

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, APRIL 29, 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, Johnson,
Pandori, Powers, Shirakawa, Jr., Woody; Hammer.
Absent: Council Members: None.

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room 600 to confer with Labor Negotiator Pursuant to Government Code Section 54957.6: City Negotiator: City Manager designee Lynn Boland; Employee Organization: Municipal Employees Federation; and to confer with Real Property Negotiator Pursuant to Government Code Section 54956.8: Property: Thunderbird Golf Course; Negotiating Parties: Darrell Dearborn for the City of San José and Marianne Bacigalupi for Barry Swenson Builders dba Green Valley Construction; Under Negotiation: Business terms, including price and terms of payment.

By unanimous consent, Council reconvened from the Closed Session, recessed at 10:35 a.m., and reconvened at 1:36 p.m. in the Council Chambers.

Present: Council Members: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson,
Pandori, Powers, Shirakawa, Jr., Woody; Hammer.
Absent: Council Members: None.

INVOCATION

Brandon Alameda, Youth Focus, Inc., sang the "Battle Hymn of the Republic"
(District 4)

PLEDGE OF ALLEGIANCE

Carolyn Dowty and Melissa Nicasio of Anderson Village School led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Powers, seconded by Council Member Diaz, and unanimously carried, Item 6e(12)(a) and (b) was deferred to May 6, 1997, and the Orders of the Day and the Amended Agenda were approved. Vote: 11-0-0-0.

CEREMONIAL ITEMS

5a Acknowledgment and presentation of certificates to the 1997 Outstanding Volunteers. (City Manager's Office)

Documents filed: None.

Discussion/Action: Mayor Hammer was joined at the podium by Sr. Deputy City Manager Darrell Dearborn and Bob Allen, Sr. Executive Assistant to the City Manager, for presentation of certificates to the Outstanding Volunteers for 1997: Pauline Lowe and Richard Gehler, Department of Conventions, Arts and Entertainment; Esther Crosby and Virginia Taylor, Library; Dr. Robert Pruitt, Jay Brown, Lilie Briggs and Cindy Chen, Parks, Recreation and Neighborhood Services; Everado Ramirez and Dawna Hawksworth, Planning, Building and Code Enforcement Department; Darrel Jensen and Adrian Aguaristi, Police Department. Sr. Deputy City Manager Darrell Dearborn expressed appreciation to the volunteers on behalf of the City Manager, Mayor, and City Council, and presented to Deputy City Manager Mark Linder the 1997 Certificate of Excellence as manager of the City's volunteer program. Deputy Director Linder thanked the Mayor and Council for the recognition and commended the volunteers for their example of community service. Mayor Hammer thanked Catherine Frank of the David and Lucile Packard Foundation for their support.

5b Presentation of plaque to Erika Nelson for 1 year 5 months service on the Youth Commission. (Mayor)

Documents filed: None.

Discussion/Action: Mayor Hammer presented the plaque to Michel Amaral, Chair of the Youth Commission, who accepted for Erika Nelson, who was unable to be present.

5c Presentation of a commendation to the Anderson Village School Earth Club. (Johnson)

Documents filed: None.

Discussion/Action: Council Member Johnson joined Mayor Hammer for presentation of a commendation to the youth participating in the Anderson Village School Earth Club and acknowledged the many beautification projects they have undertaken. Council Member Johnson acknowledged the Program Administrator Helen Dowty and Barry Vitcov, Principal of Anderson School.

**5d Designation of April 28, 1997 as "Worker's Memorial Day", sponsored by AFSCME and other unions of the AFL-CIO in memory of workers who have been killed or injured on the job. (Fernandes)
(Rules Committee referral 4/23/97)**

Documents filed: None.

Discussion/Action: Vice Mayor Fernandes and Mayor Hammer announced the designation of April 28, 1997 as "Worker's Memorial Day".

5e Presentation of commendation to Isabel Nannini in recognition of being chosen for the Woman of the Year award for the 23rd District Assembly. (Shirakawa, Jr.) (Rules Committee referral 4/23/97)

Documents filed: None.

Discussion/Action: Mayor Hammer was joined by Council Member Shirakawa, Jr. for presentation of the commendation. Isabel Nannini thanked the Mayor and Council and acknowledged Council Member George Shirakawa, Sr., Council Member Fiscalini for their inspiration over the years, as well as family and friends who were sources of encouragement to her.

9f Request by TACCLE (Teen Activists for Community Change and Leadership Education) for resolutions concerning voluntary limitations regarding teen use of alcohol and tobacco. [Rules Committee referral 4/16/96 - Item 7b(7)]

Documents filed: (1) Memorandum from Vice Mayor Fernandes, dated April 28, 1997, recommending that: 1--The City Council support the proposal by TACCLE to ask establishments throughout the City of San José that sell alcohol and tobacco products to voluntarily reduce the total number of advertisements of those products and remove all advertisements of alcohol and tobacco that are three feet and below, 2--Each City Council Member sign the TACCLE pledge not to accept money from the alcohol or tobacco industry, 3--The City of San José sign the TACCLE Petition to the Federal Communications Commission requesting a Notice of Inquiry into broadcast advertising of distilled spirits; and in addition to the proposals of TACCLE, recommended: 4--The Administration report back to the Rules Committee on the feasibility of establishing a policy to ban self-service displays of cigarettes, and 5--The Administration report back to the Rules Committee on the benefits of enacting a licensing ordinance for tobacco retailers similar to the one enacted in Rancho Mirage, California. (2) Memorandum from Council Member Fiscalini, dated April 29, 1997, recommending that the Administration and Attorney report to the Rules Committee for referral to the Council on enacting a ban on alcohol and tobacco outdoor advertising in the City of San José.

Discussion/Action: Vice Mayor Fernandes introduced Ambritt Denata to begin the presentation to the City Council by Teen Advocates for Community Change and Leadership Education, a program in partnership between Stanford University's Center for Research and Disease Prevention and Andrew Hill, Mount Pleasant and Willow Glen High Schools. Each school made a presentation on the TACCLE recommendations, which are attached to the memorandum from Vice Mayor Fernandes and included as Item 7b(7) in the Rules Committee minutes of April 16, 1997. Vice Mayor Fernandes thanked the representatives of TACCLE for their presentation and stated her memorandum recommends all three of the TACCLE resolutions and two additional recommendations for the Administration to review and report to the Rules Committee on the feasibility of establishing policy to ban self-service displays of cigarettes and the feasibility of licensing tobacco retailers. She stated that cigarettes are addictive and the harmful effects

of smoking continue for years and the Council should strongly support the TACCLE recommendations and moved approval of the five recommendations in her memorandum of April 28, 1997. Council Member Shirakawa seconded the motion. Council Member Fiscalini expressed appreciation for the work done by the youth and encouraged them to continue those efforts, and requested the motion be amended to include a referral to the City Attorney to review and report back to the Rules Committee on enactment of a ban on outdoor advertising of alcohol and tobacco in the City of San José, such as was done in the City of Baltimore. City Attorney Gallo advised that the decision of the Maryland Supreme Court not to hear a 4th District Court of Appeals on that legislation is not binding on the 9th District Court of Appeals in California and that her office will review the issue and report back through the Committee. Council Member Diaz suggested adding to the motion a referral to the Administration on the feasibility of asking the tobacco companies to commit funding for educational outreach programs in schools regarding the harmful effects of these substances. Council Member Pandori stated that the large signs shown in photographs presented by TACCLE members are already illegal under the City's sign ordinance and the Council previously had recommended a pilot project to increase enforcement at all convenience stores and commercial establishments and requested a report from the Administration be included in the referral and clarified that the ordinance applies to all signs, not just alcohol or tobacco signs. Council Member Pandori requested clarification on the pledge not to accept money from the alcohol or tobacco industries as to applicability to alcohol-related industries, such as restaurants where meals and wine are served, for instance. Vice Mayor Fernandes stated the City Attorney advised that the pledge requested under TACCLE's Recommendation No. 2 is up to each individual to decide and agreed that clarification is needed. City Attorney Gallo advised that what is being asked in TACCLE's recommendation is an individual pledge, would not be an amendment to the City's ordinance, and cited First Amendment issues. If a model pledge would be advantageous, she stated her office could work on clarification language. Mayor Hammer stated that the language of the pledge was subject to interpretation and each Council Member should be true to their own conscience. Council Member Pandori stated that he had no problem with not accepting contributions from alcohol or tobacco companies, but other businesses are related in minor ways to those industries and clarification is necessary before Council is asked to vote on the motion. Vice Mayor Fernandes agreed to remove the pledge from the motion and requested the City Attorney report back with parameters to assist Council Members in deciding if they want to sign the pledge and to those who do have the same understanding of what they are pledging. Kathy Napoli and Felix Alvarez addressed Council in support of the proposal. On a call for the question, the motion carried unanimously and the Council approved Recommendations 1, 3, 4 and 5 in Vice Mayor Fernandes' memorandum dated April 28, 1997, referred Recommendation 2 to the City Attorney to report back on suggested language for a model pledge for individual Council Members to consider. Staff was directed to report back on enforcement of the City's sign ordinance at all convenience stores and commercial establishments and report to Rules on the feasibility of enacting a ban on alcohol and tobacco outdoor advertising in the City of San José and on the issue of funding educational outreach by the alcohol and tobacco industries. Vote: 11-0-0-0.

- 9e Adoption of a resolution initiating proceedings to consider the Montgomery Hotel as a landmark of special historic, architectural, cultural, aesthetic, or engineering interest or value of a historic nature, refer proposed landmark designation back to the Historic Landmarks Commission for its consideration at a public hearing, report, and recommendation, and setting a public hearing on August 19, 1997 at 1:30 p.m. CEQA: Exempt. (Historic Landmarks Commission)
[Renumbered From 6c(1)]**

Documents filed: None.

Discussion/Action: Mayor Hammer stated the Historic Landmark Commission had requested a deferral. Council Member Fiscalini moved to defer for two weeks and Council Member Johnson seconded the motion. Council Member Pandori stated the issue at question is whether or to hold a public hearing and Council action to initiate a public hearing today would satisfy the needs of the Commission. Council Member Johnson clarified that the Commission wants to start the process immediately whereas the Redevelopment Agency wants to delay discussions until the EIR is completed. The Commission has requested a two-week deferral to allow time for them to present their rationale to the Council for starting the process prior to completion of the EIR. On a call for the question, the motion carried unanimously, and the item was deferred to May 13, 1997. Vote: 10-1-0-0. Noes: Pandori.

- 9c Discussion of the Report and Recommendations of the Council Salary Setting Commission and adoption of a salary setting ordinance. (City Clerk)
(Rules Committee referral 4/23/97)**

Documents filed: Correspondence from the City Council Salary Setting Commission, dated April 25, 1997, recommending: (1) For the Mayor an increase of three percent for the period of July 1, 1997, through June 30, 1998, for a salary of \$87,550 and an increase of three percent for the period of July 1, 1998, through June 30, 1998, for a salary of \$90,180 in accordance with the City of San José salary schedule; (2) For each City Council Member, an increase of four percent for the period of July 1, 1997, through June 30, 1998, for a salary of \$58,240 and an increase of four percent for the period of July 1, 1998, through June 30, 1999, in accordance with the City of San José salary schedule; (3) That the Mayor and Members of the City Council all participate in a retirement or pension plan, (4) That the medical, dental and insurance benefits currently in effect shall continue unchanged; and (5) That Council Members continue to be required to pay the sum of \$100 for unexcused absences from meetings pursuant to Section 407 of the City Charter.

Discussion/Action: Judy Larson, Chair of the City Council Salary Setting Commission, presented the report and recommendations from the Commission and stated their research included testimony and information provided by the Mayor and Council Members, City Administration and City Staff, and a study prepared for the Commission by Dr. Peter Haas, Associate Professor at East Carolina University. She stated the Commission took into consideration the high level of salaries in the Santa Clara Valley for comparable jobs

in the public and private sector, consistent with San José City Charter Section 407. Mayor Hammer thanked Commission Members for their work on the Commission. Upon motion by Council Member Johnson, seconded by Council Member Fiscalini, and carried, Ordinance No. 25299, entitled: “An Ordinance of the City of San José Adopting Salaries for the Mayor and Council Members Recommended by the Council Salary Setting Commission Pursuant to City Charter Section 407”, was passed for publication. Vote: 10-1-0-0. Noes: Dando.

**9d Approval of the study and recommendation on the issue of alcohol sales and service in connection with special events at Discovery Meadow, Guadalupe River Park & Gardens. (Parks and Recreation Commission)
(Rules Committee referral 4/23/97)**

Documents filed: (1) Memorandum from the Parks and Recreation Commission, dated April 17, 1997, recommending administrative measures to regulate and mitigate the impact of alcohol-serving events at Discovery Meadow, as described therein, particularly on the operation of the Children’s Discovery Museum. (2) Supplemental Memorandum from Nancy Johnson, Director of the Department of Conventions, Arts and Entertainment, dated April 29, 1997, transmitting written public comments regarding alcohol use in Discovery Meadow, received by the department following the April 9, 1997 Parks and Recreation Commission meeting. (3) Memorandum from the Board of Directors of the Guadalupe River Park and Gardens Corporation, dated April 28, 1997, recommending measures to provide relief to the Children’s Discovery Museum short of banning alcohol at events. (4) Correspondence from Michael E. Fox, Sr., M.E. Fox Company, Inc., requesting a ban on the sale and consumption of alcohol in the section of Guadalupe River Park surrounding the Children’s Discovery Museum. (5) Memorandum from Judy O’Brien, Hotel De Anza, dated April 25, 1997, expressing opposition to the serving of alcohol at festivals and events in downtown San José. (6) Memorandum from Lewis N. Wolff, Wolff, DiNapoli, LLC, dated April 28, 1997, supporting a ban on beer and alcohol sales in the park surrounding the Children’s Discovery Museum. (7) Memorandum from Council Member Fiscalini, dated April 25, 1997, recommending prohibition of the sale and consumption of alcohol in the Discovery Meadow area of the Guadalupe River Park and Gardens.

Discussion/Action: Director of the Department of Conventions, Arts and Entertainment Director Johnson reported on the Parks and Recreation Commission’s review of the sale and consumption of alcohol at festivals in the Discovery Meadow area of the Guadalupe River Park and Gardens, resulting from a Council referral to the Commission. She detailed the four options considered by the Commission: Option 1--No change to existing policy; Option 2--Enacting administrative measures; Option 3--Limiting sales of alcohol; and Option 4--Prohibiting the sale of alcohol. She stated the Commission voted to recommend administrative measures the Council could adopt and Staff is relaying those recommendations. Mayor Hammer thanked the Commission for the report and called for public testimony. The following individuals addressed the Council on various aspects of the issue: Scott Knies, Executive Director, San José Downtown Association; Abel Cota, Vice-Chair, San José GI Forum; Kathy Napoli; Mike Patterson, Children’s Discovery

Museum; Jim McClure, Firefighters Chili Cook-off; Carmen Sarkini, Children's Discovery Museum; Felix Alvarez; Heather Marks, Sophie Mijares, Daniel Michalek and Smita Das, Teen Advocates for Community Change and Leadership Education; Elaine Tencati, Fil Maresca, and John Messina. Council Member Fiscalini thanked the Commission for their efforts, stating that while disagreeing with their conclusion, he appreciated their hard work. He expressed concern about allowing symbols in places that are educational in nature that send messages which can create serious decision problems for children, and moved approval of the recommendations in his memorandum dated April 25, 1997. Council Member Dando seconded the motion. Mayor Hammer questioned whether banning alcohol from festivals in Discovery Meadow would prevent children from seeing alcohol consumed since most festivals in the Downtown are for families and stated that banning in one place may not have the result some people expect. Council Member Pandori stated that while there is rationale on both sides, he supports the motion, which is not a ban but a location prohibition. Council Member Powers agreed with moving alcohol as far from the Museum as possible and noted that while some of the administrative measures need to be fine-tuned, she supported the recommendation of the Parks and Recreation Commission. Vice Mayor Fernandes asked that if the Council bans alcohol in Discovery Meadow, would alcohol be banned at Noble Park, next to a school and library, at the City-sponsored Berryessa Art and Wine Festival, other parks in the City, and possibly at Community Centers where alcohol is served at weddings. She stated the proposed action at this time is not the solution that she favors looking for other venues for the festivals and is not in support of the motion. Council Member Dando stated support for the motion, emphasized that no one is talking about banning alcohol from the City or from all public places, and recommended setting a timeline to find a location for larger festivals. Council Member Shirakawa, Jr., stressed parental responsibility for training children and stated his opposition to the motion. Mayor Hammer stated previous efforts to find alternative sites for large festivals were unsuccessful, that she agrees with moving alcohol sales to the far northeast corner of the park and away from the Museum and supports the Commission's recommendation and not the motion on the floor. On a call for the question, the motion to prohibit the sale or consumption of alcohol in the Discovery Meadow area of the Guadalupe River Park and Gardens failed on a 5-6-0-0 vote. Noes: Diaz, Fernandes, Johnson, Powers, Shirakawa; Hammer. Council Member Powers moved to not prohibit the sale of alcohol in Discovery Meadows as recommended by the Parks & Recreations Commission, including their recommendations in Attachment A, and to direct Staff to fine-tune the recommendations with the Special Events Groups. Council Member Johnson seconded the motion. Council Member Diquisto suggested moving the fence farther away from the entrance to the Children's Discovery Museum during festivals. Vice Mayor Fernandes stated she is not comfortable with this action as a long-term solution and requested referral to Staff the issue of exploring alternative sites to relocate festivals. On a call for the question, the motion carried and the recommendations from the Parks and Recreation Commission dated April 17, 1997, were approved, Staff was directed to review the recommendations with the Special Events Groups, including consideration of moving the fence farther from the Museum and review of alternative festival sites and report back to the Council. Noes: Dando, Fiscalini, Pandori, Woody. Council Member Pandori stated that St. James Park and the Arena Green area of the Guadalupe River Park and Gardens were under-utilized

and moved to direct the Administration to formulate a plan to encourage groups to use St. James Park and the Arena Green, and direction for the City Attorney to review the issue of limiting events which are specifically alcohol related. Council Member Fiscalini seconded the motion. Mayor Hammer requested Staff review the possibility of moving the Beer Festival to St. James Park. On a call for the question, the motion carried unanimously and Staff was directed to review and report back to the Council on the issues of (1) alternative festival sites, (2) facilitation of increased use of St. James Park, (3) facilitation of increased use of Arena Green, (4) limiting events which specifically relate to alcohol use, and (5) moving the Beer Festival to St. James Park, including use of the eastern portion of the park. Vote: 11-0-0-0.

CONSENT CALENDAR

Upon motion by Fiscalini, seconded by Vice Mayor Johnson, and unanimously carried, the Consent Calendar was approved and the below listed items taken as indicated. Vote: 11-0-0-0.

Minutes for Approval

6a(1) Regular Meeting of March 18, 1997

Documents filed: Minutes of March 18, 1997.

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

6a(2) Adjourned Regular Meeting of March 24, 1997

Documents filed: Minutes of March 24, 1997.

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

6a(3) Regular Meeting of March 25, 1997

Documents filed: Minutes of March 25, 1997.

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

Ordinances for Final Adoption Titles

6b(1) ORD. NO. 25293 - Rezones certain real property situated on the northeast corner of Villages Parkway and San Felipe Road. PDC 96-07-041

Documents filed: Proof of publication of title of Ordinance No. 25293 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25293 was adopted. Vote: 11-0-0-0.

6b(2) ORD. NO. 25294 - Rezones certain real property situated on the southeasterly corner of Monterey Highway and Bernal Road. PDC 96-10-062

Documents filed: Proof of publication of title of Ordinance No. 25294 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25294 was adopted. Vote: 11-0-0-0.

6b(3) ORD. NO. 25295 - Rezones certain real property situated on the east side of Rhodes Court, 150 feet southerly of West Julian Street. C 97-01-008

Documents filed: Proof of publication of title of Ordinance No. 25295 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25295 was adopted. Vote: 11-0-0-0.

Public Hearings Set by Council

6c(1) Adoption of a resolution initiating proceedings to consider the Montgomery Hotel as a landmark of special historic, architectural, cultural, aesthetic, or engineering interest or value of a historic nature, refer proposed landmark designation back to the Historic Landmarks Commission for its consideration at a public hearing, report, and recommendation, and setting a public hearing on August 19, 1997 at 1:30 p.m. CEQA: Exempt. (Historic Landmarks Commission)

Documents filed: See Item 9e for documents filed.

Discussion/Action: This item was renumbered to Item 9e.

6c(2) Adoption of a resolution for each Maintenance District, Numbers 1, 2, and 15 to:

- (a) Preliminarily approve the Engineer's Report.**
- (b) Set a public meeting on June 10, 1997 at 1:30 p.m. and a public hearing on June 17, 1997 at 7:00 p.m. to consider the proposed re-authorization of assessments.**
- (c) Direct public notice of said meeting and hearing, including the expected consequences of both affirmation and disaffirmation of assessments by property owners.**

(Public Works)

Documents filed: See Item 6f(6) for documents filed.

Discussion/Action: This item was renumbered to Item 6f(6).

Plans and Specifications

6d(1) TRACT NO. 8773 - Within the Evergreen Specific Plan (ESP) area and is more particularly located on the easterly terminus of Falls Creek Drive - SCS

**Development Company, a California Corporation (Developer) - 68 single-family detached residential lots. Adoption of resolutions approving the plans, final map, contract, and water main extension agreement for Tract No. 8773. CEQA: Resolution No. 63179. District 8. (Public Works)
(Rules Committee referral 4/23/97)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 22, 1997 recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67262, 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. 8773"; Resolution No. 67263, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8773"; Resolution No. 67264, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8773"; Resolution No. 67265, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Agreement for the Water Main Extension, Tract No. 8773", were adopted. Vote: 11-0-0-0.

**6d(2) TRACT NO. 8909 - Southeasterly side of Silver Creek Valley Road, approximately 242 feet south of Farnsworth Drive - Shea Homes Limited (Developer) - 108 detached residential lots. Adoption of resolutions approving the plans, final map, contract, and water main extension agreement for Tract No. 8909. CEQA: Resolution No. 61784. District 8. (Public Works)
(Rules Committee referral 4/23/97)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 22, 1997 recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67266, 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. 8909"; Resolution No. 67267, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8909"; Resolution No. 67268, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8909"; Resolution No. 67269, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Agreement for the Water Main Extension, Tract No. 8909", were adopted. Vote: 11-0-0-0.

**6d(3) TRACT NO. 8920 - North side of Panoche Avenue, 125 feet westerly of Via Ferrari Drive - Viking Development/Panoche Partnership I, a California General Partnership (Developer) - 15 detached residential lots. Adoption of resolutions approving the plans, final map, contract, and approval of the parkland agreement for Tract No. 8920. CEQA: ND. District 7. (Public Works)
(Rules Committee referral 4/23/97)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 22, 1997 recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67270, 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. 8920"; Resolution No. 67271, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8920"; Resolution No. 67272, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8920", were adopted. Vote: 11-0-0-0.

- 6d(4) TRACT NO. 8970 - East side of Nieman Boulevard, 600 feet south of Golden Dew Drive - Greystone Homes (Developer) - one lot. Adoption of a resolution approving the final map for Tract No. 8970. CEQA: ND. District 8. (Public Works) (Rules Committee referral 4/23/97)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 22, 1997 recommending adoption of said resolution.

Discussion/Action: Resolution No. 67273, entitled: "A Resolution of the Council of the City of San José Approving and Accepting the Final Map of Tract No. 8970"; was adopted. Vote: 11-0-0-0.

Contracts/Agreements

- 6e(1) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1996-97 #22, 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 April 11, 1997 recommending award of open purchase orders List #22.

Discussion/Action: The award of open purchase orders List #22 was approved and the Director of General Services authorized to execute the purchase orders. Vote: 11-0-0-0.

- 6e(2) Approval of award of a service order to Double D Transportation for the hauling of 50,000 yards of clean fill material at the Water Pollution Control Plant in an amount not to exceed \$150,000. CEQA: Exempt. (General Services)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated April 11, 1997 recommending award of said service order to Double D Transportation.

Discussion/Action: The award of a service order to Double D Transportation was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(3) Adoption of a resolution authorizing the Director of General Services to:**
- (a) Execute an agreement with American Maintenance for park restroom maintenance for the period May 1, 1997 to April 30, 1998 for the East region in an amount not to exceed \$80,569.20.**
 - (b) Execute an agreement with Tiger Contract Services for park restroom maintenance for the period May 1, 1997 to April 30, 1998 for the West region in an amount not to exceed \$119,037.38.**
 - (c) Authorization for the Director of General Services to exercise four (4) one-year options for renewal based on the Consumer Price Index (CPI) adjustment, and only after sufficient funds has been appropriated.**
- (General Services)**

Documents filed: None.

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

- 6e(4) Approval of a first amendment to the Regional Clean Air Program 1994/95 AB 434 forty percent grant agreement, reducing the grant amount from \$880,000 to \$422,000 and changing the project description. (General Services)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated April 23, 1997 recommending approval of a first amendment to said Regional Clean Air Program 1994/95 AB 434 agreement.

Discussion/Action: The first amendment to said agreement was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(5) Report on bids and award of purchase of one (1) 34,000 pound cab and chassis with dump body and loader for the Department of Streets and Traffic to the low bidder, Monarch Truck Center, at a total cost of \$105,699.90, including tax, and authorization for the Director of General Services to:**
- (a) Execute the purchase order for one (1) 34,000-pound cab and chassis with dump body and loader.**
 - (b) Exercise an option to purchase additional 34,000 pound cab and chassis with dump body and loader at the same unit price of \$105,669.90 for one (1) year, only after sufficient funds have been appropriated.**
- (General Services)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated April 11, 1997 recommending award of said purchase to the low bidder, Monarch Truck Center, and authorization for the Director of General Services to execute the purchase order and exercise said option.

Discussion/Action: The award of said purchase to the low bidder, Monarch Truck Center, was approved, and the Director of General Services authorized to execute the purchase order and exercise said option, as specified.

- 6e(6) Adoption of a resolution authorizing the City Clerk to execute an agreement with Inn Vision for the payment of sanitary sewer connection and sewage treatment plant connection fees in the amount of \$6,519.04 over a three (3) year period plus interest at 9.55 percent per year on the unpaid principal. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 11, 1997 recommending adoption of said resolution.

Discussion/Action: Resolution No. 67274, entitled: “A Resolution of the Council of the City of San José Authorizing the City Clerk to Execute an Agreement with Inn Vision of Santa Clara Valley, a California Nonprofit Corporation, for the Payment of Sanitary Sewer Connection and Sewage Treatment Plant Connection Fees in Installments”, was adopted. Vote: 11-0-0-0.

- 6e(7) Adoption of a resolution approving a cooperation agreement with the State of California, Department of Transportation for the relinquishment of South De Anza Boulevard (formerly Saratoga-Sunnyvale Road) between Bark Lane and Bollinger Road. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 11, 1997 recommending adoption of said resolution.

Discussion/Action: Resolution No. 67275, entitled: “A Resolution of the Council of the City of San José Approving a Cooperative Agreement for the Relinquishment of South De Anza Boulevard from the State of California”, was adopted. Vote: 11-0-0-0.

- 6e(8) Approval of Contract Change Order No. 2 for the South Bay Water Recycling Program-Coyote/Old Oakland Road Pipeline Reach SJ2-3 Project with Mountain Cascade in the credit amount of \$83,684, for a total contract amount of \$11,397,134.70. CEQA: Resolution No. 64667. (Public Works)**

Documents filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 11, 1997 recommending approval of said Contract Change Order No. 2 with Mountain Cascade. (2) Supplemental memorandum from the Treatment Plant Advisory Committee dated April 11, 1997 recommending approval of said award.

Discussion/Action: Contract Change Order No. 2 for the South Bay Water Recycling Program-Coyote/Old Oakland Road Pipeline Reach SJ2-3 Project with Mountain Cascade, was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(9) Report on bids and award of contract for the Martin Luther King Jr. Library Reroof Project and approval of award to the low bidder, California Roofing Company, to include the Base Bid and Add Alternate, in the amount of \$198,249, and approval of a contingency in the amount of \$20,000. CEQA: Resolution No. 64273. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 11, 1997 recommending award of contract to the low bidder, California Roofing Company, and approval of said contingency.

Discussion/Action: The award of contract to the low bidder, California Roofing Company, and said contingency were approved. Vote: 11-0-0-0.

6e(10) Approval of a first amendment to the consultant agreement with Wallace Roberts and Todd for The Alameda Streetscape Phase 3 Project, extending the term of the agreement by one (1) year, from May 1, 1997 to May 1, 1998, at no additional cost to the City. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 11, 1997 recommending approval of a first amendment to said agreement with Wallace Roberts and Todd.

Discussion/Action: The first amendment to said agreement with Wallace Roberts and Todd was approved and its execution authorized. Vote: 11-0-0-0.

6e(11) Approval of a first amendment to the agreement with the Campbell Elementary School District adding approximately 235 square feet of unimproved land of Blackford Elementary School grounds for access to a future footbridge across the Los Gatos Creek. CEQA: ND. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 11, 1997 recommending approval of a first amendment to said agreement with the Campbell Elementary School District.

Discussion/Action: The first amendment to said agreement with the Campbell Elementary School District was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(12) (a) Report on bids and award of contract for the Police Athletic League Modular Building to the low bidder, Bruns Belmont Construction, Inc. for the Base Bid only, in the amount of \$216,250. CEQA: Exempt. (Public Works)**
- (b) Adoption of appropriation ordinance and funding sources resolution amendments in various capital funds in the amount of \$200,000 for the Police Athletic League Building. (City Manager's Office)**

Documents filed: None.

Discussion/Action: This item was deferred to May 6, 1997.

6e(13) Report on bids and award of purchase of one (1) food service trailer for the Convention Arts and Entertainment Department at Happy Hollow Park and Zoo to

**the sole bidder Otterbacher Manufacturing, Inc. at a total cost of \$162,576.70, including tax and freight, and authorization for the Director of General Services to execute the purchase order. (General Services)
(Deferred from 4/22/97 - Item 6e(5))**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated April 11, 1997 recommending award of said purchase to the sole bidder Otterbacher Manufacturing, Inc. and authorization for the Director of General Services to execute the purchase order.

Discussion/Action: The award of said purchase to the sole bidder Otterbacher Manufacturing, Inc. and authorization for the Director of General Services to execute the purchase order, were approved. Vote: 11-0-0-0.

**6e(14) Approval of employment agreement with Andrew Gregg. (Mayor)
(Orders of the Day 4a)**

Documents filed: None.

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

**6e(15) Adoption of a resolution authorizing the City Manager to negotiate and execute a professional services consulting agreement with Police Executive Research Forum (PERF) to conduct a Police Management Review for the period May 1, 1997 to February 1998, in an amount not to exceed \$200,000. (City Manager's Office)
(Rules Committee referral 4/23/97)**

Documents filed: Memorandum from Senior Deputy City Manager, Darrell Dearborn, dated April 25, 1997 recommending adoption of said resolution.

Discussion/Action: Resolution No. 67276, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute an Agreement with the Police Executive Research Form (PERF) to Conduct a Police Management Review in an Amount Not to Exceed \$200,000", was adopted. Vote: 11-0-0-0.

**6e(16) Report on bids for the CDBG: Minor Street Reconstruction Phase II Project.
CEQA: Exempt. (Public Works)
(Rules Committee referral 4/23/97)**

Documents filed: None.

Discussion/Action: This item was deferred to May 6, 1997.

Routine Legislation

- 6f(1) Adoption of appropriation ordinance in the Low and Moderate Income Housing Fund in the amount of \$9,859,831 for affordable housing projects. (City Manager's Office/ Housing)**

Documents filed: Memorandum from Budget Director Larry D. Lisenbee and Housing Director Alex Sanchez, dated April 11, 1997 recommending approval of said appropriation ordinance and related revenue resolution amendments.

Discussion/Action: Ordinance No. 25300, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 which Appropriates Moneys in the Low and Moderate Income Housing Fund to Increase the Housing Loans, Grants and Site Acquisition Appropriation in the Amount of \$9,859,831 to Make Funds Available for Additional Affordable Housing Projects; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 11-0-0-0.

- 6f(2) Adoption of appropriation ordinance and funding sources resolution amendments in the Treatment Plant Operating Fund in the amount of \$1,700,000 to accelerate the Biosolids Reuse Program. (City Manager's Office)**

Documents filed: None.

Discussion/Action: This item was deferred to May 13, 1997.

- 6f(3) Adoption of a resolution authorizing the Director of Economic Development to submit an application to the Foreign Trade Zone Board for the establishment of a Foreign Trade Subzone at Cirrus Logic, Inc. in Fremont, California. (Economic Development)**

Documents filed: Memorandum from the Director of Economic Development, Leslie S. Parks, dated April 11, 1997 recommending adoption of said resolution.

Discussion/Action: Resolution No. 67277, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Economic Development to File an Application for Foreign Trade Zone Subzone Authority for Cirrus Logic, Inc.", was adopted. Vote: 11-0-0-0.

- 6f(4) Adoption of resolutions to amend:**

- (a) Resolution No. 66092, Exhibit 07, to revise and re-title the class of Police Data Specialist Supervisor (1185) to Senior Police Data Specialist (1185) at the same salary range of 55D.**
- (b) Resolution No. 66583, Exhibit 06, to revise and re-title the classes of:**
 - (1) Systems Control Specialist I (1361) to Process and Systems Specialist I (1361) at the same salary range of 56C.**

- (2) **Systems Control Specialist II (1363) to Process and Systems Specialist II (1363) at the same salary range of 60C.**
- (c) **Resolution No. 66961, Exhibit 21, to revise and re-title the class of Records Operations Manager (1189) to Operations Support Services Manager (1189) at the same salary range of 61I.**
(Human Resources)

Documents filed: Memorandum from Director of Human Resources, Nona Tobin, dated April 10, 1997 recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67278, entitled: “A Resolution of the Council of the City of San José Amending Revenue Resolution No. 66092 Amending Exhibit 1 of the Memorandum of Agreement Between the City of San José and Municipal Employees Federation, (AFSCME) Local 101, Unit 7 (General Supervisory Employees to Revise and Re-title the Class of Police Data Specialist Supervisor (1185) to Senior Police Data Specialist (1185), Effective May 4, 1997”; Resolution No. 67279, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 66583 by Amending Exhibit I of the Memorandum of Agreement with International Union of Operating Engineers, Local No. 3, Unit 6, to Revise and Re-title the Class of Systems Control Specialist I (1361) to Process and Systems Specialist I (1361), and Systems Control Specialist II (1363) to Process and Systems Specialist II (1363), Effective May 4, 1997”, and Resolution No. 67280, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 66961 by Amending Exhibit I of the Memorandum of Agreement Between the City of San José and Association of Management Personnel (CAMP), Unit 21, to Revise and Re-title the Class of Records Operations Manager (1189) to Operations Support Services Manager (1189), Effective May 4, 1997”, were adopted. Vote: 11-0-0-0.

6f(5) Acceptance of the First Quarter 1997 San José Arena Authority Ticket Distribution Program Report. (San José Arena Authority)

Documents filed: Memorandum from the San José Arena Authority, dated April 10, 1997 submitting said report and recommending acceptance.

Discussion/Action: The First Quarter 1997 San José Arena Authority Ticket Distribution Program Report was accepted. Vote: 11-0-0-0.

6f(6) Adoption of a resolution for each Maintenance District, Numbers 1, 2, and 15 to:

- (a) **Preliminarily approve the Engineer’s Report.**
- (b) **Set a public meeting on June 10, 1997 at 1:30 p.m. and a public hearing on June 17, 1997 at 7:00 p.m. to consider the proposed re-authorization of assessments.**
- (c) **Direct public notice of said meeting and hearing, including the expected consequences of both affirmation and disaffirmation of assessments by property owners.**

(Public Works)

[This item was renumbered from 6c(2)]

Documents filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 21, 1997 recommending adoption of said resolutions. (2) Memorandum from City Manager Regina V.K. Williams, dated April 29, 1997 advising that the maintenance districts addressed in the Staff report require re-authorization due to the passage of Proposition 218 in November, 1996.

Discussion/Action: Resolution No. 67281, entitled: "A Resolution of the Council of the City of San José Preliminarily Approving the Engineer's Report for Maintenance District Number 1 (Los Paseos) and Taking Certain Other Actions Preliminary to the Reauthorization of Such Maintenance District Pursuant to the Provisions of Proposition 218"; Resolution No. 67282, entitled: "A Resolution of the Council of the City of San José Preliminarily Approving the Engineer's Report for Maintenance District Number 2 (Trade Zone Blvd. - Lundy Ave) and Taking Certain Other Actions Preliminary to the Reauthorization of Such Maintenance District Pursuant to the Provisions of Proposition 218"; and Resolution No. 67283, entitled: "A Resolution of the Council of the City of San José Preliminarily Approving the Engineer's Report for Maintenance District Number 15 (Silver Creek) and Taking Certain Other Actions Preliminary to the Reauthorization of Such Maintenance District Pursuant to the Provisions of Proposition 218", were adopted. Vote: 11-0-0-0.

- 6f(7) Adoption of a resolution authorizing the City Manager to apply to the United States Department of Justice for fourth year grant funding in an amount not to exceed \$225,000 for the Weed and Seed Program and other related funding for the period October 1, 1997 to September 30, 1998, to accept the grant if awarded and to execute all related documents. (Parks, Recreation and Neighborhood Services/Police/Planning and Code Enforcement)
(Rules Committee referral 4/23/97)**

Documents filed: Memorandum from Acting Director, Parks, Recreation and Neighborhood Services, Mark Linder; Chief of Police Louis A. Cobarruviaz, and Director of Planning, Building and Code Enforcement, James Derryberry, dated April 10, 1997 recommending adoption of said resolution.

Discussion/Action: Resolution No. 67284, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Submit a Grant Application for the Weed and Seed Grant Program and to Accept the Grant if Awarded", was adopted. Vote: 11-0-0-0.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - April 16, 1997

Documents filed: Rules Committee report of April 6, 1997.

- (1) Review April 29 Council Agenda

The Committee approved the April 29, 1997 Council agenda with three additions.

- (2) Add New Items to April 22 Amended Council Agenda

The Committee recommended two additions to the April 22, 1997 amended Council agenda.

- (3) The Public Record. Attachment: (1) Memorandum from City Clerk Patricia L. O'Hearn, dated April 10, 1997, listing the items transmitted to the Administration and those items filed for the Public Record for the period April 2-8, 1997. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated April 2-8, 1997, summarizing actions taken on the items transmitted to the Administration and those items filed for the Public Record.

The Committee noted and filed the Public Record.

- (4) Report back on anti-graffiti proposal

The Committee deferred this item to the April 23, 1997 Rules Committee meeting.

- (5) Report back on moving authority for issuing special events permits

The Committee deferred this item to the April 23, 1997 Rules Committee meeting.

- (6) Approve proposed City of San Jose policy position on Section 8 Expiring Contracts (Housing Department). Attachment: Memorandum from Director of Housing Alex Sanchez, dated April 9, 1997, recommending approval of a proposed City of San José policy position on expiring Section 8 contracts.

The Committee recommended approval of the proposed City of San José policy position on Section 8 expiring contracts.

- (7) Presentation by TACCLE (Teen Activists for Community Change and Leadership Education) groups from Mt. Pleasant, Andrew Hill and Willow Glen High Schools against teen use of alcohol, tobacco and other drugs. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated April 11, 1997, forwarding a packet of information from three TACCLE groups; press release dated April 7, 1997, entitled, *San José Youth 'Kick Butts' on April 10, 1997*

The Committee recommended this item report out at 2:00 p.m. time certain along with the requests, a resolution and pledge banning the acceptance of political contributions from tobacco and alcohol companies, support of initiatives asking

merchants to voluntarily remove tobacco advertisements located near candy or below a three-foot eye level, and influencing radio and television stations not to air hard liquor advertisements.

See Item 9f for Council action taken.

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

(a) Request to research the cost and a strategy for purchasing thermal imaging helmets for the City of San Jose's Fire Department (Diquisto/Fernandes). Attachment: Memorandum from Vice Mayor Fernandes and Council Member Diquisto, dated April 10, 1997, regarding infrared fire helmets. The Committee requested the Administration research thermal imaging helmets for the Fire Department and report to the City Council on the types of equipment available, current and projected costs, and a strategy for purchasing such equipment to be available for fire stations throughout the City.

(9) City Council and Rules Committee Meeting Schedules

Council Liaison Norberto Duenas reported that the Committee of the Whole entitled, "Zero Based Budgeting Pilot Program Review" will not take place on April 17 or April 29, but will be rescheduled for some time in May.

(10) Oral Communications

William Chew requested that Council meetings be televised.

(11) Adjournment

The meeting was adjourned at 3:10 p.m.

Discussion/Action: Upon motion by Vice Mayor Fernandes, seconded by Council Member Johnson, and unanimously carried, the Rules Committee report and actions of April 16, 1997, were accepted, with Item 7b(7) heard under Item 9f. Vote: 11-0-0-0.

LAND USE AND DEVELOPMENT

- 8a (1) **Adoption of an urgency ordinance and approval of a regular ordinance adding a new Chapter 18.30 to Title 18 of the San José Municipal Code to establish the process and procedures for the review and consideration of proposed modifications to the Greenline/Urban Growth Boundary.**
- (2) **Adoption of a resolution amending the 1996-97 Schedule of Fees to incorporate proposed processing fees for modification to the Urban Growth Boundary.**

CEQA: ND. (City Attorney's Office)

Documents filed: Memorandum from Planning Director, James R. Derryberry, dated April 25, 1997 recommending (1) Adoption of said urgency ordinance, (2) Approval of a regular ordinance, as described, and (3) Adoption of a resolution amending the 1996-97 Schedule of Fees to incorporate proposed processing fees for modification to the Urban Growth Boundary.

Discussion/Action: City Attorney Joan Gallo advised an urgency ordinance and a regular ordinance are proposed in order for the ordinance to go into effect in time to hold June 1997 hearings for any decisions, which would impact the General Plan hearings in the Fall. Renee Robbins, representing the Richmond Family Trust and Young Ranch, who with three other landowners have submitted a General Plan amendment request, spoke in opposition to the proposed ordinances and requested consideration of the fee schedule be deferred. Council Member Pandori stated the Planning Commission should have a role in the process since the General Plan is one of the Commission's major functions and requested more information on the fee structure. City Attorney Gallo suggested deferring the amendment to the Schedule of Fees component until the second reading of the ordinance. Council Members Pandori, Diaz and Fiscalini stated they thought the Planning Commission should have a role in the process. Council Member Johnson agreed and stated impacts to the application timeline should be considered and possibly included in the ordinance, especially in situations where a major Environmental Impact Report is needed. She suggested those kinds of issues be discussed when the final ordinance is considered. Responding to questions regarding the need for an urgency ordinance, City Attorney Gallo explained that when Council adopted the Urban Growth Boundary, it was made clear that implementation ordinances would be needed and this ordinance represents the first of such ordinances. Since an application has been filed by the aforementioned landowners, she stated a process has to be expedited in order to respond to the application in a timely manner relative to the General Plan hearings. She advised that the urgency ordinance provides a mechanism for the City to respond to the application and the regular ordinance can be adjusted to include the Planning Commission, if the Council desires. In reply to questions by Council Member Diquisto, City Attorney Gallo advised that if there are unresolved issues, the second reading can be delayed. Council Member Pandori moved approval of Items 1 and 2 of the Staff recommendation dated April 25, 1997, with direction to the City Attorney that the ordinance should include the Planning Commission in the review process, and deferral of Item 3 for two weeks for additional information. Council Member Woody seconded the motion. On a call for the question, the motion carried unanimously and the amendment to the 1996-97 Schedule of Fees to incorporate proposed processing fees for modification to the Urban Growth Boundary was deferred to May 13, 1997, Ordinance No. 25301, entitled: "An Urgency Ordinance of the City of San José Adding a New Chapter 18.30 to Title 18 of the San José Municipal Code to Establish a Process for Amendments to the Urban Growth Boundary Established by the San José General Plan and Setting Forth the Facts Constituting Such Urgency", was adopted, and Ordinance No. 25302, entitled: "An Ordinance of the City of San José Adding a New Chapter 18.30 to Title 18 of the San José Municipal Code to Establish a Process for Amendments to the Urban Growth Boundary Established by the San José General Plan", was passed for publication, and

Staff was directed to report back with clarification of the provisions of the ordinance and inclusion of the Planning Commission as part of the review process and review of the fee structure. Vote: 11-0-0-0.

GENERAL GOVERNMENT

- 9a Report on bids and award of contract for the South Bay Water Recycling Program Senter Road Project to the low bidder, and approval of a ten (10) percent contingency, pending concurrence by the Treatment Plant Advisory Committee. CEQA: Resolution No. 64667. (Public Works)**

Documents filed: None.

Discussion/Action: This item was deferred to May 6, 1997.

- 9b Report on bids and award of contract for the Slurry Seal 1997 Project, to the low bidder, Valley Slurry Seal Company, in the amount of \$1,440,945 and approval of a contingency in the amount of \$159,054.90, for a total contract amount of \$1,600,000. CEQA: Exempt. (Streets and Traffic)**

Documents filed: None.

Discussion/Action: Director of Streets and Traffic, Wayne K. Tanda, advised Council that the low bid is greater than the Engineer's Estimate of \$1.2 million. He stated an addendum was issued which provided clarification for an improved product, that the Engineer's Estimate if it had been redone would have been \$1.3 million and the low bid would have been within ten percent of that figure. Gerry Graham, President of Reed and Graham, spoke in opposition to the proposed award based on "radical changes" made to the City's standard specifications for slurry seal projects, including the designation of a product from a sole source supplier. Director Tanda stated when Valley Slurry Seal Company suggested the product, Staff contacted other jurisdictions that have used the product, including Caltrans. He stated the black aggregate is crushed rather than naturally rounded, making it stronger and longer lasting, that slurry seal lasts approximately eight years and Staff hopes to lengthen that time using the new material. He stated the latex additive creates a better bond between the rocks and the street, is used by a number of jurisdictions, and is not a sole source supplier. Jeffrey Reed, Valley Slurry Seal Company, stated his company's bid is \$200,000 lower than the second lowest bid, the difference in the cost of the rock is \$130,000, that the black aggregate and latex modified emulsion last longer than traditional materials. He stated that rejection and re-bid of the contract would jeopardize his bid and unfairly penalize his subcontractors. Senior Deputy City Manager Darrell Dearborn stated the supplier of the black aggregate is a sole source supplier to the contractors, not the City. Gerry Graham noted that the aggregate quotes were from one quarry because the qualifications specified the material had to be black. Council Member Fiscalini stated that based upon research done by his office, he is concerned about the additional costs for the new material proposed for purchase from the sole source provider in Sonora. He questioned whether the expected longer life would be

due to the composition of new material or to its increased thickness, in which case the same result could be achieved by specifying a greater thickness in the current aggregate. He stated the Willow Glen parking lot test was inadequate, questioned the advisability of using black seal due to its heat retention properties, and suggested the rejection of all bids. Mayor Hammer agreed with him on the color issue, however, noted the new aggregate would be cost effective if the application lasted two years longer than at present. Director Tanda explained that the new aggregate produces a better slurry seal than the existing aggregate due to its greater ability to be stacked without resulting in rutting. Council Member Pandori expressed concern about the rationale for expecting the new aggregate would outlast the current aggregate and recommended deferral of the issue for Staff to provide additional information on the issues raised by the Council. By unanimous consent, the item was deferred to May 13, 1997 at time certain 2:00 p.m. Vote: 10-0-1-0. Absent: Fernandes.

ORAL COMMUNICATIONS

- (1) Cathy Brandhorst addressed the Council regarding issues affecting the homeless.
- (2) Satish Ram spoke to the Council about societal issues.

ADJOURNMENT

The Council of the City of San José adjourned at 5:35 p.m. to meet in Joint Session with the Redevelopment Agency Board on Thursday, May 1, 1997, 1:30 p.m., Council Chambers. For specific items, see the Redevelopment Agency Agenda for the meeting of Thursday, May 1, 1997.

This meeting was adjourned in memory of Halsey Burke, former president of the Greater San José Chamber of Commerce and civic leader; and in memory of Phil Letcher, a part time librarian who in five years worked in almost every branch library throughout the City.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK