

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 3, 1996

The Council of the City of San Jose convened in regular session at 9:30 a.m.

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

Absent: Council Members: Diaz.

Upon motion unanimously adopted, Council recessed to a Closed Session at 9:35 a.m. in Room 600 to (A) confer with Legal Counsel pertaining to existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider the cases of Massaro v. City of San José; Mann v. City of San José, et al.; and City of San José v. Citation Homes.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:20 a.m. and reconvened at 1:39 p.m. in Council Chambers, City Hall.

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

Absent: Council Members: None.

INVOCATION

Pastor Ken Foreman, Jr., Cathedral of Faith, delivered the invocation. (District 8)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

Special thanks to Pastor Ken Foreman, Jr., Cathedral of Faith, for hosting a community cookout to feed economically deprived individuals; festivities are scheduled for Saturday, September 21, 1996 at Great Oaks Park. All citizens are invited to attend.

ORDERS OF THE DAY

Upon motion by Council Member Fiscalini, seconded by Council Member Dando and unanimously carried, the Orders of the Day, deferring to September 17, 1996 Items 6e(3)(b), 9f, and 9h, and the Amended Agenda were approved. Vote: 11-0-0-0.

CEREMONIAL ITEM

- 5b Presentation of a commendation to Chip Bronk, founder and president of Cableco, for being named Small Business Person of the Year for Northern California by the U.S. Small Business Administration. (Mayor)
(Deferred from 8/20/96 - Item 5c)**

Documents Filed: None.

Discussion/Action: Mayor Hammer acknowledged the achievements of the founder and president of Cableco—Chip Bronk—and presented to him a commendation in recognition of his business accomplishments in producing cable assemblies for electronic equipment, and in developing innovative ways of consolidating and rerouting power cables, increasing performance and decreasing the cost of computers and electronic gear. Mayor Hammer introduced staff members of Cableco and asked them to stand and be recognized.

CONSENT CALENDAR

Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 11-0-0-0.

Minutes for Approval

- 6a(1) Regular Meeting of June 18, 1996**

Documents Filed: Minutes of the regular meeting of June 18, 1996.

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

Ordinances for Final Adoption

- 6b(1) ORD. NO. 25152 - Establishes an Underground Utility District at San Pedro Street between Mission Street and Taylor Street.**

Documents Filed: Proof of publication of the title of Ordinance No. 25152 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25152 was adopted. Vote: 10-0-0-1. Disqualified: Pandori, due to his absence at the August 20, 1996 public hearing.

- 6b(2) **ORD. NO. 25153 - Rezones certain real property situated on the north side of Panoche Avenue, 125 feet westerly of via Ferrari Drive.
PDC 96-05-028**

Documents Filed: Proof of publication of the title of Ordinance No. 25153 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25153 was adopted. Vote: 10-0-0-1. Disqualified: Pandori, due to his absence at the August 20, 1996 public hearing.

- 6b (3) **ORD. NO. 25154 - Rezones certain real property situated on the northwest corner of Blackford Avenue and Rebecca Way.
PDC 96-04-021**

Documents Filed: Proof of publication of the title of Ordinance No. 25154 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25154 was adopted. Vote: 10-0-0-1. Disqualified: Pandori, due to his absence at the August 20, 1996 public hearing.

- 6b(4) **ORD. NO. 25155 - Prezones certain real property situated on the south side of Camden Avenue, 210 feet westerly of Union Avenue.
C 96-04-016**

Documents Filed: Proof of publication of the title of Ordinance No. 25155 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25155 was adopted. Vote: 10-0-0-1. Disqualified: Pandori, due to his absence at the August 20, 1996 public hearing.

- 6b(5) **ORD. NO. 25156 - Rezones certain real property situated on the northeast corner of Oakland Road and Murphy Avenue.
PDC 96-07-042**

Documents Filed: Proof of publication of the title of Ordinance No. 25156 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25156 was adopted. Vote: 10-0-0-1. Disqualified: Pandori, due to his absence at the August 20, 1996 public hearing.

- 6b(6) ORD. NO. 25157 - Rezones certain real property situated on the north side of McKee Road, 160 feet west of Toyon Avenue.
PDC 95-07-036**

Documents Filed: Proof of publication of the title of Ordinance No. 25157 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25157 was adopted. Vote: 10-0-0-1. Disqualified: Pandori, due to his absence at the August 20, 1996 public hearing.

- 6b(7) ORD. NO. 25158 - Rezones certain real property situated on the northside of Los Esteros Road, 2,000 feet east of Grand Avenue.
PDC 90-04-047**

Documents Filed: Proof of publication of the title of Ordinance No. 25158 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25158 was adopted. Vote: 10-0-0-1. Disqualified: Pandori, due to his absence at the August 20, 1996 public hearing.

Public Hearings Set by Council

- 6c(1) Adoption of a resolution initiating proceedings and setting September 24, 1996 at 1:30 p.m. as the date for Council consideration for the reorganization of territory designated as Oakgrove No. 68, which involves the annexation to the City of San José of 40.1 acres of land, located at the west side of Cottle Road, opposite Hospital Parkway and the detachment of the same from the Central Fire District and Santa Clara County Library Service Area. CEQA: Resolution No. 66836.1. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated August 16, 1996, requesting adoption of said resolution to be placed on the Consent Calendar of the September 3, 1996 City Council Agenda.

Discussion/Action: Resolution No. 66863, entitled: “Resolution of the Council of the City of San José Initiating Reorganization Proceedings for Annexation and Detachment of Certain Uninhabited Territory Designated as Oakgrove No. 68 and Described Herein, and Setting the Date and Place for Consideration of Such Reorganization”, was adopted. Vote: 11-0-0-0.

- 6c(2) **Adoption of a resolution setting a Special Assessment public hearing on September 24, 1996 at 1:30 p.m. for unpaid Recycle Plus garbage bills. (Finance) (Rules Committee referral 8/28/96)**

Documents Filed: Memorandum from Director of Finance, John V. Guthrie, dated August 23, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66864, entitled: "A Resolution of the Council of the City of San José Setting a Special Assessment Public Hearing For Unpaid Recycle Plus Bills", was adopted. Vote: 11-0-0-0.

- 6c(3) **Adoption of a resolution initiating the Antioch Baptist Church site located at 268 East Julian Street for consideration as a landmark of special historic, architectural, cultural, aesthetic, or engineering interest or value of a historic nature and referring it to the Historic Landmarks Commission for its recommendation; and setting a City Council public hearing on October 22, 1996 at 1:30 p.m. CEQA: Exempt. (Planning, Building and Code Enforcement) (Rules Committee referral 8/28/96)**

Documents Filed: Memorandum from Historic Landmarks Commission, dated August 23, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66865, entitled: "Resolution of the Council of the City of San José Initiating Proceedings On Its Own Motion, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code to Designate the Antioch Baptist Church as a Landmark or Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature", was adopted. Vote: 11-0-0-0.

Plans and Specifications

- 6d(1) **TRACT NO. 8743 - Southerly terminus of Piercy Road, 1,000 feet easterly of U.S. Highway 101 - Shea/Gibson Speno III, a California Limited Partnership (Developer) - 101 single-family residential lots. Adoption of resolutions approving the plans, final map, and contract for Tract No. 8743. CEQA: Resolution No. 65660. District 2. (Public Works) [Deferred from 8/27/96 - Item 6d(1)]**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 20, 1996, recommending Council adopt said resolutions.

Discussion/Action: Resolution No. 66866, entitled: "A Resolution of the Council of the City of San José Fixing Official Curb Grades and Position of Curbs, and Adopting Plans for Tract No. 8743 - Contract No. 2"; Resolution No. 66867, entitled: "A

Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8743 - Contract No. 2”; and Resolution No. 66868, entitled: “A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8743 - Contract No. 2”, were adopted. Vote: 11-0-0-0.

- 6d(2) TRACT NO. 8617 - East side of San Felipe Road north of Meadowlands Lane - The Blackwell Group, a California General Partnership (Developer) - 79 single-family detached residential lots. Adoption of resolutions approving the plans, final map, contract, and water main extension agreement for Tract No. 8617. CEQA: ND. District 8. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 23, 1996, recommending Council adopt said resolutions.

Discussion/Action: Resolution No. 66869, entitled: “A Resolution of the Council of the City of San José Fixing Official Curb Grades and Position of Curbs, and Adopting Plans For Tract No. 8617”; Resolution No. 66870, entitled: “A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8617”, Resolution No. 66871, entitled: “A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8617”; and Resolution No. 66872, entitled: “A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Agreement for the Water Main Extension, Tract No. 8617”, were adopted. Vote: 11-0-0-0.

Contracts/Agreements

- 6e(1) Adoption of a resolution authorizing the Director of Aviation to execute a ninth amendment to the lease agreement with Chevron U.S.A. to permit above-ground fuel storage tanks on an existing leased parcel. CEQA: ND. (Airport)**

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated August 16, 1996, recommending approval of said amendment to the lease agreement with Chevron U.S.A., Inc.

Discussion/Action: Resolution No. 66873, entitled: “A Resolution of the Council of the City of San José Delegating to the Director of Aviation the Authority to Execute a Ninth Amendment to the Agreement With Chevron U.S.A., Inc., to Permit Above-Ground Fuel Storage Tanks on an Existing Leased Parcel at San José International Airport”, was adopted. Vote: 11-0-0-0.

- 6e(2) Adoption of a resolution authorizing the City Manager to execute an agreement with Deloitte and Touche to provide risk assessment analysis of the Automated**

Information System for the Police Department for the period July 29, 1996 to December 31, 1996, in an amount not to exceed \$80,000. (City Manager's Office)

Documents Filed: (1) Supplemental memorandum from Deputy City Manager, Mark Linder, dated September 3, 1996, clarifying the necessity to make limited exception to the City's model contract language requiring unlimited indemnification by a contractor. (2) Memorandum from Deputy City Manager, Mark Linder, dated August 16, 1996, recommending approval of said agreement with Deloitte & Touche.

Discussion/Action: Resolution No. 66874, entitled: "A Resolution of the City of San José Authorizing the City Manager to Execute an Agreement With Deloitte & Touche to Provide Risk Assessment Analysis for the Automated Information System for the Police Department", was adopted. Vote: 11-0-0-0.

6e(3) Approval of recycling and reuse agreements for the period July 1, 1996 to June 30, 1997 with:

- (a) **Goodwill Industries of Santa Clara County, in an amount not to exceed \$140,100.**
 - (b) **The Salvation Army, in an amount not to exceed \$66,100.**
 - (c) **St. Vincent de Paul Society, in an amount not to exceed \$8,800.**
- (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated August 16, 1996, recommending approval of said agreements with three non-profit recycling and reuse organizations.

Discussion/Action: City Manager, Regina V.K. Williams, requested approval of the agreements with Goodwill Industries of Santa Clara County and St. Vincent de Paul Society, and deferral of The Salvation Army agreement to allow completion of certain contractual issues. The recycling and reuse agreements with Goodwill Industries of Santa Clara County and St. Vincent de Paul Society were approved and execution of the agreements authorized, and Item 6e(3)(b) (The Salvation Army Recycling and Reuse Agreement), deferred to September 17, 1996. Vote: 11-0-0-0.

- 6e(4)**
- (a) **Approval of an agreement with the State of California Commission on Peace Officer Standards and Training (POST) for a Law Enforcement Driver Training Simulator Pilot Project for the Police Department for the period October 1, 1996 to September 30, 1997, at no additional cost to the City.**
 - (b) **Authorize the continued reimbursement of a temporary Officer position to provide instruction for the period October 1, 1996 to September 30, 1997.**
 - (c) **Adoption of appropriation ordinance and revenue resolution amendments in the General Fund to increase the Police Department's**

**Personal Services appropriation by \$54,500, and Non-Personal appropriation by \$6,000.
(Police/City Manager's Office)**

Documents Filed: Memorandum from Police Chief Louis A. Cobarruviaz, and Budget Director Larry D. Lisenbee, dated August 16, 1996, recommending approval of said agreement, authorization for said reimbursement, and adoption of said appropriation ordinance and revenue resolution amendments.

Discussion/Action: Ordinance No. 25163, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 Which Appropriates Moneys in the General Fund in the Amount of \$60,500 to Increase the Police Department's Personal Services Appropriation by \$54,500 and Non-Personal Services Appropriation by \$6,000 for Expenses Related to a POST-Reimbursed Law Enforcement Driver Training Simulator Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 66875, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 66717 Setting Forth the Estimated Sources of Funds for the Fiscal Year 1996-97 to Adjust Revenues From Departmental Charges in the General Fund", were adopted. Vote: 11-0-0-0.

6e(5) Approval of an employment agreement with Heather Cook. (Powers)

Documents Filed: None.

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

**6e(6) Approval of amendment to the employment agreement with Gillian Clarke. (Woody)
(Rules Committee referral 8/28/96)**

Documents Filed: None.

Discussion/Action: The amendment to the employment agreement with Gillian Clarke was approved and its execution authorized. Vote: 11-0-0-0.

Routine Legislation

6f(1) Adoption of a resolution determining that public interest and necessity require the acquisition of certain real property owned by Lion Estates for Silver Creek Linear Park and directing the filing of suit in eminent domain. CEQA: ND. (Public Works)

Documents Filed: None.

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

- 6f(2) Approval of travel for Mayor Susan Hammer to travel to Washington, D.C., September 11-12, 1996, to attend the ACTPN meeting. Funding: ACTPN Budget. (Mayor) (Orders of the Day 4b)**

Documents Filed: None.

Discussion/Action: The travel for Mayor Hammer to attend the ACTPN meeting in Washington, D.C., was approved. Vote: 11-0-0-0.

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

- 7b Report of the Rules Committee - August 21, 1996**

Documents Filed: Rules Committee Report of August 21, 1996.

- (1) Review of September 3 Council Agenda

The Committee recommended approval of the September 3, 1996 Council Agenda with one addition.

- (2) Add New Items to August 27 Amended Council Agenda

The Committee recommended three additions and one change to the August 27, 1996 Amended Council Agenda.

- (3) The Public Record. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated August 15, 1996, listing the items transmitted to the Administration and the items filed for the Public Record for the period August 7-13, 1996. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated August 19, 1996, summarizing the actions taken on the items transmitted to the Administration and the items filed for the Public Record for the period August 7-13, 1996.

The Committee noted and filed the Public Record for period August 7-13, 1996.

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

The Committee deferred this item to August 28, 1996 Rules Committee meeting to enable Council Member Shirakawa, Jr., Council Liaison to CDBG Steering Committee, to be present.

- (5) Request to use Council General Funds to chair League of California Cities' Environmental Quality Committee Meeting in Los Angeles, CA, September 5, 1996. Attachments: (1) Memorandum from Vice Mayor Johnson, dated August 13, 1996, requesting authorization to use Council General Funds to attend a conference in Los Angeles, CA. (2) Memorandum from City Clerk, Patricia L. O'Hearn, dated August 20, 1996, submitting Council General Travel Budget information to Rules Committee for consideration.

The Committee recommended approval for Vice Mayor Johnson to use Council General funds to travel to Los Angeles, CA, September 5, 1996, to chair the meeting of the League of California Cities' Environmental Quality Committee.

- (6) Request to use Council General Funds to represent the City at the National League of Cities' Energy, Environment and Natural Resources Committee Meeting, September 11-15, 1996. Attachment: Memorandum from Vice Mayor Johnson, dated August 13, 1996, requesting authorization to use Council General Funds to attend a conference in Ft. Lauderdale, FL.

The Committee recommended approval for Vice Mayor Johnson to use Council General funds to travel to Ft. Lauderdale, FL, September 11-15, 1996, to represent the City at the National League of Cities Energy, Environmental and Natural Resources Committee Meeting.

- (7) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee. Attachment: Memorandum from Council Member Fernandes, dated August 13, 1996, referencing Alviso boat dwellers.

(a) Request that the Administration and the City Attorney investigate methods to address the health and safety issues of illegally moored boats in San José's waterways, including the possibility of creating a mooring ordinance

The Committee recommended that the Administration and the City Attorney investigate methods to address the health and safety issues of illegally moored boats in San Jose's waterways, including the possibility of creating a mooring ordinance.

- (8) City Council and Rules Committee meeting schedules

The Committee directed Staff to place on the August 28, 1996 Rules Committee Agenda the Council Referral Summary, and requested all Council Members to review the document and forward their comments to the Rules Committee.

- (9) Oral communications

None presented.

- (10) Adjournment

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

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fernandes and unanimously carried, the Rules Committee Report and actions of August 21, 1996 were accepted. Vote: 11-0-0-0.

7e Report of the Transportation, Development, and Environment Committee - August 22, 1996

Documents Filed: Transportation, Development, and Environment Committee Report of August 22, 1996

- (1) Consent Calendar. Attachments: (1) Caltrain Maintenance Facility status report for the month of August, 1996. (2) Status report on the installation of detectable warnings at the Santa Clara Street Light Rail Station for the month of July, 1996.
- (a) Status Report on Caltrain Maintenance Facility
 - (b) 1996 Status Report on the Installation of the Detectable Warning Systems at Santa Clara Street Light Rail Station

The Committee recommended approval of the Consent Calendar.

- (2) Semi-Annual Report on the Hazardous Materials Program. Attachment: Memorandum from Fire Chief, Robert L. Dorman, dated August 7, 1996, recommending approval of the Fire Department's Hazardous Materials Program semi-annual report for the period January 1, 1996 through June 30, 1996.

The Committee recommended acceptance of the staff report

- (3) Report and Recommendation on Water Policy Framework. Attachment: Memorandum from Director of Environmental Services, Louis N. Garcia, dated August 7, 1996, recommending approval and adoption of the San José Water Policy Framework

The Committee directed Staff to incorporate requested changes and to submit the report directly to the City Council.

Discussion/Action: See Item 9c for Council action taken.

- (4) Report on Statewide High Speed Rail Study. Attachment: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 13, 1996, recommending adoption of a position in support of either the Panoche Pass or Pacheco Pass alignment for California Intercity High Speed Rail service to connect directly with the City of San José.

The Committee recommended approval of staff recommendation.

- (5) Oral petitions

None presented.

- (6) Adjournment

The meeting was adjourned at 2:25 p.m.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fernandes and unanimously carried, the Transportation, Development, and Environment Committee Report and actions of August 22, 1996 were accepted with Item 7e(3) acted upon at Item 9c. Vote: 11-0-0-0.

LAND USE AND DEVELOPMENT

- 8a PUBLIC HEARING and adoption of a resolution approving the vacation of a portion of Chaboya Road, between Quimby Road and future Murillo Avenue, conditioned upon the completion and accessibility of the new public road lying immediately to the south of the vacated portion, through Tract 8781, and authorization for the Director of Public Works, or designee, to execute and deliver a Quitclaim deed to the adjacent property owner. CEQA: Resolution No. 63179. (Public Works)**

Documents Filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 16, 1996, recommending Council adopt said resolution. (2) Affidavit of Posting of the Notice of Vacation, dated August 14, 1996, and Proof of Publication of Resolution No. 66808 setting the public hearing, submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing. There was no discussion from the Floor. Upon motion by Council Member Woody, seconded by Council Member Fernandes and unanimously carried, the public hearing was closed, and Resolution No. 66876, entitled: "Resolution of the Council of the City of San José Vacating a Portion of Chaboya Road Between Quimby Road and Future Murillo Avenue, Conditioned Upon the Completion and Accessibility of the New Public Road Lying Immediately to the South of the Vacated Portion, and Authorizing the Director of Public Works to Execute a Quitclaim Deed to the Adjacent Property Owner", was adopted. Vote: 11-0-0-0.

GENERAL GOVERNMENT

- 9a
- (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 and 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)
(Deferred from 8/20/96 - Item 9e)

Documents Filed: None.

Discussion/Action: Joined by principals of Media Connections Group—consultants Edward Liebst and David Rozzelle—Pamela K. Stone, Telecommunications Director, presented a comprehensive overview of the Fiber Optics Conduit System Lease Program and City Network report and recommendations. Using overheads depicting the route of the conduit, she stated the City Council directed City Staff on April 10, 1996 to design and install 40 miles of fiber optics conduit in conjunction with the South Bay Water Recycling Project (SBWRP), contingent upon an acceptable demonstration of market interest in leasing the conduit and upon the identification of potential municipal uses of the conduit. She stated Council also authorized Staff to prepare a business plan for the conduit leasing program and to negotiate lease agreements and to report to Council in August the results of marketing efforts to lease the conduit and of a preliminary analysis of municipal uses of the conduit. She stated the appropriation ordinance and revenue resolution amendments were adopted by the City Council on April 30, 1996 to provide \$5.152 million from the Sewage Treatment Plant Connection Fee Fund for the fiber optics conduit installation project, and on May 21, 1996, a resolution was adopted formalizing the terms of the inter-fund loan for the project. In discussing the objectives of developing a fiber optics conduit network for the City of San José, she stated the analysis and marketing efforts completed to date confirm the feasibility of realizing the benefits and support the continuance of the fiber optics project, and recommended that Council authorize Staff to continue to install 40 miles of fiber optics conduit in conjunction with the South Bay Water Recycling Project at an estimated cost of \$5.152 million, at no cost to the SBWRP; direct Staff to submit updates on the progress of this project to the Transportation, Development and Environment Committee in conjunction with updates on the SBWRP project; and direct 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. MCG consultant Edward Liebst summarized the results of the marketing efforts related to the projected commercial demand for conduit, pointed out

economic case scenarios—original, expected, and optimistic projected demand in revenue and paybacks in five (5) years—and reviewed preliminary analysis of City fiber optics network or CityNet. With regard to market demand, he stated five companies have expressed immediate interest in specific portions of the conduit route, and five additional companies with potential interest in portions of the route at a later date; four of the five companies with immediate interest have each submitted a letter stating their intention to pursue conduit leases with the City. MCG consultant David Rozzelle focused his comments on potential applications using CityNet and illustrated the range of opportunities in this area—both city-wide opportunities and opportunities for facilities along or close-in to the SBWRP backbone route—in addition to public safety uses and internal telephone and data network. He stated the identification of potential City applications using a fiber network is far from comprehensive at this point and that potential use of CityNet by other public institutions in San José has not yet been explored, with the exception of preliminary discussions with Evergreen College; therefore, based on the findings by City Staff and MCG, and in order to fully develop the opportunity for CityNet, a master plan is necessary which would include a comprehensive telecommunications needs assessment, a cost and/or benefit analysis, technical feasibility analysis, and preliminary design. Five speakers addressed Council on the fiber optics conduit proposal, including: Ed Coups, Director of Operations for Brooks Fiber Communications; and William Chew. Representing Pacific Bell, Suzanne Salata and Sharon Knox, Pacific Bell Director of Government Services, addressed Council on the proposal and distributed to Council a list of questions pertaining to CityNet and the fiber leasing proposals. After substantial discussion regarding the feasibility of the fiber optics system proposal, the City Council recommended deferral of this item for two weeks with direction to City Staff to respond to the concerns pertinent only to the installation of the fiber optic conduit; and to prepare a report addressing concerns regarding the use of the City's existing fiber optics system without spending \$5 million; the proposed \$25 to \$35/ft cost for conduit compared to the City's \$20/ft; the existence of a system operating in a city comparable to the size of San José which has achieved considerable cost savings; the total cost of CityNet and its compatibility with AIS; analysis of maintenance and administrative costs; identification of potential revenue and cost savings during the recovery period; distinction between transmission mode radio and fiber optics systems, strategy to prevent CityNet system from becoming a stranded investment or outmoded technology; necessary risk analysis associated with the project; the cost to the City to lease/purchase fiber optics services from other providers; the total proposal costs including pulling of fiber optics cable; and the capital investment associated in migrating to a PBX system and upgrades. By unanimous consent, this item was deferred to September 17, 1996 and Staff directed to prepare responses to questions pertinent to the installation of the fiber optic conduit, to provide Council with additional information from potential vendors interested in working with the City on the project, and to prepare an informational report incorporating remaining concerns. Vote: 11-0-0.

9c Approval and adoption of the San José Water Policy Framework and direction to staff to report on the implementation and achievement of the adopted policies on an annual basis.

[Transportation, Development and Environment Committee referral 8/22/96 - Item 7e(3)]

Documents Filed: See Transportation, Development and Environment Committee Report of August 22, 1996, Item 7e(3).

Discussion/Action: Noting his philosophical support of the goals in the document and his concerns regarding the reference on page 2, *Attachment A: Water Policies for the City of San José, Item B8* of the August 7, 1996 memorandum from Director of Environmental Services, Louis N. Garcia, Council Member Fiscalini pointed out that Council has neither deliberated nor rendered a decision on the ownership of the municipal utility; therefore, the inclusion of the statement in the recommended framework is premature. In her recommendation for Council approval of the policy framework, Council Member Fernandes stated the current policy statement will remain in effect until the City divests itself of the municipal water system; however, the minutes should reflect that Council has not made the decision on the municipal utility, which would allow for policy changes as they occur. Upon motion by Council Member Fernandes, seconded by, Vice Mayor Johnson and unanimously carried, the report on the San José Water Policy Framework was approved as amended to stipulate that the City Council has not made the decision on whether to maintain its role as a water retailer, and the recommendation to direct Staff to report annually on the implementation and achievement of the adopted policies, was approved. Vote: 11-0-0-0.

9b Approval of a consultant agreement with Black & Veatch for engineering services, in an amount not to exceed \$750,000, and for additional services in an amount not to exceed \$130,000, for a total amount not to exceed \$880,000. (Environmental Services)

Documents Filed: (1) Memorandum from Director of Environmental Services, Louis N. Garcia, dated August 16, 1996, recommending Council approve said consultant agreement with Black & Veatch. (2) Letter from Treatment Plant Advisory Committee, dated August 9, 1996, recommending approval of said agreement with Black & Veatch for consulting engineering services.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fernandes and unanimously carried the consultant engineering services agreement with Black & Veatch was approved and execution of the agreement authorized. Vote: 11-0-0-0.

9d Adoption of a resolution to oppose on the November 5, 1996 Ballot:
(1) State Proposition 207 (Frivolous Lawsuit Limitation Act) (City Attorney) and
(2) State Proposition 211 (Attorney-Client Fee Arrangements, Securities Fraud, Lawsuits, Initiative Statute). (Dando/Pandori)

(Deferred from 8/27/96 - Item 9a)

Documents Filed: (1) Supplementary memorandum from City Attorney, Joan R. Gallo, dated August 27, 1996, transmitting a revised copy of the August 23, 1996 memorandum which reflects changes in the titles of the propositions. (2) Revised memorandum from City Attorney, Joan R. Gallo, dated August 27, 1996, recommending Council adopt a resolution in opposition to both Propositions 207 and 211. (3) Memorandum from City Attorney, Joan R. Gallo, dated August 23, 1996, recommending Council adopt a resolution opposing Propositions 207 and 211. (4) Memorandum from Council Members Dando and Pandori, dated August 8, 1996, recommending Council adopt an official City position against State Proposition 211.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Dando and unanimously carried, Resolution No. 66877, entitled: "A Resolution of the Council of the City of San José Opposing State Proposition 207, (Attorneys. Fees. Right to Negotiate. Frivolous Lawsuits. Initiative Statute) and State Proposition 211 (Attorney-Client Fee Arrangements. Securities Fraud. Lawsuits. Initiative Statute) on the November 5, 1996 Ballot", was adopted. Vote: 11-0-0.

9e Report on bids, waiver of a minor bid irregularity, and award of contract for the South Bay Water Recycling Program (SBWRP) Pump Stations and Reservoir Project to the low bidder, Alan A. Bradford, Inc., in the amount of \$6,932,778, and approval of a contingency in the amount of \$700,000, subject to concurrence by the Treatment Plant Advisory Committee. CEQA: Resolution No. 64667. (Public Works)

(Deferred from 8/20/96 - Item 9c and 8/27/96 - Item 9d)

Documents Filed: (1) Supplemental memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 29, 1996, reporting on the bids, waiver of a minor bid irregularity and award of contract. (2) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 2, 1996, recommending Council award said contract, subject to concurrence by the Treatment Advisory Committee. (3) Letter from Treatment Plant Advisory Committee, dated August 9, 1996, recommending approval of award of contract to the low bidder.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Woody and unanimously carried, the minor bid irregularity was waived and award of contract to Alan A. Bradford, Inc., the low bidder, was approved. Vote: 11-0-0.

9f Clarification of Council Policy 0-4 with regard to residency requirements for members of the Retirement Boards and decline to accept a resignation of the public member based on residency. (Fiscalini)

(Rules Committee referral 8/28/96)

Documents Filed: None.

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

**9g Rejection of all proposals for the Prepaid Dental Care Plan, and authorization for the City Manager to negotiate with prospective dental providers.
(Human Resources)
(Orders of the Day 4a)**

Documents Filed: Memorandum from Director of Human Resources, Nona Tobin, dated August 30, 1996, requesting Council reject proposals and authorize further negotiations of the dental benefit plan options.

Discussion/Action: Director of Human Resources, Nona Tobin, stated the indemnity plan administration, the Selection Committee, and the Benefits Review Forum, through the RFP process, recommend the selection of Delta Dental; however, the DHMO plan is more complicated and problematic and the two finalists, DBP and Delta Dental, did not offer final proposals satisfactory to both the Selection Committee and the Benefits Review Forum. She stated the plans offered may become acceptable with further negotiations; however, under the RFP process, the proposals submitted were firm proposals and negotiations were not anticipated and not included in the published RFP. In order to ensure timely communication with plan participants before Open Enrollment begins in November, 1996, she stated the negotiation process must be completed by Friday, September 20, 1996 with Council action to approve the contracts scheduled for early October, 1996, and that adherence to this schedule is important. She stated the Administration recommends rejection of all DHMO proposals with direction to Staff to proceed with the competitive selection process. Upon motion by Council Member Fiscalini, seconded by Council Member Dando and unanimously carried, the proposals for the Prepaid Dental Care Plan were rejected and authorization for the City Manager to negotiate with prospective dental providers, granted. Vote: 11-0-0-0.

**9h Proposed Community Outreach for Affordable Housing Project Development Applications.
[Housing and Community Services Committee 8/5/96 - Item 7c(10)]
(Council Referral 8/20/96 - Item 7c(10))**

Documents Filed: None.

Discussion/Action: Related to the recommended deferral of this item, Council Member Dando requested Staff to notify the community of the rescheduled meeting date and time. Upon motion by Council Member Fiscalini, seconded by Council Member Dando and unanimously carried, this item was deferred to September 17, 1996, with direction to City Staff to schedule this item during the evening session and to notify the community of the meeting. Vote: 11-0-0-0.

The Redevelopment Agency Board convened at 3:30 p.m. to consider Item 11a in a joint session with the City Council.

11a Adoption of resolutions:

- (1) Designating the excess affordable units in the Siena at Renaissance Square, Villa Savannah, and Stonegate Projects as substitute affordable units to allow the release of the 180 affordable ownership units in the Crescendo at River Oaks Project.**
- (2) Authorizing the Director of Housing to enter into agreements and execute all necessary documents evidencing such substitutions and releases on behalf of the City and the Redevelopment Agency.**

(Housing)

(Rules Committee referral 8/28/96)

Documents Filed: Memorandum from Director of Housing, Alex Sanchez, dated August 23, 1996, recommending Council and Agency Board adopt said resolutions.

Discussion/Action: William J. Garbett spoke against the proposed action. As a point of clarification, City Attorney, Joan R. Gallo, reiterated for the record that the affordability restrictions in the units in the Crescendo Project will be released only after building permits have been issued on the substitute units. Upon motion by Council Member Fernandes, seconded by Council Member Powers and unanimously carried, Resolution No. 66878, entitled: "A Resolution of the Council of the City of San José Designating Excess Affordable Units in the Renaissance Square, Villa Savannah, and Stonegate Housing Projects as Substitute Units to Allow the Release of Affordable Units in the Crescendo at River Oaks Housing Project and Authorizing the Director of Housing to Negotiate and Execute Necessary Documents", was adopted, and Redevelopment Agency Board Resolution No. 4137 designating the excess affordable units in the Renaissance Square, Villa Savannah, and Stonegate housing projects as substitute units to allow the release of affordable units in the Crescendo at River Oaks Housing project, and authorizing the Director of Housing to negotiate and execute necessary documents, was adopted. Vote: 11-0-0-0.

The Redevelopment Agency Board portion of the meeting was adjourned at 3:31 p.m.

ORAL COMMUNICATIONS

- (1) Ray Waechter, representing Power Bingo, and San José citizen Alice Orique, urged Council to allow the donation of electronic bingo players' equipment to non-profit organizations, pending ruling by the Office of the District Attorney and the Courts. He submitted a petition bearing approximately 70 signatures**

ORAL COMMUNICATIONS

of citizens requesting an amendment to the Municipal Code to permit the use of electronic bingo player's aides in the Charity bingo halls in San José and to exempt charitable bingo organizations from having to purchase said aides. City Attorney to submit report to the City Council.

- (2) David Wall spoke regarding alleged abuse of provisional appointments which violates certain sections of the City Charter.

RECESS/RECONVENE

Following Oral Communications, Council recessed at 3: 41 p.m. and reconvened at 7:05 p.m., Council Chambers, City Hall.

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

Absent: Council Members: Pandori (excused)

Assistant City Clerk, Nancy Alford, read the request for continuance of the application. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the below noted continuance was granted. Vote: 10-0-1-0. Absent: Pandori.

PUBLIC HEARINGS

- 15b **PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the east side of Capitol Avenue, 250 feet southerly of Cropley Avenue, from C-1 Commercial to A(PD) Planned Development, to allow up to 92 multi-family attached units on 3.8 gross acres (Paul Sade, Owner; JSM Enterprises, Developer). CEQA: ND. PDCSH 96-05-027 - District 4**

Documents Filed: None.

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

CEREMONIAL ITEMS

- 5a **Presentation of commendations to the organizers and supporters of the Bike to College Program for their dedicated efforts to raise money to send economically disadvantaged high school youth on tour of historically black colleges who otherwise would not be able to afford such a trip: Chris Parker, Executive**

Director of the Bike to College Program; Superior Court Judge Socrates Manoukian; Supervising District Attorney, Kurt Kumli; Police Chief Louis Cobarruviaz; Deputy Police Chief, Walt Atkins; Tony Brooks; Lisa Foxx; Carl Raye; and Tammie Tucker. (Woody)

Documents Filed: None.

Discussion/Action: Joined by Mayor Hammer at the Podium, Council Member Woody introduced Chris Parker, Executive Director of the Bike to College Program, and presented commendations to the supporters in recognition of their commitment to economically disadvantaged high school youth.

- 5c Presentation of commendations to the Central Valley Mercury Under 16 Girls Soccer Team who recently won the 1996 National Championship in Indianapolis, Indiana. (Fiscalini)
(Rules Committee referral 8/28/96)**

Documents Filed: None.

Discussion/Action: Council Member Fiscalini introduced Coach Vicki Wagner and Team Trainer Phillippe Blin, and Mayor Hammer presented commendations to Team Members Breana Boling, Krista Boling, Staci Duncan, Shaelyn Fernandes, Annie Griffith, Kristina Jacob, Anna Kraus, Elisa Montoya, Brooke O'Hanley, Alyson Ratzburg, Nicole Sachar, Kristen St.Clair, Danielle Slaton, Tiffany Tamashita, Lyda Velez, Alyson Wagner, Anne Zuparko, and Jessica Intrator.

PUBLIC HEARINGS

- 15a 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 8/20/96 - Item 15d)**

Documents Filed: None.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. Representing the applicant, Attorney Norm Matteoni requested a continuance of the item to allow the applicant to meet with the Planning Department regarding the septic system and leach fields. Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, stated the issue of the septic system was not presented to the Planning Commission nor addressed by the

Planning staff report; therefore, a supplemental report will be issued conveying to Council Staff's recommendation on the subject. Upon motion by Council Member Powers, seconded by Council Member Fiscalini and unanimously carried, the public hearing was closed and this item continued to October 1, 1996 with direction to Staff to prepare a supplemental report for Council consideration. Vote: 10-0-1-0. Absent: Pandori.

15c PUBLIC HEARING ON CONFORMING REZONING of the property located on the east side of Salt Lake Drive, opposite Baton Rouge Drive, from R-1:B-6 Residence to R-1 Residence, to allow a 4 lot subdivision on 0.667 gross acre (Abdy Mirzadegan, Owner/Developer). CEQA: Exempt. Director of Planning recommends approval. No Planning Commission action required.
C 96-07-038 - District 5

Documents Filed: (1) Department of Planning, Building and Code Enforcement Staff Report for C96-07-038, dated August 16, 1996 for approval, and recommending Council approve the rezoning. (2) Notice of Public Hearing to consider a change in Zoning for C96-07-038, dated August 12, 1996, and Proof of Publication submitted by the City Clerk. (3) Letter from Connie and G.E. Hendrickson, dated September 3, 1996, opposing the development of four units on the insufficient lot size.

Discussion/Action: Mayor Hammer opened the public hearing on the conforming rezoning of the subject property. The following citizens addressed Council on various aspects of the proposed rezoning: Carol Bower, Victor A. Deleon, Isabel Harrington, and Maneli Kelly. Regarding lot sizes and configuration, Council Member Diaz suggested that the applicant schedule community meetings with the residents to review design plans and to keep the residents informed of project developments. Pertaining to increased traffic in the area, he requested that Streets & Traffic conduct a traffic study and prepare a traffic analysis of the impacts, and to keep District Five Office informed of the progress. Upon motion by Council Member Diaz, seconded by Council Member Woody and unanimously carried, the public hearing was closed, Ordinance No. 25164, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Salt Lake Drive Opposite Baton Rouge Drive", was passed for publication. Vote: 10-0-1-0. Absent: Pandori.

15d PUBLIC HEARING ON CONFORMING REZONING of the property located on the northeast corner of Saratoga Avenue and Will Rogers Drive, from C-1 Commercial to C-2 Commercial, to allow commercial uses on 0.29 gross acre (Helen Wang, et al., Owner/Developer). CEQA: Exempt. Director of Planning recommends approval. No Planning Commission action required.
C 96-08-046 - District 1

Documents Filed: (1) Department of Planning, Building and Code Enforcement Staff Report for C96-08-046, dated August 15, 1996 for approval, and recommending

Council approve the subject rezoning. (2) Notice of Public Hearing to consider a change in Zoning for C96-08-046, dated August 12, 1996, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the conforming rezoning of the subject property. 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. 25165, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of Saratoga Avenue and Will Rogers Drive", was passed for publication. Vote: 10-0-1-0. Absent: Pandori.

ORAL COMMUNICATIONS

- (1) A. R. Turturici, representing residents of The Villages, addressed Council on dirt transport issues within The Villages; requested Council instruct City Staff not to issue the haul permit to UDC and to rescind the PD permit. City Attorney's Office, Public Works and Planning Departments and Council Member Woody to continue meeting with UDC on unresolved issues.
- (2) Pat Barrios, affiliated with San José PAL, informed Council of the lack of progress on the training facilities available to junior boxers. City Staff to investigate and Mayor's Office, City Manager and Council Member Diaz to work with citizen on the matter.

CLOSED SESSION REPORT

Disclosure of Closed Session Action of September 3, 1996 submitted by City Attorney, Joan R. Gallo:

A. Pending Litigation - Settlement(s) Authorized:

1. Case Name: *MANN v. City of San José, et al.*

Substance of Settlement: City to pay the total sum of \$67,500 in full settlement of the action.

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

Noes: None.
Absent: Diaz.
Disqualified: None.

ADJOURNMENT

The Council of the City of San José adjourned at 8:05 p.m. in memory of Tony Peters, successful owner and operator of Peter's Bakery on Alum Rock, and community activist in the City of San José.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK

By: _____
NANCY ALFORD, ASSISTANT CITY CLERK

RT