

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, FEBRUARY 11, 1997

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

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

Absent: Council Members: Johnson (Excused).

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room 600 to confer with Legal Counsel pursuant to Government Code Section 54956.9; under Subsection (a) to discuss existing litigation in the cases of Chand v. City of San José, et al.; Calderon v. City of San José, Allstate Insurance Company v. City of San José; City of San José, et al. v. Walnut Grove Income Estates, and San José Mercury News, Inc. v City of San José; to discuss anticipated litigation pursuant to Subsection (b) of Government Code Section 54956.9, in two matters involving significant exposure to litigation.

By unanimous consent, Council reconvened from the Closed Session, recessed at 10:50 a.m., and reconvened at 1:37 p.m. in the Council Chambers.

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

Absent: Council Members: Johnson (Excused).

INVOCATION

Jennifer Huynh, 1st place winner of the Reverend Martin Luther King, Jr. essay contest, Santa Teresa High School, read her moving and powerful essay containing excerpts from Dr. King's "I Have a Dream" speech.

(District 2)

PLEDGE OF ALLEGIANCE

Mayor Hammer led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Powers, seconded by Council Member Fiscalini and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 10-0-1-0. Absent: Johnson.

CEREMONIAL ITEMS

5a Recognition of the community-based organizations and City employees involved with staging the National Hockey League All-Star Game in San José. (Fiscalini)

Documents filed: None.

Discussion/Action: Mayor Hammer stated the tremendous success of San José's hosting of the NHL All-Star Game was made possible by many residents and City employees. She was joined at the podium by Council Member Fiscalini, who cited participating organizations: San José Sports Authority, San José Arena Management/Sharks, San José Arena Authority, US Space Camp of California, Event Transportation Associates, Convention & Visitors Bureau, Redevelopment Agency, Department of Convention, Arts and Entertainment, Visitors Services and Facilities Division, Convention & Cultural Facilities Division, and the Office of Cultural Affairs, San José Police Department, San José Conservation Corps, Graffiti Program, Department of Streets and Traffic, and the Santa Clara Valley Transportation Agency. Council Member Fiscalini expressed appreciation to the many individuals of these organization and introduced Jan Hutchins, Vice-Chair of the San José Sports Authority and a Los Gatos Council Member, who thanked the Mayor and City Council for their support. Mayor Hammer welcomed the Kindergarten through 8th grade students participating in the San José Unified School District Home Schooling Program, who attended the meeting with their parents and teacher coordinators.

CONSENT CALENDAR

Upon motion by Fiscalini, seconded by Powers and unanimously carried, the Consent Calendar was approved and the below listed items taken as indicated. Vote: 10-0-1-0. Absent: Johnson.

Public Hearings Set by Council

6c(1) Adoption of a resolution setting public hearings on March 25, June 24, September 23, and December 9, 1997 at 1:30 p.m. for confirmation of costs incurred for abatement work performed by the City during the prior time period, pursuant to Title 17 of the San José Municipal Code and as set forth on the applicable Report of Abatement Costs and Charges. CEQA: Exempt. (Planning, Building and Code Enforcement)

Documents filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated January 24, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67143, entitled: "A Resolution of the Council of the City of San José Setting Public Hearings at 1:30 P.M. on March 25, 1997, June 24, 1997, September 23, 1997, and December 9, 1997 on the Recovery of Abatement Costs and Expenses for Abatement of Nuisances Pursuant to Title 17 of the San José Municipal Code", was adopted. Vote: 10-0-1-0. Absent: Johnson.

Plans and Specifications

6d(1) TRACT NO. 8882 - Northwest corner of Capitol Avenue and Mabury Road - Pfeiffer Ranch Investors II, Inc., a California Corporation (Developer) - 41 single family detached units. Adoption of a resolution approving the final map and approval of the Parkland Agreement for Tract No. 8882. CEQA: ND. District 4. (Public Works)

(Rules Committee referral 1/29/97)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated January 28, 1997, recommending adoption of said resolution.

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

6e(1) Approval of an agreement with Smarte Carte, Inc. for a self-service luggage cart and electronic baggage locker concession at the San José International Airport for a ten-year term, with estimated annual revenue to the City of \$13,150. CEQA: Exempt. (Airport)

Documents filed: Memorandum from Airport Director Ralph G. Tonseth, dated January 24, 1997, recommending approval of said agreement.

Discussion/Action: The agreement with Smarte Carte, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Johnson.

6e(2) Adoption of a resolution authorizing the Director of General Services to:

- (a) Award the purchase of seven (7) 14,500 pound 4-wheel drive and chassis for the Fire and General Services Departments to the low bidder, Mission Valley Ford, at a total cost of \$282,919.18, including tax.**
- (b) Execute all necessary documents to add six (6) units to the Master Equipment Lease Agreement for an estimated annual cost of \$290,000 for five (5) years.**
- (c) Exercise an option to purchase additional 14,500 pound 4-wheel drive cabs and chassis at the same unit price (\$40,417.03, including tax) for one (1) year, not to exceed \$282,919.18, only after sufficient funds have been appropriated.**

(General Services)

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated January 24, 1997, recommending adoption of said resolution.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Resolution No. 67144, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute All Necessary Documents to Award the Purchase of Seven (7) 14,500 Lb. Four-Wheel Drive and Chassis to Mission Valley Ford at a Total Cost Not to Exceed \$282,919.18; and to Execute All Documents Necessary to Add the Purchase of Six of the Vehicles to the Master Equipment Lease with Access Public Funding, Inc. and to Exercise an Option to Purchase Additional Vehicles at the Same Unit Price", was adopted. Vote: 10-0-1-0. Absent: Johnson.

6e(3) Adoption of a resolution authorizing the City Clerk to execute a deferral agreement with MPJ-A for the payment of Sewage Treatment Plant Connection Fees in installments. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated January 24, 1997, recommending adoption of said resolution.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Resolution No. 67145, entitled: "A Resolution of the Council of the City of San José Authorizing the City Clerk to Execute an Agreement with MPJ-A, A California Partnership, for the Payment of Sewage Treatment Plant Connection Fees in Installments", was adopted. Vote: 10-0-1-0. Absent: Johnson.

6e(4) Report on bids and award of contract for the Branham Lane Median Island Landscaping Project to the low bidder , Lone Star Landscape, Inc., to include the Base Bid and Add Alternate No. 1, in the amount of \$202,434 and approval of a ten (10) percent contingency in the amount of \$20,243. CEQA: Exempt. (Public Works)

Documents filed: Memoranda from Director of Public Works, Ralph A. Qualls, Jr., dated January 24, 1997, recommending award of contract to the low bidder, Lone Star Landscape, Inc., and approval of a ten percent contingency.

Discussion/Action: The award of contract to the low bidder, Lone Star Landscape, Inc., and said contingency were approved and their execution authorized. Vote: 10-0-1-0. Absent: Johnson.

**6e(5) Approval of an amendment to the employment agreement with Nora Campos. (Diaz)
(Rules Committee referral 2/5/97)**

Documents filed: None.

Discussion/Action: The employment agreement with Nora Campos was approved and its execution authorized. Vote: 10-0-1-0. Absent: Johnson.

6e(6) (a) Adoption of a resolution authorizing the City Manager to negotiate and execute:

- (1) 1996/97 AB 434 grant agreement with the Bay Area Air Quality Management District to accept \$142,500 in 1996/97 grant cycle funds.**
- (2) A second amendment to the 1994/95 grant agreement with the Bay Area Air Quality Management District to change the type of vehicles to be purchased.**
 - (b) Adoption of appropriation ordinance and funding sources resolution amendments in the General Fund, Construction Excise Tax Fund and Vehicle Maintenance and Operations Fund in the amount of \$738,500 for the Alternative Fuel Program.**

**(City Manager's Office)
(Rules Committee referral 2/5/97)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., and Budget Director Larry D. Lisenbee, dated February 6, 1997, recommending adoption of said authorization resolution and appropriation ordinance and related revenue resolution amendments.

Discussion/Action: Resolution No. 67146, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute (1) A 1996/1997 Fiscal Year Grant Agreement with the Bay Area Air Quality Management District (BAAQMD) to Accept \$142,000 in AB 434 Funds to be Used for the Purchase of a Compressed Natural Gas Waste Hauler, and (2) A Second Amendment to the 1994-1995 Fiscal Year Grant Agreement with the BAAQMD to Change the Type of Vehicles to be Purchased with those Grant Funds"; Ordinance No. 25261, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 which Appropriates Moneys in the General Fund, Construction Excise Tax Fund and the Vehicle Maintenance and Operations Fund in the Total Amount of \$738,500 for Alternative Fuel Program; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 67147, entitled: "A Resolution of the Council of the City of San José Amending Revenue Resolution No. 66717 Setting Forth the Estimated Sources of Funds for the Fiscal Year 1996-97 to Adjust Revenues in the Vehicle Maintenance and Operations Fund", were adopted. Vote: 10-0-1-0. Absent: Johnson.

Routine Legislation

6f(1) Adoption of a resolution determining that the use of CDBG funds for proactive code enforcement efforts in the residential neighborhood of Mt. Pleasant, bordered by Story and White Roads, Mt. Vista Drive, and Clayton Road, is appropriate and necessary. (Planning, Building and Code Enforcement)

Documents filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated January 30, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67148, entitled: "A Resolution of the Council of the City of San José Determining that the use of CDBG Funds for Proactive Code Enforcement Efforts in the Residential Neighborhood of Mt. Pleasant, Bordered by Story and White Roads, Mt. Vista Drive, and Clayton Road, is Appropriate and Necessary", was adopted. Vote: 10-0-1-0. Absent: Johnson.

6f(2) Approval of an ordinance amending Section 2.08.470 of Chapter 2.08 of the San José Municipal Code to provide a monthly stipend of \$150 for non-employee Police and Fire Retirement Boardmembers. (Police and Fire Retirement Board)

Documents filed: Memorandum from Police and Fire Retirement Board, dated January 17, 1997, recommending approval of said ordinance.

Discussion/Action: Ordinance No. 25262, entitled: "Ordinance of the City of San José Amending Chapter 2.08 of Title 2 of the San José Municipal Code by Adding Section 2.08.470 to Provide Compensation for Non-City Employee Members of the Board of Administration for

the Police and Fire Department Retirement Plan”, was passed for publication. Vote: 10-0-1-0.
Absent: Johnson.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - Meeting of January 29, 1997

Documents filed: Rules Committee report of January 29, 1997.

(1) Review of February 11 Council Agenda

The Committee approved the February 11, 1997 Council agenda with one addition.

(2) Add New Items to February 4 Amended Council Agenda

The Committee recommended five additions to the February 4, 1997 amended Council agenda.

(3) The Public Record. Attachment: (1) Memorandum from City Clerk Patricia L. O’Hearn, dated January 23, 1997, listing the items transmitted to the Administration and those items filed for the Public Record for the period January 15-21, 1997.

The Committee noted and filed the Public Record.

(4) Report back on City-owned property on Old Hillsdale Avenue

The Committee directed the Administration to erect a barrier as soon as possible on the City-owned property on Old Hillsdale Avenue adjacent to the Mountain Shadows Mobile Home Park.

(5) Request to use Council General funds for travel to Washington, D.C., to attend National League of Cities Conference, March 7-12, 1997. Attachments: Memoranda from Council Member Powers dated January 21, 1997, requesting authorization to use Council General Funds to attend the National League of Cities Conference; and from City Clerk Patricia L. O’Hearn, dated January 29, 1997, summarizing the use of Council General Travel Budget.

The Committee recommended approval for Council Member Powers to use Council General Funds to attend the National League of Cities Conference in Washington, D.C., March 7-12, 1997.

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

There were none.

- (7) City Council and Rules Committee meeting schedules. Attachment: Memorandum from City Manager Regina V.K. Williams, dated January 28, 1997, recommending approval of the proposed 1997-98 schedule for City Council Standing Committees; and from Mayor Hammer, dated January 29, 1997, requesting approval of a City Council in the Neighborhood.

The Committee recommended approval of the following: the 1997-98 schedule for City Council Standing Committees, as outlined on the chart attached to the City Manager's memorandum, and a City Council in the Neighborhood in District 5 for the evening session of May 6, 1997.

- (8) Oral communications

William Chew commented on TCI Cablevision charges.

7b Report of the Rules Committee - Meeting of February 5, 1997 (Partial)

Documents filed: Partial report of the Rules Committee meeting of February 5, 1997.

- (6) Boards and Commissions
 - (a) Appointments to Project Diversity Screening Committee. Attachments: Memoranda from City Clerk Patricia L. O'Hearn, dated January 15, 1997, requesting nominations to fill five positions on the Project Diversity Screening Committee, two to be nominated by the Rules Committee and three by the Mayor's Office; from Council Member Shirakawa, Jr., dated January 29, 1997, recommending Maria Duran for appointment; from Vice Mayor Margie Fernandes, dated January 29, 1997, recommending Ramzey Amireh for appointment; from Council Member Diaz, dated February 3, 1997, recommending Maritza Maldonado-Cavillo for appointment; from Council Member Woody, dated February 4, 1997, nominating Doris Upshur for appointment; and from Council Member Trixie Johnson, dated February 5, 1997, nominating Virginia Holtz.

The Committee recommended appointment of Maritza Malconado-Cavillo and Ramzey Amireh to the Project Diversity Screening Committee for terms ending December 31, 1998 and forwarding the remaining nominations to the Mayor's Office for consideration.

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

Discussion/Action: Upon motion by Fiscalini, seconded by Powers and unanimously carried, the Rules Committee report and actions of January 29, 1997 were accepted, with Item 7b(6) from the February 5, 1997 meeting heard under Item 9b. Vote: 10-0-1-0. Absent: Johnson.

LAND USE AND DEVELOPMENT

- 8a PUBLIC HEARING on the designation of the River Street Historic District, as a district of special historic, architectural, cultural, aesthetic, or engineering interest or value of a historic nature. CEQA: Exempt. (Planning, Building and Code Enforcement)**

Documents filed: (1) Memorandum from the Planning Commission, dated January 24, 1997, recommending adoption of a resolution designating twelve subject buildings as the River Street City Historic District HD 96-106. (2) Memorandum from Council Member Johnson, dated December 10, 1997, reflecting support for the proposal. (3) Affidavit of routing of Resolution No. 67003 initiating said proceedings, dated December 10, 1996, by the City Clerk. (4) Proof of publication of notice of public hearing on the proposed designation, dated December 3, 1996, submitted by the City Clerk.

Discussion/Action: Bradley Matteoni, addressed the Council on behalf of Vellequette-Winger properties, stated his client was concerned about the effect a historic designation would have on the adjacent properties, including the possibility the Council would at a later date include their property in the designation, and requested the Council deny the designation. Council Member Pandori responded that the proposal does not deal with the adjacent properties mentioned and does not preclude the owner from improving the condition of those properties. Upon motion by Council Member Pandori, seconded by Council Member Fiscalini and unanimously carried, Resolution No. 67149, entitled: "A Resolution of the Council of the City of San José Designating, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, 12 Buildings in the Historic River Street Neighborhood Possessing a Significant Concentration or Continuity of Site, Buildings, Structures or Objects Unified by Past Events or Aesthetically by Plan or Physical Development", was adopted. Vote: 10-0-1-0. Absent: Johnson.

GENERAL GOVERNMENT

- 9a Approval of an ordinance amending Title 10 of the San José Municipal Code by adding a new Chapter 10.10 to ban sitting or lying down on public sidewalks in the Downtown Core Area. (City Attorney's Office)**

Documents filed: None.

Discussion/Action: This item was deferred to February 25, 1997.

- 9b Approval of Mayor and Rules Committee appointments to the Project Diversity Screening Committee.
[Rules Committee referral 2/5/97 - Item 7b(2)(f)(1)]**

Documents filed: Memorandum from Mayor Hammer, dated February 11, 1997, recommending individuals to the Project Diversity Screening Committee.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Upon motion by Vice Mayor Fernandes, seconded by Council Member Diaz and unanimously carried, the Committee recommendation was accepted and Maritza Maldonado-Cavillo, Ramzey Amireh, Doris Upshur, and Robert Baldini were appointed to the Committee for terms ending December 31, 1998, Sonia Alvarez was appointed Committee Chair, and the item continued to February 18, 1997, for an additional appointment by Mayor Hammer. Vote: 10-0-1-0. Absent: Johnson.

**9c Approval of ordinance amending Part 2 of Chapter 23.04 of Title 23 of the San José Municipal Code, to allow the placement of one (1) skyline sign with a maximum size of 250 square feet on buildings at least 190 feet and no taller than 200 feet in height in the Downtown. CEQA: Exempt. (Redevelopment Agency)
(Rules Committee referral 2/5/97)**

Documents filed: Memorandum from Dennis Korabiak, Downtown Coordinator, Redevelopment Agency, recommending approval of said ordinance.

Discussion/Action: Downtown Coordinator Dennis Korabiak amended the Staff recommendation to request the allowance of two skyline signs on buildings in the Downtown of 190 feet in height. In response to questions from Council Member Pandori regarding creating a two-tier system, City Attorney Gallo clarified that allowing two skyline signs rather than one on buildings between 190 and 200 feet in height would in effect lower the height limit of the existing ordinance from 200 feet to 190 feet for skyline signs. She advised that the existing ordinance already allows a maximum of two signs and lowering the height requirement to 190 feet and keeping the same standards in terms of number, location and size would prevent the creation of a two-tier system. William Garbett spoke in opposition to the proposal. Upon motion by Council Member Pandori, seconded by Council Member Fiscalini and unanimously carried, Council approved the Staff recommendation as amended to provide that the (maximum) two skyline signs for buildings above 200 feet in height and all standards for those signs will now be allowed in buildings 190 feet or higher, and Ordinance No. 25263, entitled: “An Ordinance of the City of San José Amending Title 23 of the San José Municipal Code by Amending Section 23.04.120 of Chapter 23.04, to Authorize Skyline Signs in the Downtown Sign Zone for Buildings Between 190 Ft. and 200 Ft. in Height Inclusive”, was passed for publication. Vote: 10-0-1-0. Absent: Johnson.

CLOSED SESSION REPORT

City Attorney Gallo disclosed the following Closed Session actions of February 11, 1997:

A. Authority to Enter a Litigation Case as Amicus Curiae:

1. *Case Name:* Metropolitan Water District of Southern California v. Francis N. Domenigoni, et al.

Adverse party or parties: Francis N. Domenigoni

Substance of litigation: This action is an eminent domain action involving numerous issues relating to the valuation of property. It is on appeal before the Fourth District Court of Appeal.

Council Vote:

Ayes: Dando, Diaz, Diquisto, Fernandes, Pandori, Powers, Shirakawa,
Woody; Hammer.
Noes: None.
Absent: Johnson.
Abstain: Fiscalini.

ADJOURNMENT

The Council of the City of San José adjourned at 2:08 p.m. in memory of John C. Kensit, long time California Room Librarian, San José Public Library and husband of Diana Wirt, Data Center Manager in Information Technology Department; in memory of Keith Kittle, General Manager of the Winchester Mystery House and Board Member of the Convention and Visitor's Bureau; and in memory of Retired Superior Court Judge David Leahy.

SUSAN HAMMER, MAYOR

ATTEST:
PATRICIA L. O'HEARN, CITY CLERK