

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 19, 1997

The Council of the City of San Jose was scheduled to convene in Closed Session at 9:30 a.m., in Room 600. The meeting was cancelled and the City Council convened in Regular Session at 1:40 p.m., Council Chambers, City Hall.

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

Absent: Council Members: Dando (excused), Diaz (excused).

INVOCATION

Elena Shirakawa and Jason Daley, Los Lupeños, performed to the music of a Mariachi, *El Son de la Negra* and *El Son del Gavilan*. (District 7)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

Special welcome to Girls Scout Troops 728 and 164, Boys Scout Troop 232, and their Scout leaders, who were asked to stand and be recognized. The City Council joined Vice Mayor Fernandes in welcoming Mike Santos, a student at UC Davis, who will serve his internship in the District Four Office. He was invited to stand and be recognized.

ORDERS OF THE DAY

Upon motion by Council Member Powers, seconded by Vice Mayor Fernandes and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 9-0-2-0. Absent: Dando, Diaz.

CEREMONIAL ITEMS

5a Presentation of plaque to Grace Purpura for 3 years service on the Arts Commission. (Mayor)

Documents Filed: None.

Discussion/Action: The plaque will be mailed to Grace Purpura, as she was unable to attend the meeting.

5b Swear in Youth Commissioner from District 1. (Mayor)

Documents Filed: None.

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

5d Recognition of Councilmembers George Shirakawa, Jr. and Patricia Dando for their participation in the Fire Department's Wildland Fire Drill. (Fire)

Documents Filed: None.

Discussion/Action: Joining Mayor Hammer at the Podium, Fire Chief Dorman presented to Council Member Shirakawa, Jr., the actual tent shelter used and the helmet and cloak worn during a recent Wildland fire drill. Fire Chief Dorman expressed appreciation to Fire Chief John MacDonald, UTC Fire Department, and Supervisor Ron McHallett, for their annual contribution of 100 acres of grassland for firefighter training and multiple fire drills. Council Member Dando was unable to attend the ceremony.

CONSENT CALENDAR

Upon motion by Council Member, seconded by Council Member and unanimously carried, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 9-0-2-0. Absent: Dando, Diaz.

Ordinances for Final Adoption

6b(1) ORD. NO. 25401 - Amends 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.

Documents Filed: Proof of publication of the title of Ordinance No. 25401 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25401 was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

6b(2) ORD. NO. 25402 - Approves the Development Agreement between the City of San José and 3Com Corporation relative to the development of property in North San José.

Documents Filed: Proof of publication of the title of Ordinance No. 25402 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25402 was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

6b(3) ORD. NO. 25403 - Establishes an Underground Utility District at Story Road, from King Road to Galahad Avenue.

Documents Filed: Proof of publication of the title of Ordinance No. 25403 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25403 was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6b(4) ORD. NO. 25404 - Rezones certain real property situated on the southeast corner of Meridian and East Hamilton Avenues. PDC 97-01-004**

Documents Filed: Proof of publication of the title of Ordinance No. 25404 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25404 was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6b(5) ORD. NO. 25405 - Rezones certain real property situated on the southwest corner of DeAnza Boulevard and Kentwood Avenue. PDC 96-02-006**

Documents Filed: Proof of publication of the title of Ordinance No. 25405 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25405 was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6b(6) ORD. NO. 25406 - Rezones certain real property situated on the west side of San Felipe Road opposite Harvest Estates Drive. PDC 97-02-013**

Documents Filed: Proof of publication of the title of Ordinance No. 25406 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25406 was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6b(7) ORD. NO. 25407 - Rezones certain real property situated on the northeast corner of North Fourth Street and the Nimitz Freeway (I-880). C 97-01-007**

Documents Filed: Proof of publication of the title of Ordinance No. 25407 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25407 was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

Public Hearings Set by Council

- 6c(1) (a) Setting a City Council public hearing on October 21, 1997 at 1:30 p.m. to consider the Montgomery Hotel as a landmark of special historic, architectural, cultural, aesthetic, or engineering interest or value of a historic nature.**

- (b) **Refer the proposed landmark designation back to the Historic Landmarks Commission for its consideration at a public hearing, report and recommendation.**

CEQA: Exempt.

(Planning, Building and Code Enforcement)

Documents Filed: None.

Discussion/Action: Director of Planning, Building and Code Enforcement, James R. Derryberry, stated the proposed schedule reflected in the August 1, 1997 staff report is superseded by a revised SEIR Schedule for the Montgomery Hotel project and tasks, and will be considered in the joint session of the City Council/Redevelopment Agency Board on Thursday, August 21, 1997. Mayor Hammer stated the extended time period is unacceptable, and asked that Staff report back to Council on August 26, 1997 with a schedule reflecting a completion date prior to the December 1997 Legislative Recess of the City Council. This item was deferred to August 26, 1997.

- 6c(2) Adoption of a resolution declaring intent to renew a grant of franchise for the conveyance of nitrogen gas to Air Products and Chemicals, Inc., and/or any wholly owned subsidiary thereof and setting a public hearing on September 2, 1997 at 1:30 p.m. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 1, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67576, entitled: "Resolution of the Council of the City of San José Declaring Intent to Renew a Grant of Franchise to Air Products and Chemicals, Inc. And/or Any Wholly Owned Subsidiary Thereof for a Nitrogen Gas Pipeline System Through Pipelines Under, Along and Across the Public Right of Way Within the City of San José", was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

Plans and Specifications

- 6d(1) TRACT NO. 8936 - Northerly of Classico Avenue, southerly of Michaelangelo Drive and easterly of Louvre Avenue - Shapell Industries, Inc., (Developer) - 79 single family detached residential lots. Adoption of resolutions approving the plans, final map, contract, and water main extension agreement, and approval of a Parkland Agreement for Tract No. 8936. CEQA: Resolution No. 24748. District 8. (Public Works)**
(Rules Committee referral 8/13/97)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 8, 1997, recommending Council adopt said resolutions.

Discussion/Action: Resolution No. 67577, 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. 8936”; Resolution No. 67578, entitled: “A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8936”, Resolution No. 67579, entitled: “A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Agreement for the Water Main Extension, Tract No. 8936”; and Resolution No. 67580, entitled: “A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8936”, were adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

Contracts/Agreements

6e(1) Adoption of a resolution authorizing the City Manager to negotiate and execute agreements to fabricate and install public artwork at the Tech Museum of Innovation with the following artists:

- (a) Brad Goldberg in the amount of \$63,471.**
- (b) Beliz Brother in the amount of \$110,648.**
- (c) Joe McShane in the amount of \$81,763.**

(Conventions, Arts and Entertainment)

Documents Filed: Memorandum from Director of Conventions, Arts and Entertainment, Nancy Johnson, dated August 1, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67581, entitled: “A Resolution of the Council of the City of San Jose Authorizing the City Manager to Negotiate and Execute Agreements for the Fabrication and Installation of Public Artwork at the Tech Museum of Innovation”, was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

6e(2) Approval of agreements with the following non-profit recycling and reuses organizations:

- (a) Goodwill Industries of Santa Clara County, in the amount of \$200,000.**
- (b) The Salvation Army, in the amount of \$95,000.**
- (c) St. Vincent de Paul Society, in the amount of \$5,000.**

(Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated August 1, 1997, recommending Council approve said agreements.

Discussion/Action: The agreements with Goodwill Industries of Santa Clara County and St. Vincent de Paul Society were approved and execution of the agreements authorized, and the recommended deferral of the agreement for The Salvation Army, Item (b), to August 26, 1997, was approved. Vote: 9-0-2-0. Absent: Dando, Diaz.

6e(3) Adoption of a resolution authorizing the Director of General Services to execute an agreement for the purchase and installation of hardware for the Lighting Retrofit Project with Onsite Energy at a cost of \$263,130.99 plus a contingency in the amount of \$25,000 for a total maximum compensation not to exceed \$288,130.99.

(General Services)

Documents Filed: (1) Memorandum from Director of General Services, Ellis M. Jones Jr., dated August 1, 1997, recommending Council adopt said resolution. (2) Letter from Treatment Plant Advisory Committee, dated August 15, 1997, recommending Council adoption of the resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 67582, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute an Agreement With Onsite Energy", was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6e(4) Adoption of a resolution amending Resolution No. 67468 authorizing the Director of General Services to include in the scope of services for an automated collections system the purchase and installation of a WinScan imaging system consisting of one (1) base PC workstation, CD-ROM jukebox server, a document scanner, and WinScan document imaging software, at a total overall agreement cost of \$250,780.22, including tax and installation, and to execute the associated agreement. (General Services)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated August 1, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67583, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 67468 Authorizing the Director of General Services to Include Additional Services and Equipment in the Agreement With Columbia Ultimate Business Systems, Inc. For an Automated Collections System Software Program", was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6e(5) Adoption of a resolution authorizing the Director of General Services to approve:**
- (a) Assignment of the zone tow contract for Zone 1 from Matos Automotive Enterprises, Inc. to Robert Coen, dba Matos Auto and Transport, an individual, for the remainder of the current contract period and for any option periods exercised by the City.**
 - (b) Further assignment of the Zone 1 towing contract to any other business entity created and owned by Robert J. Coen.**
- (General Services)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated August 1, 1997, recommending Council approve the assignment of the zone tow contract for Zone 1 and adopt said resolution.

Discussion/Action: Resolution No. 67584, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Approve the Assignment of the Agreement for Tow Operations for Zone One From Matos Automotive Enterprises to Robert Coen", was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6e(6) Approval of an agreement with Clayton Environmental Consulting to conduct a City-wide Safety Audit for the period September 1, 1997 to June 30, 1998, in the amount of \$88,900. (Human Resources)**

Documents Filed: Memorandum from Director of Human Resources, Nona Tobin, dated August 14, 1997, recommending Council approve said agreement.

Discussion/Action: The agreement with Clayton Environmental Consulting was approved and execution of the agreement authorized. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6e(7) Approval of an agreement with Eclipse Systems for consultant services for project management and technical coordination of the COPS MORE 1996 Grant Project for the period September 1, 1997 to June, 1998, in an amount not to exceed \$75,000. (Police)**

Documents Filed: None.

Discussion/Action: This item was deferred to August 26, 1997.

- 6e(8) Report on bids and award of contract for the Danna Rock, Evergreen, and Gregory Plaza Park Play Apparatus Project to the low bidder, Collishaw Construction, Inc., to include the Base Bid and Add Alternate No. 1, in the amount of \$190,965. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 1, 1997, recommending Council accept the report on bids and award said contract.

Discussion/Action: The award of contract to Collishaw Construction, Inc., the low bidder, was approved and execution of the contract authorized. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6e(9) Approval of amendments to the employment agreements with Nora Campos and Antonio V. Arreola. (Diaz)
(Rules Committee referral 8/13/97)**

Documents Filed: None.

Discussion/Action: The amendments to the employment agreements with Nora Campos and Antonio Arreola were approved and execution of the amendments authorized. Vote: 9-0-2-0. Absent: Dando, Diaz.

Routine Legislation

- 6f(1) Adoption of a resolution repealing Resolution No. 64458, modifies ranges within which the Director may adjust parking rates, and establishes a rate structure for an intermediate rate lot. CEQA: Exempt. (Airport)**

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated August 1, 1997, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 67585, entitled: "A Resolution of the Council of the City of San José Establishing Airport Parking Rates, Charges and Fees, and Repealing Resolution No. 64458 Regarding Off-Street Parking Facilities at the San José International Airport", was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6f(2) (a) Approval of recommended changes to the City of San José Bail Schedule and direction to the City Attorney to submit the recommended changes in the Bail Schedule to the Municipal Court Bail Committee.**
- (b) Approval of an ordinance amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code to update the list of infractions.**
(City Attorney's Office)

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated August 13, 1997, recommending Council approve the changes to the Bail Schedule with direction to the City Attorney to submit the changes to the Municipal Court Bail Committee, and approve said ordinance.

Discussion/Action: Referencing page 3 of the Staff report on bail schedules and infractions, Council Member Pandori stated the bail amount for "Prohibition on sitting or lying down in pedestrian facilitation zone" seems to be excessive when compared to that for "illegal parking" in the Downtown. He stated the fine should be reduced from \$1,000 to \$100 unless restricted by legal provisions. City Attorney Gallo stated the City submits the recommended bail amounts to Santa Clara County Municipal Courts to keep the Bail Schedule current and to indicate to the Courts the City's preferred level of bail applicable to a violation. She stated the Office of the City Attorney has no objection to reducing the bail amount. William J. Garbett spoke against the proposed action. The recommended changes to the City of San José Bail Schedule was approved as amended to reduce from \$1,000 to \$100 the bail amount on SJMC Section 10.10.010, and the City Attorney directed to submit the recommended changes in the Bail Schedule to the Municipal Court Bail Committee; and Ordinance No. 25411, entitled: "An Ordinance of the City of San José Amending Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code, Which Lists All Infractions, to Make Technical Corrections to the List of Infractions", was passed for publication. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6f(3) Adoption of a resolution appointing BT Securities as the successor remarketing agency for the City of San José Multifamily Housing Senior Revenue Bonds, 1990**

Series A (Timberwood Apartments) and authorization for the Director of Finance to execute all necessary documentation to affect such appointment. (Finance/Housing)

Documents Filed: Memorandum from Director of Finance John V. Guthrie, and Director of Housing Alex Sanchez, dated August 1, 1997, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 67586, entitled: "A Resolution of the Council of the City of San José Appointing BT Securities as Successor Remarketing Agent for the City of San José Multifamily Housing Senior Revenue Bonds, 1990 Series A (Timberwood Apartments) and Authorizing the Director of Finance to Execute All Necessary Documentation to Implement Such Appointment", was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6f(4) Approval of Bob Brownstein's travel to Las Vegas, Nevada, on September 26-28, 1997, to attend the regional conference on the findings of the U.S. Secretary of Labor's Task Force on Excellence in State and Local Government Through Labor-Management Cooperation. Funding: Mayor's budget office. (Mayor)**

Documents Filed: None.

Discussion/Action: This item was dropped.

- 6f(5) Adoption of a resolution authorizing the reorganization of territory designated as Hamilton No. 58, which involves the annexation to the City of San José of 0.54 acre 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. CEQA: ND (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated August 1, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67587, entitled: "Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as Hamilton No. 58 Subject to Liability for General Indebtedness of the City After Finding Protests Insufficient to Terminate Such Proceedings", was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 6f(6) (a) Approval of the substitution of a subcontractor, Air "R" Us Mechanical with C.A. Mechanical, for the Police Administration Annex Reroof Project. CEQA: Exempt. (Public Works)**
- (b) Approval of the substitution of a subcontractor, Evergreen Drywall with Culbertson Drywall and Fisher Lath and Plaster, Inc., for the Police Exercise Room Project. CEQA: Exempt. (Public Works)**

Documents Filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 1, 1997, recommending approval of the substitution of Air "R" Us Mechanical with C.A. Mechanical for the Police Administration Annex Reroof Project (2) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 1, 1997, recommending approval of the substitution of Evergreen Drywall with Culbertson Drywall and Fisher Lath and Plaster, Inc., for the Police Exercise Room Project.

Discussion/Action: The substitution of the contractors was approved. Vote: 9-0-2-0. Absent: Dando, Diaz.

6f(7) Approval of appointment of Chester Wang to serve on the Downtown Parking Board. (Mayor)
(Rules Committee referral 8/13/97)

Documents Filed: Memorandum from Mayor Hammer, dated August 19, 1997, requesting Council approval of the appointment to fill the private off-street parking facility owner position on the Downtown Parking Advisory Board.

Discussion/Action: The appointment of Chester Wang to the Downtown Parking Board was approved. Vote: 9-0-2-0. Absent: Dando, Diaz.

6f(8) Approval of Mayor Hammer's travel to Washington, D.C., September 24 - 25, 1997 to attend an ACTPN meeting. Funding: Office budget. (Mayor)
(Rules Committee referral 8/13/97)

Documents Filed: None.

Discussion/Action: The travel for Mayor Hammer to attend the ACTPN meeting in Washington, D.C. was approved. Vote: 9-0-2-0. Absent: Dando, Diaz.

6f(9) Approval of Mayor Hammer's travel to Tokyo, Japan; Taipei, Taiwan, and Seoul, Korea on an Asia Trade Mission September 27 - October 12, 1997. Funding: Friends Account. (Mayor)
(Rules Committee referral 8/13/97)

Documents Filed: None.

Discussion/Action: The travel for Mayor Hammer as a participant in the Asia Trade Mission to Tokyo, Japan; Taipei, Taiwan, and Seoul Korea was approved. Vote: 9-0-2-0. Absent: Dando, Diaz.

6f(10) Approval of Mayor Hammer's travel to Washington, D.C., December 3 - 4, 1997 to attend an ACTPN meeting. Funding: Office budget. (Mayor)
(Rules Committee referral 8/13/97)

Documents Filed: None.

Discussion/Action: The travel for Mayor Hammer to attend the ACTPN meeting in Washington, D.C. was approved. Vote: 9-0-2-0. Absent: Dando, Diaz.

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - August 6, 1997

Documents Filed: Rules Committee report of August 6, 1997.

- (1) Review August 19 Council Agenda. Attachments: (1) Memorandum from Council Member Dando, dated July 29, 1997, recommending Council (a) create a Working Group of city staff, school officials, state representatives, neighborhood representatives and developers to assess the actual impact of infill development on school attendance and make recommendations to improve coordination and processes to avoid or resolve school overcrowding; and (b) direct the Working Group to review as a case study the Blossom Valley area, which includes San José Unified and Oak Grove School district schools near Peal, Branham, Capitol Expressway, and Snell. (2) Memorandum from Council Member Dando, dated August 1, 1997, recommending Council (a) direct the Administration to create adult-only Internet zones without filtering software, and children Internet zones with filtering software at each of the libraries in the San José Public Library System; (b) direct the Administration to create a process to adjust the filtering software when it is identified that non-pornographic Websites are being blocked; and (c) to support the Library Administration and Library Commission recommendations regarding the use of the Internet. (3) Memorandum from Council Member Dando, dated August 5, 1997, recommending Council (a) make an official request to the Clinton Administration and the Bureau of Alcohol, Tobacco and Firearms that San José become a participating City in the Youth Crime Gun Interdiction Initiative; and (b) request that San Jose's Washington lobbyist and Congressional Representatives work to have the City of San Jose included in the Youth Crime Gun Interdiction Initiative.

The Committee approved the August 19, 1997 Council Agenda with one addition and made the following referrals: Council Member Dando's memoranda: (1) Regarding *School Overcrowding Solutions* to the Administration and the City Attorney with direction to return to Rules Committee with a report on the current status of the City's efforts to solve the issue raised by Council Member Dando; (2) Regarding *Anti-Pornography Internet Software for Public Libraries* to the Administration for a report back to Rules Committee with an assessment of the time and resources involved to complete the request; (3) Regarding the *Youth Crime Gun Interdiction Initiative* to the Administration and the City's Gang Task Force for a report back to the Rules Committee with an assessment of the time and resources involved to complete the request.

- (2) Add New Items to August 12 Amended Council Agenda

The Committee recommended six additions to the August 12, 1997 Amended Council Agenda.

- (3) The Public Record. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated July 31, 1997, listing the items transmitted to the Administration and the items filed for the public record for the period June 4-July 29, 1997. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated August 6, 1997, summarizing the actions taken on items transmitted to the Administration and the items filed for the Public Record for the period June 4-July 29, 1997.

The Committee noted and filed the Public Record for the period June 4-July 29, 1997.

- (4) Legislative Report 97-07
AB 940 (Miller) Public Works Contracts: Retention
AB 1070 (Campbell) Design Professionals: Indemnification
SB 885 (Watson) AIDS: Clean Needle Exchange Pilot Program

This item reported to Council on August 12, 1997.

- (5) Approve modifications to City sponsored League of California Cities policy resolutions.

This item reported to Council on August 12, 1997.

- (6) Report back on request to review the Street Tree and Sidewalk Ordinance. Attachment: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated July 31, 1997, responding to direction to the Administration to provide Council with an assessment of the time and resources necessary to complete the request with respect to street tree and sidewalk maintenance.

The Committee directed the Department of Streets and Traffic to review the street tree and sidewalk maintenance ordinances and to report back to the Transportation, Planning and Environment Committee at their first meeting in October, 1997.

- (7) Report back on Residential Window Bars. Attachment: Memorandum from Director of Housing, Alex Sanchez, dated August 1, 1997, recommending Council direct the City Attorney to research the feasibility of drafting an ordinance, effective July 1, 1998, requiring that non-releasable bars on the windows of all sleeping rooms in all dwelling units in San José be either removed or retrofitted with release mechanisms.

The Committee recommended that Council direct the City Attorney to research the feasibility of drafting an ordinance, effective July 1, 1998, requiring that non-releasable bars on the windows of all sleeping rooms in all dwelling units in San José be either removed or retrofitted with release mechanisms.

- (8) Request to use Council General funds to attend League of California Cities meeting of the Task Force on Tax Stabilization/Reform on July 16, 1997 in Burbank, CA. Attachments: (1) Memorandum from Council Member Johnson, dated July 9, 1997, requesting authorization to use Council General Funds for the purpose of attending the California League of Cities' meeting of the Task Force on Tax Stabilization/Reform. (2) Memorandum from City Clerk, Patricia L. O'Hearn, dated August 4, 1997, complying with City Council Policy 9-5 requirement when requests to use Council General Funds are considered by the Rules Committee.

The Committee approved the use of Council General funds by Council Member Trixie Johnson to attend the League of California Cities' meeting of the Task Force on Tax Stabilization/Reform on July 16, 1997 in Burbank, CA.

- (9) Council Referrals for Assignment to Appropriate Committee, Administration or Council Appointee:
- (a) Implementation of Megan's Law, AB 1562. Attachment: Revised memorandum from Council Member Pandori, dated July 8, 1997, dated July 8, 1997, recommending Council (a) adopt a local law requiring the City to disclose to the public the name, address and description of a registered sex offender when the Police Department reasonably suspects that a child or other person may be at risk of harm from the sex offender; (b) require the annual publication of a list and map indicating the number of registered sex offenders by San José neighborhood; (c) direct the Police Department to report back to Council on the status of tracking and monitoring registered sex offenders by County agencies and the Police Department, and the costs and additional staffing needed, if any, to improve oversight; and (d) to provide local control over homes with paroled sex offenders, amend the zoning code, as recommended by the City Attorney in the proposed Group Home Ordinance, to require a Conditional Use Permit for Residential Correctional Facilities/Referral Facilities; in addition, Council should amend the law to limit the concentration of these facilities in any single neighborhood.

The Committee referred this item to the City Attorney and the Administration for a report back to Rules Committee with an assessment of the time and resources involved to complete the request.

- (b) Recommendations regarding the sale of adult-oriented material in newsracks. Attachment: Memorandum from Council Members Dando and

Pandori, dated June 30, 1997, recommending Council [1] direct the Police Department to regularly inspect newsracks throughout the Downtown, and any other location, to determine compliance with Penal Code Section 313.1 and refer appropriate cases to the District Attorney's Office; [2] direct the Police Department to prepare a written report to Council that outlines the results of the inspections, including the number of newsracks, the name of publications reviewed, and any alleged violations; and [3] direct the City Attorney's Office to not proceed with amendments to local law that would allow the display or sale of harmful materials in newsracks.

The Committee referred this item to the City Attorney and the Administration for a report back to the Rules Committee with an assessment of the time and resources involved to complete the request.

(10) City Council and Rules Committee meeting schedules

None presented.

(11) Oral communications

None presented.

(12) Adjournment

The meeting was adjourned at 2:55 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 August 19, 1997 were accepted. Vote: 9-0-2-0. Absent: Dando, Diaz.

GENERAL GOVERNMENT

- 9a Adoption of a resolution approving the revised Dispersion Policy for Affordable Housing Development.**
[Housing and Community Development Committee referral 6/2/97 - Item 7d(3)]
(Deferred from 6/17/97 - Item 9j)

Documents Filed: Letter from Phyllis A. Ward, President, Affordable Housing Network of Santa Clara County, dated June 15, 1997, requesting Council adopt the dispersion policy.

Discussion/Action: This item was dropped.

- 9c Adoption of a resolution authorizing the Director of General Services to execute a third amendment to the agreement with Harris Miller, Miller & Hanson, Inc. for a**

five (5) year software maintenance agreement for the Airport Noise and Operations Monitoring System at a total cost not to exceed \$424,970, for the five (5) year term of the agreement, and authorization for the Director of General Services to execute the amendment. (General Services)

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated August 1, 1997, recommending approval of a third amendment to the agreement with Harris Miller, Miller & Hanson, Inc., and authorize the Director of General Services to execute the amendment.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Johnson and unanimously carried, Resolution No. 67588, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute the Third Amendment to the Agreement With Harris Miller, Miller & Hanson for Noise Monitoring System at the San José International Airport to Provide for Maintenance Service for the Period July 1, 1997 to June 30, 2002, in an Amount Not to Exceed \$424,970", was adopted. Vote: 9-0-2-0. Absent: Dando, Diaz.

**9d Report on bids and award of contract for the Bernal Park Renovation Project to the low bidder, Collishaw Construction, Inc., to include the base Bid, Add Alternate Nos. 1, and 2, in the amount of \$372,805. CEQA: ND.
(Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 1, 1997, recommending Council accept the report on bids and award said contract to Collishaw Construction, Inc.

Discussion/Action: Upon motion by Council Member Pandori, seconded by Council Member Powers and unanimously carried, the award of contract to Collishaw Construction, Inc., the low bidder, was approved and execution of the contract authorized. Vote: 9-0-2-0. Absent: Dando, Diaz.

ORAL COMMUNICATIONS

Cathy S. Brandhorst commented on the efficiency of government agencies in the Bay Area.

RECESS/RECONVENE

Following Oral Communications, Council recessed at 2:10 p.m. and reconvened at 7:05 p.m.

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

Absent: Council Members: Dando (excused), Diaz (excused).

City Clerk, Patricia L. O'Hearn, read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member Powers, seconded by Vice Mayor Fernandes and unanimously carried, the below noted continuances and other actions were granted. Vote: 9-0-2-0. Absent: Dando, Diaz.

PUBLIC HEARINGS

- 15a PUBLIC HEARING ON APPEAL OF THE PLANNING COMMISSION'S DECISION to Deny a Conditional Use Permit for a project located at the northeast corner of Story and White Roads on a 14.10 gross acre site in the C-3 Commercial Zoning District to construct a drive-thru window at an existing Boston Market Restaurant (Pacific San José Holdings, Owner; Peder Kruger, Developer). CEQA: ND.
CP 97-04-017 - District 5**

Documents Filed: None.

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

- 15c PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southwest corner of Hazlett Way and Sierra Road, from A-Agricultural and A(PD) Planned Development to A(PD) Planned Development, to allow construction of five single-family detached residences on 0.58 gross acre (Kaufman & Broad, Owner/Developer). CEQA: ND. Director of Planning recommends approval.
Planning Commission recommends approval (5-0-2).
PDC 97-03-018 - District 4**

Documents Filed: None.

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

- 5c Presentation of commendations to organizers of the Churches Serving Our Community Work Day, which took place on May 31, 1997.
(Mayor)
(Rules Committee referral 8/13/97)**

Documents Filed: None.

Discussion/Action: Mayor Hammer and Council Member Woody extended the City's appreciation to the 1700-member corps of volunteers who participated in the annual work day activities, acknowledged the efforts of Beverly Jaimi, Sr. Pastor's Assistant at Cathedral of Faith, and presented commendations to representatives of 27 organizations: Alum Rock Church, Pastor John Martin; Almaden Church, Pastor Ted Swinburne; Calvary Cathedral, Dan Greenlee; Cathedral of Faith, Pastors Ken & Kenny Foreman; Celebration Community Church, Pastor Greg Babish; Christ the King Church, Pastor

Doug Weiss; Community Church of Santa Clara, Pastor Freeman; Crossroads Community Church, Pastor Doug Shiplet; Family Bible Church, Pastor Michael Dismere; Freewill Bible Church, Pastor Tim Wood; Home Church, Pastor Randy Wing; Hope Lutheran Church, Pastor Paul Werkelmann; Jubilee Church, Pastor Dick Bernal; Lincoln Glen Church, Pastor Travis Reimer; Lone Hill Church, Dr. Ray Stamps; Los Gatos Community Church, Dr. Richard Kennedy; Midnight Basketball, Jeffrey Heard; Mt. Olives Church, Pastor Mike Gibsin; North Valley Church, Pastor Dan Griffith; San José Chinese Church, Pastor Abraham Poon; Santa Clara First Baptist Church, Pastor Robert Wernersbach; South Bay Covenant, Pastor Jon Issacs; South Hills Church, Pastor Peter Wilkes; South Valley Church, Pastor Dave Sawkins; St. Timothy's Church, Pastor Dan Selvo; Valley Christians Schools, Dr. Cliff Daugherty; and The Vineyard, Pastor David Shaw.

- 15b PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the north side of Naglee Avenue, 100 feet westerly of Park Avenue, from R-1 Residence to A(PD) Planned Development, to allow up to 5 single-family residences on a 0.74 gross acre site (John Boccardo & Leanne Rees, Owner/Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (7-0-0).
PDC 96-11-069 - District 6**

Documents Filed: (1) Memorandum from the Planning Commission, dated August 1, 1997, recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC 96-11-069, dated July 2, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. There was no discussion from the Floor. Upon motion by Council Member Fiscalini, seconded by Council Member Johnson and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25412, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Naglee Avenue, 100 Feet Westerly of Park Avenue", was passed for publication. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 15d PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the south side of Wayne Avenue, 600 feet easterly of Old Oakland Road, from I-Industrial to A(PD) Planned Development, to allow 79 single-family detached residences on 7.12 gross acres (Granum Holdings, L.P., Owner; Pinn Brothers Construction, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).
PDC 96-10-067 - District 4**

Documents Filed: (1) Memorandum from the Planning Commission, dated August 14, 1997, recommending Council adopt an ordinance approving the subject rezoning. (2)

Public Hearing Notice to consider a change in Zoning for PDC 96-10-067, July 22, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. There was no discussion from the Floor. Upon motion by Vice Mayor Fernandes, seconded by Council Member Johnson and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25413, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the South Side of Wayne Avenue, 600 Feet Easterly of Old Oakland Road", was passed for publication. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 15e PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the northwesterly terminus of Valley Crest Drive, from A-Agricultural to A(PD) Planned Development, to allow up to 115 single-family detached residences on a 17.0 gross acre site (Bumb & Associates, Owner; Braddock & Logan, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).
PDC 97-05-030 - District 4**

Documents Filed: (1) Memorandum from the Planning Commission, dated August 14, 1997, recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC 97-05-030, dated July 24, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. There was no discussion from the Floor. Upon motion by Vice Mayor Fernandes, seconded by Council Member Johnson and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25414, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwesterly Terminus of Valley Crest Drive", was passed for publication. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 15f PUBLIC HEARING ON CONFORMING PREZONING of the property located on the north side of Curtner Avenue, 530 feet easterly of Salerno Drive, from County to R-1: B-8 Residence, to allow residential uses on a 0.31 gross acre site (Chinese Baptist Church of San José, Owner/Developer). CEQA: Exempt. Director of Planning recommends approval. No Planning Commission action required.
C 97-06-035 - District 9**

Documents Filed: (1) Department of Planning, Building and Code Enforcement Staff Report, dated July 31, 1997, recommending Council approval of the subject conforming prezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC 97-06-035, dated July 25, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the conforming rezoning of the subject property. There was no discussion from the Floor. Upon motion by Council Member Diquisto, seconded by Vice Mayor Fernandes and unanimously carried, the public hearing was closed and Ordinance No. 25415, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Curtner Avenue, 530 Feet Easterly of Salerno Drive", was passed for publication. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 15g PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southeast corner of Berryessa Road, between I-680 and Jackson Avenue, from A-Agricultural to A(PD) Planned Development, to allow up to 68 single-family detached residential units on a 7.1 gross acre site (Frank Nola Family Limited Partnership, Owner; Citation Homes, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (7-0-0).
PDC 97-01-005 - District 4**

Documents Filed: (1) Memorandum from the Planning Commission, dated August 1, 1997, recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC 97-01-005, dated August 1, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. There was no discussion from the Floor. Upon motion by Vice Mayor Fernandes, seconded by Council Member Fiscalini and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25416, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeast Corner of Berryessa Road Between I-680 and Jackson Avenue", was passed for publication. Vote: 9-0-2-0. Absent: Dando, Diaz.

- 9b (1) Accept the proposed recommendations related to changes in the festival permit management process.
(2) Accept the recommendation to absorb costs associated with the boarding up of broken windows for six (6) businesses, refund any moneys collected, and refrain from taking any further action to collect upon these bills.
(Conventions, Arts and Entertainment/Police/Parks, Recreation and Neighborhood Services)**

Documents Filed: (1) Memorandum from Council Members Diaz and Shirakawa, Jr., dated August 18, 1997, recommending Council accept the report from City staff regarding the May 4, 1997 event, and direct Staff to pursue the enactment of State Legislation similar to the Legislation that currently allows the City of San José to recover costs associated with graffiti abatement. (2) Memorandum from Director of Conventions, Arts and Entertainment Nancy Johnson, Chief of Police Louis A. Cobarruviaz, and Acting Director of Parks, Recreation and Neighborhood Services Mark Linder, dated

August 15, 1997, recommending Council accept the proposed recommendations related to changes in the festival permit management process, and accept the recommendation to absorb costs associated with the boarding up of broken windows for six businesses, refund any moneys collected, and refrain from taking any further action to collect upon these bills. (3) Document entitled "Teatro de los Pobres: ARAC East San José - Community Alcohol Policy Recommendations to the San José City Council", dated August 18, 1997, submitted into the public record by Felix Alvarez, Director.

Discussion/Action: With the use of transparencies, Director of Conventions, Arts and Entertainment, Nancy Johnson, presented a comprehensive overview of the physical layout of festivals conducted with the goal of reducing congestion through more stringent control, specifically, the imposition of restrictions regarding the total number of stages and the size of stages allowed at festivals. She discussed five recommendations for better management of festivals and provided information on a variety of related topics: Uninsured damages and inventory losses, litter control plans, coordinating celebrations with regional and central California cities, imposition of alcohol-free festival areas, gated events, and extending the cost of City services to event organizers. She commented on coordination efforts of the San José Downtown Association and downtown businesses with the Police Department regarding dispersal of festival attendees after the "16 de Septiembre Festival", and summarized Staff recommendations related to the festival management process and costs associated with the boarding up of broken windows for businesses vandalized following the Cinco de Mayo festivities. The following citizens commented on various issues related to festivals: Abel Cota, San José GI Forum; Felix Alvarez and Perla M. Arellano, Teatro de los Pobres; Rogelio Balderas, Prevention Division AOD Programs; Kathy Chavez-Napoli; Ralph Morales, California Latino Alcohol & Other Drug Coalition; David M. Orozco, M.A.D.D. Bay Area Chapter; and Joe Cunningham, Radio Station WILD 94.9 FM. For the record, Council Member Fiscalini expressed support for the Staff recommendation and for alcohol-free zones at festivals with the ultimate goal that these types of events are not to be dependent upon the sale of alcohol for support. Noting opposition to the recommendation, Council Member Pandori stated the proposed changes to the physical layout of the Festival are not meaningful, and that consumption of alcoholic beverages continues to be permitted throughout the festival site. He stated the essential level of security is nonexistent, and while staff recommendations will provide some improvement in festival management, the Police Department cannot ensure against negative activities by festival attendees. He stated Police Officers are limited in their suppression of certain activities, given individuals' civil rights; and that in his opinion, the City is delaying the inevitable. Speaking in opposition to the banning of alcohol at festivals, he stated the sale and/or consumption of alcoholic beverages should be limited to certain areas of the site; therefore, because the policy does not mandate alcohol free zones at festivals, he could not support Staff recommendation. Upon motion by Council Member Shirakawa, Jr., seconded by Council Member Johnson and carried, the report from City staff regarding the May 4, 1997 event, was accepted; the recommendations from City Staff to accept the proposed recommendations related to changes in the festival permit management process, and to absorb costs associated with broken windows for six businesses, was approved; and the recommendation proposed by Council Members Diaz and Shirakawa, Jr., to

direct Staff to pursue the enactment of State Legislation similar to that currently allowed for the recovery of costs associated with graffiti abatement, was approved. Vote: 7-2-2-0. Noes: Diquisto, Pandori. Absent: Dando, Diaz.

ADJOURNMENT

The Council of the City of San José adjourned at 8:10 p.m. to meet again on Thursday, August 21, 1997 at 1:30 p.m. in joint session with the Redevelopment Agency, Council Chambers, City Hall.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK