

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 17, 1996

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

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

Absent: Council Members: Diquisto.

Upon motion unanimously adopted, Council recessed to a Closed Session at 9:35 a.m. in Room 600 to (A) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9, under Subsection (a) to consider the cases of the Bronzynski v. City of San José; Mathews v. City of San José, et al.; Takele, et al. v. City of San José, et al.; City of San José v. Citation Homes; Tomaino v. City of San José, et al.; and Tapia v. City of San José, et al.; and (B) to confer with Legal Counsel pertaining to anticipated litigation where there is significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 of the Government Code, to discuss one matter, and to consider two matters regarding initiation of litigation pursuant to subdivision (c) of Section 54956.9 of the Government Code.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:40 a.m. and reconvened at 1:39 p.m. in Council Chambers, City Hall.

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

Absent: Council Members: Diquisto.

INVOCATION

Pastor John Helveston, East Valley Church, delivered the invocation. (District 8)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

The City Council joined Mayor Hammer in welcoming Joanna, the daughter of Pastor John Helveston, who accompanied her father to the Council meeting.

ORDERS OF THE DAY

Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Orders of the Day, deferring to October 1, 1996 Item 6e(1), and the Amended Agenda were approved. Vote: 10-0-1-0. Absent: Diquisto.

CEREMONIAL ITEMS

5a Presentation of plaque to Brian Root for 2 years 10 months' service on the Youth Commission. (Mayor)

Documents Filed: None.

Discussion/Action: The plaque for Brian Root will be mailed, as the honoree was unable to attend the Council meeting.

5b Presentation of a commendation to San José Lady Sharks for winning the 1996 A.S.A. Jr. Olympic 16 under Fast Pitch Softball National Championship. (Mayor)

Documents Filed: None.

Discussion/Action: Mayor Hammer introduced Team Manager Kevin Newman, Head Coach Sue Phillips-Chargin, and Assistant Coach Art Guterrez, and presented commendations to team members Kristina Anderson, Bonnie Brannen, Shelly Bruno, Stacy Bouldin, Sarah Caudle, Melissa Combes, Domenica Curran, Christine Gorshe, Jennifer Guglielmo, Kelly Morgan, Veronica Nelson, Akilah Ponds-Owens, Tiffany Scaglione, Alexandra Sickinger, Tiffany Satalino, and Kirsten Voak.

5c Presentation of a commendation to Carmen M. Gonzalez for her contributions to the City of San José. (Mayor) (Rules Committee referral 9/11/96)

Documents Filed: None.

Discussion/Action: Mayor Hammer presented the commendation to Carmen Gonzalez, owner and operator of Las Cazuelas Restaurant, who was accompanied by her son and daughter, and thanked her for the many years of service to the citizens of San José.

CONSENT CALENDAR

Upon motion by Council Member Powers, seconded by Vice Mayor Johnson and unanimously carried, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 10-0-1-0. Absent: Diquisto.

Minutes for Approval

6a(1) Adjourned Regular Meeting of June 20, 1996

Documents Filed: Minutes of the adjourned regular meeting of June 20, 1996.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: Diquisto.

6a(2) Regular Meeting of June 25, 1996

Documents Filed: Minutes of the regular meeting of June 25, 1996.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: Diquisto.

6a(3) Adjourned Regular Meeting of June 27, 1996

Documents Filed: Minutes of the adjourned regular meeting of June 27, 1996.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: Diquisto.

6a(4) Joint City Council/Redevelopment Agency Meeting of June 27, 1996

Documents Filed: Minutes of the joint Council/Agency meeting of June 27, 1996.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: Diquisto.

Ordinances for Final Adoption

6b(1) ORD. NO. 25159 - Amends Section 17.10.325 of Chapter 17.10 of Title 17 of the San José Municipal Code to make a technical correction and amends Section 17.10.420 of Title 17 to modify the criteria for the alteration or construction of single-family residences on existing lots within the Special Geologic Hazard Study Area.

Documents Filed: Proof of publication of the title of Ordinance No. 25159 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25159 was adopted. Vote: 10-0-1-0. Absent: Diquisto.

6b(2) ORD. NO. 25161 - Grants a Commercial Solid Waste Collection Franchise to AAA Express Roll-Off Disposal.

Documents Filed: Proof of publication of the title of Ordinance No. 25161 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25161 was adopted. Vote: 10-0-1-0. Absent: Diquisto.

6b(3) ORD. NO. 25164 - Rezones certain real property situated on the east side of Salt Lake Drive, opposite Baton Rouge Drive. C 96-07-038

Documents Filed: Proof of publication of the title of Ordinance No. 25164 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25164 was adopted. Vote: 9-0-1-1. Absent: Diquisto. Disqualified: Pandori, due to his absence at the September 3, 1996 public hearing.

6b(4) ORD. NO. 25165 - Rezones certain real property situated on the northeast corner of Saratoga Avenue and Will Rogers Drive. C 96-08-046

Documents Filed: Proof of publication of the title of Ordinance No. 25165 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25165 was adopted. Vote: 9-0-1-1. Absent: Diquisto. Disqualified: Pandori, due to his absence at the September 3, 1996 public hearing.

Plans and Specifications

6d(1) TRACT NO. 8857 - Southwest corner of Monroe and Hemlock Streets - MacKay and Somps, civil engineers for SCS Development Company, Inc., (Developer) - 124 single-family detached residential units. Adoption of a resolution approving the amended final map for Tract No. 8857. CEQA: ND. District 6. (Public Works)

Documents Filed: None.

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

Contracts/Agreements

- 6e(1) 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)
[Deferred from 8/20/96 - Item 6e(2)]**

Documents Filed: None.

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

- 6e(2) Approval of award of contract for Miscellaneous Installations to Municipal Water System Facilities to the low bidder, R. W. French Construction, in the amount of \$158,317.25. CEQA: Exempt. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated August 23, 1996, recommending Council approve said award to the low bidder, R.W. French Construction.

Discussion/Action: The award of contract to R.W. French Construction, the low bidder, was approved and execution of the contract authorized. Vote: 10-0-1-0. Absent: Diquisto.

- 6e(3) Approval of an amendment to the employment agreement with Vincent Cantore. (Fernandes)**

Documents Filed: None.

Discussion/Action: The amendment to the employment agreement with Vincent Cantore was approved and its execution authorized. Vote: 10-0-1-0. Absent: Diquisto.

- 6e(4) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1996-97 #4, and authorization for the Director of General Services to execute the purchase orders. (General Services)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated August 23, 1996, recommending Council award said open purchase orders list, and authorize the Director of General Services to execute the purchase orders.

Discussion/Action: The award of open purchase orders List No. 4 for FY 1996-97 was approved and execution of the purchase orders authorized. Vote: 10-0-1-0. Absent: Diquisto.

6e(5) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1996-97 #5, and authorization for the Director of General Services to execute the purchase orders. (General Services)

Documents Filed: (1) Memorandum from Director of General Services, Ellis M. Jones Jr., dated August 29, 1996, recommending Council award said open purchase orders list, and authorize the Director of General Services to execute the purchase orders. (2) Letter from Treatment Plant Advisory Committee, dated September 13, 1996, recommending approval of report on bids and a \$75,000 addition to an existing open purchase order, and authorize the Director of General Services to execute the purchase order.

Discussion/Action: The award of open purchase orders List No. 5 for FY 1996-97 was approved and execution of the purchase orders authorized. Vote: 10-0-1-0. Absent: Diquisto.

6e(6) Approval of a first amendment to the custodial service agreement for City facilities with Acme Building Maintenance Co., increasing the compensation by \$50,000, from \$756,790 to \$806,790. (General Services)

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated August 29, 1996, recommending approval of the first amendment to said agreement.

Discussion/Action: The first amendment to the custodial service agreement with Acme Building Maintenance Co., was approved and execution of the amendment authorized. Vote: 10-0-1-0. Absent: Diquisto.

6e(7) Adoption of a resolution authorizing the Director of General Services to negotiate and execute an agreement with Ciscorp, Inc., for a records management imaging system for the Planning, Building and Code Enforcement Department at a total amount of \$288,370, including tax, installation, integration, and implementation. (General Services)

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated August 29, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66879, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Negotiate and Execute an Agreement With Ciscorp, Inc., for a Records Management Imaging System for the Planning, Building and Code Enforcement Department", was adopted. Vote: 10-0-1-0. Absent: Diquisto.

6e(8) Adoption of a resolution:

- (a) Approving a Community Development Block Grant (CDBG) Predevelopment Loan of up to \$100,000 to Eden Housing Inc., for 1 (one) 200-unit family rental housing project, affordable to low- and very-low income households, on 7.3 acres of the Ohlone-Chynoweth Light Rail Station site located on the south side of the intersection of Chynoweth Avenue and Pearl Avenue.**
- (b) Authorization for the Director of Housing to negotiate and execute all necessary documents on behalf of the City.**
(Housing)

Documents Filed: None.

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

6e(9) Approval of an exception to the policy which requires that Community Development Block Grant (CDBG) funds remain in an allowed use for no less than 15 years, to allow for a five (5) year lease with a ten (10) year option, for the Parents Helping Parents (PHP) Family Resource Center Project. (Parks, Recreation and Neighborhood Services)

Documents Filed: Director of Parks, Recreation and Neighborhood Services, Ellis E. Mitchell, dated August 23, 1996, recommending Council approve said exception, and authorize the Human Services Administrator to negotiate and execute the lease.

Discussion/Action: The policy exception was approved and authorization granted for the Human Services Administrator to enter into an agreement with Parent Helping Parents to provide for the five-year lease with option. Vote: 10-0-1-0. Absent: Diquisto.

6e(10) Report on proposals and rejection of the sole proposal by Thermal Mechanical, Inc., for the Temporary Environmental Control System - San José McEnery Convention Center Project. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 13, 1996, recommending Council approve Staff recommendation.

Discussion/Action: In response to concerns expressed by Mayor Hammer and Council Member Powers regarding timely completion of the equipment necessary to house the Smithsonian Exhibit, Director of Public Works, Ralph A. Qualls, Jr., stated the approach to implementing the contractual requirements within the short time frame will be modified, because of the limited contractor resources available to perform the prescribed work. He stated a single technical proposal was received on August 7, 1996 and a cost proposal submitted to the City on September 4, 1996, which exceeded the Engineer's Estimate by approximately \$200,000; upon evaluating the cost proposal,

City Staff found it to be noncompetitive and recommends rejection. He stated the CAE Department will solicit proposals for renting a complete temporary system—material, equipment, installation and removal—to supplement the San José McEnery Convention Center house system for the duration of the Exhibit, which will be completed by Spring, 1997. The sole proposal was rejected and solicitation for a complete system authorized. Vote: 10-0-1-0. Absent: Diquisto.

6e(11) Approval of recycling and reuse agreements for the period July 1, 1996 to July 30, 1997, with The Salvation Army, in an amount not to exceed \$66,100.

(Environmental Services)

[Deferred from 9/3/96 - Item 6e(3)(b)]

Documents Filed: See Item 6e(3)(b) of the Minutes of September 3, 1996 meeting of the City Council.

Discussion/Action: The recycling and reuse agreements with The Salvation Army were approved and execution of the agreements authorized. Vote: 10-0-1-0. Absent: Diquisto.

6e(12) Approval of an employment agreement with Lisa Poelle. (Powers) (Orders of the Day 4a)

Documents Filed: None.

Discussion/Action: The employment agreement with Lisa Poelle was approved and its execution authorized. Vote: 10-0-1-0. Absent: Diquisto.

6e(13) (a) Adoption of a resolution authorizing the City Manager to negotiate and execute an amendment to the agreement for the Construction of Phase II Improvements at the Hayes Mansion with Hayes Renaissance, L.P. providing for the release of a portion of the retention for the Edenvale Garden park improvements and adding additional improvements to the park in the approximate amount of \$70,000.

(b) Adoption of appropriation ordinance amendments in the Council District 2 Construction and Conveyance Tax Fund in the amount of \$30,000.

(City Manager's Office)

(Rules Committee referral 9/11/96)

Documents Filed: Memorandum from Deputy City Manager Darrell Dearborn, and Budget Director Larry D. Lisenbee, dated September 6, 1996, recommending Council adopt said resolutions and ordinance amendments.

Discussion/Action: Resolution No. 66880, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an

Amendment to the Agreement for the Construction of Phase II Improvements at the Hayes Mansion Providing for a Release of a Portion of the Construction Retention and Additional Park Improvements in the Amount of \$70,000”; and Ordinance No. 25166, entitled: “An Ordinance of the City of San José Amending Ordinance No. 25131 Which Appropriates Moneys in the Construction and Conveyance Tax Fund to Establish an Appropriation for the Edenvale Garden Park Improvements Project in the Amount of \$30,000; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. Vote: 10-0-1-0. Absent: Diquisto.

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)

[Deferred from 9/3/96 - Item 6f(1)]

Documents Filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 26, 1996, recommending Council adopt said resolution. (2) Letter from Stanley K. Woo, Lion Development Co., Lion Estates, L.P., dated September 9, 1996, requesting an addition to the official record of the City Council on the Notice of Intent to Condemn Real Property. (3) Letter from Stanley K. Woo, Lion Development Co., Lion Estates, L.P., dated August 27, 1996, submitting Lion Estates’ position on the subject matter.

Discussion/Action: Stanley Woo, representing Lion Estates, L.P., requested the following statement to be included in the official record of the City Council: “The subject parcel has been under negotiation with Mr. Byron Jones, Real Estate Division, Public Works Department, City of San José, since March 1995. Based on the appraisal report requested by Lion Estates, the City’s offering price of \$190,000.00 was not acceptable to Lion Estates. Lion Estates would like to request a higher price which reflects a fair market value of the subject property”. Mr. Woo was advised that the City will continue negotiations toward a settlement with Lion Development Co., as well as proceed with the filing of the suit in eminent domain. Resolution No. 66881, entitled: “Resolution of Necessity of the Council of the City of San José Making Certain Findings and Determinations Relating to the Exercise of the Power of Eminent Domain Pursuant to Article 2, Chapter 4, Title 7 of Part 3 of the California Code of Civil Procedure for the Following Project: Silver Creek Linear Park; Authorizing and Empowering the City Attorney to Bring an Action in Eminent Domain to Acquire Certain Property for Said Project and to Apply for an Order of Possession Before Judgment and to Prosecute Said Action to Final Judgment; and Authorizing and Empowering the Deposit of Money in Court for Possession of Said Property From the Funds Lawfully Available Therefore”, was adopted. Vote: 10-0-1-0. Absent: Diquisto.

6f(2) Response to Grand Jury report regarding implementation of the Brown Act by local government agencies. (City Attorney)

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated August 9, 1996, recommending Council authorize a response to the Grand Jury.

Discussion/Action: William J. Garbett spoke against the proposed action. Referencing the City Attorney's memorandum of August 9, 1996, Council Member Fiscalini stated for the public record that "the City of San José was one of four cities cited as exceptional in their presentation of written procedures on the Brown Act". Council approved the City Attorney's recommendation to authorize the Mayor to send a letter on behalf of the City Council thanking the Grand Jury for its report and specifically for acknowledging San José as one of the communities which provides exceptional procedures to the public with respect to the application of the Brown Act to its meetings; in addition, the City Attorney's Office was directed to continue to update the written meeting procedures as recommended in the report from the Grand Jury. Vote: 10-0-1-0. Absent: Diquisto.

6f(3) Approval of the Administration's response to the 1995-96 Grand Jury's report "Review of Affordable Housing Programs of the County and City of San José." (City Manager's Office)

Documents Filed: Memorandum from City Manager, Regina V.K. Williams, dated August 23, 1996, recommending Council approve the response to the Grand Jury's report.

Discussion/Action: Regarding Council Member Diaz' inquiry pertaining to the City's planning efforts to address the reduction in Federal funding for the Housing Trust Fund, Director of Housing, Alex Sanchez, enumerated several of the steps already taken to address the reductions that have occurred during the past several years. He stated the Housing Department is pursuing the feasibility of a Housing Trust Fund to provide an ongoing and reliable revenue source for affordable housing; that the Department continues to seek funds for the Housing and Homeless Fund, with more than \$1 million identified and deposited in the Fund during FY 1995-96; and that the Department has streamlined processes in its Housing Rehabilitation and Project Development Programs to ensure that limited funds are used for program rather than administrative costs. He stated the City continues to place great importance on leveraging funds and has sought to develop new programs and efforts to ensure maximizing limited funds. He underscored the importance for the City to continue to work with its lobbyist in Washington, D.C., to ensure that Federal Housing and Community Development funds are maintained and that San José receives its fair share of those funds that are available. Council approved the response to the 1995-96 Grand Jury's Report, *Review of Affordable Housing Programs of the County and City of San José*, including the recommendation that the Mayor and City Council of the City of San José, the City Manager, and the Director of Housing continue to develop contingency planning for the forecasted reduction in Federal Housing funds. Vote: 10-0-1-0. Absent: Diquisto.

6f(4) Approval of the Administration’s response to the Grand Jury’s report “A Review of the Santa Clara County Sobering Station.” (City Manager’s Office)

Documents Filed: Memorandum from City Manager, Regina V.K. Williams, dated August 29, 1996, recommending Council approve the response to the Grand Jury’s report.

Discussion/Action: Council approved the recommended response to the 1995-96 Grand Jury’s report, *A Review of the Santa Clara County Sobering Station*. Vote: 10-0-1-0. Absent: Diquisto.

6f(5) Adoption of appropriation ordinance amendments to adjust various appropriations in the Gift Trust Fund. (City Manager’s Office)

Documents Filed: None.

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

6f(6) Adoption of resolutions to amend:

(a) Resolution 51872:

- (1) Exhibit 18, to create the class of Plant Assistant General Operations Supervisor (3617) at a salary range of 61H.**
- (2) Exhibit 21, to create the class of Department Training and Safety Administrator (1440) at a salary range of 61C.**
- (3) Exhibit 21, to adjust the salary of Central Procurement Manager (1546) at a salary range of 66C.**

(b) Resolution No. 66092:

- (1) Exhibit 05, to create the class of Alarm Technician (2233) at a salary range of 51D**
- (2) Exhibit 07, to change the Unit Designation of Senior Light and Sound Technician (3230) from Unit 03 to Unit 07 at no salary change.**

(Human Resources)

Documents Filed: Memorandum from Director of Human Resources, Nona Tobin, dated August 29, 1996, recommending Council adopt said resolutions.

Discussion/Action: Resolution No. 66882, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 51872 to (1) Amend Exhibit 18 to Create the Class of Plant Assistant General Operations Supervisor (3617) and (2) Amend Exhibit 21 to Create the Class of Department Safety and Training Administrator (1440) and (3) Amend Exhibit 21 to Adjust the Salary of Central Procurement Manager 1546), Effective September 22, 1996”; Resolution No. 66883, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 66092 Amending Exhibit I

of the Memorandum of Agreement Between the City of San José and Municipal Employees Federation (AFSCME) Local 101, Unit 5 (Administrative, Technical, Clerical and Custodial Employees) to Create the Class of Alarm Technician (2233), Effective September 22, 1996”; and Resolution No. 66884, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 66092 Amending Exhibit I of the Memorandum of Agreement Between the City of San José and Municipal Employees Federation (AFSCME) Local 101, Unit 7 (General Supervisory Employees) to Change the Unit Designation of Senior Light and Sound Technician (3230) From Unit 3 to Unit 7, Effective September 22, 1996”, were adopted. Vote: 10-0-1-0. Absent: Diquisto.

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - Meeting of August 28, 1996

Documents Filed: Rules Committee Report of August 28, 1996.

- (1) Review of September 10 Council Agenda

The Committee recommended cancellation of the September 10, 1996 Council meeting.

- (2) Add New Items to September 3 Amended Council Agenda

The Committee recommended six additions and one change to the September 3, 1996 Amended Council Agenda.

- (3) The Public Record. Attachments: (1) Memorandum from City Clerk, Patricia L. O’Hearn, dated August 22, 1996, listing the items transmitted to the Administration for the period August 14-20, 1996. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated August 26, 1996, summarizing the actions taken on items transmitted to the Administration and the items filed for the Public Record for the period August 14-20, 1996.

The Committee noted and filed the Public Record for the period August 14-20, 1996.

- (4) Boards and Commissions

- (a) CDBG Steering Committee. Attachment: Memorandum from Council Member Shirakawa, Jr., dated August 26, 1996, recommending Valarie Bennett-Lewis be appointed to the CDBG Steering Committee, and that the recruiting period be extended to September 13, 1996.

The Committee recommended appointment of Valerie Bennett-Lewis to fill the City Wide position on the CDBG Steering Committee for an unexpired term ending June 30, 2000, and directed the Office of the City Clerk to advertise until September 13, 1996 for applicants to fill the two District 3 vacancies on the CDBG Steering Committee.

- (5) Discussion and acceptance of:
- (a) Council Referral Summary
 - (b) FY 1995-96 Administrative Work Plan Year-End Status Report
 - (c) FY 1996-97 Administrative Work Plan

The Committee deferred this item to September 4, 1996 Rules Committee meeting and requested Council Members to review the documents and forward any comments to the Rules Committee.

- (6) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee

None presented.

- (7) City Council and Rules Committee meeting schedules

None presented.

- (8) Oral communications

William Garbett commented on the letters listed on the Public Record, housing issues, and the use of beta software by the City.

- (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 28, 1996 were accepted. Vote: 10-0-1-0. Absent: Diquisto.

Report of the Rules Committee - Meeting of September 4, 1996

Documents Filed: Rules Committee Report of September 4, 1996.

- (1) Review of September 17 Council Agenda

The Committee recommended approval of the September 17, 1996 Council Agenda with one addition and one change.

- (2) Add New Items to September 10 Amended Council Agenda

This item dropped - Meeting cancelled.

- (3) The Public Record

None filed.

- (4) Discussion and acceptance of:

- (a) Council Referral Summary. Attachment: Memorandum from Council Liaison, Norberto L. Duenas, dated August 22, 1996, transmitting to Rules Committee the updated Council Referral Summary.

The Committee accepted the Council Referral Summary with the following corrections/additions:

File #113: Narrow Subject to Animals Which are Given Away
File #249: Change Department to Planning
File #166: Drop
File #496: Add Training for Board and Commission Chairs
File #395: Change Due Date to 1997
File #525: Refer Back Through TD&E
File #394: Drop
Add: Live/Work Uses in Commercial Zones, PBCE
Department
Add: How to Deal With For Sale Vehicles on City
Streets, Streets and Traffic Department

- (b) FY 1995-96 Administrative Work Plan Year-End Status Report

The Committee deferred this item to September 18, 1996 Rules Committee.

- (c) FY 1996-97 Administrative Work Plan

The Committee deferred this item to September 18, 1996 Rules Committee.

- (5) Approve Board and Commission Annual Reports. Attachment: Memorandum from Assistant to the City Manager, Nina S. Grayson, dated August 27, 1996, recommending approval of the subject reports.

The Committee recommended approval of the Board and Commission Annual Reports.

- (6) Approve requests for use of Council General Funds. Attachments: (1) Memoranda from Council Member Diaz, dated August 22, 1996, from Vice Mayor Johnson, dated August 26, 1996, and from Council Member Powers, dated August 27, 1996, each requesting authorization for use of Council General funds to travel to Anaheim, CA (2) Memoranda from Council Member Diaz, dated August 20, 1996, and from Vice Mayor Johnson, dated August 26, 1996, requesting authorization for use of Council General funds to travel to San Antonio, TX. (3) Memorandum from City Clerk, Patricia L. O'Hearn, dated September 4, 1996, complying with City Council Policy 9-5 requirement when requests to use Council General Funds are considered by the Rules Committee.
- (a) For travel to the League of California Cities' Annual Conference in Anaheim, CA, October 12-15, 1996
 - (b) For travel to the National League of Cities' Congress of Cities in San Antonio, Texas, December 6-10, 1996

The Committee recommended approval for Council Members Diaz and Powers and Vice Mayor Johnson to use Council General funds to travel to Anaheim, CA, October 12-15, 1996 to attend the League of California Cities' Annual Conference; and recommended approval for Council Members Diaz and Vice Mayor Johnson to use Council General funds to travel to San Antonio, Texas, December 6-10, 1996 to attend the National League of Cities' Congress of Cities.

- (7) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee
- (a) Sub-standard business facilities at 102 through 150 Bellevue Avenue. Attachment: Memorandum from Council Member Shirakawa, Jr., dated August 27, 1996, requesting Rules Committee to forward to the appropriate Committee for study and solution to the substandard business facilities on Bellevue Avenue.

The Committee referred this issue to the City Attorney's Office for report back to the Rules Committee.

- (b) Rancho Drive public improvements. Attachment: Memorandum from Council Member Shirakawa, Jr., dated August 28, 1996, requesting Rules Committee to assign to the appropriate Committee the request for public improvements to Rancho Drive, with direction for the funding application to be submitted prior to October 28, 1996.

The Committee referred this issue to the Administration for report back to the Rules Committee.

(c) Little Orchard Street public improvements. Attachment: Memorandum from Council Member Shirakawa, Jr., dated August 28, 1996, requesting Rules Committee to forward to the appropriate Committee the request for public street improvements in the shelter area of Little Orchard Street, with instructions to make improvements with little cost to the City. The Committee referred this issue to the Administration for report back to the Rules Committee.

(8) City Council and Rules Committee meeting schedules

The Committee recommended approval for the October 1, 1996 City Hall in the Neighborhood to be held at Lynbrook High School in District One.

(9) Oral Communications

William Chew requested the City to activate public TV Channel 35.

(10) Adjournment

The meeting was adjourned at 3:30 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 September 4, 1996 were accepted. Vote: 10-0-1-0. Absent: Diquisto.

7d Report of the Finance Committee - August 28, 1996

Documents Filed: Finance Committee Report of August 28, 1996.

(1) Oral petitions

None presented.

(2) Monthly Investment Report for June 1996. Attachment: June 1996 Monthly Investment report, prepared by Finance Department, Treasury Division.

The Committee noted and filed the June 1996 investment report.

(3) Monthly Auditor's Report for July 1996. Attachment: Letter from City Auditor, Gerald A. Silva, dated August 21, 1996, submitting a written report of the Office of the City Auditor's activities for the month of July 1996.

The Committee noted and filed the July 1996 Auditor's report.

- (4) Report on Workers' Compensation Claims Validations Unit. Attachment: Memorandum from Director of Finance John V. Guthrie, and Chief of Police Louis A. Cobarruviaz, dated August 15, 1996, recommending Council end the Claims Validation Unit Pilot on September 30, 1996 and authorize the use of private investigators to perform surveillance on all City employees suspected of abusing the workers' compensation system.

The Committee recommended terminating the pilot program as of September 30, 1996, and directed that Staff return within 60-90 days to the Finance Committee with an implementation plan for keeping intact the concept of the Claims Validation Unit, the methods of financing, and setting appropriate targets.

- (5) Summary of Council Approved Recommendations Requiring Funding to be Implemented as of August 23, 1996. Attachment: Letter from City Auditor, Gerald A. Silva, dated August 21, 1996, transmitting the subject summary.

The Committee noted and filed the report.

- (6) Committee schedule

The Committee agreed to meet from 9:00 a.m. to 12:00 noon on September 25, 1996 and to schedule a special meeting on October 2, 1996, if necessary.

- (7) Adjournment

The meeting was adjourned at 10:38 a.m.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Fiscalini and unanimously carried, the Finance Committee Report and actions of August 28, 1996 were accepted. Vote: 10-0-1-0. Absent: Diquisto.

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 and 9/3/96 - Item 9a)

Documents Filed: (1) Supplemental memorandum from Telecommunications Director, Pamela K. Stone, dated September 6, 1996, responding to Council's questions about the Conduit Leasing Program of the Fiber Optics Conduit Project. (2) Memorandum from Telecommunications Director, Pamela K. Stone, dated August 14, 1996, submitting for Council consideration the Fiber Optics Conduit System Lease Program and City Network status report and recommendations. (3) Letter from San José Metropolitan Chamber of Commerce President/CEO Steven J. Tedesco, dated September 3, 1996, requesting a copy of the full financial analysis of the Fiber Optics and CityNet projects. (4) Document of "questions prepared by Sharon Knox, Pacific Bell Director of Government Services", dated September 3, 1996, submitted during public testimony.

Discussion/Action: City Manager, Regina V.K. Williams, stated the Administration's supplemental report to Council attempts to respond to questions related to the project and about the Conduit Leasing Program; however, the recommended action does not include authorization for Staff to move forward with the CityNetwork, at this time, other than a recommendation for the Administration to return with a workplan and a budget for preparation of a master plan for the development of a municipal fiber optics network. She stated the Administration is requesting Council direction to provide status reports to the Transportation, Development and Environment Committee in conjunction with updates on the SBWRP project. She stated the potential benefits to the City offer opportunities to build a fiber optics backbone for a City-wide network, as the open trench associated with the SBWRP represents an unprecedented opportunity for the City to install fiber optics conduit to lease to telecommunications service providers. She stated the analysis and marketing efforts completed to date confirm the feasibility of realizing the benefits and support the continuance of the project. She advised Council that five telecommunications providers have submitted letters of interest to the City, and that undertaking of this project will generate City revenues and reduce the number of street cuts associated with private installation of this infrastructure. Speaking in support of Staff recommendation, Council Member Fiscalini stated Item #3 of the recommendation should be expanded to give the Administration additional authority to develop an enterprise using its market analysis of the fiber optics network. William J. Garbett spoke against the proposed action. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the City Council (a) authorized 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 SBWRP; (b) directed Staff to submit updates on the progress of the project to the Transportation, Development and Environment Committee in conjunction with updates on the SBWRP project; (c) directed Staff to develop a workplan 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; and (d) authorized the Administration to use compiled market analysis of the fiber optics network to extend the system planning to ultimately develop an enterprise. Vote: 10-0-1-0. Absent: Diquisto.

**9b 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)
(Deferred from 9/3/96 - Item 9f)**

Documents Filed: (1) Memorandum from Board of Administration Secretary, Edward F. Overton, dated September 9, 1996, recommending acceptance of Jeffrey Perkins' resignation as Public Member on the Federated Retirement Board and appointment of applicant Frank Cetani. (2) Memorandum from Council Member Fiscalini, dated August 28, 1996, proposing Council decline the resignation and clarify the residency provisions of the Council Policy.

Discussion/Action: In response to Council Member Fiscalini's request for clarification of residency requirement for Retirement Board members, City Attorney, Joan R. Gallo stated the requirements for service on the Federated Boards differ from those set forth for appointees to other Boards and Commissions under Project Diversity; specifically, the residency requirement in City Council Policy O-4 does not apply to Retirement Boards. She stated requirements for service on the Federated Board are set forth by an ordinance which does not include a residency requirement, but enables the Board to operate distinctly through its own ordinance. She stated the City Council will have acted sufficiently, if automatic application of the Council Policy to the Retirement Board is not the intent of the City Council, and acceptance of the resignation of Jeff Perkins is declined. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the clarification that the Retirement Boards are not subject to residency provisions of City Council Policy O-4, was approved, acceptance of the public member's resignation declined, and the City Clerk directed to convey to Mr. Perkins the Council's decision regarding residency requirements and the status of his participation on the Retirement Board. Vote: 10-0-1-0. Absent: Diquisto.

9d Presentation from the Association of Retired San José Police Officers and Firefighters. (City Manager's Office)

Documents Filed: None.

Discussion/Action: This item was deferred to October 8, 1996.

**9e Adoption of a resolution authorizing the Director of General Services to execute two and one-half (2 1/2) year agreements to provide City-generated towing services beginning October 1, 1996, including four (4) one (1) year options to renew with Century Tow - Zone 3 and Delta Towing, Inc. - Zone 6.
(General Services)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated August 29, 1996, recommending Council adopt said resolution.

Discussion/Action: Jim Alves, President of Delta Towing, Inc., and Nemo Ganoza, owner of Century Tow, spoke in support of the proposed tow contract. Council Member Pandori stated his concerns are the same as those expressed in previous discussions of this issue, and that he would not support the contract award. Upon motion by Council Member Powers, seconded by Council Member Fiscalini and carried, Resolution No. 66885, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute an Agreement With Century Tow, Inc., and With Delta Towing, Inc. for Tow Operations for Zone Three for the Period October 1, 1996 to March 30, 1999”, was adopted. Vote: 9-1-1-0. Noes: Pandori. Absent: Diquisto

9f Report on bids and award of contract for the Kelley Park Parking Lot Improvements Project to the low bidder, O’Grady Paving, Inc., to include the Base Bid and Add Alternate Nos. 1, 2, and 3, in the amount of \$484,200, and approval of a contingency in the amount of \$50,000. CEQA: Exempt. (Public Works)

Documents Filed: (1) Supplemental memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 10, 1996, providing additional information obtained after the bid opening of September 5, 1996, and recommending Council award said contract to O’Grady Paving, Inc., the low bidder. (2) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 29, 1996, recommending Council accept the report on bids and award said contract to the low bidder.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the award of contract to O’Grady paving, Inc., the low bidder, was approved and execution of the contract authorized. Vote: 10-0-1-0. Absent: Diquisto.

9g Report on bid, waive a minor bid irregularity, and award of contract for the Alviso Ring Levee Wetland Mitigation and Restoration Project to the low bidder, RGW Construction, Inc., in the amount of \$426,250, and approval of a contingency in the amount of \$86,000. CEQA: Exempt. (Public Works)

Documents Filed: (1) Supplemental memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 12, 1996, recommending Council accept the report on bid, waive the minor bid irregularity, and award said contract to RGW Construction, Inc., the low bidder. (2) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 29, 1996, recommending Council accept the report on bids and award said contract to the low bidder.

Discussion/Action: Council Member Fernandes requested Staff notify Alviso residents of the proposed construction work on the levee and to present status reports to the Alviso Task Force. Upon motion by Council Member Fiscalini, seconded by Council

Member Powers and unanimously carried, the minor bid irregularity was waived, the award of contract to RGW Construction, Inc., the low bidder, was approved, and execution of the contract authorized. Vote: 10-0-1-0. Absent: Diquisto.

- 9h Adoption of a position in support of the Panoche Pass and the Pacheco Pass alignment for California Intercity High Speed Rail services to connect directly with the City of San José.**
[Transportation, Development and Environment Committee referral 8/22/96 - Item 7e(4)]

Documents Filed: See Transportation, Development and Environment Committee Report of August 22, 1996, Item 7e(4).

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and unanimously carried, adoption of a position in support of the Panoche Pass and the Pacheco Pass alignment for California Intercity High Speed Rail service to connect directly with the City of San José, was approved. Vote: 10-0-1-0. Absent: Diquisto.

- 9i Presentation of the 1996 Mid-Year Report, January 1 through June 30, 1996. (Independent Police Auditor)**
(Rules Committee referral 9/11/96)

Documents Filed: None.

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

- 9j Adoption of a resolution:**
- (1) Expressing its intent to issue up to \$32,000,000 in Multi-family Revenue Bonds for the purpose of providing financing for the 250-unit Almaden Lake Village Apartment Project on 5.401 acres of leased land located at the northwest corner of Coleman Road and Winfield Boulevard.**
 - (2) Authorizing the Director of Housing to file an application with the California Debt Limit Allocation Committee (CDLAC) for \$32,000,000 for the Almaden Lake Village Apartment Project.**
 - (3) Setting a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing on October 8, 1996 at 1:30 p.m. for the issuance of up to \$32,000,000 in Multi-family Tax Exempt Mortgage Revenue Bonds.**
 - (4) Authorizing the City Manager to negotiate and execute an agreement with Joe C. Litten, Litten Financial Consulting, to serve as Financial Advisor for the period September 1, 1996 to June 30, 1997, in an amount not to exceed \$45,000.**

(5) Authorizing the Director of Housing to negotiate and execute a Deposit and Escrow Agreement for the CDLAC Application for the Almaden Lake Village Apartment Project.

(Housing)

(Rules Committee referral 9/11/96)

Documents Filed: Memorandum from Director of Housing Alex Sanchez, and Director of Finance John V. Guthrie, dated September 12, 1996, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Upon motion by Council Member Dando, seconded by Council Member Fernandes and unanimously carried, Resolution No. 66886, entitled: "A Resolution of the Council of the City of San José Declaring the City's Official Intent to Issue Revenue Obligations for the Almaden Lake Village Multifamily Housing Project and Taking Other Related Action", was adopted. Vote: 10-0-1-0. Absent: Diquisto.

91 Discussion and direction regarding the Rosemary Gardens Neighborhood and Route 87 Project. (Pandori)
(Orders of the Day 4b)

Documents Filed: (1) Memorandum from Council Member Pandori, dated September 13, 1996, recommending Council approve the proposal to maintain the current schedule for completing Route 87 and to benefit the Rosemary Gardens neighborhood. (2) Correspondence and a petition bearing signatures of registered voters residing in the Rosemary Gardens neighborhood conveying their concerns regarding the condition of the Caltrans-owned properties on Guadalupe and urging Council to take immediate action on the matter.

Discussion/Action: Council Member Pandori stated the completion of Highway 87 is the highest transportation priority for the City of San José; however, the project is being delayed through litigation by residents remaining at the Caltrans-owned complex in the Rosemary Gardens area. Of the 79 units along Route 87 owned by Caltrans, he stated 20 units have been demolished; 49 of the 59 remaining units are vacant and boarded up; and 19 units can be demolished without negatively affecting the remaining tenants. He suggested that the City formerly notify Caltrans to terminate the leases of their remaining properties in the Rosemary Gardens neighborhood to accommodate the completion of Route 87 project. Regarding the remaining items of the recommendation as contained in his September 13, 1996 memorandum, he recommended Council approval with communications to Caltrans to expedite its demolition efforts. He pointed out that a petition bearing approximately 130 signatures of neighborhood residents and several letters were distributed to the City Council and made a part of the public record, expressing concerns about code enforcement and health and safety issues existing in the neighborhood. Amanda Wilson, Public Interest law Firm, representing the tenants; and Robert Hill, Rosemary Gardens Neighborhood Association, spoke in support of the recommended action. Regarding item #1 of the recommendation,

Council Member Diaz stated Caltrans should be encouraged to work with the tenants to provide relocation assistance and to complete vacation of the properties for immediate demolition. Upon motion by Council Member Pandori, seconded Vice Mayor Johnson and carried, the recommendation that the City of San José support Caltrans' efforts to terminate the leases of the remaining properties in the Rosemary Gardens neighborhood so the Route 87 project can remain on schedule, was approved Vote: 9-1-1-0. Absent: Noes: Diaz. Diquisto. Upon motion by Council Member Pandori, seconded Vice Mayor Johnson and unanimously carried, the recommendation that (1) the City of San José ask Caltrans to clean up trash and debris from the vacant properties in the Rosemary Gardens neighborhood, increase the frequency of the cleanups, and to add security to prevent illegal conduct from reoccurring in the neighborhood; and (2) that the City of San José ask Caltrans to proceed with the demolition of the 19 vacant properties that do not adjoin remaining tenants, were approved with Mayor Hammer authorized to convey in writing to Caltrans the City's position regarding the health and safety issues and its failure to address code enforcement issues at the Rosemary Gardens site. Vote: 10-0-1-0. Absent: Diquisto.

ORAL COMMUNICATIONS

- (1) Gabriella Wooley addressed Council on the adverse conditions created by street closures and traffic congestion resulting from the Mexican Independence Day festivities held in Downtown San José. She suggested that future festivals should be held at the Santa Clara County Fairgrounds. Mayor's Office and Council Members to work with City Staff on solutions to alleviate for next year's festival the problems created during the festival held earlier this year.
- (2) David S. Wall addressed Council on issues related to provisional appointments, equal employment protection, and adherence to specific mandates of the San José City Charter and Municipal Code.
- (3) Cathy S. Brandhorst spoke on the benefits of being an American citizen.

RECESS/RECONVENE

Following Oral Communications, Council recessed at 3:25 p.m. and reconvened at 7:10 p.m.

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

Absent: Council Members: Diquisto.

Assistant City Clerk, Nancy Alford, read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member, seconded by

Council Member and unanimously carried, the below noted continuances and other actions were granted. Vote: 10-0-1-0. Absent: Diquisto.

- 15a PUBLIC HEARING and adoption of an ordinance amending the L-R, IP-a, IP-b, IP-c, IP-d, I, M-1, and M-4 Industrial Zoning Districts of Title 20 of the San José Municipal Code, to make certain Permitted Uses Conditional Uses, add Permitted Uses and Conditional Uses, delete Conditional Uses, and other changes to conform with the SJ2020 General Plan.
(Planning, Building and Code Enforcement)
(Continued from 2/20/96 - Item 15b, et al. and 8/6/96 - Item 15b)**

Documents Filed: None.

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

- 15b PUBLIC HEARING ON THE APPEAL OF THE PLANNING COMMISSION'S DECISION to deny a Conditional Use Permit for a project located on the southeast corner of Harwood Road and Little Branham Lane, on a 0.56-gross-acre site in the C-1 Commercial Zoning District, to allow a cellular transeiving facility and to increase the maximum height from 35 to 65 feet for a monopole, and for a 144-square-foot equipment building (George Penz, Owner; GTE Mobilnet, Developer). CEQA: ND. Staff recommends upholding Planning Commission's decision.
CP 96-03-019 & V 96-03-010 - District 9
(Continued from 6/25/96 - Item 8b and 8/6/96 - Item 15d)**

Documents Filed: None.

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

- 15d PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southwest corner of Amaryl Drive and Sierra Road, from R-1:B-6 Residence Zoning District to A(PD) Planned Development Zoning District, to allow up to 7 single-family detached residential units on 1.25 gross acres (Northern California Baptist Conference, Owner; Braddock & Logan, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (7-0-0).
PDC 96-06-031 - District 4**

Documents Filed: (1) Memorandum from the Planning Commission, dated August 29, 1996, recommending Council adopt an ordinance approving the subject rezoning.
(2) Renotice of Public Hearing to consider a change in Zoning for PDC 96-06-031, dated August 19, 1996, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. Council Member Fernandes spoke in support of the proposed rezoning with the suggestion that the Developer work with the Berryessa Union Elementary School District on school availability requirements. Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25167, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of Amaryl Drive and Sierra Road", was passed for publication. Vote: 10-0-1-0. Absent: Diquisto.

- 15e PUBLIC HEARING ON CONFORMING REZONING of the property located on the west side of San Felipe Road, opposite The Villages Parkway, from A(PD) Planned Development to A(PD) Planned Development, to allow 27 single-family detached residential units on 57.5 gross acres (Roman Catholic Bishop of San José, Owner; Greenbriar Hillstone Ltd., Developer). CEQA: ND. Director of Planning recommends approval. No Planning Commission action required.
PDC 96-05-030 - District 8**

Documents Filed: (1) Department of Planning, Building and Code Enforcement Staff Report on PDC 96-05-030, dated September 3, 1996, recommending Council approve the proposed conforming PD rezoning. (2) Notice of Public Hearing to consider a change in Zoning for PDC 96-05-030, dated August 23, 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 Council Member Woody, seconded by Council Member Diaz and unanimously carried, the public hearing was closed, and Ordinance No. 25168, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of San Felipe Road Opposite The Villages Parkway", was passed for publication. Vote: 10-0-1-0. Absent: Diquisto.

- 15c PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the west side of S. King Road, 300 feet southerly of San Antonio Road, from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District, to allow up to 200 single-family detached residential units, 100 multi-family attached residential units for senior housing, 2-acre public park and a 9 hole golf course with a driving range, club house, and maintenance facility on 52.8 gross acres (Donald E. Allen, Owner; Green Valley Corporation, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (7-0-0).
PDCSH 96-04-020 - District 5**

Documents Filed: (1) Memorandum from the Planning Commission, dated August 29, 1996, recommending Council adopt an ordinance approving the subject rezoning.
(2) Public Hearing Notice to consider a change in Zoning for PDCSH 96-04-020, dated August 6, 1996, and Proof of Publication submitted by the City Clerk.
(3) Correspondence from Bella Rosa Mobilehome Park residents conveying to the City Council their concerns about the proposed development.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. Eric Hwang and James Beerer, representing Bella Rosa Mobilehome Park, spoke in support of the proposed rezoning. Marianne Bacigalupi of Barry Swenson Builders, representing Green Valley Corporation, assured Council that the safety and security issues as well as perimeter landscaping design will be addressed during the PD permit process, and that the Developer will meet with neighborhood residents to address all other concerns. As a condition of approval, Council Member Diaz stated satisfactory resolution of the following Plan provisions will need to be finalized at the PD permit stage of the project: Wrought iron fence as perimeter on King Road should be integrated with the safety netting; public art gate entry from the new public street onto King Road should be incorporated in the design and maintained by the homeowners association; provisions for 7' masonry wall between the neighborhood park and adjacent dwellings will be needed to shield and protect adjacent residential development from errant golf balls, in addition to planting ivy to discourage graffiti; construction of 7' good-neighbor fence surrounding the project, in order to provide added security for existing homes; for the senior housing component, the trash collector should be located at the rear of the complex; upgrade window design; construction of neighborhood park and golf course improvements to be completed during first phase of the housing development; regarding turn-key operations, consider the use of park dedication fees for physical park improvements made by the Developer. Council Member Diaz recommended Council direct that Staff consider the issues regarding development of the potential public facility as referenced in the August 9, 1996 memorandum from Carla Ruigh, Public Works Department, an addendum to the April 29, 1996 correspondence related to the proposed rezoning of the Thunderbird Golf Course site. Upon motion by Council Member Diaz, seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25169, entitled: "Ordinance of the City of San José Rezoning Certain Real Property situated on the West Side of King Road, 300 Feet Southerly of San Antonio Road", was passed for publication with direction that Staff work with the Developer to address at the PD Permit stage the conditions proposed by Council Member Diaz, e.g., appropriate fencing/safety netting at prescribed heights between residences and the golf course, installation and maintenance of landscaping, positioning of trash enclosures, review of window designs. Vote: 10-0-1-0. Absent: Diquisto.

9c Adoption of a resolution establishing Community Outreach Guidelines for affordable housing sponsors seeking City funding for their development proposals.

[Housing and Community Services Committee 8/5/96 - Item 7c(10)]
(Council Referral 8/20/96 - Item 7c(10))
(Deferred from 9/3/96 - Item 9h)

Documents Filed: See Housing and Community Services Committee Report of August 5, 1996, Item 7c(10).

Discussion/Action: Dave Fadness and Jayne Elkins, President of VEP Homeowners' Association, spoke in support of the proposed action and requested that Council endorse the concept of early notification of homeowners associations to participate in the planning of development of high-density and affordable housing projects in the membership areas. Council Member Dando stated the community outreach guidelines should include direct contact with adjacent neighborhood associations and homeowners within 300' of the proposed site, in addition to notifying the Council Member representing the District, and that this should occur prior to any aspect of a project being scheduled for Council consideration during a public hearing. In order to maintain an open and meaningful process for community input, and to keep the City's commitment to providing affordable housing, she stated the Council must require better community outreach earlier in the affordable housing process; therefore, the Housing Department should be proactive and notify communities similar to the Planning Department's notification and outreach procedures. She stated proposals for City-assisted housing projects should follow the same process as zoning projects, where the first step in the public process is community notification and the final step a scheduled public hearing. Council Member Pandori stated the proposed guidelines are the same as the current process for predevelopment loans, and that consensus of the Housing and Community Services Committee was to recommend Council approval. Regarding the timeline of the Community Outreach Guidelines as referenced in the staff report of July 25, 1996, he suggested that Staff, when developing the final document, provide ample flexibility for all parties to schedule community meetings, to evaluate the proposals and deal with development proposals and to make decisions accordingly. Council Member Powers stated the proposal seems to develop two different standards for different types of housing projects—one process for affordable and another for market rate housing projects—which is unfair and inequitable. For clarification, she stated the proposed criteria subjects affordable housing to greater scrutiny than market rate housing projects; and queried Staff on other processes which would result in the funding and the planning zonings presented simultaneously to Council in one public hearing. She disagreed with the proposed guidelines that provides the Council Member with the flexibility to deal with each development proposal on a case-by-case basis, since the policy should apply Citywide. She suggested that Council refer this item back to Housing and Community Services Committee for further consideration and development of an equitable process. In describing the difficulty of tracking the land use process in conjunction with the funding process, Director of Housing, Alex Sanchez, stated the process for City approval of the development of an affordable housing project has two parallel tracks – rezoning and funding. He stated the rezoning process includes the preparation of detailed plans for the development proposal and the determination of necessary offsite infrastructure improvements. He stated the plans required for submitting a rezoning application are the best means for neighboring

residents to understand the development proposal. He stated the process for making a City loan typically begins with the reservation of City funds for the project at a very early stage in the development process, sometimes before an application for rezoning is filed. He stated the fund reservation is a necessary part of the developer's assembly of financing commitment; in many cases the local government commitment of funds is a prerequisite to obtaining financing from other sources. As a point of clarification, City Attorney, Joan R. Gallo, stated the zoning application is submitted by the property owner; and many sponsors of affordable housing developments are nonprofit organizations, and as such, lack the resources to invest in the architectural and engineering services necessary to prepare plans in enough detail for a rezoning application before securing financing for the project; therefore, to connect the land use process simultaneously to the funding process is difficult. Reiterating the elements of the development application process, funding and land use portions, and roles of all parties involved, Council Member Fernandes agreed with the recommendation to refer the item to Committee for further discussion and clarification, and for the development of a process which would apply to both affordable and market rate housing projects Citywide. The motion by Council Member Dando, seconded by Council Member Pandori to approve Staff recommendation with addition of the proposed notification process, failed. 3-7-1-0. Noes: Diaz, Fernandes, Johnson, Powers, Shirakawa, Jr., Woody; Hammer. Absent: Diquisto. Referencing the concerns expressed by the City Council, City Manager, Regina V.K. Williams stated the objective is to create a balance between the developers and the public noticing process, and suggested that the Administration be allowed to revise the recommendation and report to the Housing and Community Services Committee within 30 days. Upon motion by Council Member Powers, seconded by Council Member Fernandes and carried, the resolution was not adopted and the item was referred back to Housing and Community Services Committee for a report to Council within 30 days. Vote: 9-1-1-0. Noes: Pandori. Absent: Diquisto.

- 9k**
- (1) Acceptance of the Status Report on Junk Guns.
(City Manager)**
 - (2) Approval of an ordinance amending Title 10 of the San José Municipal Code by adding new Sections 10.32.112 and 10.32.115 to Part 3 of Chapter 10.32 to make the provision of trigger locks and printed safe storage practice literature and the "Saturday Night Special" sale ban requirements of a Concealable Firearms Dealers License, and grounds for revocation of such license; and adding a new Chapter 10.33 to ban the sale of "Saturday Night Specials," also known as "Junk Guns."
(City Attorney's Office)**
- (Rules Committee referral 9/11/96)**

Documents Filed: (1) Memorandum from City Attorney, Joan R. Gallo, dated September 16, 1996, correcting the effective date of the ordinance from January 1, 1996 to January 1, 1997 to be consistent with other cities' ordinances. (2) Memorandum from City Attorney, Joan R. Gallo, dated September 12, 1996, submitting the draft of an ordinance banning the sale of *Saturday Night Specials* and

amending the existing Concealable Firearms Dealers Ordinance to include provisions for trigger locking devices and printed materials on safe storage practices of firearms. (3) Memorandum from City Attorney, Joan R. Gallo, dated September 17, 1996, advising Council of the potential liability if the City were sued and did not prevail in its defense of the proposed gun ordinance. (4) Memorandum from Council Member Fernandes and Vice Mayor Johnson, dated September 17, 1996, recommending Council approve the ban on the sale of *Saturday Night Specials* with an effective date of January 1, 1997. (5) Memorandum from Council Member Pandori, dated September 16, 1996, requesting the City Attorney provide estimates of *range of costs* the City might expect to pay for enforcing and defending the proposed gun ordinance. (6) Memorandum from Chief of Police, Louis A. Cobarruviaz, dated September 12, 1996, submitting a status report on Council referral regarding junk guns. (7) The following documents were submitted for the public record by citizens addressing Council on various aspects of the proposed gun ban: Letter from Senator Barbara Boxer, dated September 17, 1996, supporting the effort to ban “junk guns” in the City of San Jose; Independence Institute Issue Paper - “Children and Guns: Sensible Solutions”, by David B. Kopel, Golden, Colorado; “Crime, Deterrence, and Right-to-Carry Concealed Handguns”, dated July 26, 1996, prepared by John R. Lott, Jr., School of Law, and David B. Mustard, Department of Economics – University of Chicago – Chicago, ILL.; “Do Federal Gun Traces Accurately Reflect Street Crime?”, by David B. Kopel, dated February 2, 1996; copy of San José City Council Meeting Agenda for September 17, 1996 from the Website, making no mention of Item 9k– Status Report on Junk Guns; *ILA Research & Information Division Fact Sheet* - “Ten Myths About Gun Control”; from the Website, a copy of *The Wall Street Journal Interactive Edition*, “Clinton’s Gun Hoax”, dated September 17, 1996; “Misfire: Public Health and Misinformation”, produced by *Citizens Opposed to Waste in Government* in response to “Taking Aim at Gun Dealers: Contra Costa’s Public Health Approach to Reducing Firearms in the Community” and related tax-funded lobbying activities; “Rebuttal to CPCA Position Paper”, dated Wednesday, July 5, 1995, by Edgar A. Sutter, MD, National Chair, Doctors For Integrity in Policy Research, Inc.; “Gun Control and American Blacks”, by Raymond G. Kessler (pp. 476-478); VHS tape, bearing the legend “06/18/96 - 2hr 55min San José City Council meeting on handgun ban and related items plus media snippets” and “06/25/96 1hr 55min Santa Clara County Board of Supervisors meetings on Fairgrounds gun show ban”; copy of “Violence in America - Effective Solutions”, *Journal of the Medical Association of Georgia* by Edgar A. Suter, MD, Chair, Doctors For Integrity in Policy Research, Inc.; copy of *The Wall Street Journal*, *Wednesday, August 28, 1996*, “More Guns, Less Violent Crime”, “Principle 219 - From the Second Amendment”; Twelve (12) documents produced by “CrimeStrike - A Division of the National Rifle Association”; “Gun Control Sprouts From Racist Soil”, reprinted *Wall Street Journal* 11/21/91, by Roy Innis; “The Unconstitutional Bill of Rights”, by J. Neil Schulman; “The Application of the Legislative, Judicial and Criminal Justice Systems Against Black Ownership of Firearms From 1751-1865 and Its Parallels Today: Are We Missing the Message?”, by Richard Bash, submitted in partial completion of the requirements for AJ 511 Historical Perspective of Criminal Justice, Dr. Charles Tracy, March 2, 1995”; “The Failure of Gun Control - A Task Force Report to the President of the United States, the U.S. Congress and The American People, copyright 1995 by Citizens Committee for the Right to Keep and

Bear Arms”; The National Rifle Association Institute for Legislative Action documents entitled, “Kids & Guns” and “RS/ILA Fact Sheet on What Is the Gun Lobby? The Gun Lobby Is The People”; “Fact Sheet: Saturday Night Specials: The Affordable Handgun Debate”; undated documents entitled “Info From the NRA Members’ Council of Alameda County”; “San José City Council Gun Ordinance - Questions the City Council Should Answer”; copy of presentation by Johann Opitz, San José resident, dated September 17, 1996, opposing the ban on affordable handguns; Andrea Villasenor-Perry, dated September 17, 1996, supporting the proposed ban; and copy of presentation by George McClary, dated September 17, 1996, opposing the ban on firearms.

Discussion/Action: Setting forth time limitations for public testimony, Mayor Hammer stated approximately one hundred fifty (150) “Citizens Request to Speak” cards have been submitted; however, each viewpoint on the measure will be allotted a maximum of 60 minutes respectively to present its position, after which the City Council will deliberate and render its decision. She introduced Deputy Police Chief Skalland of the Bureau of Field Operation (BFO) and Police Lt. Babineau who were available for questioning. As co-author of the proposal with Vice Mayor Johnson, Council Member Fernandes stated the City Attorney was directed after a lengthy hearing June 18, 1996 on the subject of “junk guns” to draft an ordinance with a January 1, 1997 effective date to be consistent with actions taken by other California cities. For discussion purposes, she recommended and Vice Mayor Johnson concurred that Council approve the ban on “Saturday Night Specials”, require that concealable firearms dealers equip all concealable firearms sold with trigger locks or similar locking mechanisms, and require that, accompanying each sale, dealers provide printed materials advising purchasers on safe storage practices; continue to gather information and seek support for legislation to regulate the manufacture, sale, and use of certain handguns, and to create both statewide and national firearm injury reporting systems; that the Administration continue to gather information and seek legislative support to create a uniform firearm serial number program that would allow identification of specific firearm characteristics at the national level; and to continue evaluating existing property tracking software, conduct preparatory work for a new tracking system which will be considered for funding during the Mid-year Budget Review. She stated several major cities in the State of California have adopted similar ordinances, including San Francisco, Oakland, Berkeley, Alameda, El Cerrito, Hayward, San Pablo, Richmond, San Carlos, San Leandro, Belmont, and most recently Los Angeles; several other cities and counties are preparing for either their first or second readings, including Fremont, Livermore, San Mateo County, and Alameda County. She stated Pinole and Santa Cruz County have considered enacting legislation to ban the “junk guns”, and that the jurisdictions have selected January 1, 1997 as their effective date. The following citizens addressed Council in support of the ban: Police Chief Larry Todd, Santa Clara County Police Chief and California Police Chiefs Associations; Brenda Otey, Vice President N.A.A.C.P. of Santa Clara County; Dr. Luther Cobb, Trauma Unit, Valley Medical Center, Santa Clara County Medical Association; Anthony Ortiz, Director, Breakout Ministries; Eric Gorovitz, representing Legal Community Against Violence; Dr. Linda Murray, Superintendent, San José Unified School District; Paul J. Mulholland; Dr. Marty Fenstersheib, President, Santa Clara County Medical

Association; Dena Dickinson, Santa Clara County Public Health - School Link Services; Steve Arevalo, Director, Filipino Youth Coalition; Andrea Villasenor-Perry, Violence prevention Coordinator for Santa Clara County Public Health; George Carter; Stan Voyles, Deputy District Attorney, Santa Clara County; Gloria J. Baxter, Bill Wilson Center, Santa Clara County Social Services; Attorney Daniel Hoffman; Pastor Sonny Lara, MACSA Youth Minister; Akemi Flynn, Santa Clara County Catholic Charities; Gil Villagran, Social Services Agency; Mark Pertschale, Executive Director, Californians For Responsible Gun Laws; Bobbi Artz, Director, League of Women Voters; and Jimmy Clarke. Gia Daniller, representing U.S. Senator Barbara Boxer, read into the public record a letter supporting the ban on "junk guns" in the City of San Jose. The following citizens spoke in opposition to the proposed legislation: Gregory Nichols; Robert Litfin; Jeff Cullins; Joseph Banister, Federal Law Enforcement Officer; Robert A. Gorini, State Law Enforcement Officer; Mark Nissen; Duane R. Darr; Jared Wade; George Levy; Curtis Howland; Loyd B. Nesbitt; Bob Rapp; and Phil Nicholas. Speaking against the proposed gun ban, Nic Matulich presented a document entitled: "Crime Deterrence and Right-to-Carry Concealed Handguns"; Dionne Hewell, presented a document entitled: "Children & Guns: Sensible Solutions"; Jean Ghandchi, presented a document entitled: "Violence in America - Effective Solutions"; Alan Denney, presented a document entitled: "Do Federal Gun Traces Accurately Reflect Street Crime?", "Ten Myths About Gun Control", and a copy of the City Council Agenda as appeared on the Website; Jessie H. Arias, Jr., Junior American Legion, presented a document entitled: "Misfire: Public Health & Misinformation"; Phillip Reynolds, representing Olinder Neighborhood Association, presented a document entitled: "Gun Control and American Blacks"; David Keegan presented a labeled video tape; Pat Jorgenson presented a copy of "More Guns, Less Violent Crime", bearing "Wall Street Journal" dateline of Wednesday, August 28, 1996, "Principle 219 From the Second Amendment", and Principle 220 From the Third Amendment"; Gary Molle submitted a document entitled: "Who Kills The Law?, Crime Strike Special Report", "Keeping the Community"; and Todd Baltes, presented a document entitled: "Gun Control Sprouts From Racist Soil". Speaking in opposition to the recommendation made by Council Member Fernandes, Council Member Shirakawa, Jr., stated the ordinance will do nothing to get at the root causes of youth violence; however, direct education, identifying social causes of violence, and increasing funding for programs coordinated by Police Departments and the National Rifle Association are but a few ways to begin. Council Member Dando expressed support for the reasonable gun restrictions contained in the ordinance, but pointed out that gun control is the responsibility of State and Federal governments, and that the City should not risk costly litigation involving attorneys' fees, damages associated with unlawful denial of gun ownership and/or sales, and costs incurred in defending lawsuits through trial because of the ordinance. She endorsed the City Attorney's position that Council adopt the ordinance but suspend its enforcement until the Courts have rendered a final decision on the West Hollywood lawsuit filed by the National Rifle Association and the California Rifle and Pistol Association. She requested the Police Department follow up on statements made by individuals claiming "guns can be purchased within thirty minutes" in the City of San José. Council Members Fiscalini and Pandori agreed the probability that the Courts will find the proposed ordinance to be preempted by State law, and therefore illegal, highly probable; and until authorization has been granted

local governments to enact and enforce gun control measures, the Council should forego deliberation of the matter and concentrate on ordinances consistent with the laws of the State of California. The motion by Council Member Fernandes to approve the ban on "Saturday Night Specials", and to require that concealable firearms dealers equip all concealable firearms sold with trigger locks or similar locking mechanisms, and to require that, accompanying each sale, dealers provide printed materials advising purchasers on safe storage practices, was seconded by Vice Mayor Johnson. As a subsidiary motion, Council Member Dando moved to amend the main motion by supporting adoption of the ordinance but suspending enforcement of the gun ban provision until there is a final court decision upholding the validity of the ban, and that trigger locks and safe storage brochure provisions should be implemented immediately, was seconded by Council Member Pandori and carried. Vote: 3-7-1-0. Noes: Diaz, Fernandes, Johnson, Powers, Shirakawa, Jr., Woody; Hammer. Absent: Diquisto. Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and carried, the status report on Junk Guns was accepted; Ordinance No. 25170, entitled: "An Ordinance of the City of San José Amending Title 10 of the San José Municipal Code by Adding New Sections 10.32.112 and 10.32.115 to Part 3 of Chapter 10.32 to Make the Provision of Trigger Locks and Printed Safe Storage Practice Literature and the 'Saturday Night Special' Sale Ban Requirements of a Concealable Firearms Dealers License, and Grounds for Revocation of Such License; and to Add a New Chapter 10.33 to Ban the Sale of 'Saturday Night Specials', Also Known as 'Junk Guns'", was passed for publication, with recommendations contained in the September 12, 1996 memorandum from Police Chief Cobarruviaz, (1) to continue to gather information and seek support for legislation to (a) regulate the manufacture, sale, and use of certain handguns, and (b) to create both statewide and national firearm injury reporting systems; (2) that the Administration continue to gather information and seek legislative support to create a uniform firearm serial number program that would allow identification of specific firearm characteristics at the national level; and (3) to continue to evaluate existing property tracking software, conduct preparatory work for a new tracking system which will be considered for funding during the Mid-year Budget Review, were approved. Vote: 6-4-1-0. Noes: Dando, Fiscalini, Pandori, Shirakawa, Jr. Absent: Diquisto.

CLOSED SESSION REPORT

Disclosure of Closed Session Action of September 17, 1996 submitted by City Attorney, Joan R. Gallo:

A. Authority to Initiate Litigation:

Authority to initiate litigation was given in two (2) matters. The names of the actions and the defendants as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action is formally commenced.

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

Noes: None.
Absent: Diquisto.
Disqualified: None.

ADJOURNMENT

The Council of the City of San José adjourned at 10:45 p.m.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK

By: _____
NANCY ALFORD
ASSISTANT CITY CLERK

RT