agreement with Inventa Corporation.

Discussion/Action: The third agreement to said agreement with Inventa Corporation was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(2) Approval of a second amendment to the agreement with Greenwaste Recovery, Inc., for collection of yard wastes from Collection Districts B and C, to extend the term to June 30, 2002, and to revise the compensation payment structure. CEQA: ND. (Environmental Services)**

Documents filed: None.

Discussion/Action: This item was deferred to September 17, 1996.

- 6e(3) Approval to reject the proposal for an automated timekeeping system for the Police Department, and authorization to resolicit proposals. (General Services)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated August 2, 1996, recommending approval to reject said proposal for an automated timekeeping system for the Police Department, and authorization to resolicit proposals.

Discussion/Action: The rejection of the proposal for an automated timekeeping system for the Police Department, and authorization to resolicit proposals, was approved. Vote: 11-0-0-0.

- 6e(4) Approval of amendment to the employment agreement with Marivel Sosa, Data Analyst for the Independent Police Auditor. (Independent Police Auditor)**

Documents filed: None.

Discussion/Action: The employment agreement with Marivel Sosa was approved and

its execution authorized. Vote: 11-0-0-0.

- 6e(5) Approval of a three-year sublease with Barry and Molly Swenson, DBA 777 Associates, for 1,810 square feet of office space located at 777 North First Street, Suite 620, at a cost of \$2,534 per month during the first year, \$2,624.50 per month the second year and \$2,715 per month the third year. (Public Works)**

Documents filed: None.

Discussion/Action: This item was deferred to August 27, 1996.

- 6e(6) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Pinn Brothers Construction, Inc., for the donation of park improvements with an estimated value of \$45,000 on the site located at the northwesterly corner of Downs Drive and Rawls Place (Avenida España Park). CEQA: ND. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 2, 1996, recommending the adoption of said resolution.

Discussion/Action: Resolution No. 66850, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Pinn Brothers Construction, Inc. for the Donation of Park Improvements", was adopted. Vote: 11-0-0-0.

- 6e(7) Adoption of a resolution authorizing the Director of Public Works to execute an agreement with E.H. Renzel, Jr. and Merle Withycombe as Trustees for the donation of land for the King/Las Plumas Street Improvement Project, and authorization for the Director of Public Works, or designee, to sign the necessary documents to accept the donation. CEQA: ND. (Public Works)
[Deferred from 8/13/96 - Item 6e(7)]**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated July 26, 1996, recommending the adoption of said resolution.

Discussion/Action: This item was dropped from the agenda.

- 6e(8) Approval of an employment agreement with Jack Salois. (Diquisto)
(Rules Committee referral 8/14/96)**

Documents filed: None.

Discussion/Action: The employment agreement with Jack Salois was approved and its execution authorized. Vote: 11-0-0-0.

Routine Legislation

- 6f(1) Approval of an ordinance amending Section 17.10.325 of Chapter 17.10 of Title 17 of the San José Municipal Code to make a technical correction, and amending Section 17.10.420 to modify the criteria for the alteration or construction of single family residences on existing lots. (Public Works)
[Deferred from 8/6/96 - Item 6e(9) and 8/13/96 - Item 6f(4)]**

Documents filed: None.

Discussion/Action: This item was deferred to August 27, 1996.

- 6f(2) Approval of Council Member Charlotte Power's travel to New York and Ireland, August 24-28, 1996, to conduct review of investment capabilities and processes on two international equity managers. Funding: Police & Fire Retirement Fund. (Powers) (Rules Committee referral 8/14/96)**

Documents filed: None.

Discussion/Action: The travel to New York and Ireland on August 24-28, 1996, by Council Member Powers was approved. Vote: 11-0-0-0.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - August 7, 1996

Documents filed: Rules Committee report of August 7, 1996.

- (1) Review August 20 Council Agenda

The Committee recommended approval of the August 20, 1996 Council agenda with one change.

- (2) Add New Items to August 13 Amended Council Agenda

The Committee recommended two additions to the August 13, 1996, amended Council agenda.

- (3) The Public Record. Attachment: (1) Memorandum from City Clerk Patricia L.

O'Hearn, dated June 20, June 27, July 4, July 11, July 18 and July 25, 1996, listing items transmitted to the Administration and items filed for the Public Record for the period June 12 - July 23, 1996, listing items transmitted to the Administration and filed for the public record for the period June 12 - July 23, 1996. (2) Memorandum from Assistant to the City Manager Nina Grayson dated August 7, 1996, stating the disposition of items transmitted to the Administration on the Public Record for the period June 12 - July 23, 1996.

The Committee noted and filed the report.

- (4) Boards and Commissions
 - (a) CDBG Steering Committee

The Committee deferred this item to the August 14, 1996 Rules Committee meeting.

- (b) Parking Advisory Commission. Attachments: (1) Memorandum from City Clerk Patricia L. O'Hearn, dated August 2, 1996, forwarding to the Rules Committee the applications of those qualified by the Project Diversity Screening Committee. (2) Memorandum from City Clerk Patricia L. O'Hearn, dated August 2, 1996, to Council Member Pandori, enclosing a list of qualified applicants for the Parking Advisory Commission. (3) Memorandum from City Attorney, Joan R. Gallo, dated July 26, 1996, regarding potential conflicts of interest; and memorandum from Council Member Pandori, dated August 7, 1996, recommending Janis Manzano and Ronald Shaw for appointment to the Parking Advisory Commission.

The Committee recommended appointments of Janis Manzano to a term ending June 30, 1998 and Ronald Shaw to a term ending June 30, 2000.

- (5) Request to use Council General Funds to attend League of California Cities Conference in Anaheim, CA, October 13-15, 1996. Attachment: (1) Memorandum from Council Member Woody, dated July 19, 1996, requesting use of Council General Funds. (2) Memorandum from City Clerk Patricia L. O'Hearn, dated July 31, 1996, summarizing the use of Council General Travel Budget to date.

The Committee recommended approval for Council Member Alice Woody to use Council General funds to attend the League of California Cities Conference in Anaheim, California from October 13-15, 1996.

- (6) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee
 - (a) Direction to Administration to report back to Rules on the status of State and Federal legislation dealing with handgun control.

This item was dropped, as the referral to Administration had already been made.

- (7) City Council and Rules Committee meeting schedules

There were none.

- (8) Oral communications

None were presented.

- (9) Adjournment

The meeting was adjourned at 2:50 p.m.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Powers, and unanimously carried, the Rules Committee report and actions of August 7, 1996, were accepted. Vote: 11-0-0-0.

7c Report of the Housing and Community Services Committee - August 5, 1996

Documents filed: Housing and Community Services Committee report of August 5, 1996.

- (1) Acceptance of third quarter report on Public Art. Attachment: (1) Memorandum from Nancy Johnson, Acting Director of the Department of Conventions, Arts and Entertainment, dated July 30, 1996, recommending acceptance of said report and recommendation that the Public Art Program submit annual reports in lieu of quarterly reports. (2) Public Art Workplan Quarterly Report, dated August 5, 1996.

The Committee recommended approval of maintaining the quarterly reports, directing Staff to research the Transit Mall art fund source and the conditions placed upon those funds, requesting that HAAC specifically look at the timeline issue and to make a recommendation to maintain that schedule, and return to the Committee with a proposed dollar amount for the revised contract for East Los Streetscapers for Pueblo San José de Guadalupe Art Project.

- (2) Review of Happy Hollow. Attachment: Memorandum from Nancy Johnson, Acting Director of the Department of Conventions, Arts and Entertainment, dated July 30, 1996, recommending the City Council authorize Staff to develop and conduct an RFP to solicit proposals for the private operation of the park, after the City adopts and implements a City Competition Policy.

The Committee recommended moving forward with the RFP process and encouraging timely completion of the New Realities competition policy.

See Item 9b for Council Action taken.

- (3) Relocation of Andrew P. Hill House. Attachment: Memorandum from Nancy Johnson, Acting Director of the Department of Conventions, Arts and Entertainment, dated July 30, 1996, recommending the City Council authorize Staff to continue discussions with Sacred Heart to determine whether the Andrew P. Hill House (Hill House) should remain on its existing site or be moved to the San José Historical Museum.

The Committee recommended approval of the Staff report and direction for Staff to work with the County on the use of funds, to look at whether an EIR would be required to move the house, to look at funding options for restoration of the house, and to come back to the Committee in September with a status report and timeline.

- (4) Status Report on Neighborhood Revitalization Strategy.

The Committee deferred this item to the September 9, 1996 Housing and Community Services Committee meeting.

- (5) Evaluation of conditions of tow yard sites. Attachment: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated July 30, 1996, reporting to the Council on the status of vehicle release at the tow yard site(s) and evaluating the conditions of tow yard sites prior to any award of contract, as recommended in memorandum from Council Member Powers, dated January 23, 1996; and responding to concerns raised by Council Member Shirakawa, Jr., at the March 26, 1996, City Council meeting regarding Century Tow, Inc.

The Committee accepted the Staff report.

- (6) Approval of Child Care Commission Study Action Plan. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services, Ellis E. Mitchell, dated July 22, 1996, recommending approval of the Workplan for the child care study, *Child Care is Good Business*, and inclusion of the workplan as an addendum to the Youth Services Master Plan.

The Committee accepted the Staff report and directed Staff to return in six months with a status report on resources necessary to pursue a more aggressive program.

- (7) Approval of Housing Rehabilitation Annual Report for 1995-96. Attachment: Memorandum from Director of Housing, Alex Sanchez, dated July 26, 1996, transmitting the Housing Rehabilitation Report for 1995-96.

The Committee accepted the Staff report.

- (8) Discussion of the Policy to Disperse Affordable Housing/Impacted Districts.

The Committee deferred this item to the September 9, 1996 Housing and Community Services Committee meeting.

- (9) Approval of Project Development Quarterly Report. Attachment: Informational memorandum from Director of Housing, Alex Sanchez, dated July 31, 1996, transmitting the Project Development Fourth-Quarter FY 1995-96 Report.

The Committee accepted the Staff report.

- (10) Proposed Community Outreach for Affordable Housing Project Development Applications. Attachment: (1) Memorandum from Director of Housing, Alex Sanchez, dated July 25, 1996, recommending the approval of Community Outreach Guidelines for affordable housing sponsors seeking City funding for their development proposals. (2) Memorandum from Council Member Dando, dated August 20, 1996, recommending that outreach guidelines include direct contact with adjacent neighborhood associations and homeowners within 300 feet of the proposed site in addition to the Council Member representing the district, and a community meeting be scheduled with the Council Office.

The Committee recommended approval of the Staff recommendation.

Discussion/Action: Council Member Dando suggested that to ensure the community is aware of this proposal, the City should send it to local homeowners' associations, and Mayor Hammer using the City-wide list in the City Clerk's Office for a mailing of the proposal. Council Member Dando suggested each Council Member forward names from their district to the Administration.

- (11) Oral petitions

None.

- (12) Adjournment

The meeting was adjourned at 3:25 p.m.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson, and unanimously carried, the Housing and Community Services Committee report and actions of August 5, 1996, were accepted, and Council directed that community outreach be enhanced by contacting community homeowners' associations regarding the proposal for the Affordable Housing Project Development Policy. Vote: 11-0-0-0.

7e Report of the Transportation, Development, and Environment Committee - August 8, 1996

Documents filed: Transportation, Development, and Environment Committee Report of August 8, 1996.

7e Report of the Transportation, Development, and Environment Committee - August 8, 1996

- (1) Consent Calendar

None.

- (2) Report on Paper Mill Feasibility Study Update. Attachment: Memorandum from Director of Environmental Services, Louis N. Garcia, dated July 25, 1996, providing said study in response to Council direction on October 26, 1993.

The Committee accepted the report.

- (3) Quarterly Status Report for the South Bay Water Recycle Program. Attachment: Memorandum from Director of Environmental Services, Louis N. Garcia, dated July 22, 1996, recommending approval of said report.

The Committee accepted the Status Report.

- (4) Results and Recommendations of the Six-Month Trial of Automobile Traffic on Second Street Through St. James Park. Attachment: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated July 30, 1996, recommending that the City Council approve: (1) the permanent use of Second Street between St. James and St. John Streets by automobile traffic and forward this recommendation to the Santa Clara County Transportation Agency Board of Directors for their consideration, and (2) the continued use of Second Street between St. James and St. John Streets by automobile traffic until such time as the Santa Clara County Transportation Agency Board of Directors takes action on this item.

The Committee recommended approval of the Staff recommendation.

- (5) Report on the Draft Council Policy 6-20; Land Use Policy for Wireless Communication Facilities. Attachment: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated July 25, 1996, recommending that the Transportation, Development and Environment Committee recommend Council approval of the proposed revisions to Council Policy 6-20, Land Use Policy for Wireless Communication Facilities, as contained therein.

The Committee recommended approval of Council Policy 6-20 revisions.

See Item 9d for Council action taken.

7e Report of the Transportation, Development, and Environment Committee - August 8, 1996

- (6) Approval of the Transportation, Development & Environment Committee Draft Workplan for August through December 1996. Attachment: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated July 30, 1996, recommending review and comment on the attached draft Transportation, Development & Environment Committee Workplan for the period of August through December 1996, for final adoption at the August 22, 1996 Committee meeting.

The Committee took no action.

- (7) Committee schedule

None.

- (8) Oral petitions

None presented.

- (9) Adjournment

The meeting was adjourned at 2:30 p.m.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson, and unanimously carried, the Finance Committee report and actions of August 8, 1996, were accepted. Vote: 11-0-0-0.

LAND USE AND DEVELOPMENT

- 8a PUBLIC HEARING and adoption of a resolution vacating a portion of Kirk Avenue, (also known as Fenton Street) immediately north of McKee Road. CEQA: ND. (Public Works) (Council Referral 6/18/96 - Item 15I) (Continued from 8/6/96 - Item 8b)**

Documents filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated July 19, 1996, recommending the adoption of said resolution. (2) Proof of publication of notice of hearing submitted by the City Clerk. (3) Affidavit of posting, dated July 18, 1996, submitted by the Director of Public Works.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson, and unanimously carried, Resolution No. 66851, entitled: "Resolution of the Council of the City of San José Vacating that Portion of Kirk Avenue Immediately North of McKee Road", was adopted. Vote: 11-0-0-0.

GENERAL GOVERNMENT

9a Approval of a six (6) month performance report for Four Seasons Landscape and Maintenance, Inc., for landscape services at the Water Pollution Control Plant. (Environmental Services)

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated August 2, 1996, recommending approval of said report.

Discussion/Action: Council Member Diquisto stated that costs were excessive for the amount of work on this contract. Upon motion by Council Member Fiscalini, seconded by Council Member Fernandes, and carried, the six (6) month performance report for Four Seasons Landscape and Maintenance, Inc., was approved. Vote: 10-1-0-0. Noes: Diquisto.

**9b Authorization for staff to develop and conduct an RFP to solicit proposals for the private operation of Happy Hollow Park, after the City adopts and implements a City Competition Policy.
[Housing and Community Services Committee referral 8/5/96 - Item 7c(2)]**

Documents filed: See 7c(2) for documents filed.

Discussion/Action: Council Member Powers explained that the Committee voted 3-1 to authorize Staff to develop a Request for Proposal since by the time the information came back from the Request for Proposals, the proposed policy on competition would be in place. Council Member Fiscalini stated it was premature to prepare a Request for Proposal before the policy is in place and to do so would create barriers to that process and create a credibility problem. Council Member Powers stated she had opposed the proposal in Committee and moved to defer issuance of a Request for Proposal until the competitive policy is in place. Vice Mayor Johnson seconded the motion. City Manager Regina V.K. Williams stated there are two or three companies that would be interested and the next step would be a Request for Proposal, but that would need to be predicated on the decision that the Council is interested in contracting out, and for that reason the staff recommendation is to wait until the competition policy is adopted. Acting Director Nancy Johnson, Department of Conventions, Arts and Entertainment, explained that with a competition policy, the element of the financial treatment of employees is critical to how firms will prepare a proposal that will address the broad scope of issues from operations to maintenance to major infrastructure repairs and the build out of the Master Plan. She stated that for the Staff to do a competent financial analysis, the firm

would have to know what direction they would choose and/or the City policy regarding the treatment of employees and until the competition policy settles that issue, Staff would have nothing definitive on which bidders could formulate their financial figures. Council Member Shirakawa, Jr., stated he would not support a delay since information contracting out work at Happy Hollow was needed and a Request for Proposal could be issued without making a commitment to contract out. Mayor Hammer stated it is unfair to ask people to respond to a Request for Proposal which could change after the policy is adopted. Council Member Shirakawa, Jr., expressed concerns about delaying needed work at Happy Hollow until the policy is in place, which could take several years. Council Member Diaz stated concerns about the City's ability and revenues to service Happy Hollow in-house and stressed the need for information on other options. Vice Mayor Johnson raised the issue of whether proposers would be taking on City employees and the pertinence of that information to any proposer. Mayor Hammer stated that to move forward before having policy that is agreed to by all interested parties was unacceptable. Council Member Woody expressed concern about how the affordability of the park would be affected by having a private provider of services, and stated more information is needed before issuing a Request for Proposal. City Attorney Gallo advised that a Request for Proposal requires specific specifications, and stated there are no specifications as to what the City will expect from proposers as employers, not only in terms of what happens to City employees, but in terms of prevailing wages, grievance policies, etc., but also issues like levels of improvement, funding, fee setting, and related issues, and suggested Council direct the Administration to report back with a list of issues where policy decisions have to be made before a Request for Proposal can be issued. Council Member Powers moved to add that direction to the motion and Vice Mayor Johnson, as the seconder of the motion, agreed with the proposed amendment and Council Member Powers then added the amendment to the motion. On a call for the question, the motion, as amended, was approved, action on the proposed action was deferred until a City Competition Policy is in place, and the Administration was directed to report back to the Housing and Community Services Committee with a list of the issues which need to be decided prior to the preparation of a Request for Proposal for the private operation of Happy Hollow Park. Vote: 8-3-0-0. Noes: Diaz, Pandori, and Shirakawa.

9c Report on bids and award of contract for the South Bay Water Recycling Program (SBWRP) Pump Stations and Reservoir Project to the low bidder, subject to the concurrence by the Treatment Advisory Committee. CEQA: Resolution No. 64667. (Public Works)

Documents filed: None.

Discussion/Action: This item was deferred to August 27, 1996.

9d Adoption of revised Council Policy 6-20 regarding location of Wireless Communication Facilities.
[Transportation, Development & Environment Committee referral 8/8/96 - Item

7e(5)]

Documents filed: See Item 7e(5) for documents filed.

Discussion/Action: Chuck Reed, representing Pacific Bell Mobile Services, stated that Pacific Bell supports the language of the policy, however, will begin testing temporary portable antennas, which may require adding to or modifying the policy. He advised that Pacific Bell Mobile Services is attempting to deploy a relatively new technology, digital service, that has been deployed in other countries but only on a limited basis in the United States. He stated that approximately 55 sites in San José have been selected for placement of wireless communication antennas, thirty of which have not gone through the approval process and will be tested with temporary portable antennas to decide if it may be possible to eliminate some of the sites. He questioned whether the proposed policy revision should be deferred until it could be determined if a language change is required because of the temporary testing. City Attorney Gallo advised that these kinds of uses on a temporary test basis can be dealt with as an add-on and should not change the language of the policy, and would not warrant deferring adoption of the policy. Director of Planning Schoennauer recommended adopting the policy and coming back to the Council if revisions are needed. William J. Garbett addressed the Council in opposition to the proposal. Suzanne Salata, Pacific Bell Public Affairs, stated that Pacific Bell is committed to working with people with disabilities and the Disability Access Coordinator and will provide an annual review, as indicated in the policy. Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson, and unanimously carried, the revised Draft Council Policy 6-20, as recommended in memorandum from the Director of Planning dated July 25, 1996, was adopted. Vote: 10-0-1-0. Absent: Pandori.

- 9e
- (1) **Authorization for staff to continue to install 40 miles of fiber optics conduit in conjunction with the South Bay Water Recycling Project (SBWRP) at an estimated cost of \$5.152 million, at no cost to the SBWRP.**
 - (2) **Direction to staff to submit updates on the progress of this project to the Transportation, Development & Environment Committee in conjunction with updates on the SBWRP Project.**
 - (3) **Direction to staff to develop a work plan and budget for the preparation of a master plan for the development of a municipal fiber optics network using the SBWRP fiber optics conduit route as a backbone.**
- (City Manager's Office)

Documents filed: None.

Discussion/Action: This item was deferred to September 3, 1996.

JOINT CITY COUNCIL/REDEVELOPMENT AGENCY ITEMS

The City Council convened the Redevelopment Agency Board at 3:05 p.m. to consider Item 11a in a joint session.

**11a Discussion of salary increases for Council Appointees and the Executive Director of the Redevelopment Agency and adoption of City and Agency salary resolutions. (Mayor)
(Rules Committee referral 8/14/96)**

Documents filed: Memorandum from Mayor Hammer, dated August 19, 1996, proposing salary increases for Council Appointees.

Discussion/Action: Mayor Hammer advised that the salary increases will be retroactive to July 1, 1996. William J. Garbett addressed the Council in opposition to the proposal. Council Member Dando stated she would have preferred increases more in line with the 3-4 percent increases received by most of the employees; therefore, will not support the motion, but clarified that her vote does not reflect upon the professionalism of each of the individuals listed. Council Member Woody expressed concerns about salary compaction, stating that differences in workloads should be considered in salary determinations. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson, and carried, Agency Resolution No. 4136, and Resolution No. 66852, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 51972 to Amend Exhibit 99 to increase the Annual Salary of the City Attorney (2135) (U) to a Flat Biweekly Rate of \$5,654.40 (82G), to Increase the Annual Salary of the City Manager (1689) (U) to a Flat Biweekly Rate of \$6,080.80 (84B), to Increase the Annual Salary of the City Auditor (1256) (U) to a Flat Biweekly Rate of \$4,674.40 (78H), to Increase the Annual Salary of the Redevelopment Manager Classification to a Flat Biweekly Rate of \$5,818.40 (83C), and to Increase the Annual Salary of the City Clerk to a Flat Biweekly Rate of \$3,291.20 (71F), in Accordance with the City of San José Salary Schedule, Effective July 1, 1996", were adopted. Vote: 9-1-1-0. Noes: Dando. Absent: Pandori.

The Redevelopment Agency Board portion of the meeting was adjourned at 3:09 P.M.

ORAL COMMUNICATIONS

Rodrigo-Roy Hernandez, Santa Clara Valley Athletic Association, addressed the Council regarding the need for a multi-sports facility.

Cathy S. Brandhorst addressed the Council regarding issues affecting the homeless population.

RECESS/RECONVENE

Following Oral Communications, Council recessed at 3:17 P.M. and reconvened at 7:05 P. M., Council Chambers, City Hall.

Present: Council Members -Diaz, Dando, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members - Pandori.

City Clerk, Patricia L. O'Hearn, read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, the below noted continuances and other actions were granted. Vote: 10-0-1-0. Absent: Pandori.

PUBLIC HEARINGS

- 15a PUBLIC HEARING ON AN ORDINANCE amending Title 20 of the San José Municipal Code by adding Chapter 20.38 to establish special zoning provisions for the Downtown. (City Attorney's Office)**
(Continued from 5/21/96 - Item 15d et al., and 06/18/96 - Item 9a)

Documents filed: None.

Discussion/Action: This item was continued to September 24, 1996.

- 15b PUBLIC HEARING ON APPEAL OF THE PLANNING COMMISSION'S DECISION to deny a Conditional Use Permit for a project located at the east side of Chapman Street, approximately 100 feet northerly of McKendrie Street, on a 0.50 gross acre site in the R-1 Residence Zoning District, for expansion of church uses to add off-street parking and expand the festival area (St. Nicholas Greek Orthodox Church of San José, Owner; Michael Prokopakis, Developer). CEQA: ND. Staff recommends upholding Planning Commission's decision.**
CP 95-03-018 - District 6
(Continued from 11/7/95 - Item 15b, et al., and 8/6/96 - Item 15a)

Documents filed: None.

Discussion/Action: This item was continued to November 5, 1996.

- 15d PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the east side of Monterey Highway, approximately 500 feet southerly of Richmond Avenue, from R-1:B-1 to A(PD), to allow a recreational vehicle park on 3.0 gross acres (Ming Tree Realty, Inc., Owner; Henry Baba, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (7-0-0).**
PDC 95-05-030 - District 2

(Continued from 2/6/96 - Item 15e, et al., and 8/6/96 - Item 15e)

Documents filed: Correspondence from Matteoni, Saxe and Nanda, dated August 14, 1996, requesting a two-week deferral to gather additional information concerning septic disposal of the property to allow individual hook-ups to each RV space.

Discussion/Action: This item was continued to September 3, 1996.

- 15g PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southeast corner of San Felipe Road and Silver Estates Drive from A-Agriculture to A(PD) Planned Development Zoning District to allow up to 18 single-family detached residences on 4.88-gross-acres (Chao Wu, c/o STOA International, Owner/Developer). CEQA: ND. PDC 95-06-034 - District 8**

Documents filed: None.

Discussion/Action: This item was continued to October 1, 1996.

- 15c PUBLIC HEARING on and approval of an ordinance establishing an Under-ground Utility District at San Pedro Street, from Mission Street to Taylor Street. CEQA: Exempt. (Public Works)**

Documents filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 14, 1996, recommending the adoption of said resolution. (2) Certification of Mailing of Notice of Hearing, dated August 27, 1996, submitted by the Department of Public Works.

Discussion/Action: The Mayor opened the public hearing and there was no discussion from the floor. Upon motion by Vice Mayor Johnson, seconded by Council Member Powers, and unanimously carried, the public hearing was closed, and Ordinance No. 25152, entitled: "An Ordinance of the City of San José Establishing an Underground Utility District at San Pedro Street Between Mission Street and Taylor Street", was passed for publication. Vote: 10-0-1-0. Absent: Pandori.

- 15h PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the north side of Panoche Avenue, 125 feet westerly of Via Ferrari Drive from R-2 and R-3 Residence Zoning Districts to A(PD) Planned Development Rezoning to allow construction of up to 15 single-family detached residential units on 1.58 ±-gross-acres (A.A. Ferrari, et al., Owner; Westcoast Land, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).**

PDC 96-05-028 - District 7

Documents filed: (1) Memorandum from Planning Commission Secretary Schoennauer, dated August 2, 1996, recommending approval of the Staff recommendation, subject to the conditions contained in the staff report. (2) Staff Report, dated July 17, 1996, recommending approval of the subject Planned Development Rezoning. (3) Proof of publication of Notice of Hearing, dated June 24, 1996, submitted by the City Clerk.

Discussion/Action: The Mayor opened the public hearing and there was no discussion from the floor. Upon motion by Council Member Shirakawa, Jr., seconded by Council Member Fiscalini, and unanimously carried, the public hearing was closed, and Ordinance No. 25153, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Panoche Avenue, 125 Feet Westerly of Via Ferrari Drive", was passed for publication. Vote: 10-0-1-0. Absent: Pandori.

- 15i **PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the northwest corner of Blackford Avenue and Rebecca Way from R-1:B-3 Residence Zoning District to A(PD) Planned Development Zoning District to allow up to 7 multi-family attached residential units on 0.3-gross-acres (Jeff Minarek, Owner/Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval with conditions to enclose garages and install security doors to units (6-0-1).**

PDC 96-04-021 - District 1

Documents filed: (1) Memorandum from Planning Commission Secretary, Gary J. Schoennauer, dated August 2, 1996, recommending approval of the Staff recommendation as contained in the staff report. (2) Staff Report, dated July 17, 1996, recommending approval of the subject Planned Development Rezoning. (3) Proof of publication of Notice of Hearing, dated June 27, 1996, submitted by the City Clerk.

Discussion/Action: The Mayor opened the public hearing and there was no discussion from the floor. Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini, and unanimously carried, the public hearing was closed, and Ordinance No. 25154, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwest Corner of Blackford Avenue and Rebecca Way", was passed for publication. Vote: 10-0-1-0. Absent: Pandori.

- 15j **PUBLIC HEARING ON CONVENTIONAL PREZONING for the property located on the south side of Camden Avenue, 210 feet westerly of Union Avenue from County Zoning District to C-2 Commercial Zoning District to allow commercial uses on .36-gross-acres (Jim and Patricia Huckabay, Owner/Developer). CEQA: Exempt. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).**

C 96-04-016 - District 9

Documents filed: (1) Memorandum from Planning Commission Secretary, Gary J. Schoennauer, dated August 2, 1996, recommending approval of the Staff recommendation as contained in the staff report. (2) Planning Department Staff Report, dated July 18, 1996, recommending approval of the subject conventional rezoning. (3) Declaration of Mailing dated July 12, 1996, and Proof of Publication of Notice of Hearing dated June 24, 1996, submitted by the City Clerk.

Discussion/Action: The Mayor opened the public hearing and there was no discussion from the floor. Upon motion by Council Member Diquisto, seconded by Council Member Fiscalini, and unanimously carried, the public hearing was closed, and Ordinance No. 25155, Rezoning Certain Real Property Situated on the South Side of Camden Avenue, 210 Feet Westerly of Union Avenue”, was passed for publication. Vote: 10-0-1-0. Absent: Pandori.

15k PUBLIC HEARING ON PLANNED DEVELOPMENT CONFORMING REZONING of the property located on the northeast corner of Oakland Road and Murphy Avenue, from A(PD) Planned Development to A(PD) Planned Development, to allow the addition of 20 multi-family attached residential units to an approved project consisting of up to 80 multi-family attached residential units and 89,845 square feet of commercial uses on 11.58 gross acres (Brokaw Interests, Owner; Sobrato Development Companies, Developer). CEQA: ND. Director of Planning recommends approval. No Planning Commission action required.
PDC 96-07-042 - District 4

Documents filed: (1) Planning Department Staff Report, dated August 2, 1996, recommending approval of the subject Planned Development Conforming Rezoning. (2) Proof of Publication of Notice of Hearing dated July 26, 1996, submitted by the City Clerk.

Discussion/Action: The Mayor opened the public hearing. Andy Desept, who owns property adjacent to the site under consideration, addressed the Council with concerns about the narrowness of the entrance on the north front road which allows egress into the complex on the back side of the property, and asked if the road would be widened. Mayor Hammer asked John Shenk, Sobrato Development Industries, to respond to the speaker’s questions. Council Member Fernandes stated that the request of the Transportation Agency to work on facilitating transit use in that area was very important, and encouraged the applicant to continue to work with the Transportation Agency and the Planning Department to make that area as mass transit user friendly as possible. Upon motion by Council Member Fernandes, seconded by Council Member Fiscalini, and unanimously carried, the public hearing was closed, the Staff was directed to work with applicant and the Transportation Agency to facilitate mass transit use in the area, and Ordinance No. 25156, entitled: “Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of Oakland Road and Murphy Avenue”, was passed for publication. Vote: 10-0-1-0. Absent: Pandori.

15f PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of a portion of Kirk Avenue, for the property located on the north side of McKee Road, 100 feet west of Toyon Avenue, from C-1 and C-L Commercial Zoning Districts to A(PD) Planned Development Zoning District, to allow an addition to and remodeling of the existing shopping center, for a net increase of 46, 970 square feet of commercial buildings, including a new drive-thru restaurant on 10.7-gross-acres (Country Club Villa, Owner). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (5-1-1).

PDC 95-07-036 - District 5

(Continued from 6/18/96 and 8/6/96 - Item 15f)

Documents filed: (1) Memorandum from Planning Commission Secretary, Gary J. Schoennauer, dated June 13, 1996, recommending approval of the Staff recommendation, subject to the conditions contained in the Staff report. (2) Declaration of Mailing of Notice of Hearing, dated May 31, 1996, submitted by the Director of Planning. (3) Proof of publication of Notice of Hearing, dated May 5, 1996, submitted by the City Clerk.

Discussion/Action: The Mayor opened the public hearing. Council Member Diaz advised that concerns about the proposed drive-thru restaurant have been discussed with Jack-in-the-Box representatives, who have agreed to develop a security plan to address concerns of the community, and to reduce hours of operation to 6 A.M. to 10 P.M. Sundays through Thursdays and 6 A.M. to 11 P.M. on Fridays and Saturdays, and moved approval of the Planned Development Rezoning, with the issues of a security plan and limitation of hours of operation to be addressed at the PD permit stage. Council Member Fiscalini seconded the motion. Sal Caruso addressed the Council on behalf of the applicant. Gary Johnson questioned the traffic signal planned for Toyon and McKee, which he asserted would create more traffic problems than currently exist by further impacting the heaviest traffic flow, and suggested the developer lengthen the two-lane section of McKee Road by restriping the second lane. Public Works Deputy Director Carl Mosher advised that the signal is on the City's warrant list and would be installed by the City whether or not the project was approved. Council Member Diaz concurred that the traffic signal would negatively impact traffic at that intersection by creating a stacking problem on McKee Road. City Manager Williams stated that since the signal is far down on the warrant list, there is time to re-evaluate placing a traffic signal at that intersection. S. Rani Agarwaca and Dick Decker addressed the Council in support of the project. On a call for the question, the motion carried unanimously, the public hearing was closed, Ordinance No. 25157, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of McKee Road, 160 Feet West of Toyon Avenue", was passed for publication, and the Administration was directed to address at the PD permit stage the conditions relating to security provisions at the drive-thru restaurant and limiting its hours of operation to 6 A.M. to 10 P.M. Sundays through Thursdays, and from 6 A.M. to 11 P.M. on Fridays and Saturdays. Vote: 10-0-1-0. Absent: Pandori.

RECESS/RECONVENE

The City Council recessed at 7:25 P.M. and reconvened at 7:34 P.M., Council Chambers, City Hall.

Present: Council Members -Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members -None.

15e PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the north side of Los Esteros Road, 2,500 feet east of Grand Avenue from M-1 Manufacturing to A(PD) Planned Development Zoning District to allow a landfill and resource recovery facility on 52.5-gross-acre (Zanker Road Resource Management, Ltd., Owner/Developer). CEQA: Resolution to be adopted. Director of Planning recommends approval. Planning Commission has no recommendation (3-2-1-1).

PDC 90-04-047 - District 4

(Continued from 5/07/96 - Item 15d et al., and 6/18/96 - Item 15d)

Documents filed: (1) Memorandum from Planning Commission Secretary, Gary J. Schoennauer, dated August 2, 1996, forwarding the project to the City Council with no recommendation from the Planning Commission. The Commission failed to reach a majority after a 3-2-1-1 vote on a motion to approve the rezoning with the conditions contained in the Staff report and with additional conditions that Staff work with the applicant at the PD permit stage to resolve the truck traffic issue through the use of signage on Grand Boulevard, and measures to reduce airborne particulate matter generated by the proposed wood grinding and concrete crushing operations. (2) Planning Department Staff report, dated June 7, 1996, recommending approval of the subject Planned Development Rezoning, with conditions contained in the Staff report. (3) Proof of Publication of Notice of Hearing, dated May 17, 1996, submitted by the City Clerk. (4) Correspondence from the Don Edwards San Francisco Bay National Wildlife Refuge, United States Department of the Interior, Fish and Wildlife Service, dated August 16, 1996, stating opposition to the proposed Zanker Road Material Processing Facility. (5) Correspondence from the United States Environmental Protection Agency, Region IX, dated August 16, 1996, providing information on Title VI of the 1964 Civil Rights Act. (6) Petition from Alviso Community in Action containing approximately 93 signatures in opposition to the proposed project. (7) Petition containing approximately 158 signatures in opposition to the proposed project. (8) Letters dated August 13 and August 19, 1996, from the Environmental Law and Justice Clinic of the Golden Gate University School of Law, representing--as a public interest legal clinic--the Alviso Community in Action, and opposing the Environmental Impact Report for the proposed project. (9) Materials on Alviso Wind Rose statistics, submitted by Victor Monarrez. (10) Letter from Alviso Seniors Associations, dated August 20, 1996, opposing the proposed project. (11) Letters from Matteoni, Saxe and Nanda, dated August 20, 1996, responding to legal challenges from the Environmental

Law and Justice Clinic about the proposed project, and submitting additional pictures, illustrations, and key summary information on the proposed project. (12) Leaflet entitled, *Excepts (sic) from the City of San José 2020 General Plan*, submitted by Claudia Rucker. (13) Letter from Thomas Reid Associates, dated August 20, 10996, responding to questions on the Environmental Impact Report.

Discussion/Action: The Mayor opened the public hearing. Rich Christina, representing the applicant, Zanker Road Resource Recovery, stated the Owens Corning Landfill has been in operation since 1955 and has waste discharge permits with the Regional Water Quality Control Board. He advised the project involves 40 of a total of 80 acres, 28 of which will continue to be a landfill, and 12 on the southerly end of the site will be for recycling only, operating demolition and concrete recycling plants on the site. He stated these operations currently exist at Zanker and will be moved to the Owens Corning site and will employ approximately twenty people and give preferential jobs to Alviso residents. He cited materials which will not be accepted and stated no liquid products nor anything with odor or contamination will be accepted. He advised that Zanker recycles 90 percent of incoming material and is impacted by a lack of space and, if current operations continue, would be full in four and one-half years, causing major impact to San José's recycling program. Because Zanker is moving existing operations and machinery and not adding new operations, he noted there will be no increase in traffic since trucks now going into Zanker will be going instead into Owens Corning. He described steps Zanker will take to eliminate significant impacts from noise, sound and visual effects, including building a 30-foot high berm around the landfill section, planting trees to block view of the recycling area, and locating stationary machinery in the southerly portion of the site to alleviate noise, dust and lighting impacts. He stated the Regional Water Quality Control Board, in twenty years of monitoring the site, has not found a toxic problem. He stated the Salt Marsh Harvest Mouse, an endangered species, will be captured and relocated prior to the tearing down of the levee and after the levee is rebuilt, will be reestablished with natural grasses so the mouse can again occupy the levee. Addressing allegations regarding economic and environmental racism, he stated the applicant takes this issue extremely seriously and has reviewed the issue and does not believe this applies to this project, because Owens Corning will be receiving only inert material, and noted that projects of this type are located throughout the City and County. On behalf of the applicant, Norm Matteoni, responding to the August 13, 1996, letter from the Golden Gate University Public Interest Clinic challenging the California Environmental Quality Act, advised that his response dated August 20, 1996, was submitted into the record, and pointed out that a letter dated July 16, 1996, from the Bay Area Air Quality Management Board indicated no problem in permitting the site. Addressing water quality issues, he stated the site is not a toxic dump, that a waste discharge order in 1995 found no significant impact on surface or ground water, and the site has been under regulation of the Regional Water Quality Board since 1970. Regarding alleged violations of Title VI of the Civil Rights Act of 1965, he advised that historically landfills were located around San Francisco Bay because that was the manner in which landfills were located in the 1940s and 1950s, and had nothing to do with the ethnicity of the people or the communities. He stated that in the 1980s, when the primary landfill serving the City of San José was Newby Island, the City of San José made a commitment in the General Plan to provide relief

for what had been the historic siting of landfills around the Bay and, specifically in the Alviso area, by looking away from the Bay lands to the canyon areas, resulting in the subsequent permitting of Kirby Canyon. He responded to correspondence from Nancy Nadel, dated August 16, 1996, which he stated contained outdated information, and cited more current information as contained in the Environmental Impact Report. He noted a requirement under the Solid Waste Facility Committee of the State for a closure and post-closure maintenance fund that goes thirty years beyond the life of the landfill that would apply to the site, and that pollution liability coverage is required under state law. Addressing the wildlife sanctuary, he stated that redesigns required by the Staff reduce landfill activity in scope and will result in the recycling operation using the landfill as a screen to the wildlife refuge instead of recycling on top of the landfill. Thirty-three speakers addressed Council on various aspects of the project. Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, responded to issues raised in testimonies and correspondence received, specifically from the Environmental Law and Justice Clinic, the Environmental Protection Agency, and the Department of the Interior. Regarding questions raised about impacts of PM10 (Particulate Matter smaller than 10 micrometers in size), he stated the Zanker Road material processing site is situated in such a way that there is no expectation of chronic PM10 impacts. He stated that prevailing winds do not blow toward Alviso, that reverse prevailing winds blowing west to north are due primarily only at night and do not transmit daytime emissions that may periodically be emitted from the site, and stated the Environmental Impact Report has adequately addressed all cumulative impacts. Regarding the question of adequate opportunity for participation by the Alviso community, he stated the testimony at this meeting is clear evidence of a great deal of involvement in the Alviso community in consideration of this project. He advised that since the General Plan was adopted in 1989, which actually designated this sight as a candidate solid waste site, there have been scoping meetings on the Environmental Impact Report, community meetings with very large turnouts of Alviso residents, most recently at a community meeting with regard to discussions of the Environmental Impact Report, and at the Planning Commission hearing on June 12, 1996, and noted the volume of testimony from both Spanish speaking and non-Spanish speaking individuals. He advised that recirculation of the second and third amendments to the Draft Environmental Impact Report are not required, that the Draft Environmental Impact Report was circulated for its 45-day review period, and the first amendment to the Draft Environmental Impact Report, which contained responses to the comments on the draft, was prepared and circulated. He noted that as a result of the Staff recommendation and public comments, the project has been modified in that it is adopting a hybrid between two alternatives addressed in the Environmental Impact Report. Finally, with regard to the significant alternatives that have been identified in the project, he stated the project has addressed the geologic and visual impacts, and was redesigned to eliminate noise impacts. He advised that Staff has reviewed the letter from the Department of the Interior, which outlines several potential conditions that could be added, and stated most of those conditions are already incorporated in the Planned Development Zoning and some could appropriately be considered as part of the Planned Development Permit. Mayor Hammer asked Thomas Reid, of Thomas Reid Associates to address issues of wind rose, leachate, noise, and wetlands. Thomas Reid stated it is important to recognize that the arms on a wind rose show the origin of the wind, so that misreading

a wind rose leads to incorrect interpretation of data. He advised that the wind rose in the Environmental Impact Report represents ten years of data and is consistent with wind roses available from the air district, explained that the Environmental Impact Report considered dust and other pollutants at great length, and advised there is no pathway from the project to have a significant impact on the community, and regarding PM10, stated there is no meteorological relationship between the project and the community that is of concern. He noted that extensive noise modeling and testing determined it is theoretically possible in the late evening hours for the landfill equipment, the concrete crusher in particular, to be audible and to rise above a level of significance that City staff thought applicable to the community, resulting in the EIR recommendation for mitigation that evening hours of operation be truncated, mitigating noise impacts on the community of Alviso to insignificance. With respect to leachate, Thomas Reid advised that material being disposed of will not include household or toxic material, and that concern for toxic material comes about by the historical use of the site by Owens Corning, that adding material on top of material which may have been disposed a long time ago may exacerbate a problem, but stated there is nothing in the material to be added that would have potential for leaching new hazardous materials. He advised that water from monitoring wells around the site which is tested repeatedly has not found the chemicals believed historically to have been disposed of, and if there were evidence of chemicals being mobilized at the site, those wells at the perimeter of the site would become the method of extracting and the treating materials. Rick Hopkins, Wildlife Ecologist and Senior Project Manager with H. T. Harvey and Associates, addressing wetlands issues, stated the project will not remove any wetland habitat nor have any direct impact on actual wetland vegetation, and as redesigned to move most of the noise level to the front of the project, will have no noticeable effect on the wildlife population at the refuge. Concerning the Salt Water Harvest Mouse, a federally endangered species, which resides primarily in the marsh adjacent to the landfill and occasionally moves into the upland vegetation, he stated the project will place a silt fence along the base of the levee to prevent impact to wetland vegetation, and will re-engineer and re-vegetate the levee with a native grass mix that will provide a slightly better habitat. He indicated the project will not increase current capacity for red foxes in the refuge since most carnivore species, and particularly red foxes, are limited by the available prey, and stated the applicant will be involved in active removal of any predators that appear on the site. Replying to questions from Council Member Diaz about the August 16, 1996, letter from the Department of the Interior, Director Schoennauer commented on each of the six conditions that were identified in the letter and stated that Condition Nos. 4 and 5 are already included and that Condition Nos. 3 and 6 could be dealt with in both the Planned Development and Solid Waste Permits. Answering questions from Council Member Dando regarding water quality issues, Bill Fowler, Registered Geologist and Certified Engineering Geologist in the State of California, stated that a comprehensive water quality analysis, the Solid Waste Assessment Test, conducted in 1992 as mandated by the State, detected no impacts to water quality at the Owens Corning site. Responding to the issue of possible jeopardy of federal funds, City Attorney Gallo advised that the proposal does not violate Title VI of the Civil Rights Act and that her office is prepared to defend the City's record on that point. Council Member Fernandes advised that the Owens Corning Disposal Site has been operating unregulated for forty years because the site was not part of San José

at that time, and the City will now be in a position to monitor its operations. She advised that the operation will recycle ninety percent of material and will have no impact on Alviso. She stated she requested the applicant upgrade the size of trees planted from 15 to 36 gallon to improve the visual impact of the facility, reemphasized that no materials other than those listed will go into the recycling center, and that no left turns into the and no right turns out of the recycling center will be authorized in order to control truck traffic on Grand Boulevard. She advised the applicant has agreed to work to improve the operation as far as dust is concerned, including the use of electrical rather than diesel powered machines, to continue to work with the Task Force and the Wildlife Refuge, and to have a "hire Alviso" policy. Upon motion by Council Member Fernandes, seconded by Council Member Powers, and unanimously carried, Resolution No. 66853, entitled: "A Resolution of the Council of the City of San José Making Certain Findings Required by the California Environmental Quality Act in Connection with the Zanker Road Material Processing Facility (Owens Corning Disposal Site) and for which an Environmental Impact Report has been Prepared", was adopted; and Ordinance No. 25158, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Los Esteros Road, 2,000 Feet East of Grand Avenue", was passed for publication. Vote: 10-0-1-0. Absent: Pandori.

CLOSED SESSION REPORT

City Attorney Joan Gallo reported out of Closed Session the City Manager's recommendation for the appointment of Acting Fire Chief Robert Dorman to the position of Fire Chief. The Council unanimously approved the appointment of Fire Chief Dorman.

City Attorney Gallo disclosed the following Closed Session actions of August 20, 1996:

A. Pending Litigation - Settlements Authorized:

1. Case Name: *In re Manson*

Substance of Settlement: Approval of settlement of Workers' Compensation claim in the amount of \$57,000.

Council Vote: Ayes: Dando, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Woody; Hammer.

Noes: None.

Absent: Diaz, Diquisto, Pandori.

Abstain: None.

B. Authority to Enter Litigation Cases as Amicus Curiae:

1. Case Name: *Auer, et al, v. Robbins, et al.*

Adverse party or parties: Auer, et al.

Substance of litigation: Review of the applicability of the Fair Labor Standards Act to Police Sergeants for the City of St. Louis.

Council Vote: Ayes: Dando, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Woody; Hammer.

Noes: None.

Absent: Diaz, Diquisto, Pandori.

Abstain: None.

2. Case Name: *McGuire, et al. v. City of Portland*

Adverse party or parties: McGuire, et al.

Substance of litigation: Review of the applicability of the Fair Labor Standards Act to Battalion Chiefs for the Portland Fire Bureau.

Council Vote: Ayes: Dando, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Woody; Hammer.

Noes: None.

Absent: Diaz, Diquisto, Pandori.

Abstain: None.

3. Case Name: *Hackett, et al. v. Lane County*

Adverse party or parties: Hackett, et al.

Substance of litigation: Review of the applicability of the Fair Labor Standards Act to Supervising County Sheriffs officers of Lane County, Oregon.

Council Vote: Ayes: Dando, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Woody; Hammer.

Noes: None.

Absent: Diaz, Diquisto, Pandori.

Abstain: None.

ADJOURNMENT

The City Council adjourned at 10:30 p.m. in memory of Caroline Crummey, philanthropist and FMC heiress; and in memory of Lodovicio Salussolia, father of Gary Robinson, Chief of Staff, Mayor's Office.

SUSAN HAMMER, MAYOR

ATTEST:

**PATRICIA L. O'HEARN
CITY CLERK**

DC/8-20-96