

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 5, 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, Diquisto, Fernandes, Fiscalini, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: Diaz (excused), 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 (1) In re Lonero, (2) In re Laman, (3) Mears, et al. v. City of San José, et al, and (4) City of San José v. Norcal Waste Systems, Inc.; to discuss anticipated litigation pursuant to Subsection (b) of Government Code Section 54956.9, in one matter involving anticipated litigation; and to confer with Labor Negotiator Pursuant to Government Code 54957.6: (1) City Negotiator: City Manager designee Darrell Dearborn, Employee Organizations: San José Police Officers' Association and International Association of Firefighters.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:50 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.

Absent: Council Members: Hammer (excused).

INVOCATION

Jose Placencia and Jeffery Peralta, students at Seven Trees Elementary School, sang "America the Beautiful" in both English and Spanish.
(District 7)

PLEDGE OF ALLEGIANCE

Vice Mayor Fernandes led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Johnson, seconded by Council Member Fiscalini, and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 9-0-2-0. Absent: Pandori; Hammer.

CEREMONIAL ITEMS

- 5a Presentation of plaques to Christopher Aguilera for 4 years service, and to Leslie Bowles Moreland for 5 years service on the Airport Commission; to Maria Ferrer for 4 years service on the Arts Commission; to Linda Larson-Boston for 4 years service, and to James Salata for 4 years service on the Historic Landmarks Commission; to Kathy D. Imamura for 1 year service on the Library Commission; to Randal Okamura for 1 year service, and to David Poeschel for 1 year service on the Parks and Recreation Commission; to Carol Hunter for 4 1/2 years service on the San José Appeals Hearing Board; to Nina Mazzo for 4 years 10 months service, to George Miskulin for 6 years service, to Betty Rinsler for 4 years service, to Donald Stacks for 4 years service, and to John Vincent for 6 years 3 months service on the Senior Citizens Commission. (Mayor)**

Documents filed: None.

Discussion/Action: Vice Mayor Fernandes made presentations to Christopher Aguilera for service on the Airport Commission, to Maria Ferrer for service on the Arts Commission, Linda Larson-Boston and James Salata for service on the Historic Landmarks Commission, to Randal Okamura for service on the Parks and Recreation Commission, to Carol Hunter for service on the San José Appeals Hearing Board, and to Nina Mazzo, George Miskulin, Betty Rinsler, Donald Stacks and John Vincent for service on the Senior Citizens Commission. Plaques will be sent to the recipients who were unable to attend.

CONSENT CALENDAR

Upon motion by Council Member Fiscalini, seconded by Council Member Johnson, and unanimously carried, 6e(3)(b) was deferred to August 12, 1997 and the Consent Calendar was approved and the below listed items taken as indicated. Vote: 10-0-1-0. Absent: Hammer.

Minutes for Approval

6a(1) Regular Meeting of May 6, 1997

Documents filed: Minutes of May 6, 1997.

Discussion/Action: The minutes were approved. Vote: 10-0-1-0. Absent: Hammer.

6a(2) Regular Meeting of May 13, 1997

Documents filed: Minutes of May 13, 1997.

Discussion/Action: The minutes were approved. Vote: 10-0-1-0. Absent: Hammer.

6a(3) Joint City Council/Redevelopment Agency Meeting of May 15, 1997

Documents filed: Minutes of May 15, 1997.

Discussion/Action: The minutes were approved. Vote: 10-0-1-0. Absent: Hammer.

Ordinances for Final Adoption Ord. Titles from Contracts

6b(1) ORD. NO. 25398 - Establishes an Underground Utility District at Saratoga Avenue, from State Route 280 to Blackford Avenue, and Moorpark Avenue, from Saratoga Avenue to 200 feet east.

Documents filed: Proof of publication of title of Ordinance No. 25398, submitted by the City Clerk.

Discussion/Action: Ordinance No. 25398 was adopted. Vote: 10-0-1-0. Absent: Hammer.

Plans and Specifications

6d(1) TRACT NO. 8948 - Northeast corner of Oakland Road and Murphy Avenue - Brokaw Interests, a California Limited Partnership (Developer) - 8 lots. Adoption of a resolution approving the final map for Tract No. 8948. CEQA: ND. District 4. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated July 25, 1997, recommending adoption of said ordinance.

Discussion/Action: Resolution No. 67538, entitled: "A Resolution of the Council of the City of San José Approving and Accepting the Final Map of Tract No. 8948", was adopted. Vote: 10-0-1-0. Absent: Hammer.

Contracts/Agreements

6e(1) Adoption of a resolution authorizing the City Attorney to execute a second amendment to the agreement with DKS Associates, extending the term through August 30, 1998. (City Attorney's Office)

Documents filed: Memorandum from City Attorney Joan R. Gallo, dated July 30, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67539, entitled: "A Resolution of the Council of the City of San José Delegating to the City Attorney the Authority to Execute a Second Amendment to the Agreement with DKS Associates Extending the Term Through August 30, 1998", was adopted. Vote: 10-0-1-0. Absent: Hammer.

- 6e(2) Approval of a continuation agreement with Environmental Science Associates, Inc. for the preparation of an Environmental Impact Statement for the San José International Airport/Master Plan Update Project, increasing the compensation by \$120,000, from \$1,487,000 to \$1,607,000, and extending the term of the agreement by one (1) year, from July 1, 1997 to June 30, 1998. (Airport)**

Documents filed: Memorandum from Aviation Director Ralph G. Tonseth, dated July 18, 1997, recommending approval of said agreement with Environmental Science Associates, Inc.

Discussion/Action: The continuation agreement with Environmental Science Associates, Inc. was approved and its execution authorized. Vote: 10-0-1-0. Absent: Hammer.

- 6e(3) (a) Adoption of a resolution authorizing the City Manager to negotiate and execute a grant agreement with Alum Rock Union Elementary School District on behalf of Ryan Elementary School for the purchase and installation of a portable building in the amount of \$125,000. CEQA: Exempt.**
- (b) Adoption of a resolution authorizing the City Manager to negotiate and execute a grant agreement with East Side Union High School District on behalf of Piedmont Hills High School for costs associated with the purchase and installation of bleachers and light standards in the amount of \$100,000. CEQA: Exempt.**
- (c) Approval of a grant agreement with San José/Evergreen Community College District on behalf of San José City College for the renovation of their track and field in the amount of \$150,000. CEQA: Exempt.**
- (City Manager's Office)**

Documents filed: (1) Memorandum from Aviation Director Ralph G. Tonseth, dated July 18, 1997, recommending authorization for the City Manager to negotiate and execute said grant agreement with Alum Rock Union Elementary High School District on behalf of Ryan Elementary School. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated July 18, 1997, recommending approval of said grant agreement with the San José/Evergreen Community College District on behalf of San José City College.

Discussion/Action: The grant agreement with San José/Evergreen Community College District on behalf of San José City College was approved, Resolution No. 67540, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Grant Agreement with Alum Rock Union Elementary School District on Behalf of Ryan Elementary School for the Purchase and Installation of a Portable Building in an Amount Not to Exceed \$125,000", was adopted, and the negotiations with East Side Union High School District on behalf of Piedmont Hills High School for costs associated with the purchase and installation of bleachers and light standards was deferred to August 12, 1997. Vote: 10-0-1-0. Absent:

Hammer.

- 6e(4) Report on bids and award of contract for Miscellaneous and Emergency Repairs to Municipal Water System Facilities to the sole bidder, R.W. French Construction, Inc., in the amount of \$253,393.75. CEQA: Exempt. (Environmental Services)**

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated July 18, 1997, recommending award of said contract to the sole bidder, R.W. French Construction, Inc.

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

- 6e(5) Adoption of a resolution approving the purchase of an insurance policy providing excess workers' compensation coverage from American International Group (AIG) for the period July 1, 1997 to June 30, 1998, in an amount not to exceed \$153,000. (Finance)**

Documents filed: Memorandum from Director of Finance, John V. Guthrie, dated July 18, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67541, entitled: "A Resolution of the Council of the City of San José Approving the Purchase of an Insurance Policy Providing Excess Workers' Compensation Coverage from American International Group for the Period July 1, 1997 Through June 30, 1998, in an Amount Not to Exceed \$153,000", was adopted. Vote: 10-0-1-0. Absent: Hammer.

- 6e(6) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1997-98 #3, 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, recommending approval of said open purchase orders.

Discussion/Action: The award of open purchase orders List No. 3, was approved and execution of the purchase orders authorized. Vote: 10-0-1-0. Absent: Hammer.

- 6e(7) Approval of an agreement with Catholic Charities of Santa Clara County for recreation, meal and nutrition, counseling, and case management services provided to senior citizens at the Eastside Community Center, for the period July 1, 1997 to June 30, 1998, in the amount of \$105,090. (Parks, Recreation and Neighborhood Services)**

Documents filed: Memorandum from Acting Director of Parks, Recreation and

Neighborhood Services, Mark Linder, dated July 18, 1997, recommending approval of said agreement with Catholic Charities.

Discussion/Action: The agreement Catholic Charities of Santa Clara County was approved and its execution authorized. Vote: 10-0-1-0. Absent: Hammer.

- 6e(8) Report on bids and award of contract for the San José International Airport Administrative Office Terminal C (Revised) Project to the sole bidder, Redwood Plumbing Co., in the amount of \$89,000, and approval of a contingency in the amount of \$9,000. CEQA: Exempt. (Public Works)**

Documents filed: Memoranda from Director of Public Works, Ralph A. Qualls, Jr., dated July 18 and 31, 1997, recommending award of said contract to sole bidder, Redwood Plumbing Co.

Discussion/Action: The award of said contract to the sole bidder, Redwood Plumbing Co. was approved and its execution authorized. Vote: 10-0-1-0. Absent: Hammer.

- 6e(9) Approval of an amendment to the employment agreement with Gillian Clarke and approval of an employment agreement with Chari Hearn. (Woody)**

Documents filed: None.

Discussion/Action: the amendment to said employment agreements with Gillian Clarke, Chari Hearn was approved, and their execution authorized. Vote: 10-0-1-0. Absent: Hammer.

Routine Legislation

- 6f(1) Approval of an award in the amount of \$25,778 to Rob Piper, Fire Department, for his suggestion: Wireless Communication Network. (City Manager's Office)**

Documents filed: Memorandum from Assistant to the City Manager, Nina S. Grayson, dated July 18, 1997, recommending approval of said award to Rob Piper, Fire Department, pursuant to Section 2.08.1550 of the San José Municipal Code.

Discussion/Action: The award to Rob Piper as recommended by the City's Suggestion Award Commission was approved and its execution authorized. Vote: 10-0-1-0. Absent: Hammer.

- 6f(2) Approval of an ordinance amending Chapter 9.10 of the Municipal Code to eliminate the requirement that collectors of source separated commercial recyclables obtain Single Recyclables Collection Permits from the City. (Environmental Services)**

Documents filed: Memorandum from Director of Environmental Services, Louis N.

Garcia, dated July 18, 1997, recommending approval of said ordinance.

Discussion/Action: Ordinance No. 25401, entitled: “An Ordinance of the City of San José Amending Chapter 9.10 of Title 9 of the San José Municipal Code to Eliminate the Requirements for Swill Collectors Permits and Commercial Single Recyclables Permits”, passed for publication. Vote: 10-0-1-0. Absent: Hammer.

- 6f(3) Adoption of a resolution finding that the use of CDBG funds for proactive code enforcement efforts in the residential neighborhood of Snow Drive bordered by Snow Drive, Rahway Drive and Bold Drive, is appropriate and necessary. (Planning, Building and Code Enforcement)**

Documents filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated July 18, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67542, 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 Snow Drive, Bordered by Snow Drive, Rahway Drive and Bold Drive, is Appropriate and Necessary”, was adopted. Vote: 10-0-1-0. Absent: Hammer.

- 6f(4) Adoption of a resolution initiating proceedings and setting August 19, 1997 at 1:30 p.m. as the date for Council consideration of the reorganization of territory designated as Hamilton No. 58 which involves the annexation to the City of San José of 0.54 acres of land, located on the north side of East Hamilton Avenue, approximately 70 feet westerly of Norman Avenue and adjacent public right-of way extending to the east side of Norman Avenue, and the detachment of the same from the Central Fire District and the Santa Clara County Library Service Area. CEQA: ND. (Planning, Building and Code Enforcement)**

Documents filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated July 18, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67543 entitled: “Resolution of the Council of the City of San Jose Initiating Proceedings for Annexation and Detachment of Certain Uninhabited Territory Designated as Hamilton No. 58 and Described Herein, and Setting the Date and Place for Consideration of such Reorganization”, was adopted. Vote: 10-0-1-0. Absent: Hammer.

- 6f(5) (a) Adoption of a resolution accepting a donation of an alarm system from Sonitrol for the Police Department’s Horse Mounted Unit Stables to include the installation charges at a total value of \$17,900. (Police/City Manager’s Office)**
- (b) Adoption of a resolution accepting a donation of a “Blue Box” video**

processing system from Atlantic Richfield Company for use by the Police Department in the investigation of retail crimes at a total value of \$7,500. (Police)

Documents filed: Memoranda from Chief of Police, Louis A. Cobarruviaz, dated July 18, 1997, recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67544, entitled: "A Resolution of the Council of the City of San José Accepting a Gift of a Security and Fire Alarm System for the Police Horse Mounted Unit Stables from Sonitrol Valued at Approximately \$17,900", and Resolution No. 67545, entitled: "A Resolution of the Council of the City of San José Accepting a Gift of a Blue Box Video Processing System from Atlantic Richfield Company Valued at Approximately \$7,500 to be Used by the Police Department in Criminal Investigations", was adopted. Vote: 10-0-1-0. Absent: Hammer.

- 6f(6) Adoption of a resolution declaring a parcel of City-owned land located at the northwest corner of Lone Bluff Way and Dadis Way surplus to the needs of the City, approving the agreement for sale of surplus City-owned real property to Nor-Cal Development Group, Inc., a California Corporation in the amount of \$2,500, and directing the City Clerk to execute the necessary documents. CEQA: Exempt. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated July 18, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67546, entitled: "A Resolution of the Council of the City of San José Declaring Certain City-Owned Property Surplus and Authorizing the City Clerk to Execute an Agreement for Sale of Real Property and all Necessary Documents for the Sale of Such Property", was adopted. Vote: 10-0-1-0. Absent: Hammer.

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

7a Reports of the Committee of the Whole:

Meeting of May 15, 1997

Documents filed: Committee of the Whole report of May 15, 1997.

- (1) Departmental/Fund Reviews for Proposed FY 1997-98 Operating Budget. Attachments: (1) FY 1997-98 Proposed Operating Budget, FY 1997-98 Proposed Capital Budget, and FY 1998-2002 Proposed Capital Improvement Program. (2) Proposed FY 1997-98 Fees and Charges Report. (3) Memorandum from City Manager Regina V.K. Williams, dated May 13, 1997, transmitting

agendas for Committee of the Whole meetings scheduled for budget discussions. (4) Hard copies of transparencies used in the Staff presentation on the FY 1997-98 Proposed Operating Budget, Department and Fund Reviews.

The Committee accepted presentations on proposed budgets for the Offices of the Mayor and City Council, City Attorney, City Auditor, City Clerk, City Manager, Independent Police Auditor, and the Departments of Equality Assurance, Economic Development, Finance, Human Resources, Information Technology, Redevelopment Agency, and General Services, and directed Staff report back on issues raised by Council Members.

Meeting of May 19, 1997

Documents filed: Committee of the Whole report of May 19, 1997.

- (1) Departmental/Fund Reviews for Proposed FY 1997-98 Operating Budget. Attachments: See Proposed FY 1997-98 Operating budget.

The Committee accepted presentations on the Departments of Fire and Police, and directed Staff to report on issues raised by Council Members.

7a Reports of the Committee of the Whole:

Meeting of May 22, 1997

Documents filed: Committee of the Whole report of May 22, 1997.

- (1) Police Non-Emergency 311 Pilot Project. Attachment: Memorandum from Police Chief Cobarruviaz, dated May 15, 1997, reporting the status of the proposed 311 Non-Emergency Number Pilot Project (Manager's Budget Document No. 2).

The Committee approved Implementation of the Non-Emergency 311 Pilot Project, as recommended by Council Member Fernandes in memorandum dated May 20, 1997

- (2) Departmental/Fund Reviews for Proposed FY 1997-98 Operating Budget. Attachments: See Proposed FY 1997-98 Operating budget.

The Committee accepted presentations on the Departments of Public Works, Streets and Traffic, Environmental Services, Library, and Parks, Recreation and Neighborhood Services, and directed Staff to report on issues raised by Council Members.

Documents filed: Committee of the Whole report of May 29, 1997.

- (1) Departmental/Fund Reviews for Proposed FY 1997-98 Operating Budget. Attachments: See Proposed FY 1997-98 Operating Budget.

The Committee accepted presentations on Parks, Recreation and Neighborhood Services and Community Development Block Grants; on Planning, Building and Code Enforcement and the Planning Commission, on City-wide Expenses, Departments of the Airport, Housing, and Conventions, Arts and Entertainment, and the Integrated Waste Management Fund, Sewer Service and Use Charge Fund, and Storm Drainage Service Use Charge Fund; and directed Staff to report back on issues raised by Council Members.

- (2) Proposed FY 1997-98 Capital Improvement Program. Attachments: (1) See Proposed FY 1997-98 Capital Budget and Proposed 1998-2002 Capital Improvement Program Budget. (2) Mayor Hammer's FY 1997-98 Capital Budget Message dated May 8, 1997.

The Committee accepted presentations on the Airport and on Developer Assisted Projects, Park Facilities, Sanitary Sewer, Storm Drainage and Traffic from the Department of Public Works.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Diaz, and unanimously carried, the Committee of the Whole report and actions of May 15, 19, 22 and 29, 1997, were accepted. Vote: 10-0-1-0. Absent: Hammer.

7c Report of the Finance/Agency Finance Committee - June 25, 1997

Documents filed: Finance/Agency Finance Committee report of June 25, 1997.

- (1) Monthly Financial Statements
- (2) Capital Cost Report
- (3) Cash Flow Projection

Items 1-3 to be heard by the Redevelopment Agency Board. Attachments: Redevelopment Agency Finance Committee Agenda for June 25, 1997, and related documents.

- (4) Review of Commercial Solid Waste Franchise and AB 939 fees. Attachment: Report and Executive Summary, entitled: *A Review of Commercial Solid Waste Franchise and AB 939 fees*, submitted by City Auditor Gerald A. Silva.

The Committee accepted the Staff report and continued the issue to the August 13, 1997 Committee meeting.

- (5) Monthly Auditor's Report for May 1997. Attachment: Memorandum from City Auditor Gerald A. Silva, dated June 19, 1997, submitting the May 1997

Auditor's report.

The Committee noted and filed the report.

- (6) Quarterly Audit Follow-up Report on Recommendations for the period ended April 30, 1997. Attachment: Memorandum from City Auditor Gerald A. Silva, dated June 18, 1997, submitting the Follow-Up Report on Recommendations for period ended April 30, 1997.

The Committee noted and filed the report.

- (7) Auditor's Workplan for FY 1997-98. Attachment: Memorandum from City Auditor Gerald A. Silva, dated June 18, 1997, submitting the Auditor's Proposed FY 1997-98 Workplan.

The Committee approved the workplan, as amended by the Committee.

- (8) Oral petitions

David Wall discussed the Environmental Services Department.

- (9) Adjournment

The meeting was adjourned at 10:39 a.m.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Fiscalini, and unanimously carried, the Finance/Agency Finance Committee report and actions of June 25, 1997, were accepted, with Items 1-3 to be heard by the Redevelopment Agency Board. Vote: 10-0-1-0. Absent: Hammer.

GENERAL GOVERNMENT

- 9a Approval to refer to the Redevelopment Agency commencement of negotiations for the purchase of up to six (6) toilets with the two (2) vendors that have purchase options and also examine the maintenance options for the facilities.
[Transportation, Planning and Environment Committee referral 6/12/97 - Item 7e(2)]
(Deferred from 6/17/97 - Item 9n)**

Documents filed: None.

Discussion/Action: This item was deferred to September 2, 1997.

- 9b Adoption of resolutions of intention to annex territory designated as Annexation Areas Nos. 1, 2, and 3 into Community Facilities District No. 2 (Aborn-Murillo), authorizing the levy of special taxes within the Annexation Areas, and setting**

**public hearings regarding the annexation of those Annexation Areas on September 9, 1997 at 1:30 p.m. (Public Works)
(Rules in Lieu referral 7/30/97)**

Documents filed: None.

Discussion/Action: This item was deferred to August 12, 1997, to be heard after the Public Hearings on the formation of Community Facilities District Nos. 2 and 3.

FISCAL AFFAIRS

10a PUBLIC HEARING on the Annual Sewer and Use Charge/Storm Drainage Service Charge Report of the Director of Finance, filed with the City Clerk, containing a description of each and every parcel of real property receiving sewer services and facilities pursuant to Chapter 15.12.550 and 15.16.1340 of the San José Municipal Code, and approving the placement of the amount of the sewer service and use charge and storm drainage service charge for each parcel to be collected on the FY 1997-98 County Tax Roll. (Finance)

Documents filed: (1) Memorandum from Director of Finance, John V. Guthrie, dated July 18, 1997, recommending approval of the placement of said sewer services and use charge and storm drainage service charges on the County Tax Roll for FY 1997-98. (2) Proof of Publication of Notice of Public Hearing dated June 16, 1997, submitted by the City Clerk. (3) Affidavit of Posting of Notice of Public Hearing, dated June 16, 1997, submitted by the City Clerk.

Discussion/Action: The public hearing was opened and William J. Garbett spoke in opposition to the proposed action. Upon motion by Council Member Johnson, seconded by Council Member Powers, and unanimously carried, the public hearing was closed, the Finance Director's report approved, and the placement of said sewer services and use charge and storm drainage service charges on the County Tax Roll for FY 1997-98 was authorized. Vote: 10-0-1-0. Absent: Hammer.

ORAL COMMUNICATIONS

Ross Signorino addressed the Council in opposition to a relocation of City Hall.

RECESS/RECONVENE

Following Oral Communications, Council recessed at 2:00 p.m. until 7:03 p.m.

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

Absent: Council Members: Hammer (excused).

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

PUBLIC HEARINGS

- 15a PUBLIC HEARING and approval of an ordinance amending Title 20 of the San José Municipal Code to (1) allow group residences which are operated as single housekeeping units as permitted uses in all residential zoning districts; (2) regulate the location and require a conditional use permit for residential facilities which are not operated as a single housekeeping unit; (3) regulate residential correctional facilities; (4) and provide a process for requesting a reasonable accommodation in the application of City land use regulations for persons with disabilities. (Planning, Building and Code Enforcement)
(Continued from 1/12/96 - Item 8a et al., and 6/17/97 - Item 15a)**

Documents filed: None.

Discussion/Action: This item was continued to October 7, 1997.

- 15b PUBLIC HEARING ON APPEAL OF SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT for a Planned Development Rezoning and Historic Preservation Permit for property located on the block bounded by South 2nd Street, East Santa Clara Street, South 3rd Street, and East San Fernando Street in Downtown San José. Director of Planning recommends approval. Planning Commission recommends approval (5-0-1-1).
PDC 96-12-082 - District 3**

Documents filed: None.

Discussion/Action: This item was continued to September 2, 1997.

- 15c PUBLIC HEARING on the approval of an ordinance granting a Development Agreement between the City of San José and 3Com Corporation and BNP Leasing Corporation for the property located on the south side of State Route 237, between Zanker Road and North First Street, relative to the development of property in North San José, on 72.16 gross acres (3Com Corporation, BNP Leasing Corporation, Owner; 3Com Corporation, Developer). CEQA: Resolution No. 67510. Director of Planning recommends approval. Planning Commission recommends approval (5-0-1-1). District 4
(Continued from 6/17/97 - Item 15c)**

Documents filed: (1) Memorandum from the Planning Commission, dated July 18, 1997, recommending approval of an ordinance granting said Development Agreement. (2) Proof of Publication of Notice of Public Hearing, dated May 19, 1997, submitted by

the City Clerk.

Discussion/Action: The public hearing on the proposed Development Agreement between the City of San José and 3Com Corporation and BNP Leasing Corporation was opened. Planning Director James Derryberry stated the proposed item is a development agreement vesting the General Plan, the zoning, and the approved development permits for the 3Com Campus development at First and State Route 237. He stated the agreement is a fairly standard form of development agreement, which is prescribed by the City's ordinance--unlike some cities that negotiate individual agreements with developers San José has a fairly rigid format that is prescribed by ordinance--and the agreement is similar to previous agreements between the City and Sony, Cisco Systems, and other developers in the area. Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, the public hearing was closed and Ordinance No. 25402, entitled: "An Ordinance of the City of San José Approving the Development Agreement Between the City of San José and 3Com Corporation Relative to the Development of Property in North San José", was passed for publication. Vote: 10-0-1-0. Absent: Hammer.

15d PUBLIC HEARING and adoption of a resolution conditionally vacating portions of Fowler Road east of Littleworth Way, reserving a public service easement over vacated portions of the street. CEQA: Exempt. (Public Works)

Documents filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated July 18, 1997, recommending Council conduct a public hearing on said street vacation and adopt said resolution. (2) Proof of publication of Resolution No. 67360, dated July 8, 1997, submitted by the City Clerk. (3) Affidavit of Posting of Resolution No. 67360, approving certain maps showing those portions of Fowler Road East of Littleworth Way which Council proposes to vacate.

Discussion/Action: The public hearing on conditionally vacating portions of Fowler Road was opened and there was no testimony from the floor. Upon motion by Council Member Powers, seconded by Council Member Diaz, and unanimously carried, the public hearing was closed and Resolution No. 67547, entitled: "Resolution of the Council of the City of San José Conditionally Vacating Portions of Fowler Road as Shown on Maps Approved by the Council on June 10, 1997 and Reserving a Public Service Easement", was adopted. Vote: 10-0-1-0. Absent: Hammer.

15e PUBLIC HEARING and approval of an ordinance establishing an Underground Utility District at Story Road, from King Road to Galahad Avenue. CEQA: Exempt. (Public Works)

Documents filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated July 29, 1997, recommending Council conduct a public hearing and approve and ordinance establishing said Underground Utility District. (2) Certificate of Mailing of Notice of Public Hearing for the Proposed Underground Utility District, dated July 24, 1997, submitted by the Director of Public Works.

Discussion/Action: The public hearing was opened and there was no testimony from the floor. Upon motion by Council Member Diaz, seconded by Council Member Powers, and unanimously carried, the public hearing was closed and Ordinance No. 25403, entitled: "An Ordinance of the City of San José Establishing an Underground Utility District at Story Road from King Road to Galahad Avenue", was passed for publication. Vote: 10-0-1-0. Absent: Hammer.

- 15f PUBLIC HEARING ON MITIGATION PLAN of the property located on both sides of O'Nel Drive, between the Guadalupe Parkway and Karina Court, for a development project to allow up to 865,000 square feet of office/research and development uses on 48 gross acres (Novell, Inc., Owner/Developer). CEQA: EIR Resolution to be adopted. Director of Planning recommends approval. No Planning Commission action required.
District 4**

Documents filed: None.

Discussion/Action: This item was continued to August 12, 1997, at 1:30 p.m.

- 15g PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the northwest corner of East San Fernando Street and South Third Street, from C-3 Commercial to A(PD) Planned Development, to allow up to 124 multi-family attached residential units and 21,100 square feet of commercial/retail uses on 1.8 gross acres (Green Valley Corporation, Owner; Redevelopment Agency of the City of San José, Developer). CEQA: Resolution to be adopted. Director of Planning recommends denial. Planning Commission recommends approval with condition to revise the rezoning to reuse the Jose Theatre and Hong Kong Market, redesign Third Street Building, architecture and massing to be compatible with the Historic District (4-1-1-1).
PDC 96-12-082 - District 3
(Continued from 6/17/97 - Item 15m)**

Documents filed: None.

Discussion/Action: This item was continued to September 2, 1997.

- 15h PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the east side of North First Street, 150 feet northerly of Bassett Street, from M-4 Manufacturing to A(PD) Planned Development, to allow up to 34 residential loft units and up to 900 square feet of commercial/retail uses on a 0.43 gross acre site (Barry Swenson Builder, Owner/Developer). CEQA: ND.
PDC 97-04-025 - District 3
(Continued from 6/17/97 - Item 15u)**

Documents filed: None.

Discussion/Action: This item was continued to September 2, 1997.

- 15i **PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southeast corner of Meridian Avenue and East Hamilton Avenue from C-2 Commercial to A (PD) Planned Development to allow 24-hour operation for an existing gasoline station and for the addition of a 660-square foot car wash facility on 0.51-gross-acres. (Shell Oil Products Co., Owner/Developer) CEQA: Negative Declaration. Director of Planning recommends approval. Planning Commission recommends approval (5-0-2).
PDC 97-01-004 - District 6**

Documents filed: (1) Memorandum from the Planning Commission, July 18, 1997, recommending Council adopt an ordinance approving the subject rezoning. (2) Proof of publication of Notice of Hearing, dated May 9, 1997, submitted by the City Clerk.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the proposed planned development rezoning of the subject property. There was no discussion from the floor. Upon motion by Council Member Fiscalini, seconded by Council Member Diaz, and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25404, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeast Corner of Meridian and East Hamilton Avenues", was passed for publication. Vote: 10-0-1-0. Absent: Hammer.

- 15j **PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southwest corner of DeAnza Boulevard and Kentwood Avenue, from C-1 Commercial to A(PD) Planned Development, to allow a new service station and carwash facility on a .61 gross acre site (Groner Limited Partnership, Owner; Encabo, Inc., Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).
PDC 96-02-006 - District 1**

Documents filed: (1) Memorandum from the Planning Commission, July 18, 1997, recommending adoption of an ordinance approving the subject rezoning. (2) Proof of Publication of Renotice of Public Hearing, dated June 3, 1997, submitted by the City Clerk.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the proposed planned development rezoning of the subject property. There was no discussion from the floor. Upon motion by Council Member Johnson, seconded by Council Member Powers, and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25405, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of DeAnza Boulevard and Kentwood Avenue", was passed for publication. Vote: 10-0-1-0. Absent: Hammer.

- 15k PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the west side of San Felipe Road opposite Harvest Estates, from A(PD) Planned Development to A(PD) Planned Development, to allow a 36,980 square foot church and a pastors' residence on a 14.55 gross acre site (Roman Catholic Bishop of San José, Owner/Developer). CEQA: ND.
PDC 97-02-013 - District 8**

Documents filed: (1) Memorandum from the Planning Commission, July 24, 1997, recommending adoption of an ordinance approving the subject rezoning. (2) Proof of Publication of Notice of Public Hearing, dated June 16, 1997, submitted by the City Clerk.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the proposed planned development rezoning of the subject property. There was no discussion from the floor. Upon motion by Council Member Woody, seconded by Council Member Fiscalini, and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25406, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of San Felipe Road Opposite Harvest Estates Drive", was passed for publication. Vote: 10-0-1-0. Absent: Hammer.

- 151 PUBLIC HEARING ON CONFORMING REZONING of the properties located on the northeast corner of North Fourth Street and Interstate I-880, from M-1 Manufacturing to C-2 Commercial, to allow a 2-story, 61-room hotel on a 1.15 gross acre site (John Bruzzone, Owner; Iyad Naffa, Developer). CEQA: Resolution No. 60197. Director of Planning recommends approval. No Planning Commission action required.
C 97-01-007 - District 3**

Documents filed: (1) Department of Planning, Building and Code Enforcement Staff Report dated July 17, 1997, recommending Council approve the subject rezoning. (2) Proof of Publication of Renotice of Public Hearing, dated June 3, 1997, submitted by the City Clerk.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the proposed planned development rezoning of the subject property. Council Member Dando asked whether there are plans for improved maintenance or beautification of the subject area, given that there are several hotels in the area, which will generate traffic and suggested providing a pedestrian walkway to connect the hotel area to the light rail. Planning Director James R. Derryberry stated he was not aware of any beautification or streetscape improvements planned for the area. Council Member Dando stated the proposed hotel, with the existing Radisson and Holiday Inn hotels, will generate an increase in traffic from the area to the Downtown and it would be a nice gesture to provide improvements in the area, as well as facilitate traffic and better access to the light rail, and suggested referring the issue to Staff to review and report back to the

Council. Council Member Pandori stated there is City funding for a Specific Plan for the area from Route 880 to 101, and suggested Council Member Dando's recommendations be included in the comprehensive review, which will be part of that planning effort. Upon motion by Council Member Pandori, seconded by Council Member Johnson, and unanimously carried, the public hearing was closed, the Staff recommendation approved, Ordinance No. 25407, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of North Fourth Street and the Nimitz Freeway (I-880)", was passed for publication, and Staff was directed to review possible beautification or streetscape improvements for this area, including access to the Light Rail, in conjunction with development of a Specific Plan for the area from Highway 880 to 101 and report back to the Council. Vote: 10-0-1-0. Absent: Hammer.

9m PUBLIC HEARING regarding the formation of Community Facilities District No. 2 (Aborn-Murillo) ("CFD No. 2") and adoption of a resolution:

- (1) Forming CFD No. 2, authorizing the levy of a special tax within CFD No. 2, preliminarily establishing an appropriations limit for CFD No. 2 and submitting levy of the special tax and the establishment of the appropriations limit to the qualified electors in CFD No. 2; and**

- (2) Calling special mailed ballot election in CFD No. 2.**

(Public Works)

(Rules in Lieu referral 7/30/97)

Documents filed: None.

Discussion/Action: This item was deferred to August 12, 1997.

15n PUBLIC HEARING regarding the formation of Community Facilities District No. 3 (Silverland-Capriana) ("CFD No. 3") and adoption of a resolution:

- (1) Forming CFD No. 3, authorizing the levy of a special tax within CFD No. 3, preliminarily establishing an appropriations limit for CFD No. 3 and submitting levy of the special tax and the establishment of the appropriations limit to the qualified electors in CFD No. 3; and**

- (2) Calling special mailed ballot election in CFD No. 3.**

(Public Works)

(Rules in Lieu referral 7/30/97)

Documents filed: None.

Discussion/Action: This item was deferred to August 12, 1997.

CLOSED SESSION REPORT

City Attorney Gallo disclosed the following Closed Session actions of August 5, 1997:

- A. Pending Litigation - Settlements Authorized:

1. Case Name: In re LONERO

Substance of litigation: Approval of settlement of Workers' Compensation claim in the amount of \$60,000.

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

Noes: None.

Absent: Diaz, Johnson, Pandori.

Abstain: None.

2. Case Name: In re LAMAN

Substance of litigation: Approval of settlement of Workers' Compensation claim in the amount of \$80,000.

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

Noes: None.

Absent: Diaz, Johnson, Pandori.

Abstain: None.

3. Case Name: City of San José v. Norcal Waste Systems, Inc.

Substance of litigation: Approval of settlement. Norcal Waste Systems, Inc. to pay the total sum of \$170,000 to the City in full settlement of all claims.

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

Noes: None.

Absent: Diaz, Johnson, Pandori.

Abstain: None.

CLOSED SESSION REPORT

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

1. Case Name: 52 Valparaiso Associates v. City of Cotati

Adverse party or parties: 152 Valparaiso Associates

Substance of litigation: This is an action challenging the City of Cotati's rent control law on the basis that it is unconstitutional.

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

Noes: None.

Absent: Diaz, Johnson, Pandori.

Abstain: None.

ADJOURNMENT

The Council of the City of San José adjourned at 7:13 p.m. in memory of Dr. Tokio Ishikawa, native of San José's Japantown, a beloved humanitarian and a local historian; and in memory of Gene Lokey, who was active in Santa Clara County politics for over 20 years and was a tireless advocate for those in need in our community. His many contributions included co-founding the Coalition Against Poverty, an organization dedicated to protecting the rights of low income, disabled, and migrant farm workers.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK