

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, OCTOBER 1, 1996

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

Present: Council Members: Diaz, Diquisto, Fernandes, Fiscalini, Shirakawa, Jr.;
Hammer.

Absent: Council Members: Dando, Johnson, Pandori, Powers, Woody

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 cases *In re McIntosh; and Tyson v. City of San Jose*; (B) to confer with Legal Counsel regarding one matter on anticipated litigation and to discuss two matters pertaining to the initiation of litigation pursuant to subdivision (c) of Section 54956.9 of the Government Code; and (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6 regarding the following: City Negotiator: City Manager designee Darrell Dearborn for San José Police Officers' Association and International Association of Firefighters Employee Organizations.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:00 a.m.; due to the cancellation of the afternoon session, the City Council reconvened at 7:05 p.m., in the auditorium of Lynbrook High School, 1280 Johnson Ave., San José, CA 95129.

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

Absent: Council Members: None.

As a prelude to the meeting of the City Council, 11th Grade Students Ted Wang, on piano, and Clement Kiew, on flute, performed to the enjoyment of all in attendance. Joined by the City Council, Mayor Hammer acknowledged the talent of the musicians and thanked them for the "mini-concert".

INVOCATION

The Reverend A.J. Moore, Senior Minister, Church on the Rock, delivered the invocation. (District 9)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

The City Council joined Mayor Hammer in expressing appreciation to Lynbrook High School's Principal, Mike Hawkes, Assistant Principal Bill Hyland, Vocational Programs Coordinator Bill Richter, and students for their hospitality in hosting the meeting of the City Council.

ORDERS OF THE DAY

Upon motion by Council Member Fernandes, seconded by Council Member Powers and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 11-0-0-0.

Mayor Hammer announced the order of business for the evening and City Clerk, Patricia L. O'Hearn, read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member Fiscalini, seconded by Council Member Dando and unanimously carried, the below noted continuances and other actions were granted. Vote: 11-0-0-0.

PUBLIC HEARINGS

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

**PDC 95-06-034 - District 8
(Continued from 8/20/96 - Item 15g)**

Documents Filed: None.

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

15e 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.

PDC 96-06-031 - District 4

Documents Filed: None.

Discussion/Action: This item was dropped from the Agenda, as it was heard by Council on September 17, 1996, Item 15d.

- 15f PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the south side of McKee Road, 480 feet easterly of North Capitol Avenue, from R-1, R-2, and R-3 Residence Zoning District to A(PD) Planned Development Zoning District, to allow up to 92 multi-family attached residential units for senior housing on 1.5 gross acres (McKee Road Associates, Owner; JSM Enterprises, Developer). CEQA: ND. PDCSH 96-05-024 - District 5**

Documents Filed: None.

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

- 15g PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the south side of Stevens Creek Boulevard, 140 feet easterly of Stern Avenue, from C-1 and C-3 Commercial Zoning District to A(PD) Planned Development Zoning District, to allow up to 315 multi-family attached residential units on 7.94 gross acres (Hudson et al., Owner; Bay Apartment Communities, Inc., Developer). CEQA: ND. PDC 96-06-033 - District 1**

Documents Filed: None.

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

CEREMONIAL ITEMS

- 5a Swearing in of Youth Commissioners representing Districts 2, 4, 5, 6, 8, 9, 10, and City-Wide. (Mayor)**

Documents Filed: None.

Discussion/Action: Representing District 2, Youth Commissioner David Chau, student at Santa Teresa High School, was introduced by Council Member Powers; Council Member Diaz introduced Youth Commissioner Ernesto Gutierrez, a junior at James Lick High School, representing District 5; Council Member Diquisto introduced Youth Commissioner Emily Kane, a student at Willow Glen High School, representing District 9; representing District 8, Youth Commissioner Sabrina Rusnak, a student at Preservation High School, was introduced by Council Member Woody; representing District 10, Youth Commissioner Lindsey Neilsson, a student at Preservation High

School, was introduced by Council Member Dando; Incumbent Youth Commissioner Laura Melendez, a student at Independence High School, was introduced by Council Member Fernandes; representing District 6, Incumbent Youth Commissioner Michel Amaral, a student at Bellarmine College Preparatory, was introduced by Council Member Fiscalini; and Mayor Hammer introduced Citywide representative, Youth Commissioner Micael Estremera, a student at Bellarmine College Preparatory, and parents Tony and Yolanda Estremera. Incumbent Youth Commissioners Erika Nelson–Lynbrook High School, James Zoulas–Bellarmine College Preparatory, and Stephanie Kong–Notre Dame High School Senior, currently representing Districts 1, 3, and 7 respectively, were introduced by Vice Mayor Johnson, Council Member Pandori, and Council Member Shirakawa, Jr. City Clerk Patricia L. O’Hearn administered the Oath of Office to all Youth Commissioners. The City Council joined Mayor Hammer in commending the Commissioners for their commitment and outstanding contributions to the citizens of San José; and the families and friends of the Commissioners were asked to stand and be recognized.

5b Presentation to the Lynbrook High School Epic Newspaper staff and faculty advisor. (Johnson)
(Rules Committee referral 9/25/96)

Documents Filed: None.

Discussion/Action: Joined by Mayor Hammer, Vice Mayor Johnson introduced ten members of the Lynbrook High School Epic Newspaper staff and presented a commendation to Faculty Advisor Arnetta Garcin.

5c Presentation to the Archbishop Mitty High School Christian Service Committee. (Johnson)
(Rules Committee referral 9/25/96)

Documents Filed: None.

Discussion/Action: Joined by Mayor Hammer, Vice Mayor Johnson introduced seven members of the Archbishop Mitty High School Christian Service Committee and presented a commendation to the organization.

5d Presentation to the Prospect High School Spanish Club. (Johnson)
(Rules Committee referral 9/25/96)

Documents Filed: None.

Discussion/Action: Joined by Mayor Hammer, Vice Mayor Johnson introduced six members of the Prospect High School Spanish Club and presented a commendation to Faculty Advisor Carole Crane.

**5e Presentation to the Westmont High School Link Crew. (Johnson)
(Rules Committee referral 9/25/96)**

Documents Filed: None.

Discussion/Action: Joined by Mayor Hammer, Vice Mayor Johnson introduced four members of the Westmont High School Link Crew and presented a commendation in recognition of their dedication in facilitating the transition for incoming freshmen from middle school to high school.

City Manager, Regina V.K. Williams announced the appointment of Tom Manheim as the new Public Education and Community Outreach Manager for San José, responsible for development of Channel 35A programming and the enhancement of the currently decentralized department efforts to keep the citizens of San José informed about their City services and programs.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - Meeting of September 18, 1996

Documents Filed: Rules Committee Report of September 18, 1996.

- (1) Review of October 1 Council Agenda. Attachment: Memorandum from Council Member Pandori, dated September 18, 1996, requesting the scheduling for October 1, 1996 Council meeting to include the discussion and direction regarding the traffic impact and traffic diversion measures associated with large festivals.

The Committee recommended approval of the October 1, 1996 Council Agenda with one addition and referred Council Member Pandori's issue to the Housing and Community Services Committee for a final report to coincide with the Downtown Festival Task Force Report.

- (2) Add New Items to September 24 Amended Council Agenda

The Committee recommended five additions to the September 24, 1996 Amended Council Agenda.

- (3) The Public Record. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated September 12, 1996, 1996, listing the item transmitted to the Administration and the item filed for the Public Record for the period September 4-10, 1996.

The Committee noted and filed the Public Record for the period September 4-10, 1996.

- (4) FY 1995-96 Year End Work Plan Status Report and FY 1996-97 Work Plan

The Committee reviewed the FY 1995-96 Year-End Work Plan Status Report and will continue discussion of the FY 1996-97 Work Plan at September 25, 1996 Rules Committee meeting.

- (5) Approve request for use of Council General Funds for travel to the National League of Cities' Conference in San Antonio, Texas, December 6-10, 1996. Attachments: (1) Memorandum from Council Member Powers, dated September 5, 1996, regarding authorization to travel to San Antonio, TX. (2) Memorandum from City Clerk, Patricia L. O'Hearn, dated September 18, 1996, complying with City Council Policy 9-5 requirement when requests to use Council General Funds are considered by the Rules Committee.

The Committee approved the use of Council General Funds by Council Member Powers to attend the National League of Cities Conference in San Antonio, Texas, December 6-10, 1996.

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

[a] Incorporation of County-zoned neighborhoods into District 7. Attachment: Memorandum from Council Member Shirakawa, Jr., dated September 5, 1996, requesting consideration of the incorporation of County-Zoned Neighborhoods into District 7 be assigned to the appropriate Committee.

The Committee referred this issue to the Administration with direction to begin the process of annexation.

- (7) City Council and Rules Committee meeting schedules

The Committee recommended the following:

- Cancel the afternoon session of the October 1, 1996 Council meeting.
- Cancel the evening session of the November 5, 1996 Council meeting.

- (8) Oral communications

None presented.

- (9) Adjournment

The meeting was adjourned at 3:35 p.m.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and unanimously carried, the Rules Committee Report and actions of September 18, 1996 were accepted. Vote: 11-0-0-0.

Report of the Rules Committee Meeting of September 25, 1996 - (Partial)

Documents Filed: Rules Committee Report of September 25, 1996.

- (6) Approve City Positions on November 1996 Ballot Propositions. Attachments: Supplemental memorandum from Director of Intergovernmental Relations, Georgiana Flaherty, dated September 30, 1996, recommending Council approve a support position on Proposition 217. (2) Memorandum from Director of Intergovernmental Relations, Georgiana Flaherty, dated September 19, 1996, recommending approval of the recommended City position for each of the statewide ballot propositions set for the November 5, 1996 general election.

The Committee approved the following City positions for the Statewide Ballot Propositions set for the November 5, 1996 General Election, with the recommended position on Proposition 208 changed from SUPPORT to NO POSITION, with Council Member Fernandes dissenting.

Proposition 204 Safe, Clean, Reliable Water Supply Act
Recommended City Position: SUPPORT

Proposition 205 Youthful and Adult Offender Local Facilities Bond Act of 1996
Recommended City Position: SUPPORT

Proposition 206 Veterans' Bond Act of 1996
Recommended City Position: SUPPORT

Proposition 207 Attorneys. Fees. Right to Negotiate. Frivolous Lawsuits
Recommended City Position: OPPOSE

Proposition 208 Campaign Contributions and Spending Limits. Restricts Lobbyists
Recommended City Position: NO POSITION. Noes: Fernandes

Proposition 209 Prohibition Against Discrimination or Preferential Treatment by State and Other Public Entities
Recommended City Position: OPPOSE

Proposition 210 Minimum Wage Increase
Recommended City Position: NO POSITION

Proposition 211 Attorney-Client Fee Arrangements. Securities Fraud. Lawsuits
Recommended City Position: OPPOSE

Proposition 212 Campaign Contributions and Spending Limits Repeals Gift and Honoraria Limits, Restricts Lobbyists
Recommended City Position: OPPOSE

Proposition 213 Limitation on Recovery to Felons, Uninsured Motorists, Drunk Drivers
Recommended City Position: SUPPORT

Proposition 214 Health Care. Consumer Protection
Recommended City Position: OPPOSE

Proposition 215 Medical Use of Marijuana
Recommended City Position: OPPOSE

Proposition 216 Health Care. Consumer Protection. Taxes on Corporate Restructuring
Recommended City Position: OPPOSE

Proposition 217 Top Income Tax Brackets. Reinstatement. Revenues to Local Agencies
Recommended City Position: POSITION PENDING

Proposition 218 Voter Approval for Local Government Taxes Limitations on Fees, Assessments and Charges
Recommended City Position: OPPOSE

Discussion/Action: Council Members Dando and Fernandes reiterated their opposition to the Rules Committee's recommendation of "No Position" on Proposition 208, and underscored their "Support" for the proposition. Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini and unanimously carried, the Rules Committee Report (partial) and actions of September 25, 1996 were accepted with Council Members Dando and Fernandes in SUPPORT of Proposition 208 and opposed to City Recommended Position of NO POSITION. Vote: 11-0-0-0.

GENERAL GOVERNMENT

9a Presentation of the 1996 Mid-Year Report, January 1 through June 30, 1996. (Independent Police Auditor) (Deferred from 9/17/96 - Item 9i)

Documents Filed: (1) Memorandum from City Attorney, Joan R. Gallo, dated October 1, 1996, responding to questions raised by the Council regarding the handling of complaints. (2) Memorandum from Chief of Police, Louis A. Cobarruviaz, dated September 13, 1996, recommending acceptance of the Police Department response to the Mid-Year 1996 Report of the Independent Policy Auditor. (3) Memorandum from Independent Police Auditor, Teresa Guerrero-Daley, dated September 17, 1996,

transmitting the Midyear Report for Council review, approval, and referral of recommendations to the City Manager.

Discussion/Action: Independent Police Auditor, Teresa Guerrero-Daley, presented a summary of the Midyear Report detailing the activities of the Office of the Independent Police Auditor, including statistical data, ongoing changes that have taken place at the San José Police Department's Professional Standards and Conduct Unit, and an update on previous issues and recommendations. Regarding the recommendations, she underscored the necessity for maintaining an "early warning" system and a commitment from the Chief of Police to ensure all PSCU investigators are trained on the use of the newly designed database which will facilitate the flow of information between the PSCU and the IPA and reduce investigators' workload. She recommended that the investigation of "Use of Force" complaints where emergency medical care is required should be given priority and completed within 120 days. In addition to allowing access to E-mail, she stated access to the Internet is recommended in order to facilitate dissemination of the information contained in the Police Auditor's Public Reports. In her review of pending recommendations raised on previous reports, she stated policy and procedure changes addressing secondary employment by San José Police Officers should be revised, and that a time frame for installation of the interview and intake office space for the PSCU is requested. The City Council joined Mayor Hammer in commending Teresa Guerrero-Daley on the outstanding reporting of the data contained in the quarterly summary. Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and unanimously carried, the 1996 Mid-Year Report was approved and recommendations referred to the Office of the City Manager with direction to work with the Mayor's Office in providing necessary hardware and software to connect the Office of the Independent Police Auditor to the City Network. Vote: 11-0-0-0.

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 9/3/96 - Item 15a)

Documents Filed: (1) Memorandum from Mayor Hammer and Council Member Powers, dated September 25, 1996, recommending that the Planned Development Rezoning be referred back to the Planning Commission for review of the proposed plan with the inclusion of individual sewer connections. (2) Memorandum from the Planning Commission, dated September 13, 1996, recommending Council approve the subject PD rezoning as proposed on the final plans with additional conditions for length of stay limitations. (3) Memorandum from the Planning Commission, dated July 19, 1996, recommending Council adopt an ordinance approving the subject rezoning. (4)

Notice of Public Hearing to consider a change in Zoning for PDC 95-05-030, dated November 21, 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 Powers stated the Planning Commission held a public hearing on June 26, 1996 to consider the proposed rezoning to allow a recreational vehicle park, however, the plans did not include individual sewer connections. She stated the Planning Staff has raised several concerns regarding the intensity of the land use associated with individual sewer connections, and since the issue has not been addressed at a Planning Commission hearing, Council does not have the benefit of input from the Commission. She stated the zoning should be referred back to the Planning Commission for review and recommendation. Upon motion by Council Member Powers, seconded by Council Member Fiscalini and unanimously carried, the public hearing was closed, the Planning Commission recommendation was not approved, and the recommendation as contained in the September 25, 1996 memorandum from Mayor Hammer and Council Member Powers to refer this item back to the Planning Commission for review of the proposed plan with the inclusion of individual sewer connections, was approved. Vote: 11-0-0-0.

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 et al., and 9/17/96 - Item 15b)

Documents Filed: (1) Supplemental memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated September 18, 1996, transmitting petitions, cards, and letters from City of San José residents and GTE Mobilnet customers in support of the project. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated September 13, 1996, attaching 11 statements from City of San José residents and GTE Mobilnet customers in support of the project. (3) Memorandum from Council Member Diquisto, dated August 8, 1996, recommending Council uphold the Planning Commission's decision to deny said Conditional Use Permit. (4) Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated July 19, 1996, recommending Council uphold the decision of the Planning Commission and deny the subject CUP and include in its resolution the findings and conditions as contained in the Planning Commission Resolution. (5) Notice of Public Hearing to consider a change in Zoning for PDC 95-06-034, dated August 6, 1996, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the appeal of the Planning Commission's decision to deny a CUP for the subject project. Ray Hashimoto of JM Consulting Group, representing GTE Mobilnet, appealed the Planning Commission decision asserting that the project conforms to City Council Policy on *Monopoles and Cellular Telephone Facilities*, and that a height variance from the Zoning Code for the 65-foot pole is needed to provide adequate cellular coverage. With the use of transparencies, he presented a comprehensive summary of the proposed 65-foot "slim pole" site design, including installation of landscaped setbacks from existing residential units to reduce visual impacts, and explained the need for a 65-foot monopole to compensate for the 20-foot soundwalls and subgrade roadbed along Highway 85. He referenced a petition from residents in support of GTE Mobilnet's efforts in improving cellular service along the Highway 85/Camden corridor with the installation of a monopole antenna facility and its attending structures on or adjacent to the business property at the corner of Harwood Road and Little Branham Lane, and urged Council to approve the appeal and the Conditional Use Permit for the facility. Council Member Diquisto stated area residents have submitted letters and petitions bearing in excess of 200 signatures opposed to the installation of the cellular telephone antenna; and that this position in addition to the decision of the Planning Commission to deny the Permit, substantiates his reason for recommending Council uphold the Planning Commission decision. Given the recommendation by Council Member Diquisto, Mayor Hammer extended an invitation to the citizens opposed to the installation to make their presentation; however, they declined. Upon motion by Council Member Diquisto, seconded by Council Member Fiscalini and unanimously carried, the public hearing was closed, the appeal was denied and the Planning Commission recommendation approved, and Resolution No. 66899, entitled: "Resolution of the Council of the City of San José Denying a Conditional Use Permit and Development Variance to Use Certain Real Property Described Herein for the Purpose of a Cellular Transceiving Facility and to Increase the Maximum Height From 35 to 65 Feet for a Monopole", was adopted. Vote: 11-0-0-0.

15d 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. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).

PDCSH 96-05-027 - District 4

(Continued from 9/3/96 - Item 15b)

Documents Filed: (1) Memorandum from the Planning Commission, dated September 13, 1996, recommending Council adopt an ordinance approving the subject rezoning. (2) Correspondence from JSM Enterprises and East Side Union High School District regarding the Compromise Settlement Agreement and General Release for the proposed affordable multi-family development. (3) Notice of Public Hearing to consider a change in Zoning for PDCSH 96-05-027, dated July 15, 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. There was no discussion from the Floor. 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. 25173, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Capitol Avenue, 250 Feet Southerly of Cropley Avenue", was passed for publication. Vote: 11-0-0-0.

- 15h PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southeast side of McKean Road, 2,250 feet southerly of Bailey Avenue, from R-1:B-3 Residence to A(PD) Planned Development, to allow a 27 hole golf course and ancillary uses on 347 gross acres (Figgie Properties, Inc., Owner; The Tradition Golf Club, Inc., Developer). CEQA: EIR Resolution to be adopted. Director of Planning recommends approval. Planning Commission recommends approval (5-0-2).
PDC 96-03-013 - District 10**

Documents Filed: (1) Memorandum from the Planning Commission, dated September 26, 1996, recommending Council adopt an ordinance approving the subject rezoning. (2) Notice of Public Hearing to consider a change in Zoning for PDC 96-03-013, dated September 4, 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. Representing the applicant, Norm Matteoni of Matteoni, Saxe & Nanda, spoke in support of the proposed development. In her endorsement of the proposed 27-hole public golf course and ancillary uses on 347 gross acres, Council Member Dando stated the City Council has made findings that the EIR for the project identified growth inducement as significant and unavoidable; that this zoning would allow an open space recreational use in accordance with the General Plan Greenline Strategy and provide a much needed golf course; that the project implements the recreational goals of the General Plan and preserves the natural scenic in open space resource while allowing public access; and that these benefits outweigh the significant unavoidable impacts. Upon motion by Council Member Dando, seconded by Council Member Shirakawa, Jr. and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25174, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated at the East Side of McKean Road, Approximately 2,250 Feet Southerly of Bailey Avenue", was passed for publication; and CEQA Resolution No. 66899.1, entitled: "Resolution of the Council of the City of San José Making Certain Findings Required by the California Environmental Quality Act in Connection With a Project Consisting of a Planned Development Rezoning of Approximately 347 Acres on the Easterly Side of McKean Road, Approximately One-Half Mile South of Bailey Avenue, to Allow the Construction of the Tradition Golf Club a Public 27-Hole Championship Golf Course and Clubhouse Development, for Which an Environmental Impact Report Has Been Prepared", was adopted. Vote: 11-0-0-0.

GENERAL GOVERNMENT

- 9b** **Consideration of a request from the Guadalupe River Park and Gardens Association to rename the portion of the Guadalupe River Park from Highway 280 to Julian Street *Guadalupe River Park and Gardens*. (Parks & Recreation Commission)**

Documents Filed: (1) Letter from Gloria C. Duffy, President, Guadalupe River Park & Gardens, dated September 26, 1996, urging Council support of the Parks & Recreation Commission recommendation to name the portion of the Guadalupe River Park from Highway 280 to Julian Street “Guadalupe River Park and Gardens”. (2) Letter from Parks & Recreation Commission, Linda Herschbach, Chairperson, dated August 26, 1996, requesting the City Clerk to schedule the renaming of a specified portion of Guadalupe River Park to Guadalupe River Park and Gardens.

Discussion/Action: Gloria Duffy, President, Board of Directors, and Kathy Muller and Virginia Holtz, all representing Guadalupe River Park & Gardens, spoke in support of the naming issue. Upon motion by Vice Mayor Johnson, seconded by Council Member Pandori and unanimously carried, the Parks and Recreation Commission recommendation to rename that portion of Guadalupe River Park from Highway 280 to Julian Street *Guadalupe River Park and Gardens*, was approved with the name of Guadalupe River Park for that portion north of Julian Street, retained. Vote: 11-0-0-0.

ORAL COMMUNICATIONS

Karen P. Anderson urged Council to assign law enforcement officers to Lynbrook School campus to direct traffic and cite drivers traveling in an opposite direction on a one-way private driveway on school property. Citizen was informed that San José Police Officers will not be utilized as traffic guards and that concerns regarding traffic related activities should be coordinated with the County or District Office of Education.

Council Member Pandori left the auditorium at this point in the meeting.

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: 10-0-1-0. Absent: Pandori.

Minutes for Approval

- 6a(1) Regular Meeting of August 13, 1996**

Documents Filed: Minutes of the Regular Meeting of August 13, 1996.

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

Ordinances for Final Adoption

- 6b(1) ORD. NO. 25167 - Rezones certain real property situated on the southwest corner of Amaryl Drive and Sierra Road
PDC 96-06-031**

Documents Filed: Proof of publication of the title of Ordinance No. 25167 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25167 was adopted. Vote: 10-0-1-0. Absent: Pandori.

- 6b(2) ORD. NO. 25168 - Rezones certain real property situated on the west side of San Felipe Road opposite The Villages Parkway.
PDC 96-05-030**

Documents Filed: Proof of publication of the title of Ordinance No. 25168 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25168 was adopted. Vote: 10-0-1-0. Absent: Pandori.

- 6b(3) ORD. NO. 25169 - Rezones certain real property situated on the west side of King Road, 300 feet southerly of San Antonio Road.
PDCSH 96-04-020**

Documents Filed: Documents Filed: Proof of publication of the title of Ordinance No. 25169 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25169 was adopted. Vote: 10-0-1-0. Absent: Pandori.

- 6b(4) This item was removed from the Consent Calendar to be considered separately.**

Plans and Specifications

- 6d(1) **TRACT NO. 8397 - North side of Foxworthy, 400 feet east of Meridian Avenue - Roem Development Corporation, a California Corporation (Developer) - 8 detached residential lots. Adoption of resolutions approving the plans, final map, and contract for Tract No. 8397. CEQA: ND. District 9. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 23, 1996, recommending Council adopt said resolutions for Tract No. 8397.

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

- 6d(2) **TRACT NO. 8764 - Easterly of Falls Creek Drive and Pinot Blanc Way - Buena Vista Development, L.L.C., a Limited Liability Corporation (Developer) - 44 single-family detached residential lots. Adoption of resolutions approving the plans, final map, contract, water main extension agreement, and parkland agreement for Tract No. 8764. CEQA: Resolution No. 63179. District 8. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 23, 1996, recommending Council adopt said resolutions for Tract No. 8764.

Discussion/Action: Resolution No. 66900, 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. 8764"; Resolution No. 66901, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8764", Resolution No. 66902, 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. 8764"; and Resolution No. 66903, 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. 8764", were adopted. Vote: 10-0-1-0. Absent: Pandori.

- 6d(3) **TRACT NO. 8907 - 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 final map for Tract No. 8907. CEQA: ND. District 6. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 23, 1996, recommending Council adopt said resolutions for Tract No. 8907.

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

- 6d(4) TRACT NO. 8886 - South side of Hostetter Road between Old and New Piedmont Roads - Greystone Homes, Incorporated (Developer) - 95 single family detached residential units. Adoption of resolutions approving the Parkland Agreement, plans, final map, and contract for Tract No. 8886. CEQA: ND. District 4. (Public Works)
[Deferred from 9/24/96 - Item 6d(2)]**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 16, 1996, recommending Council adopt said resolutions for Tract No. 8886.

Discussion/Action: Resolution No. 66904, 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. 8886"; Resolution No. 66905, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8886", and Resolution No. 66906, 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. 8886", were adopted. Vote: 11-0-0-0.

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) and 9/17/96 - Item 6e(1)]**

Documents Filed: (1) Supplemental memorandum from Director of Environmental Services, Louis N. Garcia, dated September 30, 1996, providing additional information in response to Council questions and stating this item was deferred from the September 17, 1996 City Council meeting at the request of Greenwaste Recovery, Inc.; since that time, no additional changes to the contract amendment have been made. (2) Supplemental memorandum from Director of Environmental Services, Louis N. Garcia, dated September 13, 1996, referencing the second amendment to the agreement between the City of San José and Greenwaste Recovery, Inc. for collection of yard wastes and clarifying the intent of the third amendment to same. (3) Memorandum from Director of Environmental Services, Louis N. Garcia, dated August 7, 1996, recommending Council approve said amendment to the agreement with Greenwaste Recovery, Inc.

Discussion/Action: The second amendment to the agreement with Greenwaste Recovery, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Pandori.

- 6e(2) 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)

[Deferred from 9/17/96 - Item 6e(8)]

Documents Filed: (1) Memorandum from Council Members Dando and Diquisto, dated October 1, 1996, recommending approval of a predevelopment loan to allow for a comprehensive review of neighborhood and environmental impacts. (2) Memorandum from Director of Housing, Alex Sanchez, dated September 13, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66907, entitled: "A Resolution of the Council of the City of San José (I) Approving a CDBG Predevelopment Loan of Up to \$100,000 to Eden Housing Inc., for a 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, and (II) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents on Behalf of the City", was adopted. Vote: 11-0-0-0.

- 6e(3) Report on bids and award of purchase of 200 Sig-Sauer 9mm handguns for the Police Department to the low bidder, San Diego Police Equipment Co., at a total cost of \$114,427.81, including tax, and authorization for the Director of General Services to execute the purchase order. (General Services)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated September 13, 1996, recommending Council award said purchase, and authorize the Director of General Services to execute the purchase order.

Discussion/Action: The award of purchase to San Diego Police Equipment Co., the low bidder, was approved and execution of the purchase order authorized. Vote: 10-0-1-0. Absent: Pandori.

- 6e(4) Approval of a one-year agreement with four (4) one (1) year options to renew with Aris Helicopters for the maintenance of the Police Department's McDonnell Douglas Model 520N Notar helicopter for a total cost of \$278,000 for Fiscal Year 1996-97. (General Services)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated September 13, 1996, recommending approval of said agreement with Aris Helicopters.

Discussion/Action: The one-year agreement with four one-year options with Aris Helicopters was approved and execution of the agreement authorized. Vote: 10-0-1-0. Absent: Pandori.

6e(5) Approval to reject bids for a 60' shallow pit electronic motor truck scale for the Streets and Traffic Department, and authorization for the Director of General Services to resolicit bids. (General Services)

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated September 13, 1996, recommending Council reject bids for said truck scale and authorize the Director of General Services to resolicit bids.

Discussion/Action: The recommendation that the bids be rejected and the Director of General Services be authorized to resolicit for the electronic motor truck scale was approved. Vote: 10-0-1-0. Absent: Pandori.

6e(6) Adoption of a resolution declaring a parcel of City-owned land surplus to the needs of the City, approving the agreement for sale of surplus City-owned property to Kaufman and Broad South Bay, Inc. in the amount of \$2,500, and authorizing the Director of Public Works to execute the necessary documents. CEQA: Resolution No. 61115. (Public Works)

Documents Filed: None.

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

6e(7) Approval of an employment agreement with Yvonne Cook. (Powers) Rules Committee referral 9/25/96)

Documents Filed: None.

Discussion/Action: The employment agreement with Yvonne Cook was approved and execution of the agreement authorized. Vote: 10-0-1-0. Absent: Pandori.

6e(8) Adoption of a resolution approving an agreement with Unit 18 (Association of Maintenance Supervisory Personnel). (City Manager's Office) (Orders of the Day 4a)

Documents Filed: Memorandum from City Manager, Regina V.K. Williams, dated September 26, 1996, noting the reason for the addendum and recommending adoption of said resolution.

Discussion/Action: Resolution No. 66908, entitled: "A Resolution of the Council of the City of San José (1) Approving the Memorandum of Agreement Between the City of San José and City of San José Association of Maintenance Supervisory Personnel; (2) Providing for the Payment of Salary and Benefits Pursuant to the Memorandum of Agreement; and (3) Providing That Any Conflict Between the Memorandum of Agreement and Salary Resolution Nos. 51870, 51871, and 51872, the Memorandum of Agreement Shall Prevail", was adopted. Vote: 10-0-1-0. Absent: Pandori.

- 6e(9) Approval of a second amendment to the agreement with REVIEWCO to provide medical workers' compensation cost containment services, extending the term of the agreement by three (3) months, from September 30, 1996 to December 31, 1996, and increasing the compensation by \$75,000, from \$375,000 to \$450,000. (Finance)
[Deferred from 9/24/96 - Item 6e(2)]**

Documents Filed: Memorandum from Director of Finance, John V. Guthrie, dated September 6, 1996, recommending Council approve the second amendment to said agreement with REVIEWCO.

Discussion/Action: The second amendment to the agreement with REVIEWCO was approved and its execution authorized. Vote: 10-0-1-0. Absent: Pandori.

- 6e(10) Approval of an employment agreement with Brooke Carey. (Diaz)
(Orders of the Day 4b)**

Documents Filed: None.

Discussion/Action: The employment agreement with Brooke Carey was approved and its execution authorized. Vote: 10-0-1-0. Absent: Pandori.

Routine Legislation

- 6f(1) Approval of travel for Council Member Alice Woody to travel to Orlando, Florida, October 23 - 28, 1996, to attend the Trustee Educational Forum for the Police and Fire Retirement Fund. Funding: Police and Fire Retirement Fund. (Woody)
(Rules Committee referral 9/25/96)**

Documents Filed: None.

Discussion/Action: The travel for Council Member Woody to participate in the Trustee Educational Forum for the Police and Fire Retirement Fund, was approved.
Vote: 10-0-1-0. Absent: Pandori.

- 6f(2) Approval for City Manager Regina V.K. Williams to travel to the National Forum for Black Public Administrators (NFBPA), October 4-6, 1996, and the International City Manager's Association (ICMA) Annual Conference, October 6-10, 1996, both in Washington D.C. (City Manager's Office)
(Rules Committee referral 9/25/96)**

Documents Filed: Memorandum from City Manager, Regina V.K. Williams, dated September 30, 1996, requesting Council authorization to travel at City expense to Washington, D.C.

Discussion/Action: The travel for City Manager Williams to attend said conferences, was approved. Vote: 10-0-1-0. Absent: Pandori.

END OF CONSENT CALENDAR

Council Member Pandori returned to the meeting at 8:35 p.m.

Ordinance for Final Adoption

- 6b(4) ORD. NO. 25170 - Amends 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 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 adds a new Chapter 10.33 to ban the sale of "Saturday Night Specials," also known as "Junk Guns."**

Documents Filed: (1) Twelve (12) documents addressing various viewpoints on issues related to firearms were submitted for the public record by citizens unable to address Council because of time constraints. (2) Proof of publication of the title of Ordinance No. 25170 submitted by the City Clerk.

Discussion/Action: This item was removed from the Consent Calendar by Council Member Diquisto to allow for additional public testimony. Mayor Hammer accepted 25 *Citizen's Request to Speak* cards and advised the audience that a total of four hours during the June 18, 1996 and September 17, 1996 public hearings had been dedicated to public testimony; therefore, fifteen minutes would be allotted to public testimony during tonight's hearing on the ban of the "Saturday Night Specials". Johann Opitz, Scott Varner, and Duane R. Darr spoke against the proposed gun ban, and no other testimony was presented. Upon motion by Council Member Fernandes, seconded by

Council Member Powers and carried, Ordinance No. 25170 was adopted. Vote: 6-5-0-0. Noes: Dando, Diquisto, Fiscalini, Pandori, Shirakawa, Jr.

ORAL COMMUNICATIONS

William J. Garbett addressed Council on various aspects of the Council Agenda.

CLOSED SESSION REPORT

Disclosure of Closed Session Action of October 1, 1996 submitted by City Attorney, Joan R. Gallo:

A. Pending Litigation - Settlements Authorized:

1. Case Name: In re MCINTOSH

Substance of Settlement: Approval of Settlement of Workers' Compensation Claim in the Amount of \$75,000

Council Vote: Ayes: Diaz, Diquisto, Fernandes, Fiscalini, Shirakawa, Jr.; Hammer.
Noes: None.
Absent: Dando, Johnson, Pandori, Powers, Woody
Disqualified: None.

2. Case Name: *Tyson v. City of San Jose*

Substance of Settlement: Approval of Settlement of Lawsuit. City to Pay the Sum of \$250,000.

Council Vote: Ayes: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr., Woody; Hammer.
Noes: None.
Absent: Dando, Pandori.
Disqualified: None.

CLOSED SESSION REPORT

Disclosure of Closed Session Action of October 1, 1996 submitted by City Attorney, Joan R. Gallo:

B. Authority to Enter Litigation Cases As Amicus Curiae:

1. Case Name: Atilano, et al. v. California Department of Transportation, et al.

Adverse Party or Parties: Atilano, et al.
Substance of Litigation: Plaintiffs are Seeking Injunctive Relief Prohibiting Termination of Tenancies Until They are Provided Relocation Costs

Council Vote: Ayes: Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr., Woody; Hammer.
Noes: Diaz.
Absent: Dando, Pandori.
Disqualified: None.

C. Authority to Initiate Litigation:

Authority to initiate litigation was given in one (1) matter. The name of the action and the defendant 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: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr., Woody; Hammer.
Noes: None.
Absent: Dando, Pandori.
Disqualified: None.

ADJOURNMENT

The Council of the City of San José adjourned at 9:00 p.m.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK