

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 2, 1997

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

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

Absent: Council Members: None.

Upon motion unanimously adopted, the City Council recessed to a Closed Session at 9:35 a.m. in Room 600 to (A) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider the case of City of San José v. Farahani, et al.; (B) to confer with Legal Counsel - Anticipated Litigation - regarding the initiation of litigation pertaining to two matters pursuant to subdivision (c) of Section 54956.9 of the Government Code; and (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: Government Code Section 54957.6 with respect to the following: City Negotiator–City Manager designee Lynn Boland: Municipal Employees Federation and Confidential Employees Organization.

By unanimous consent, Council reconvened from the Closed Session, recessed at 11:30 a.m., and reconvened at 1:40 p.m. in Council Chambers, City Hall.

Present: Council Members: Dando, Diaz (arrived at 2:00 p.m.), Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: None.

### INVOCATION

Pastor John Helveston, Evergreen Valley Church, delivered the invocation. (District 8)

### PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

### ORDERS OF THE DAY

Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Orders of the Day, deferring to September 30, 1997 Item 9a, and the Amended Agenda were approved. Vote: 10-0-1-0. Absent: Diaz.

### 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.**

[Transportation, Planning and Environment Committee referral 6/12/97 - Item 7e(2)]  
(Deferred from 6/17/97 - Item 9n and 8/5/97 - Item 9a)

Documents Filed: None.

Discussion/Action: Council Member Pandori queried Staff regarding the recommendation to drop this item. Director of Public Works, Ralph A. Qualls, Jr., stated Redevelopment Agency Staff has assumed responsibility to negotiate with the vendors for the purchase and will submit a report and recommendation to Council upon completion of those negotiations. Council Member Pandori disagreed with dismissing the issue, and requested a deferral of four weeks; therefore, the recommendation to drop this item was not approved. By unanimous consent, this item was deferred to September 30, 1997. Vote: 11-0-0-0.

## **CEREMONIAL ITEMS**

### **5b Presentation of plaque to Stephanie Kong for 3 years 7 months service on the Youth Commission. (Mayor)**

Documents Filed:

Discussion/Action: The plaque for Stephanie Kong will be mailed, as she was unable to attend the meeting.

Council Member Diaz entered the meeting at 2:00 p.m.

## **CONSENT CALENDAR**

Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 11-0-0-0.

### **Minutes for Approval**

#### **6a(1) Special Meeting of June 16, 1997**

Documents Filed: Minutes of the special meeting of June 16, 1997.

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

#### **6a(2) Regular Meeting of June 17, 1997**

Documents Filed: Minutes of the regular meeting of June 17, 1997.

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

#### **6a(3) Adjourned Regular Meeting of June 19, 1997**

Documents Filed: Minutes of adjourned regular meeting of June 19, 1997.

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

**6a(4) Joint City Council/Redevelopment Agency Meeting of June 19, 1997**

Documents Filed: Minutes of the joint meeting of June 19, 1997.

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

**Ordinances for Final Adoption**

**6b(1) ORD. NO. 25411 - Amends Section 1.08.020 of Chapter 1.08 of Title 1 of the San José Municipal Code to make technical corrections to the list of infractions.**

Documents Filed: Proof of publication of the title of Ordinance No. 25411 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25411 was adopted. Vote: 11-0-0-0.

**6b(2) ORD. NO. 25412 - Rezones certain real property situated on the north side of Naglee Avenue, 100 feet westerly of Park Avenue.  
PDC 96-11-069**

Documents Filed: Proof of publication of the title of Ordinance No. 25412 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25412 was adopted. Vote: 11-0-0-0.

**6b(3) ORD. NO. 25413 - Rezones certain real property situated on the south side of Wayne Avenue, 600 feet easterly of Old Oakland Road.  
PDC 96-10-067**

Documents Filed: Proof of publication of the title of Ordinance No. 25413 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25413 was adopted. Vote: 11-0-0-0.

**6b(4) ORD. NO. 25414 - Rezones certain real property situated on the northwesterly terminus of Valley Crest Drive.  
PDC 97-05-030**

Documents Filed: Proof of publication of the title of Ordinance No. 25414 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25414 was adopted. Vote: 11-0-0-0.

- 6b(5) ORD. NO. 25415 - Prezones certain real property situated on the north side of Curtner Avenue, 530 feet easterly of Salerno Drive.  
C 97-06-035**

Documents Filed: Proof of publication of the title of Ordinance No. 25415 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25415 was adopted. Vote: 11-0-0-0.

- 6b(6) ORD. NO. 25416 - Rezones certain real property situated on the southeast corner of Berryessa Road between I-680 and Jackson Avenue.  
PDC 97-01-005**

Documents Filed: Proof of publication of the title of Ordinance No. 25416 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25416 was adopted. Vote: 11-0-0-0.

### **Public Hearings Set by Council**

- 6c(1) Adoption of a resolution initiating proceedings and setting a public hearing on October 28, 1997 at 1:30 p.m. for the reorganization of territory designated as Canoas No. 28 which involves the annexation to the City of San José of 127.15 acres of land, located on the north side of Hillsdale Avenue, approximately 200 feet easterly of Old Almaden Road, and the detachment of the same from the Central Fire District. CEQA: Exempt.  
(Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated August 15, 1997, recommending the placement on the Consent Calendar of September 2, 1997 City Council Agenda the adoption of said resolution.

Discussion/Action: Resolution No. 67606, entitled: "Resolution of the Council of the City of San José Initiating Reorganization Proceedings for Annexation and Detachment of Certain Uninhabited Territory Designated as Canoas No. 28 and Described Herein, and Giving Notice of Hearing on the Proposed Reorganization and Written Protests", was adopted. Vote: 11-0-0-0.

### **Plans and Specifications**

- 6d(1) TRACT NO. 9006 - Northeast corner of Old Oakland Road and Wayne Avenue - Kaufman and Broad - South Bay, Inc., (Developer) - 92 detached residential lots. Adoption of Resolutions approving the plans, final map, contract, and approval of a parkland agreement for Tract No. 9006. CEQA: ND. District 4.**

**(Public Works)**

**[Deferred from 8/26/97 - Item 6d(2)]**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 19, 1997, recommending Council adopt said resolutions for Tract No. 9006.

Discussion/Action: Resolution No. 67607, 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. 9006"; Resolution No. 67608, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 9006"; and Resolution No. 67609, 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. 9006", were adopted. Vote: 11-0-0-0.

**Contracts/Agreements**

- 6e(1) Approval of Contract Change Order No. 4 with Mountain Cascade, Inc. for the South Bay Water Recycling Program-Coyote/Old Oakland Road Pipeline, Reach SJ2-3 Project, in the credit amount of \$156,082 for a total contract amount of \$11,244,052.70 and a credit of 85 working days for a total contract time of 190 working days, pending concurrence by the Treatment Plant Advisory Committee (TPAC) at its September 11, 1997 meeting. CEQA: Resolution No. 64667. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 15, 1997, recommending Council approve said contract change order to credit the City the amount of \$156,082 and reduce the duration of the contract by 85 working days, contingent upon approval by TPAC.

Discussion/Action: Contract Change Order No. 4 with Mountain Cascade, Inc. was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(2) 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)**

**[Deferred from 8/19/97 - Item 6e(7) and 8/26/97 - Item 6e(12)]**

Documents Filed: Memorandum from Chief of Police, Louis A. Cobarruviaz, dated August 8, 1997, recommending Council approve said agreement.

Discussion/Action: The consultant and project management services agreement with Eclipse Systems was approved and execution of the agreement authorized. Vote: 11-0-0-0.

- 6e(3) Adoption of a resolution authorizing the City Manager to negotiate and execute a consultant agreement with DKS Associates for the Spartan Stadium Transportation and Parking Study, in an amount not to exceed \$75,000.**

**(Streets and Traffic)**

**(Rules Committee referral 8/27/97)**

Documents Filed: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated August 22, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67610, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute an Agreement With DKS Associates for the Spartan Stadium Transportation and Parking Plan in a Amount Not to Exceed \$75,000", was adopted. Vote: 11-0-0-0.

### **Routine Legislation**

- 6f(1) Adoption of a resolution amending Resolution No. 66776, Exhibit 50, to consolidate the classes of Executive Administrative Secretary (1159) (C) and City Council Administrative Secretary (C) (1160) to Administrative Assistant (C) (1159), at a salary range of 54G. (Human Resources)**

Documents Filed: Memorandum from Director of Human Resources, Nona Tobin, dated August 15, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67611, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 66776 by Amending Exhibit 50 of the Memorandum of Agreement With the Confidential Employees Organization, AFSCME, Local 101, Unit 50 (Confidential Employees) to Consolidate the Classes of Executive Administrative Secretary (C) (1159) and City Council Administrative Secretary (C) (1160) to Administrative Assistant (C) (1159), Effective September 7, 1997", was adopted. Vote: 11-0-0-0.

- 6f(2) Adoption of a resolution declaring a parcel of City-owned land, a portion of vacated Kirk Avenue immediately north of McKee Road, surplus to the needs of the City and approving the agreement for transfer of surplus City-owned real property to the adjoining property owners, Cortese, at al. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 15, 1997, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 67612, 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 Transfer of the Surplus City-Owned Real Property and All Necessary Documents for the Transfer of Such Property to the Adjoining Property Owners", was adopted. Vote: 11-0-0-0.

- 6f(3) (a) Approval of the feasibility study for the Northside Senior Housing Project proposed for development on a 0.79-acre City-owned site (the Empire Corporation Yard) at the southwest corner of Seventh and Empire Streets.**
- (b) Direction to the Director of Housing to proceed to the next steps in the development of the housing project recommendations.**

**(Housing)**

**[Deferred from 8/26/97 - Item 6e(10)]**

Documents Filed: Memorandum from Director of Housing Alex Sanchez, Acting Director of Parks, Recreation and Neighborhood Services Mark Linder, and Director of Planning, Building and Code Enforcement James R. Derryberry, dated August 28, 1997, recommending Council adopt a resolution approving the feasibility study for the Northside Senior Housing Project, and authorize the Director of Housing to proceed to the next phase in the development of the housing project.

Discussion/Action: In presenting background information on the proposal, Council Member Pandori stated the project is planned and designed for the development of an affordable senior housing project on the Corporation Yard portion of the property and the replacement of the current Community Center building with a larger facility. Noting three of his concerns regarding the recommendation, he stated the Staff report discusses a reduction in the number of units and the shifting of approximately 32 parking spaces to on-site parking; that direction is premature. He stated the Master Plan, as developed, was requested by the community, approved by the City Council, and envisioned the construction of 87 senior housing units. Absent neighborhood meetings and community input, he stated the reduction in the number of units to 64 should not occur at this time, and the project should be allowed to proceed without any pre-imposed modifications. He requested Staff pursue through the Community Planning process a review of the location and number of parking spaces per unit. He pointed out that the Staff report on page 7 states the community center expansion and the senior housing development should be treated as two independent projects on separate timelines; however, the motivation for the development of the project is to provide community space in the senior housing project to compliment the Northside Center, and that the development should not be perceived solely as a senior housing project without coordinating it with existing needs in the Center. He recommended Staff continue to plan for development of the community space in conjunction with the housing project. With regards to the process, he stated the Master Plan was approved by Council with direction that Staff involve the prospective developer in the process; the Project Development Timeline does not fulfill that directive, and Staff should prepare to report back to Council prior to April 1998 with appropriate recommendations. Director of Planning, Building and Code Enforcement, James R. Derryberry, pointed out the concerns of Staff regarding the Residential Design Guidelines and the proposed setback of the project and stated Staff will review the proposal with the changes, if the developer can find a way to mitigate those concerns and work through the zoning process with the neighborhood. Given Council discussion on the Staff recommendation and the concerns expressed by Council Member Pandori, the consensus of Council was to support Staff recommendation, to expedite the planning

process as much as possible, to accelerate the development schedule, and to reconsider the proposal to reduce the number of units which can be physically accommodated on the site. The following individuals spoke in support of the senior housing project: Simplicio Bal; Jesus B. Blando, representing Aging Veterans Group of San José; Hernando F. Manaois, representing Filipino-American Senior Opportunities Development Center; and Evelyn Chau, representing Northside Community Board Members. Council approved Staff recommendation regarding the feasibility study for the Northside Senior Housing Project, and authorized the Director of Housing to proceed to the next steps in the development of the housing project recommendations with requests that development of the project be allowed to proceed without reduction in the number of units; that the housing development and community center expansion schedules be implemented as an entire concept plan, and not as two separate projects; that the parking spaces issue will be reconsidered; and that all the issues be addressed through the zoning process. Vote: 11-0-0-0.

- 6f(4) Approval of City Auditor, Gerald Silva's travel to New Orleans, LA, on September 15-16, 1997 to attend the Association of Government Accountants Sixth Annual State and Local Government Leadership Conference; travel to Arlington, VA on October 16-17, 1997, to present a workshop at the FDIC Best Practices Conference on Successful Risk Management and Internal Control Programs; and travel to Washington, D.C., on October 20-21, 1997, to present a workshop at the Institute of Internal Auditors 1997 State and Local Government Conference. Funding: FDIC/IIA/Auditor's Non-Personal budget. (City Auditor)  
(Rules Committee referral 8/27/97)**

Documents Filed: Letter from City Auditor, Gerald A. Silva, dated August 19, 1997, requesting Council approval of the Auditor's Travel Calendar of events extending through December 31, 1997.

Discussion/Action: The travel for Gerald Silva to attend conferences in New Orleans, LA, Arlington, VA, and Washington, D.C., was approved. Vote: 11-0-0-0.

- 6f(5) Approval of Council Member George Shirakawa, Jr.'s travel to the City of Quito, Ecuador, September 3-10, 1997, as a participant in the International City Manager's Association (ICMA) International Resource Cities Program - Partners with Quito Project. (City Manager's Office)  
(Rules Committee referral 8/27/97)**

Documents Filed: None.

Discussion/Action: The travel for George Shirakawa, Jr., to participate in the International Resource Cities Program in the City of Quito, Ecuador, was approved. Vote: 11-0-0-0.

**END OF CONSENT CALENDAR**  
**COMMISSION, COMMITTEE, AND STANDING REPORTS**

**7b Report of the Rules Committee - August 20, 1997**

Documents Filed: Rules Committee Report of August 20, 1997.

- (1) Review September 2 Council Agenda

The Committee approved the September 2, 1997 Council Agenda with one addition.

- (2) Add New Items to August 26 Amended Council Agenda

The Committee recommended eight additions to the August 26, 1997 Amended Council Agenda.

- (3) The Public Record. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated August 14, 1997, listing the items transmitted to the Administration for the period August 6-12, 1997. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated August 18, 1997, summarizing the actions taken on items transmitted to the Administration and the items filed for the Public Record for the period August 6-12, 1997.

The Committee noted and filed the Public Record for the period August 6 - August 12, 1997.

- (4) Request to use Council General funds to attend National League of Cities' Community and Economic Steering Committee meeting in Myrtle Beach, South Carolina, September 18-21, 1997. Attachments: (1) Memorandum from Council Member Powers, dated August 12, 1997, requesting authorization to travel to Myrtle Beach, SC, as a participant on the National League of Cities Community and Economic Steering Committee. (2) Memorandum from City Clerk, Patricia L. O'Hearn, dated August 12, 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 Charlotte Powers to attend the National League of Cities' Community and Economic Steering Committee Meeting in Myrtle Beach, South Carolina, September 18-21, 1997.

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

None presented.

- (6) City Council and Rules Committee meeting schedules

None presented.

- (7) Oral communications

None presented.

- (8) Adjournment

The meeting was adjourned at 2:40 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 20, 1997 were accepted. Vote: 11-0-0-0.

Mayor Hammer left the meeting at 2:12 p.m.

## **GENERAL GOVERNMENT**

- 9b Approval of an agreement with CH2M Hill for consulting services for technical support and biosolids management at the Water Pollution Control Plant for the period September 15, 1997 to September 14, 1998, in an amount not to exceed \$475,000. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services, Louis N. Garcia, dated August 15, 1997, recommending Council approve said consulting services agreement. (2) Letter from Treatment Plant Advisory Committee, dated August 15, 1997, recommending approval of an agreement with CH2M Hill for consulting services.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Johnson and unanimously carried, the consulting services agreement with CH2M Hill was approved and its execution authorized. Vote: 10-0-1-0. Absent: Hammer.

- 9c Approval of implementation of the Police Automated Information System consisting of the following elements:**

- (1) Adoption of a resolution approving an agreement with TRW, Inc. for the Police Automated Information System in the amount of \$10,145,628, and authorization for the Director of General Services to execute change orders up to a maximum of \$500,000.**
- (2) Approval of appropriation ordinance amendments to transfer \$2,075,000 from the Contingency Reserve to the AIS Project that is anticipated to be repaid from the Federal Local Law Enforcement Block Grant, the State Supplemental Law Enforcement Service Fund Block Grant, or other police related sources.**

- (3) **Approval of addition of the Police Automated Information System to the Pitney Bowes Master Equipment Lease in the amount of \$5,647,420, at an estimated interest rate of 5%, and with estimated annual lease payments of \$1,452,916 for four (4) years with a final estimated payment of \$726,458 in the fifth year, for a total lease cost of \$6,538,122.**
- (4) **Approval of appropriation ordinance amendments to eliminate the earmarked reserve for Police Automated Information System of \$4,047,430.**
- (5) **Approval of an appropriation ordinance amendment to appropriate \$11,694,853 in Citywide for the Police Automated Information System Project.**
- (6) **Approval of the first year project staffing of:**
  - (a) **1.0 Project Manager (Contract employee)**
    - 1.0 Data Base Analyst**
    - 1.0 Information Systems Analyst in ITD**
  - (b) **1.0 Network Engineer in the Police Department**
- (7) **Approval of an employment agreement with Dan Smith to serve as project manager for one (1) year in the amount of \$150,000 and authorization for the Director of General Services to exercise a second year option.**
- (8) **Approval of an Information Technology Specialist function in the City Manager's Office to fund this function for a portion of 1997-98.**  
**(City Manager's Office)**

Documents Filed: None.

Discussion/Action: This item was deferred to September 16, 1997.

- 9d Approval of an agreement with the County of Santa Clara to provide a nutrition and services program for senior citizens, for the period July 1, 1997 to June 30, 1998, with reimbursement to the City for actual costs not to exceed \$531,683. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services, Mark Linder, dated August 12, 1997, recommending approval of said agreement.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Johnson and unanimously carried, the agreement with the County of Santa Clara to provide a nutrition and services program for senior citizens was approved and its execution authorized. Vote: 10-0-1-0. Absent: Hammer.

Mayor Hammer returned to Council Chambers at this point in the meeting.

- 9e PUBLIC HEARING and approval of an ordinance granting a franchise for the conveyance of nitrogen gas to Air Products and Chemicals, Inc., and/or any wholly owned subsidiary thereof. CEQA: Exempt. (Public Works)**

Documents Filed: None.

Discussion/Action: This item was continued to September 16, 1997.

- 9f Adoption of appropriation ordinance and funding sources resolution amendments in various funds to provide an additional \$15,000,000 for the Water Pollution Control Plant Bufferland Acquisition Project. (City Manager's Office/Environmental Services)  
(Deferred from 8/26/97 - Item 9g)**

Documents Filed: (1) Memorandum from Budget Director Larry D. Lisenbee, and Director of Environmental Services Louis N. Garcia, dated August 29, 1997, recommending Council approve the appropriation ordinance and funding sources resolution amendments in the San Jose/Santa Clara Treatment Capital Fund, the Sewer Service and Use Fund, and the Sewage Treatment Plant Connection Fee Fund. (2) Letter from Treatment Plant Advisory Committee, dated August 15, 1997, recommending approval of a budget increase.

Discussion/Action: William J. Garbett spoke against the proposed action. Upon motion by Council Member Johnson, seconded by Council Member Fiscalini and unanimously carried, Ordinance No. 25418, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25390 Which Appropriates Moneys in the San Jose/Santa Clara Treatment Plant Capital Fund in the Total Amount of \$15,000,000 for the Water Pollution Control Plant Bufferland Acquisition Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 67613, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 67424 Setting Forth the Estimated Sources of Funds for the Fiscal Year 1997-98 to Adjust Revenues in the San Jose/Santa Clara Treatment Plant Capital Fund", were adopted. Vote: 11-0-0-0.

- 9g Confirming the approval of the services to participate in the pilot project for Public-Private Competition:**
- (1) Service Currently Provided In-House: Roadway Markings Services, Department of Streets and Traffic.**
  - (2) Service Currently Contracted-Out: Landscape Maintenance at Water Pollution Control Plant, General Services Department.**
- (City Manager's Office)  
(Rules Committee referral 8/27/97)**

Documents Filed: Memorandum from Assistant to the City Manager, Pamela Jacobs, dated August 29, 1997, recommending Council confirm the approval of services participating in the pilot project for Public-Private Competition.

Discussion/Action: Council Member Pandori opposed the proposed action as inadequate and dilatory. Upon motion by Council Member Fiscalini, seconded by Council Member

Johnson and carried, approval of the services to participate in the pilot project for Public-Private Competition, was confirmed. Vote: 9-2-0-0. Noes: Dando, Pandori.

## **JOINT CITY COUNCIL/REDEVELOPMENT AGENCY ITEMS**

The Redevelopment Agency Board convened at 2:18 p.m. to consider the following items in a joint session.

- 11a Discussion of salary increases for Council Appointees and Executive Director of the Redevelopment Agency and adoption of City and Agency salary resolutions. (Mayor)**  
**(Deferred from 6/24/97 - Item 11a and 8/12/97 - Item 11a)**

Documents Filed: None.

Discussion/Action: This item was deferred to September 16, 1997.

- 11b Adoption of a resolution amending Agency Resolution No. 4264, which approved the issuance of Multifamily Housing Revenue Bonds (GNMA Collateralized - The Miraido Village), to ratify the reallocation of payment of the costs of issuance from bond proceeds to Improvement Assistance Funds under the Disposition and Development Agreement. (Executive Director)**  
**(Rules Committee referral 8/27/97)**

Documents Filed: Memorandum from Executive Director, Frank M. Taylor, dated August 19, 1997, recommending the Redevelopment Agency Board adopt an amendment to the resolution approving the issuance of the Miraido Village Bonds.

Discussion/Action: William J. Garbett spoke against the proposed action. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, Resolution No. 4315, entitled: "Resolution of the Board of Directors of the Redevelopment Agency of the City of San José Amending Agency Resolution No. 4264, Which Approved the Issuance of Multifamily Housing Revenue Bonds (GNMA Collateralized - The Miraido Village), to Ratify the Reallocation of Payment of the Costs of Issuance From Bond Proceeds to Agency Improvement Assistance Funds Under the Disposition and Development Agreement for the Project", was adopted. Vote: 11-0-0-0.

The Redevelopment Agency Board portion of the meeting was adjourned at 2:20 p.m.

## **ORAL COMMUNICATIONS**

- (1) Cathy S. Brandhorst spoke on a variety of issues.
- (2) Bill Chew spoke on budget appropriations for broadcasting and televising meetings of the City Council.
- (3) Margie Fernandes addressed Council as a member of the public and read into the record a statement regarding the Ethics Board investigation into her use of surplus campaign funds in 1996 to conduct a poll.

- (4) Sidney T. Scarlett read excerpts from his letter to Mayor Hammer and Council Member Powers regarding a complaint against the San José Police Department.

### **RECESS/RECONVENE**

Following Oral Communications, Council recessed at 2:38 p.m. and reconvened at 7:10 p.m., Council Chambers, City Hall.

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

- 15a PUBLIC HEARING and approval of an ordinance amending Part 4 of Chapter 20.08 of Title 20 of the San José Municipal Code to add Sections 20.08.400 through 20.08.490 to create a pilot program requiring the termination of conditional permitting of all legal nonconforming uses in residential structures in R-1 zoning districts in the Downtown Frame and Naglee Park areas.**

(City Attorney's Office)

(Continued from 3/18/97 - Item 15b and 5/20/97 - Item 15b)

Documents Filed: None.

Discussion/Action: This item was dropped.

- 15h PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southeast corner of Chynoweth Avenue and Pearl Avenue, from A-Agricultural to A(PD) Planned Development, to allow up to 200 multi-family attached residential units, 4,400 square feet of retail commercial uses, daycare center, and community facility on 8.4 gross acres (Santa Clara County Transit, Owner; Eden Housing, Inc., Developer). Planning Director recommends approval. Planning Commission recommends approval (6-0-1). CEQA: ND.**

**PDCSH 96-11-072 - District 9**

(Continued from 5/20/97 - Item 15g and 6/17/97 - Item 15h)

Documents Filed: Memorandum from Mayor Hammer, dated August 29, 1997, requesting a continuation of the public hearing to September 16, 1997 to be heard at the evening session.

Discussion/Action: This item was continued to September 16, 1997.

- 15i 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 and 8/5/97 - Item 15h)**

Documents Filed: None.

Discussion/Action: This item was continued to November 4, 1997.

- 15j 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  
(Continued from 8/19/97 - Item 15c)**

Documents Filed: None.

Discussion/Action: This item was continued to September 16, 1997.

## **CEREMONIAL ITEMS**

- 5a Swear in Youth Commissioners from Districts 1, 2, 6, and 10. (Mayor)  
(Deferred from 8/19/97 - Item 5b)**

Documents Filed: Memorandum from City Clerk, Patricia L. O'Hearn, dated September 2, 1997, submitting the names of the Youth Commissioners who have been appointed and are scheduled to be sworn in during the evening session of the September 2, 1997 Council meeting.

Discussion/Action: Council Members Johnson, Powers, Fiscalini, and Dando presented biographical sketches of the students' and their accomplishments, and City Clerk, Patricia L. O'Hearn, administered the Oath of Office to Annie Chang, representing District One; Pamela Pendleton, representing District 2; Katharine Vierhus, representing District 6; and Shannon Doyle, representing District 10. The City Council joined Vice Mayor Fernandes in congratulating the Commissioners on their appointment to the Youth Commission and their willingness to serve the youth of San Jose.

## **PUBLIC HEARINGS**

- 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. Staff recommends upholding Planning Commission's decision.**

**PDC 96-12-082 - District 3**

**(Continued from 8/5/97 - Item 15b)**

Documents Filed: None.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the appeal of the supplemental environmental impact report. She advised the audience of the City Council recommendation to continue Items 15b and 15c for two weeks, and invited those individuals who could not attend the public hearing at Yerba Buena High School on September 16, 1997 to address Council on the subject SEIR. William J. Garbett spoke against the proposed action. By unanimous consent, the Public Hearing was continued to September 16, 1997. Vote: 10-0-1-0. Absent: Hammer.

- 15c 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 retain and 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 and 8/5/97 - Item 15g)**

Documents Filed: None.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the planned development rezoning of the subject property. She advised the audience of the Council recommendation to continue Items 15b and 15c for two weeks, and invited those individuals who could not attend the public hearing at Yerba Buena High School on September 16, 1997 to address Council on the planned rezoning. Andre Broussard, representing Preservation Action Council, addressed Council on the issue. By unanimous consent, the Public Hearing was continued to September 16, 1997. Vote: 10-0-1-0. Absent: Hammer.

- 15d 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. Staff recommends upholding Planning Commission's decision. Planning Commission recommends denial (4-1-1-1).**

**CP 97-04-017 - District 5**

**(Continued from 8/19/97 - Item 15a)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated August 18, 1997, recommending Council uphold the Planning Commission's denial of CP 97-04-017, based on specific findings.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the appeal of the Planning Commission's decision to deny the CUP. Council Member Diaz recommended that Council deny the Planning Commission's decision, grant the appeal of the applicant, and approve the Conditional Use Permit for the project. He stated the existing City Council Drive-Through Policy addresses traffic mitigation with respect to high concentrations of drive-through uses in commercial neighborhoods and is designed to minimize traffic conflicts and congestion. Should Council choose to approve the application, Council Member Johnson stated additional direction should be given to Staff to develop revisions to the Drive Through Policy, which would allow flexibility when drive-through uses are located within shopping centers. Upon motion by Council Member Diaz, seconded by Council Member Shirakawa, Jr., and unanimously carried, the public hearing was closed, the appeal was upheld, the Planning Commission recommendation denied, Resolution No. 67614, entitled: "A Resolution of the Council of the City of San José Granting a Conditional Use Permit, Subject to Conditions, to Use Certain Real Property Described Herein for the Purpose of Constructing a 62 Square-Foot Drive-Through Window Addition to an Existing Restaurant", was adopted with direction to City Staff to develop a policy which provides flexibility when similar uses are located within a shopping center. Vote: 10-0-1-0. Absent: Hammer.

**15e PUBLIC HEARING and approval of an ordinance that amends:**

- (1) Various provisions of Title 11 in order to expand the prohibition against the parking of large commercial vehicles in "Residential Districts" and to make other technical changes to Title 11 related to the large commercial vehicle parking prohibition; and**
- (2) Title 20 of the San José Municipal Code by adding Section 20.04.489 to set forth a new definition of "Residential District", by amending Section 20.04.490 to remove the current definition of "Residential District", and by making technical conforming changes to other provisions of Title 20. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).**

**CEQA: Exempt. (City Attorney's Office)**

Documents Filed: (1) Supplemental memorandum from City Attorney, Joan R. Gallo, dated August 22, 1997, clarifying the primary purpose of the proposed Ordinance amendments to expand the prohibition against parking large commercial vehicles in areas used for residential purposes. (2) Memorandum from City Attorney, Joan R. Gallo, dated September 2, 1997, transmitting the Planning Commission memorandum of August 5,

1997 with respect to the proposal to amend part of an ordinance expanding said prohibition. (3) Notice of Public Hearing on an ordinance to amend the Zoning Code of the City of San José, dated July 22, 1997, and the Proof of Publication submitted by the City Clerk.

Discussion/Action: Vice Mayor Fernandes opened the public hearing to consider various provisions of Titles 11 and 20 of the San José Municipal Code. There was no discussion from the Floor. Upon motion by Council Member Woody, seconded by Council Member Shirakawa, Jr., and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25419, entitled: “An Ordinance of the City of San José Amending Chapter 11.04 of Title 11 of the San José Municipal Code to Set Forth a New Definition of ‘Residential District’ and to Make Other Technical Changes; Amending Chapter 11.36 of Title 11 of the San José Municipal Code to Delete the Definition of ‘Residential District’ and to Make Other Technical Changes; Amending Chapter 20.04 of Title 20 of the San José Municipal Code to Set Forth a New Definition of ‘Residential District’; and Amending Sections 20.08.280 of Title 20 of the San José Municipal Code to Replace the References to ‘Residential District’ With References to ‘Residentially Zoned Property’, was passed for publication. Vote: 10-0-1-0. Absent: Hammer.

**15f PUBLIC HEARING ON APPEAL of the Planning Commission’s Decision to Deny a Conditional Use Permit for a project located at the east side of Pomona Avenue, 200 feet south of San José Avenue (1650 Pomona Avenue), on a .71 gross acre site in the M-4 Manufacturing Zoning District, for the use of an auto dismantling facility (Fred Farahani, Owner/Developer). CEQA: Not complete. Staff recommends upholding Planning Commission’s decision. Planning Commission recommends denial (4-1-2)  
CP 96-06-050 - District 7**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated August 18, 1997, recommending Council uphold the decision of the Planning Commission and deny the above referenced Conditional Use Permit and include in its resolution the findings and recommended conditions. (2) Letter from Douglas B. Allen of Burnett, Burnett & Allen, Attorney & Counselors at Law, dated September 2, 1997, requesting a two-week deferral of the subject appeal.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the appeal of the Planning Commission’s decision to deny a CUP for the subject project. Director of Planning, Building and Code Enforcement, James R. Derryberry, stated a letter was received from the applicant’s representative indicating the applicant had not received proper notification of tonight’s public hearing. He reviewed the noticing process and recommended Council approve the Planning Commission’s recommendation for denial predicated on the applicant’s failure to provide requested information and obtain appropriate permits and clearances from the City. Fred Farahani, appellant, spoke in support of the continued use of the site as a wrecking yard. William J. Garbett spoke in

favor of the CUP. Upon motion by Council Member Shirakawa, Jr., seconded by Council Member Johnson and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Resolution No. 67615, entitled: "A Resolution of the Council of the City of San José Denying a Conditional Use Permit, to Use Certain Real Property Described Herein for the Purpose of Allowing the Conditional Use of a Non-permitted Auto Dismantling Operation", was adopted. Vote: 10-0-1-0. Absent: Hammer.

- 15g PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the north side of Rose Avenue, 600 feet easterly of South Capitol Avenue, from A-Agricultural to A(PD) Planned Development, to allow 9 single-family attached residences and subdivide into 10 lots on 0.59 gross acre (Citibank, Owner; Sergio Estrada, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (4-0-3).  
PDC 96-12-081 - District 5  
(Continued from 4/1/97 - Item 15g et al., and 6/17/97 - Item 15g)**

Documents Filed: (1) Memorandum from the Planning Commission, dated May 29, 1997, recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning on PDC 96-12-081, dated February 14, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Vice Mayor Fernandes 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 Diaz, seconded by Council Member Fiscalini and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25420, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Rose Avenue, 600 Feet East of South Capitol Avenue", was passed for publication. Vote: 10-0-1-0. Absent: Hammer.

- 15k PUBLIC HEARING ON CONFORMING PREZONING of the property located on the north side of Hillsdale Avenue, 200 feet easterly of Old Almaden Road, from County to A-Agricultural, to allow the existing uses on a 124 gross acre site (Salvatore & Grace Rubino, Owner; Kaufman and Broad, Developer). CEQA: Exempt. Director of Planning recommends approval. No Planning Commission action required.  
C 97-08-049 - District 6**

Documents Filed: (1) Department of Planning, Building and Code Enforcement Staff Report, dated August 15, 1997, recommending Council approve the subject conforming prezoning. (2) Public Hearing Notice to consider a change in Zoning on C 97-08-049, dated August 8, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the conforming prezoning of the subject property. William J. Garbett spoke in support of preserving the

Hillsdale Bridge as a historical structure. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the public hearing was closed, and Ordinance No. 25421, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the North Side of Hillsdale Avenue, 200 Feet Easterly of Old Almaden Road", was passed for publication. Vote: 10-0-1-0. Absent: Hammer.

## **CLOSED SESSION REPORT**

Disclosure of Closed Session Action of September 2, 1997 submitted by City Attorney, Joan R. Gallo:

A. Authority to Enter Litigation Case As Amicus Curiae:

1. Case Name: Green v. City of Los Angeles

Adverse Party or Parties: Green

Substance of Litigation: This is an action seeking damages for alleged discrimination for some incidents that occurred long after the time limit for bringing an action had passed.

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

## **ORAL COMMUNICATIONS**

Cathy S. Brandhorst commented on a variety of societal issues.

## **ADJOURNMENT**

The Council of the City of San José adjourned at 7:50 p.m. in memory of Diana, Princess of Wales, and in memory of James Walker, father of Mayor Susan Hammer.

**SUSAN HAMMER, MAYOR**

**ATTEST:**

**PATRICIA L. O'HEARN, CITY CLERK**