

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 23, 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, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: Pandori.

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room 600 to confer with Legal Counsel pursuant to Government Code Section 54956.9; under Subsection (c) to discuss the initiation of litigation in one (1) case; to conduct Public Employment/Public Employee Appointments pursuant to Government Code Section 54957 for the titles of Director of Parks, Recreation and Neighborhood Services and the Department of Environmental Services; and to confer with Labor Negotiator Pursuant to Government Code 54957.6: City Negotiator: City Manager designee Lynn Boland; Employee Organizations: Confidential Employees Organization, Unit 99, City Association of Management Personnel, Association of Maintenance Supervisory Personnel; and Association of Building and Mechanical and Electrical Inspectors.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:05 a.m. and reconvened at 1:37 p.m. in the Council Chambers.

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

Absent: Council Members: None.

INVOCATION

Lynda Haliburton, Youth Outreach Department, City Team Ministries, a frequent guest soloist at local events, sang an inspirational song entitled "Hero." (District 8)

PLEDGE OF ALLEGIANCE

Mayor Hammer led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Council Member Fiscalini, seconded by Council Member Johnson, and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 11-0-0-0.

CEREMONIAL ITEMS

- 5a Presentation of commendation and award honoring the Outstanding Employee for September 1997 to Vivian Frelix-Hart, Homeless Coordinator, Housing Department. (City Manager's Office)**

Documents filed: None.

Discussion/Action: Mayor Hammer and City Manager Williams were joined by Housing Director Sanchez for presentation of the Outstanding Employee award for September 1997 to Vivian Frelix-Hart, Homeless Coordinator, Housing Department, who has received national recognition for her work with the homeless population, in the City of San José, and throughout the greater Bay Area.

5b Presentation of a commendation to His Holiness Pemu Norbu Rinpoche, Supreme Head of the Nyinga School of Tibetan Buddhism. (Mayor)

(Orders of the Day 4a)

Documents filed: None.

Discussion/Action: Mayor Hammer presented a commendation to His Holiness Pemu Norbu Rinpoche, who through an interpreter accepted the recognition and expressed his appreciation to the Mayor and City Council.

5c City Manager Regina V.K. Williams introduced Deputy Public Works Director Carl Mosher, as her nominee for appointment as Director of the Department of Environmental Services, to replace Director Louis Garcia, who will retire at the end of the year.

Documents filed: None.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Dando, and unanimously carried, the City Council unanimously confirmed the appointment of Carl Mosher as Director of Environmental Services. Mr. Mosher was joined in the audience by his wife Jamie, and his parents Joe and Eileen Mosher, long-time residents of San José. Public Works Director Ralph Qualls congratulated Mr. Mosher on his appointment. City Manager Williams expressed appreciation to outgoing Environmental Services Director Garcia for his service to the City of San José, and offered good wishes for his retirement. Vote: 11-0-0-0.

5d City Manager Regina V.K. Williams introduced Mark Linder, as her nominee for appointment as permanent Director of the Department of Parks, Recreation and Neighborhood Services; Mr. Linder has been serving as Acting Director of the Department.

Documents filed: None.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, the City Council unanimously confirmed the appointment of Mark Linder as Director of Parks, Recreation and Neighborhood Services; Mr. Linder was joined in the audience by his wife, Mary. Vote: 11-0-0-0.

CONSENT CALENDAR

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

Public Hearings Set by Council

6c(1) Adoption of a resolution initiating the conforming rezoning of the area generally within the boundaries of the south side of Coleman Avenue and Julian Avenue, east of Highway 87, west of Fourth Street, and north of Highway 280, from C-3 Commercial, M-1 and M-4 Manufacturing, R-2, R-3, and R-4 Residence District to D-C Downtown Primary Commercial District (CC 97-08-057); and D-R Downtown Primary Residential District, and D-RC downtown Residential Conservation District (CC 97-08-058); and setting the public hearings before the City Council for rezoning to D-C Downtown Primary Commercial District (CC 97-08-057) on November 18, 1997 at 7:00 p.m. and for rezoning to D-R Downtown Primary Residential District; and D-RC Downtown Residential Conservation District (CC 97-08-058) on February 17, 1998 at 7:00 p.m. No change is recommended for the existing R-I Residence District and PD Planned Development Districts. (Planning, Building and Code Enforcement)

Documents filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated September 5, 1997, recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67639, entitled: "Resolution of the Council of the City of San José Initiating Proceedings on its Own Motion to Rezone Certain Real Property Situated Within the Southern Pacific Railroad, Devine and Julian Streets to the North, Third Street to the East, Reed and Balbach Streets, Highway 280 to the South, and Highway 87 to the West;" Resolution No. 67640, entitled: "Resolution of the Council of the City of San José, Initiating Proceedings on its Own Motion to Rezone Certain Real Property Situated Within the South Side of Coleman Avenue, 300 Feet Southerly of Fox Avenue, West Side of North First Street, North Side of Bassett Street, Southern Pacific Railroad Right-of-Way, East Side of Highway 87, South Side of Julian Street, West Side of North Fourth Street, North Side of East Santa Clara Street, Julian Street, Devine Street, East Side of North Third Street, North First Street, North Market Street; Southside of East Santa Clara Street Between North Third and Fourth Streets, 500 Feet North of East San Fernando Street; South Side of Balbach, Reed and East San Carlos Streets, Between Almaden Avenue and South Market Street, and Between East Side of South Second and West Side of South Fourth Streets, All North of Highway 280", were adopted. Vote: 11-0-0-0.

6c(2) (a) Adoption of a resolution of intention to form Community Facilities District (CFD) No. 4 (Evergreen Improvements), setting a public hearing on November 4, 1997 at 1:30 p.m., and authorization of the levy of special taxes within the proposed District.

(b) Approval of the second amendment to the cooperation agreement with the Evergreen Specific Plan (ESP) Developers extending the term of the Interim Lien measures set forth in the first amendment, until all properties within the Evergreen Planned Residential Community (EPRC) and outside of CFD No. 4 boundaries have closed escrows.

CEQA: Resolution No. 63179. (Public Works)

Documents filed: None.

Discussion/Action: This item was deferred to September 30, 1997, to be renumbered 6e.

Plans and Specifications

6d(1) TRACT NO. 8937 - Within the Evergreen Specific Plan Area (ESP) and is more particularly located on the southeast corner of Altamara Avenue and Aborn Road - Shapell Industries, Inc. (Developer) - 45 single family detached residential lots. Adoption of resolutions approving the plans, final map, contract, and water main extension agreement for Tract No. 8937. CEQA: Resolution No. 24748. District 8. (Public Works)

[Deferred from 9/16/97 - Item 6d(1)]

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 5, 1997, recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67641, 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. 8937;" Resolution No. 67642, entitled: "A Resolution of the Council of the City of San Jose Approving and Accepting Final Map of Tract No. 8937;" Resolution No. 67643, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8937"; and Resolution No. 67644, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Agreement for the Water Main Extension, Tract No. 8937," were adopted. Vote: 11-0-0-0.

6d(2) TRACT NO. 8986 - North side of Dadis Way, between Senter Road and Lone Bluff Way - Nor-Cal Development Group Inc. (Developer) - 22 attached single family residential units. Adoption of resolutions approving the plans, final map, contract, and approval of the parkland agreement for Tract No. 8986. CEQA: ND. District 7. (Public Works) (Rules Committee referral 9/17/97)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 12, 1997, recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67645, 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. 8986;" Resolution No. 67646, entitled: "A Resolution of the Council of the City of San Jose Approving and Accepting Final Map of Tract No. 8986," and Resolution No. 67647, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8986"; were adopted. Vote: 11-0-0-0.

Contracts/Agreements

6e(1) Approval of the Santa Clara County Operational Area Disaster Response and Recovery Organization agreement. (Emergency Services)

Documents filed: Memorandum from Frances E. Winslow, Director of Emergency Services, dated September 23, 1997, recommending ratification of the Final Agreement for the creation of a governing body of the Santa Clara County Operational Area, which is required for the application for and receipt of Emergency Management Assistance funding, beginning with Federal Fiscal Year 1998.

Discussion/Action: The Santa Clara County Operational Area Disaster Response and Recovery Organization agreement was approved and its execution authorized.

Vote: 11-0-0-0.

6e(2) Approval of:

(a) Fourth amendment to the agreement with GreenTeam of San José (District A/Single Family) to modify Section 7.04 regarding garbage and recycling collection route audits.

(b) Third amendment to the agreement with Western Waste Industries (Districts B and C/Single Family) to modify Section 7.04 regarding garbage and recycling collection route audits. (Environmental Services)

Documents filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated September 5, 1997, recommending approval of the amendments to said agreements with GreenTeam of San José and Western Waste Industries.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. The fourth amendment to said agreement with GreenTeam of San José and the third amendment to said agreement with Western Waste Industries were approved and their execution authorized.

Vote: 11-0-0-0.

6e(3) Adoption of a resolution granting revocable permission to Dharma Realm Buddhist Association to maintain an existing connection to the City's sanitary sewer system to provide sanitary sewer service for a worship/educational/residence facility located on property on Clayton Road, outside the city limits of the City of San José, and authorization for the City Manager to negotiate and execute an agreement with the user and the City of Santa Clara related to this outside sewer use. (Environmental Services/Public Works)

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated September 5, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67648, entitled: "A Resolution of the Council of the City of San José Granting Revocable Permission to Dharma Realm Buddhist Association to Use an Existing Connection to City's Sanitary Sewer System to Provide Sanitary Sewer Service for a Worship/Educational/Residence Facility Located on a Parcel of Real Property Located on Clayton Road Outside the Limits of the City of San José", were adopted. Vote: 11-0-0-0.

6e(4) Approval of an agreement with Mary L. Herrera, Trustee, for the purchase of real property rights for the Riverside-Los Gatos Storm Drain Project in the amount of \$3,500, and authorization for the Director of Public Works to execute the necessary documents. CEQA:

Exempt. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 5, 1997, recommending approval of said agreement with Mary L. Herrera, Trustee, and authorization for the Director of Public Works to execute the necessary documents.

Discussion/Action: The agreement with Mary L. Herrera, Trustee, for the purchase of said real property rights was approved and the Director of Public Works authorized to execute the necessary documents. Vote: 11-0-0-0.

6e(5) Approval to negotiate with the National Association of Local Government Auditors to conduct an audit of the City Auditor's Office. (Mayor)
(Rules Committee referral 9/16/97)

Documents filed: Memorandum from Mayor Hammer dated September 22, 1997, recommending approval of said agreement with the National Association of Local Government Auditors.

Discussion/Action: The approval to negotiate with the National Association of Local Government Auditors to conduct an audit of the City Auditor's Office was approved and its execution authorized. Vote: 11-0-0-0.

6e(6) Approval of an agreement with the East Side Union High School District to provide the services of a Gang Policy Manager in an amount not to exceed \$93,252.54, for the period July 1, 1997 to June 30, 1998. (Parks, Recreation and Neighborhood Services)
(Rules Committee referral 9/17/97)

Documents filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services, Mark Linder, dated September 17, 1997, recommending approval of said agreement with the East Side Union High School District.

Discussion/Action: The agreement with the East Side Union High School District was approved and its execution authorized. Vote: 11-0-0-0.

6e(7) Approval of an agreement with James Smith for consultant services for technical assistance on the Process Control System and the Laboratory Information Management System at the San José/Santa Clara Water Pollution Control Plant (WPCP) for the period September 28, 1997 to September 27, 1998, in the amount of \$98,500. (Environmental Services)
[Deferred from 9/16/97 - Item 6e(2)]

Documents filed: (1) Memorandum from Director of Environmental Services, Louis N. Garcia, dated August 28, 1997, recommending approval of said agreement with James Smith. (2) Supplemental memorandum from Director of Environmental Services, Louis N. Garcia, dated September 22, 1997, providing information requested at the September 16, 1997, City Council meeting regarding procedures used to notice/advertise the contract.

Discussion/Action: The agreement with James Smith for said services was approved and its

execution authorized. Vote: 11-0-0-0.

Routine Legislation

6f(1) Approval of the transfer of ownership of City Tow, Inc., the company holding the zone tow contract for Zone 2, from Eugene A. Carvalho and Marie T. Carvalho, husband and wife, to Kenneth M. Carvalho, their son. (General Services)

Documents filed: None.

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

6f(2) Approval of the Federal Consolidated Annual Performance and Evaluation Report (CAPER) covering Fiscal Year 1996-97 and authorization for the Director of Housing to submit the approved CAPER to the Federal government on or before October 1, 1997 in accordance with Federal regulations. (Housing/Parks, Recreation and Neighborhood Services)

Documents filed: None.

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

6f(3) Adoption of a resolution to amend Resolution No. 66908, Exhibit 18, to establish the class of Maintenance Contract Supervisor (3227) at a salary range of 62I. (Human Resources)

Documents filed: Memorandum from Director of Human Resources, Nona Tobin, dated September 5, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67649, entitled: "A Resolution of the Council of the City of San José Amending Revenue Resolution No. 68908 by Amending Exhibit 18 to Establish the Class of Maintenance Contract Supervisor (3227), Effective October 5, 1997, was adopted. Vote: 11-0-0-0.

6f(4) Adoption of a resolution summarily vacating a portion of McKean Road and Almaden Road. CEQA: ND. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 5, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67650, entitled: "Resolution of the Council of the City of San José Summarily Vacating a Portion of McKean and Almaden Roads" was adopted. Vote: 11-0-0-0.

6f(5) Adoption of resolutions summarily vacating a portion of Kirk Avenue immediately north of McKee Road and declaring this parcel of City-owned real property 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, et al. CEQA: ND. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 5, 1997, recommending adoption of said resolutions.

Discussion/Action: Resolution Nos. 67651, entitled: "Resolution of the Council of the City of San José Summarily Vacating Right-of-Way on Kirk Avenue, North of McKee Road," and Resolution No. 67652, 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(6) Adoption of a resolution accepting easements for property located in the Silver Creek Valley Maintenance District 15 being dedicated to the City of San José by Grant Deed for the purpose of landscape maintenance and an open space trail, and authorization for the Director of Public Works to accept the Grant Deed on behalf of the City. CEQA: Resolution No. 61784. (Public Works)

[Deferred from 9/9/97 - Item 6f(7) and 9/16/97 - Item 6f(7)]

Documents filed: None.

Discussion/Action: This item was deferred to September 30, 1997.

6f(7) Approval of Council Member Patricia Dando's travel to Okayama, Japan, October 8 - 14, 1997, to participate in the celebration of the 40th anniversary of the San José/Okayama Sister City Partnership. Funding: no City funds. (Dando)
(Rules Committee referral 9/16/97)

Documents filed: None.

Discussion/Action: The travel for Council Member Dando to Okayama, Japan from October 8 - 14, 1997 was approved. Vote: 11-0-0-0.

6f(8) Adoption of a resolution amending Resolution No. 51872, Exhibit 16, to create the class of Temporary Employee (U) (PT), level 0 at a salary range of 28J - 31B (\$5.15-\$5.73 hr). (Human Resources)
(Rules Committee referral 9/17/97)

Documents filed: Memorandum from Director of Human Resources, Nona Tobin, dated September 15, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67653, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 51872 by Amending Exhibit 16 to Establish the Class of Temporary Employee (U) (PT), Level O, Effective October 5, 1997", was adopted. Vote: 11-0-0-0.

END OF CONSENT CALENDAR
COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - September 10, 1997

Documents filed: Rules Committee report of September 10, 1997.

- (1) Review of September 23 Council Agenda

The Committee approved the September 23 Council agenda with two additions.

- (2) Add New Items to September 16 Amended Council Agenda

The Committee recommended ten additions and one deletion to the September 16, 1997 amended Council Agenda.

- (3) The Public Record. Attachment: (1) Memorandum from City Clerk Patricia L. O'Hearn, dated September 4, 1997, listing the items transmitted to the Administration and those items filed for the Public Record for the period August 27 - September 2, 1997. (2) Memorandum from Council Liaison Norberto Dueñas, dated September 8, 1997, summarizing actions taken on items transmitted to the Administration and filed for the Public Record.

The Committee noted and filed the Public Record.

- (4) Report back on Retail Alcoholic Beverage Licenses. Attachment: (1) Memorandum from Mark Linder, Acting Director of Parks, Recreation and Neighborhood Services dated September 5, 1997 referring four staff recommendations regarding retail alcoholic beverage licenses to the City Council for action. (2) Memorandum from Council Members Diaz, Shirakawa, Jr., and Woody, dated September 10, 1997, recommending Rules Committee accept the Staff report and refer the recommendations to City Council for approval.

The Committee recommended approval of the Staff report on retail alcoholic beverage licenses; directed the item be cross referenced on the 9/23/97 Council agenda for placement of City Attorney's resolution to oppose the issuance of new liquor licenses in 24 census tracts in San José; and directed the item be placed on the October 7, 1997 Council agenda, to be heard in the evening.

Discussion/Action: See Item 9d for council action taken.

- (5) Report back on Internet Access at San José Libraries. Attachment: Memorandum from City Librarian Jane Light, dated September 5, 1997, regarding Internet access in libraries.

The Committee approved the Staff recommendation that the City of San José's current policy of unrestricted access to all library materials and services which extends to parents the right and responsibility to determine what their children may read or view be placed on the September 23, 1997 City Council agenda for discussion and direction.

Discussion/Action: See Item 9e for council action taken.

(6) Request to use Council General Funds to attend California League of Cities' Annual Conference in San Francisco, October 11-14, 1997. Attachment: (1) Memorandum from Council Member Johnson, dated September 2, 1997, requesting use of Council General funds. (2) Memorandum from City Clerk Patricia O'Hearn, dated September 5, 1997, summarizing the use of the Council General Travel Budget.

The Committee approved the use of Council General Funds for Council Member Trixie Johnson to attend the California League of Cities' Annual Conference in San Francisco, CA, October 11-14, 1997.

(7) Request to use Council General Funds to represent and participate in the City of Okayama's 40th Anniversary celebration of the San José/Okayama Sister City partnerships in Okayama, Japan, October 8-14, 1997. Attachment: (1) See Item 6 for memorandum from City Clerk Patricia O'Hearn, dated September 5, 1997, summarizing the use of the Council General Travel Budget.

The Committee directed that a policy discussion on the use of Council General Funds be placed on next week's Rules Committee agenda and deferred this item to the September 17, 1997 Rules Committee meeting.

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

(a) Jet Fuel Sales Tax Allocation

The Committee noted the Informational report recently issued to the Council by the Administration regarding the jet fuel sales tax; and directed the City Attorney to report back to the Rules Committee next week on the need for a City Council resolution regarding jet fuel sales tax revenue.

(9) City Council and Rules Committee meeting schedules

There were none.

(10) Oral communications

None presented.

(11) 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 September 10, 1997, were accepted. Vote: 11-0-0-0.

Documents filed: Finance/Agency Finance Committee report of September 10, 1997.

(1) Monthly Investment Report for July 1997. Attachment: Memorandum from Finance Director Guthrie, dated August 22, 1997, transmitting the July 1997 Investment Report.

The Committee noted and filed the report.

(2) Review of City of San José Landfill Fees and Taxes. Attachment: Report entitled: *A Review of the City of San José's Landfill Fees and Taxes*, prepared by the Office of the City Auditor.

The Committee noted and filed the report with the request for follow-up information.

(3) Status Report on Audit of Santa Clara County's Tax Allocation Process. Attachment: Letter from City Auditor Gerald A. Silva, dated August 28, 1997, reporting the status of the Audit of the Santa Clara County's Property Tax Allocation Process.

The Committee noted and filed the report.

(4) Oral petitions

Bill Chew discussed broadcasting the meetings on television.

(5) Adjournment

The meeting was adjourned at 10:30 p.m.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Fiscalini, and unanimously carried, the Finance/Agency Finance Committee report and actions of September 10, 1997, were accepted. Vote: 11-0-0-0.

7d Report of the Housing and Community Development Committee - September 8, 1997

Documents filed: Housing and Community Development Committee report of September 8, 1997.

(1) Consent Calendar

(a) Report on Library Usage FY 1996-97

The Committee accepted the staff report with direction for GSA and the Library to prepare a maintenance program and cost analysis and report back to the Committee in January, 1998, and a proposal to increase the maintenance budget be brought forward at the Mid-Year Budget process.

(2) Annual Report on Arts Education

The Committee accepted the report.

- (3) Update on the implementation of the Seismic Retrofit Program

The Committee accepted the report.

- (4) Review Video: "Affordable Family Housing: A Bay Area Tour"

The Committee thanked Staff and the Non-Profit Housing Association for the video presentation.

- (5) Oral petitions

None presented.

- (6) Adjournment

The meeting was adjourned at 3:00 p.m.

Discussion/Action: Upon motion by Council Member Powers, seconded by Council Member Diaz, and unanimously carried, the Housing and Community Development Committee report and actions were accepted. Vote: 11-0-0-0.

7e Report of the Transportation, Planning, and Environment Committee - Meeting of August 28, 1997 (Partial)

Documents filed: Transportation, Planning, and Environment Committee report of August 28, 1997.

- (2) Report and Recommendation on the Parkland Dedication Fee Ordinance
[Deferred from 9/16/97 - Item 7e(2)]

The Committee recommended this item be cross-referenced to the City Council Agenda of September 16, 1997, for discussion, with the recommendation from Committee that Council direct the City Attorney to draft appropriate ordinances and resolutions implementing the recommendations outlined in the staff report and that the ordinances and resolutions be brought back to the TP&E Committee for discussion and final recommendation on October 9, 1997.

Discussion/Action: See Item 9f for Council action taken on this item, and the September 16, 1997 City Council minutes for the August 28, 1997 Transportation, Planning and Environment Committee Report.

7e Report of the Transportation, Planning, and Environment Committee - Meeting of September 11, 1997

Documents filed: Transportation, Planning, and Environment Committee report of September 11,

1997.

- (1) Consent Calendar

No Consent Calendar items.

- (2) Report on Non-Profit Reusers/Franchiser Fees & Disposal Facility Tax Follow-up. Attachment: Memorandum from City Attorney Gallo, dated August 27, 1997, reporting on options for funding Nonprofit Reusers' Exemption from AB939 fees, pursuant to Council Referral No. 6-17-97-90.

The Committee accepted the report.

- (3) Report on the Transportation Level of Service (LOS) Policy Review. Attachment: (1) Memorandum from Public Works Director Qualls, and Planning Director Derryberry, dated September 11, 1997, providing the Transportation Level of Service Policy Review. (2) Memorandum from Council Member Diaz, dated September 9, 1997, recommending the inclusion of Story Road between King and White Roads, in the study of traffic mitigation, neighborhood preservation and economic development.

The Committee noted and filed the report.

- (4) Report on Countywide Deficiency Plan. Attachment: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 3, 1997, reporting on the Countywide Deficiency Plan.

The Committee noted and filed the report.

- (5) Oral petitions

None presented.

- (6) Adjournment

The meeting was adjourned at 2:39 p.m.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Council Member Johnson, and unanimously carried, the Transportation, Planning, and Environment Committee report and actions of September 11, 1997, were accepted. Vote: 11-0-0-0.

LAND USE AND DEVELOPMENT

- 8a PLANNED DEVELOPMENT REZONING of the property located at both sides of Gold Street northerly of Route 237, from M-4 Manufacturing to A(PD) Planned Development, to allow up to 348,732 square feet of office/R&D and commercial development on a 28.1 gross acre site (Lincoln Property Co., Owner/Developer).**

CEQA: EIR Resolution to be adopted.
PDC 97-01-002 - District 4

Documents filed: None.

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

9a (1) Approval to amend the Performance Based Incentive Development Policy to exclude subsidies for “big box” retail uses larger than 100,000 square feet (a definition of “subsidy” is provided in the staff report).

(2) Approval to defer consideration of standards regarding wages and benefits to future Council discussion of broader issues such as the impacts of welfare reform and prevailing wage. (Economic Development) (Deferred from 6/24/97 - Item 9ii and 8/26/97 - Item 9a)

Documents filed: None.

Discussion/Action: This item was deferred to October 21, 1997.

9b Interview applicants for Campaign Finance Review and Ethics Board. (City Clerk)

Documents filed: (1) Memorandum from City Clerk O’Hearn, dated September 19, 1997, listing the five applicants selected to be interviewed for the unexpired term on the Campaign Finance Review and Ethics Board: Beverly Jean Adams, District 2; David R. Fadness, District 10; Christopher Keith Garvey, District 3, Janice K. Scott, District 9, Louis “Bud” K. Towner, applicant from District 6, was unable to attend, and scheduling the interviews for 2:00 p.m. at the City Council Meeting of September 23, 1997. (2) Memorandum from City Attorney Joan R. Gallo, dated September 18, 1997, providing Conflict of Interest Reviews of the applicants selected to be interviewed.

Discussion/Action: The City Council interviewed the four applicants. Following the City Clerk’s reading of the votes by each Council Member, on the second ballot Beverly Jean Adams was appointed to the unexpired term ending March 1, 2000 on the Campaign Finance Review and Ethics Board.

9c New Realities Task Force Report and recommendations on proposed modifications to the City’s Retirement System and a possible increase in the Kaiser Co-Payment (New Realities Recommendations #4.02, #4.06 and #4.08). (City Manager’s Office)

Documents filed: (1) Memorandum from City Manager Regina V.K. Williams, dated September 17, 1997, recommending the City Council accept the report and direct the Administration to proceed with its workplan to: (1) Develop negotiation strategies related to the recommended modifications of the City’s retirement system and increased Kaiser co-payment proposal within the context of other salary and benefit negotiations and to report to Council through the normal meet and confer process; (2) Request that the Police and Fire Retirement Board review their earning assumptions and asset allocation given the CalPERS information; and (3) Place on Council Agenda a status report related to New Realities Recommendations #4.02, #4.06 and

#4.08. (2) Memorandum from the New Realities Retirement Task Force, dated August 15, 1997, submitting Final Report, entitled: *New Realities Task Force on Retirement, Report on Recommendations 4.02 and 4.08 (a), (b), and (c), dated August, 1997.*

Discussion/Action: Human Relations Director Nona Tobin made the Staff presentation on the New Realities Retirement Task Force recommendations. She highlighted major areas studied for both retirement plans and an expenditure reduction recommendation involving a change in the Kaiser co-payment, and stated Staff recommends those issues be referred to the meet and confer process, with a status report in six months. While Task Force recommendations are geared toward saving money, she stated the design of the retirement plan should be considered in a broader perspective, i.e. the purpose of a retirement plan, types of employees that can be attracted and retained, and the type of replacement income the plan provides for long-term employees. She pointed out the actions would apply to new, not current employees and any differences would represent a split between the two groups of employees. Regarding the Task Force recommendation for consideration of a defined contribution plan, she explained that a defined contribution plan, such as a 401K, obligates the employer to contribute a certain amount into the plan and management of the plan is the responsibility of the employee, whereas in a defined benefit plan, as the City currently has, both the employee and employer contribute set amounts to the plan, and the employee receives a guaranteed retirement benefit. She stated actuarial reviews that were conducted concluded that a defined contribution plan is not viable for either of the City's plans; because the City is not in Social Security there would be no safety net for retirees since a pure defined contribution plan shifts the total investment and mortality risk to the employee. In comparing the funding of a defined contribution to a defined benefit plan, she stated it would cost approximately 30% more to provide an equivalent benefit to a 30-year employee because a defined contribution plan shifts the benefit to the shorter-term employee, not a career employee. She stated a hybrid plan was studied that would combine a reduced defined benefit plan, to provide the safety net, with a defined contribution plan which would be 2% of salary matched by the employee, would allow a greater portability and be good for changes expected in the future civilian workforce. She stated such a plan could have positive features that would work in the Federated system and could save the City ten percent of the program, but would not work in Police and Fire. She commented on the recommendation for increasing the retirement age for new employees in the Federated system from age 55 to 60 or after 30 years of service and stated the Administration believes this recommendation is worth pursuing. Concerning Cost of Living Adjustments, she stated COLA reductions could be considered in combination with other programs which include purchasing power protection. She stated the Administration is not recommending pursuing the issue of salary caps for retirement purposes, or the issue of a medical buy-out, which would have adverse tax ramifications. Regarding Disability Hearing Officers, she stated a ten-year survey indicated that Hearing Officers were not appropriate for Federated, but is recommended for further consideration for Police and Fire. Director Tobin reported contracting with CalPERS for future employees was not recommended in Federated because of costs associated with the unfunded liability; however, cost savings can be achieved with a second tier in the current program. Because the credit the City takes for negative unfunded liability within the Police and Fire plan would be accelerated if the plan closed, the Administration is recommending the possibility of contracting with CalPERS be pursued for future entrants into the Police and Fire system. She concluded her presentation by stating several ideas proposed by the Benefits Review Forum as alternatives to raising the Kaiser

co-payment are recommended for referral with the original Task Force proposal to the meet and confer process. Donald Macrae addressed Council on behalf of the San José Retired Employees Association and questioned the value in splitting the system into two tiers and contracting with CalPERS. Mayor Hammer thanked Director Tobin and the many City staff who worked on this project. Council Member Fiscalini thanked Staff for their work and stated that along with concern for the employees, there is a need to assure the system remains financially sound. Council Member Woody stated concerns about whether hearing officers for disability retirement applications would be beneficial, citing the need for options regarding alternate employment or modified duty assignments for use in disability cases, and about contracting with CalPERS, which has no comparable system to San José's, for Police and Fire Retirement. Council Member Powers reported hearing speculations that CalPERS may cap their program and not accept new systems; she commented on the impact of the tax laws to disability retirements, and stated physical fitness and wellness programs should be stressed. Mayor Hammer stated the Administration recommends bringing these issues back in the regular cycle of bargaining negotiations and, since some units have just negotiated new contracts, requested discussions with those units be accelerated. City Manager Regina V.K. Williams stated it was the Administration's plan to begin discussions with all bargaining units after coming to the Council. Upon motion by Council Member Johnson, seconded by Council Member Fiscalini, and unanimously carried, the Staff recommendations dated September 17, 1997, were approved. Vote: 11-0-0-0.

9d Adoption of a resolution to oppose the issuance of new liquor licenses in twenty-four (24) Census Tracts in San José.

[Rules Committee referral 9/10/97 - Item 7b(4)]

Documents filed: None.

Discussion/Action: This item was deferred to October 7, 1997, to be heard in the evening.

9e Reaffirmation of the City of San José's current policy of unrestricted access to all library materials and services, which extends to parents the right and responsibility to determine what their children may read or view.

[Rules Committee referral 9/10/97 - Item 7b(5)]

Documents filed: (1) Memorandum from City Librarian Jane Light, dated September 18, 1997, recommending reaffirmation of the City's current policy of unrestricted access to all library materials and services, which extends to parents the right and responsibility to determine what their children may read or view. (2) Letter from the American Civil Liberties Union Foundation of Northern California, dated September 23, 1997, in support of the Staff recommendation. (3) Petitions entitled: "Petition to Restrict Access by Minor Children to Pornographic Materials at the Library, via the Internet", containing approximately 975 signatures.

Discussion/Action: City Librarian Jane Light presented the Staff recommendation that Council reaffirm the City's current policy of unrestricted access to all library materials and services, which extends to parents the right and responsibility to determine what their children may read or view. She stated the library's mission is to provide access to information and ideas; that it is

the right of parents to restrict their own children's access to library resources, that open access to the Internet has not been a problem in San José and pointed out that limiting access at libraries would not help parents guide their children in responsible use of the Internet in other places. She stated the terms "inappropriate for children" and "pornography" mean different things, questioned if filtering Internet access to youth would approach censorship, and quoted Benjamin Franklin who in 1759 stated, "They that can give up essential Liberty to obtain a little temporary safety deserve neither Liberty nor Safety." In response to questions by Council Member Shirakawa, Jr. about disruptive behavior procedures at the library, Librarian Light stated a recent policy review indicated current procedures are applicable to Internet usage, which is unsupervised and limited to 30 minute intervals. She stated most of the Internet machines in City libraries are designated shared use for both children and adults; just three are designated for children only. Responding to questions by Council Member Diaz regarding filtering technology, Librarian Light explained that no software filter blocks all or only obscene or pornographic materials, that a filter is a "one size fits all" prescription for a diverse community where different ages have vastly different informational needs and families have different standards; since criteria used for blocking and which sites are blocked is proprietary information, control over what is blocked rests with the software provider. Council Member Dando requested Librarian Light address the differences between filters and blocks. Librarian Light stated some approaches attempt to filter out certain words while others try to block particular providers of content, and as new filters are developed, they are analyzed for applicability to libraries and results reported in library journals. She stated that none work with enough accuracy to reduce illegal pornography and all screen out information that is not illegal. Council Member Diquisto inquired about illegal materials on the Internet and was advised by City Attorney Gallo that whenever material thought to be illegal is found and reported to the District Attorney, the supplier of the material can be prosecuted. She explained that pornography or harmful material is difficult to define because until a prosecutor takes the provider of specific material to court, that material has not been declared illegal, even though it would, if prosecuted, be found illegal. Council Member Dando stated it is not difficult to confirm what has already been deemed illegal since there is a software program which blocks only those sites which clearly fall under the Miller Act. Mayor Hammer inquired about the extent of the problem in San José and Librarian Light replied she had received two phone calls about the issue in six months and approximately six calls were received by other Staff. Public speakers in support of the Staff recommendation were: Ann Brick, ACLU, Library Commissioners Polly Kam, Steve Ferree, Jerry Gandara and James Webb, Jr., and William Garbett. Speaking in opposition to the Staff recommendation were Beth Beebe, A. Gordon Holmes, Bruce Wonnacott, representing Ackfin Networks, Sandi Zappa, Patty Galligan-Silcott, Randy Wing, Home Church; and Ross Signorino. Mayor Hammer stated that Internet access is a serious issue dealing with first amendment rights that have served the country well for generations. She stated the issue is one of censorship and the public's right to access information, that government should not play the role of censor determining who can have access to what types of materials, nor did she think that software from the private sector which is imperfect at best should be the arbitrator of what information will be available. She noted that objectionable materials are widely distributed in magazines and books and access to the Internet at the Library's 80 terminals is dwarfed by the many other places where the Internet is available to children. She stated the City's current policy of unrestricted access in the Library has served the City well, and the Librarian's recommendation to reaffirm the policy and launch a public education program will educate parents on how to impart the knowledge their children

need when faced with unsuitable information. She stated reaffirming the policy with an educational program will declare that Council is determined to protect children while preserving the nation's heritage of freedom for people to read, think and access information as they choose and, although a problem exists, it is not properly addressed by politicians becoming censors of this or any other material. Council Member Diquisto stated the City should attempt to eliminate illegal material from library access. Council Member Dando equated the issue being discussed with a Library Bill of Rights which grants unrestricted access to all library material for all patrons regardless of age. She noted the current policy was adopted by the City Council in 1971 and reaffirmed in 1985, but twelve years ago no one knew that hard core sex acts in audio and video could be easily accessed; therefore, the policy is now outdated and must be revised to meet the needs of parents and children who use the modern Internet link library and San José is not unlike many other cities and school districts which are reviewing this issue currently. She stated the issue is fundamentally about protecting children from obscene adult-oriented pornography, and although parents are the best judge of what their children should experience and it is their right and responsibility to decide what their children view, she believes the current system of unrestricted access removes a parent's choice of protecting their child from sexually explicit materials. Because she shares the concerns expressed about censorship and the first amendment, she stated her proposal balances the need of children and adults by creating children's safe zones and adults zones and would use the least restricted means possible to achieve the objective of protecting children from obscenity in libraries. She noted there are at least 20,000 Internet web sites that meet the court-established definition of obscenity and are illegal, but they are accessible in San José libraries. She stated pornography on the Internet is not significantly different from pornography in newsracks where the State has banned pornography because children had unrestricted access to these materials, and she believes the City has the same compelling interest in protecting children from pornography in the library as it does on street corners. Noting that technology exists to screen pornography websites and new and improved technologies in both software and hardware can block sexually explicit sites, she stated confidence that a flexible and evolving process can be established that will ensure that only sexually oriented websites are blocked. She expressed concerns with the City Librarian's position on the issue and her philosophy in general relative to maintaining unrestricted access, which she stated does not represent the values of San José communities and should not guide the policies of the library. She stated a software developer had estimated costs of \$35 per computer and other cities such as Boston, Austin, and Orlando are studying the issue and the City of Berkeley has established a program that requires anyone under age 14 to have a parental permission slip in order to have access to the Internet. She moved to establish a restricted and an unrestricted Internet access so adults would have full access to all terminals and children would have access to all terminals only with parental permission. Council Member Pandori seconded the motion. Council Member Woody expressed concerns about reaffirming the current policy of unrestricted access to all library materials and services, noted that times have changed and questioned the difference between having a children's section for books and a similar section for computers with restricted Internet access. She stated the issue has no bearing on parental responsibilities, that using software to limit access is not censorship since any child can enlist librarians' assistance in accessing needed information, and limiting access would not violate a child's first amendment rights because adults continually monitor what information children should have. She asked Librarian Light how materials are selected and whether pornography materials are in the library. Librarian Light responded libraries have a broad range of

information that some people would call pornographic and other people would not and stated print materials are selected on criteria based on community need and on demonstrated demand in the community. Council Member Woody reiterated her concern with children having full access to the Internet, and suggested referring the issue back to the Library Commission. Council Member Shirakawa expressed doubts about the efficiency of filters due to the surreptitious methods of pornographers and stressed the use of supervision to protect children. Council Member Pandori stated that with the capability and low costs of new technology, a system can be set up that satisfies both positions presented today by giving parents the choice of allowing their child to use either a restricted or unrestricted computer. He agreed that the issue is one of parents' rights and responsibility, but since parents cannot watch their children all of the time, he supports giving them a tool, albeit imperfect, and allowing parents to determine how to use it. Council Member Powers expressed support for reaffirmation of the City's policy of unrestricted access, stating while parental values and choices are important, they are not in the government's realm to impose, nor should government legislate values. She noted government officials are obligated to uphold first amendment rights and State and Federal constitutions, the steps outlined in the Librarian's memorandum are a responsible approach and would make parents aware of Library policies and services as they teach values to their children. Although times have changed, she declared that the same constitution serves as the foundation of the country. Council Member Johnson stated there is an issue of age appropriateness in that a filtering process that works for a six year old child may not be appropriate for a 16 year old youth and doubted the City's computers would be fast enough to download such material in the thirty minutes allowed. She stated some libraries lack space for separate sections and such divisions would dilute the computers available for adult access, stated she favors the approaches in the Librarian's recommendation, and stressed that parents need to understand that the Internet in libraries is not restricted and if that is a concern, parents should come to the library with their children or take advantage of the education process that equips the child to make the right choices. She stated the issue can be handled under the disruptive behavior policy, a direction she prefers and which avoids other problems that may accompany restrictions. She favored the approach of free access, parents taking responsibility for teaching their children about the Internet and the library enforcing the disruptive behavior policy. Council Member Fiscalini stated censorship attempts are very difficult to deal with and revolve around individual rights and freedom to access and research information. He stressed the responsibility of legislators to protect and defend the Constitution of the United States and of the State of California, a responsibility he takes seriously, because contained therein are the precious rights assured under the first amendment to the U.S. Constitution. He commented on the lack of evidence that there is a problem with access in the City's libraries, and if there were, it could be dealt with by the positioning of machines and visual supervision. He stated there is a greater danger of exposure to objectionable matter in home computers and, while not excusing those who attempt to prey on the young and who should be prosecuted to the fullest extent of the law, he questioned whose value system would be imposed and where the line would be drawn when it comes to restrictions, especially in light of materials already available in libraries to which some would object. He stated it is the parents responsibility and suggested better education for parents to teach young people make good decisions, stated he does not believe in censorship with does not work and creates greater problems, and suggested referring the issue to the Library Commission for purposes of keeping the Council advised and informed periodically as to how this matter evolves. Vice Mayor Fernandes stated parents are responsible for their children but children are not watched because

of working parents and unsupervised children. She stated filters are not the answer to the problem and favored supervision by librarians and suggested referring to the Library Commission the issue of library supervision. She cited the problems of filtering objectionable materials, the question of who would decide what materials are allowed, and the defense of the constitution as reasons for not supporting the motion on the floor. Council Member Dando stated she doubts the founding fathers would support children's access to pornography as a defense of First Amendment rights. She commended the Library Commission for their recommendations for further education, which she supports, and clarified that her motion is to establish a restricted and unrestricted Internet access terminal, with adults having full access to all terminals and minors having access to restricted terminals only with the consent of their parent or guardian. In summary, Mayor Hammer stated the libraries' few terminals are not worthy of a challenge to the freedom of speech rights enjoyed by all Americans, that responsibility for children belongs with the family and only they should restrict and monitor the information available to their children, and while it may be appropriate for librarians to be more watchful of what information children are viewing on the terminals, it is not the job of software companies or government politicians. She expressed apprehensions that such restrictions would open the floodgates of censorship which would be disastrous not only for the city but for the country. On a call for the question, the motion by Council Member Dando failed on a 3-8-0-0 vote. Noes: Noes: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr.; Hammer. Council Member Fiscalini moved approval of the Staff recommendation. Council Member Powers seconded the motion. Vice Mayor Fernandes requested the Library Commission work on the physical setup of the computers, the supervision that currently exists, and report back to the Council on their observations as to what can be done to provide better protection for children in the City's libraries. Council Member Dando reiterated her support for further education as recommended by the Library Commission. Council Member Shirakawa, Jr. requested the Commission report back expeditiously. Council Member Pandori stated that although he opposes maintaining the current policy, he supports the parent education process. Council Member Woody stated she opposes the reaffirmation of the open access and agrees with having the Library Commission review the issues and report back to the Council. On a call for the question, the motion by Council Member Fiscalini carried and the Staff recommendation dated September 18, 1997, was approved. Vote: 9-2-0-0. Noes: Pandori, Woody.

9f Direction to the City Attorney to draft an ordinance to revise the existing Parkland Dedication Ordinance/Park Impact Fee Ordinance and related ordinances.

[Transportation, Planning and Environment Committee referral 8/28/97 - Item 7e(2)]
(Deferred from 9/16/97 - Item 9g)

Documents filed: (1) Supplemental memorandum from Public Works Director Qualls, Acting Director of Parks, Recreation and Neighborhood Services, Mark Linder, and Planning Director Derryberry, dated September 19, 1997, recommending the City Council (a) Direct Staff to prepare a report and recommendation on an interim fee increase to the Parkland Dedication Ordinance and Park Impact Fee Ordinance which reflects current land values in San Jose and return to Council on October 21, 1997, and (b) Refer the final report and recommendations on Parkland Dedication Ordinance changes back to the Transportation, Planning, and Environment Committee for further discussion, direct Staff to prepare a work program for TP&E to conduct a study session to examine key policy issues in greater depth and return to Council with

recommendations. (2) Memorandum from the Parks and Recreation Commission, dated September 10, 1997, supporting the staff recommendations to amend the Parkland Dedication Ordinance and Park Impact Fee Ordinances. (3) Correspondence from the V.E.P. Homeowners Association, dated September 10, 1997, recommending changes to the existing Parkland Dedication Ordinance. (4) Correspondence from the Guadalupe-Washington Neighborhood Association, dated September 16, 1997, requesting Council take the steps necessary to ensure adequate parkland for the communities.

Discussion/Action: Public Works Director Ralph Qualls stated the Committee recommendations were to draft an ordinance based on the proposals presented the Committee at that time. Since that meeting, additional discussions of the complex issues have taken place with industry groups and it was determined that additional discussion on the basic concept at issue needs to take place before final action by the City Council. He stated the continuing policy discussions should take place at the Committee Level for a report back to Council by the end of the year. In addition, he stated there is some urgency to look at an interim fee increase to address the issue which the Staff report notes is a very insufficient amount of money accumulating into the fund for parks acquisition and development of neighborhood serving parks. To that end, Staff has two recommendations in the Supplemental report, contrary to that listed on the agenda: Direct Staff to return to Council with a fee resolution for adoption on October 21, 1997, which would reflect current land values as an interim fee proposal and refer the final report and recommendations back to the Transportation, Planning, and Environment Committee for further discussion. Ann Marquino, Parks and Recreation Commission, spoke in support of the recommendation, Mark Lazzarini, Home Builders Association, expressed support for an appropriate fee increase and requested inclusion of all stake-holders in the discussion. Terry Feinberg, Tri-County Apartment Association, spoke in opposition to the proposal. Mayor Hammer stated she supported the recommendation of Staff to refer the proposal back to the Transportation, Planning, and Environment Committee and in the meantime, before October 21, 1997, to work with industry and other stakeholders to come up with an interim fee, noted there is some urgency to the issue, and policy issues which are more appropriately addressed by the Committee. Council Member Fiscalini stated it is essential that people who will be affected by the policy be involved in helping craft the recommendation. Council Member Diaz stated discussions would ensue early next year with the school districts relative to use of their facilities for community activities and recommended that factor be considered in the discussion as pertains to calculating the need for parks based on population figures. Council Member Dando stressed that all stakeholders should be involved before the policy is determined, including home builders and representation from the community, and suggested the availability of regional parks be taken into consideration. Mayor Hammer asked if private recreational facilities should be included in consideration of available recreational sites. Council Member Diquisto pointed out there is recreational land belonging to the County that borders the City and should be taken into consideration. Upon motion by Council Member Johnson, seconded by Vice Mayor Fernandes, and unanimously carried, the Staff recommendation dated September 19, 1997, was approved and Staff was directed to include all stakeholders in policy discussions and to include consideration of issues raised by Council Members relating to schools, regional parks, private recreational facilities, and County recreational facilities. Vote: 11-0-0-0.

FISCAL AFFAIRS

10a Actions regarding Community Facilities District No. 1 (Capitol Expressway Auto Mall) and the levy of a special tax therein:

- (1) Adoption of an ordinance levying special taxes within CFD No. 1.
- (2) (a) Adoption of a resolution approving plans and specifications, calling for opening of construction bids, and approving an exception to the City's street light policy to allow the uses of high pressure sodium lighting in the Capitol Expressway Auto Mall area.
 - (1) Approval of the construction of one (1) 40-foot tall monument top with a 20-foot banner pole and four (4) 18-foot tall monuments in the median island area due to the uniqueness of the Auto Mall.
 - (2) Approval of these monuments shall not set a precedent for monuments within public rights-of-way in the City of San José.
 - (3) Adoption of a resolution authorizing the issuance of special tax bonds in the aggregate principal amount of not to exceed \$4.1 million in connection with the financing of certain public capital improvements, authorizing and directing the Director of Finance to execute the Fiscal Agent Agreement, and Continuing Disclosure Certificate, authorizing the competitive sale of bonds with a total interest cost not to exceed 8.0%, approving the preliminary official statement, and authorizing the Director of Finance to take other related actions and execute documents as necessary.

CEQA: ND. (Public Works/Finance)

[Continued from 8/12/97 - Item 10a et al., and 9/16/97 - Item 10a(5)(6)(7)]

Documents filed: (1) See Item 10a in City Council minutes of September 16, 1997. (2) Supplemental memorandum from Ralph A. Qualls, Jr., Director of Public Works, dated September 11, 1997, recommending that as part of the formation of Communities Facility District No. 1 (Capitol Expressway Auto Mall), the City Council approve special design features of a 40-foot tall monument top with a 20-foot banner pole and four 18-foot tall monuments in the median island area, as allowed by design criteria unique to the Auto Mall.

Discussion/Action: Council Member Fiscalini stated this project in Districts 6, 7 and 10 follows up on the formation of the assessment district by the Capitol auto dealers to give some identity to Capitol Expressway and thanked the auto dealers for their support and moved approval of the Staff recommendation. Council Member Powers seconded the motion. Council Member Dando thanked Council Member Fiscalini and Council Member Shirakawa, Jr. for their work on this project. Dennis Boyle, Secretary, Capitol Auto Mall Dealers Advertising Association, thanked the Council and Staff for their work on this project. Council Member Woody stated she opposes this project because of concerns about the high pressure sodium lighting. Council Member Johnson stated she has similar concerns but since the lighting was already in place, she would support the project; however, this project should not be used as a precedent for allowing new installation of high pressure sodium lights. William J. Garbett addressed the Council in opposition to the proposal. On a call for the question, the Staff recommendation dated September 11, 1997, was approved, Ordinance No. 25433, entitled: "An Ordinance of the City of San José Levying Special Taxes Within Community Facilities District No. 1 (Capitol Expressway Auto Mall)"; Resolution No. 67654, entitled: "A Resolution of the Council of the City of San José Approving Plans and Specifications, Calling for Advertisement Soliciting Construction Bids, and Approving an Exemption to the City's Street Light Policy to Allow the Use of High-Pressure

Sodium Lighting in the Improvement of the Capitol Expressway Auto Mall”, and Resolution No. 67655, entitled: “A Resolution of the Council of the City of San José Authorizing the Issuance of Special Tax Bonds, and Approving and Authorizing the Related Documents and Actions”, were adopted. Vote: 11-0-0-0, with Council Member Woody in opposition to Item 10a(1)(a) and Items 10a(1)(a)(1) and (2).

9g (1) Approval of Contract Change Order No. 1 for the Central Service Yard Phase I Project with S.J. Amoroso Construction in the amount of \$930,000, for a total contract amount of \$8,947,000. (Public Works)

(2) Adoption of appropriation ordinance and funding sources resolution amendments in various funds to provide an additional \$1,820,000 for the Central Service Yard Improvement Project. (City Manager’s Office)
(Deferred from 9/16/97 - Item 9i)

Documents filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 19, 1997, recommending approval of Contract Change Order No. 1 for the Central Service Yard Phase I Project with S.J. Amoroso Construction. (2) Memorandum from Budget Director Larry D. Lisenbee, dated September 19, 1997, recommending approval of said appropriation ordinance and related revenue resolution amendments.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, Contract Change Order No. 1 with S.J. Amoroso Construction for said project was approved, and Ordinance No. 25434, entitled: “An Ordinance of the City of San José Amending Ordinance No. 25390 which Appropriates Moneys in the Construction Excise Tax Fund, Central Service Yard Acquisition and Development Fund, Service Yard Construction and Conveyance Tax Fund and the Parks City-Wide Construction and Conveyance Tax Fund in the Total Amount of \$1,820,000 for the Central Service Yard Improvement Project: and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 67656, entitled: “A Resolution of the Council of the City of San José Amending Revenue Resolution No. 67424 Setting Forth the Estimated Sources of Funds for the Fiscal Year 1997-98 to Adjust Revenues in the Construction Excise Tax Fund and Central Yard Acquisition and Development Fund”, were adopted. Vote: 11-0-0-0.

9hDiscussion regarding the sale of test tube candy. (Mayor)
(Rules Committee referral 9/16/97)

Documents filed: None.

Discussion/Action: Peggy Allred presented a report on candy which is packaged to look like street drugs and sold to children. She reported on her efforts in contacting the manufacturer and requesting removal of the product from the market and in bringing media attention to the issue and commented on other objectionable projects from the same manufacturer. Mayor Hammer reported that the City Attorney advises it is not possible for the City Council to adopt an ordinance to deal with this issue. The Mayor commented on reports that the distributor has recently agreed to cease distribution of the product. She stated the best course of action would be for the City to use its influence to obtain voluntary compliance to be sure the so-called “test

tube” candy is removed, if not already done so, and stated the Mayor’s Gang Task Force would be reviewing this issue, and asked the Council to direct the City Manager to send a letter to the manufacturer expressing Council’s concerns. Council Member Pandori stated the City has an existing ordinance that prohibits marketing, possessing or offering for sale imitation drug paraphernalia and he thought the ordinance would apply to this issue. He expressed concern the ordinance was being interpreted from a sophisticated adult point of view rather than from the point of view of a child who may perceive the product as a drug. By unanimous consent, Council referred the issue to the City Manager for review and written response. Vote: 11-0-0-0.

9i Approval of the Federal Consolidated Annual Performance and Evaluation Report (CAPER) covering Fiscal Year 1996-97 and authorization for the Director of Housing to submit the approved CAPER to the Federal government on or before October 1, 1997 in accordance with Federal regulations. (Housing/Parks, Recreation and Neighborhood Services) [Renumbered from 6f(2)]

Documents filed: (1) Memorandum from Housing Director Alex Sanchez and Acting Director Mark Linder, Department of Parks, Recreation and Neighborhood Services, dated September 5, 1997, recommending approval of the Federal Consolidated Annual Performance and Evaluation Report for Fiscal Year 1996-97 and authorization for the Director of Housing to submit the approved CAPER to the Federal government on or before October 1, 1997, in accordance with Federal regulations. (2) Draft report entitled, *Federal Consolidated Annual Performance and Evaluation Report for Fiscal Year 1996-97*, dated September 9, 1997.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. The CAPER report was approved and its submittal in accordance with Federal regulations was authorized. Vote: 11-0-0-0.

JOINT CITY COUNCIL/REDEVELOPMENT AGENCY ITEMS

The Council convened the Redevelopment Agency Board at 5:45 p.m. to consider Item 11a 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 et al., and 9/16/97 - Item 11a)

Documents filed: Memorandum from Mayor Hammer, dated September 19, 1997, recommending annual salary increases for City Council Appointees.

Discussion/Action: Mayor Hammer stated that based on evaluations by the City Council, she recommends Council Appointees be given a six percent salary increase and that City Manager Regina V.K. Williams be given an additional one-time two percent bonus. Speaking in opposition to the proposal were Deborah Powell, President of Confidential Employees Organization, AFSCME, Local No. 101; Brad Imamura, President, AFSCME, Municipal Employees Federation, Local 101; and Louis Johnson, Chief Steward, Municipal Employees Federation, Local 101. Mayor Hammer stated based on the Council Appointee evaluations, she

would stand by her recommendation, which is in no way a reflection on the respect that she or the Council has for the good work that is done by the City's rank and file employees. Vice Mayor Fernandes stated that because of the difficult negotiations just completed with City employees, resulting in a 4% increase, she could not support giving a 6% increase to the Council appointees, but does support the bonus for the City Manager. Council Member Pandori stated he could not support the increases because they represent a double standard and will make future union negotiations more difficult. Council Member Diaz stated he does support the recommendation, that the increases are justified and the issues are different and do not reflect on the rank and file. Council Member Fiscalini stated there is nothing inherent that would dictate a settlement in one arena should be translated to another arena, that he would think the employees understand that and that they should not be involved in the salary setting of management. He pointed out management increases are not based on step increases but on merit only, and all were subjected to a lengthy evaluation process which concluded in the salary recommendations. Council Member Dando stated she would not support the motion, that all employees should be treated equally, whether Council Appointees or rank and file. Council Member Woody expressed support for the recommendations because the rank and file salaries are based on step increases and cost of living increases which are negotiated, whereas Council Appointees have an evaluation process whereby the Council make recommendations for appropriate salary levels. Council Member Johnson expressed support for the recommendation, stating the two systems are different, the standard negotiating process provides comparisons with comparable positions, and similar considerations must be made for top management in order to hire and keep capable staff. Upon motion by Council Member Fiscalini, seconded by Council Member Woody, and carried, Resolution No. 67657, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 51872 to Amend Exhibit 99 to Increase the Annual Salaries of Council Appointees by an Approximate 6% by Increasing the Salary of the City Attorney (2136) (U) to a Flat Biweekly Rate of \$5996.00 (831), to Increase the Annual Salary of the City Manager (1689) (U) to a Flat Biweekly Rate of \$6449.60 (85D) with a One Time Bonus of \$3,165.00, to Increase the Annual Salary of the City Auditor (1256) (U) to a Flat Biweekly Salary of \$4958.40 (79J); to Increase the Annual Salary of the Redevelopment Manager (1687) (U) to a Flat Biweekly Rate of \$6173.60 (84E); to Increase the Annual Salary of the City Clerk to a Flat Biweekly Rate of \$3488.80 (72H), and to Increase the Annual Salary of the Independent Police Auditor (8023) (U) to a Flat Biweekly Rate of \$4,200.80 (76F), In Accordance with the City of San José Salary Schedule, Effective July 1, 1997", was adopted. Noes: Dando, Diquisto, Fernandes, Pandori. Vote: 7-4-0-0. Noes: Dando, Diquisto, Fernandes, Pandori.

The City Council adjourned the Redevelopment Agency Board portion of the meeting adjourned at 5:57 p.m.

ORAL COMMUNICATIONS

- (1) **Cathy Brandhorst addressed the Council on various societal issues.**
- (2) **Joseph Martin spoke about an issue relating to access to his property.**

ADJOURNMENT

The Council of the City of San José adjourned at 6:01 p.m.

SUSAN HAMMER, MAYOR

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

DC/9-23-97