

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, SEPTEMBER 30, 1997

The regularly scheduled Closed Session of the Council of the City of San Jose was canceled due to the anticipated lack of a quorum.

Present: Council Members: None.

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

The Council of the City of San José convened in regular session at 1:35 p.m. in City Council Chambers at City Hall.

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

Absent: Council Members: Hammer (Excused).

INVOCATION

The Cadwallader Elementary School Choir, comprised of 42 students in grades 4, 5 and 6, sang "We are the World--We are the Children", led by Choir Directors Donna Harris and Shirley Madsen and accompanied by Cadwallader Principal Lisa Artiga and Maryann Cavallo, Assistant Superintendent of Instruction, Evergreen School District. (District 8)

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Kathleen Carruthers, a 6th grade student from Cadwallader Elementary School.

ORDERS OF THE DAY

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

CONSENT CALENDAR

Upon motion by Council Member Fiscalini,, seconded by Council Member Johnson and unanimously carried, the Consent Calendar was approved, as amended to drop 6e(2) and defer Item 6f(4) to October 21, 1997, the below listed items taken as indicated. Vote: 10-0-1-0. Absent: Hammer.

Minutes for Approval

6a(1) Regular Meeting of August 5, 1997

Documents filed: Minutes of August 5, 1997

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

6a(2) Regular Meeting of August 12, 1997

Documents filed: Minutes of August 12, 1997

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

Ordinances for Final Adoption

6b(1) ORD. NO. 25422 - Amends Title 1 of the San José Municipal Code to add a new Chapter 1.10 to grant subpoena power to the City Attorney.

Documents filed: Proof of publication of title of Ordinance No. 25422, submitted by the City Clerk.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Ordinance No. 25422 adopted. Vote: 10-0-1-0. Absent: Hammer.

6b(2) ORD. NO. 25427 - Grants to Air Products and Chemicals, Inc., and/or any wholly-owned subsidiary thereof a nonexclusive franchise for conveyance of nitrogen gas through pipelines under, along and across the public right of way in the City of San José, as the same now exist or may hereafter exist.

Documents filed: Proof of publication of title of Ordinance No. 25427, submitted by the City Clerk.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Ordinance No. 25427 adopted. Vote: 10-0-1-0. Absent: Hammer.

6b(3) ORD. NO. 25428 - Amends Chapter 6.14 of Title 6 of the San José Municipal Code relating to the activity of automobile dismantling to modernize the permit procedures and set forth operating regulations and conditions.

Documents filed: Proof of publication of title of Ordinance No. 25428, submitted by the City Clerk.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Ordinance No. 25428 adopted. Vote: 10-0-1-0. Absent: Hammer.

6b(4) ORD. NO. 25429 - Grants a Commercial Solid Waste Collection Franchise to BPS Market Management dba Recycle West.

Documents filed: Proof of publication of title of Ordinance No. 25429, submitted by the City Clerk.

Discussion/Action: Ordinance No. 25429 adopted. Vote: 10-0-1-0. Absent: Hammer.

- 6b(5) **ORD. NO. 25430** - Grants a Commercial Solid Waste Collection Franchise to Diversified Recycling Services, Inc. dba Recycling II.

Documents filed: Proof of publication of title of Ordinance No. 25430, submitted by the City Clerk.

Discussion/Action: Ordinance No. 25430 adopted. Vote: 10-0-1-0. Absent: Hammer.

- 6b(6) **ORD. NO. 25431** - Adopts the eleventh amended Alum Rock Avenue Redevelopment Plan, addressing findings and determinations respecting the amended Plan, and implementing certain changes including, without limitation, reducing the Alum Rock Avenue Redevelopment Project Area boundaries, extending the term of the Alum Rock Avenue Redevelopment Plan, and authorizing the Redevelopment Agency of the City of San José to participate in the development and financing of publicly-owned recreational and educational facilities, if necessary.

Documents filed: Proof of publication of title of Ordinance No. 25431, submitted by the City Clerk.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Ordinance No. 25431 was adopted. Vote: 9-1-1-0. Noes: Woody. Absent: Hammer.

- 6b(7) **ORD. NO. 25432** -Adopts the third amended Monterey Corridor Redevelopment Plan, addressing findings and determinations respecting the amended Plan, and implementing certain changes including, without limitation, allowing the Redevelopment Agency of the City of San José to participate in the construction of two new publicly-owned facilities, if necessary.

Documents filed: Proof of publication of title of Ordinance No. 25432, submitted by the City Clerk.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Ordinance No. 25432 was adopted. Vote: 10-0-1-0. Absent: Hammer.

Plans and Specifications

- 6d(1) **TRACT NO. 8729** - North side of Bacchus Drive, 500 feet east of McLaughlin Avenue - Venture Bacchus Enterprises (Developer) - 16 detached residential units. Adoption of resolutions approving the plans, final map, and contract for Tract No. 8729. CEQA: ND. District 7. (Public Works)
(Rules Committee referral 9/24/97)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr.,

dated September 19, 1997, recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67658, 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. 8729”; Resolution No. 67659, entitled: “A Resolution of the Council of the City of San Jose Approving and Accepting Final Map of Tract No. 8729”; Resolution No. 67660, 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. 8729”; were adopted. Vote: 10-0-1-0. Absent: Hammer.

Contracts/Agreements

- 6e(1) Adoption of a resolution authorizing the Director of Aviation to negotiate and execute an agreement with the San José Sharks for advertising and promotion of the San José International Airport, for the period September 15, 1997 to September 30, 1998, in an amount not to exceed \$70,000. (Airport)**

Documents filed: Memorandum from Aviation Director Ralph G. Tonseth, dated September 12, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67661, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Aviation to Negotiate and Execute an Agreement with the San José Sharks for Advertising and Promotion of the San José International Airport”, was adopted. Vote: 10-0-1-0. Absent: Hammer.

- 6e(2) Adoption of a resolution authorizing the City Manger to negotiate and execute an agreement with Tony May for the fabrication and installation of public artwork commemorating Santa Clara Valley agriculture in an amount not to exceed \$175,000. CEQA: Resolution No. 89-16. (Conventions, Arts and Entertainment)**

Documents filed: Memorandum from Nancy Johnson, Director of the Department of Conventions, Arts and Entertainment, dated September 12, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67662, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Tony May for the Fabrication and Installation of a Work of Art Commemorating Agriculture”, was adopted. Vote: 9-1-1-0. Noes: Dando. Absent: Hammer.

- 6e(3) Approval of a first amendment to the agreement with Dennis Church for consultant services, increasing the compensation by \$20,000, from \$52,000 to \$72,000, extending the term of the agreement by five (5) months from October 1, 1997 to February 28, 1998. (Environmental Services)**

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

Garcia, dated September 12, 1997, recommending approval of an amendment to said agreement with Dennis Church.

Discussion/Action: The first amendment to said agreement with Dennis Church was approved and its execution authorized. Vote: 10-0-1-0. Absent: Hammer.

6e(4) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1997-98 #7, and authorization for the Director of General Services to execute the purchase orders. (General Services)

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated September 12, 1997, recommending the award of said open purchase order.

Discussion/Action: The Open Purchase Order List #7 was approved and the Director of General Services authorized to execute the purchase orders. Vote: 10-0-1-0. Absent: Hammer.

6e(5) Approval to reject all bids and to re-solicit bids for one IBM UNIX Power PC server and hardware for the Information Technology Department. (General Services)

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated September 24, 1997, recommending approval to reject all bids and re-solicit bids for said equipment.

Discussion/Action: The rejection of all bids and re-solicitation of bids for one IBM UNIX Power PC server and hardware was approved and its execution authorized. Vote: 10-0-1-0. Absent: Hammer.

6e(6) Adoption of a resolution:

(a) **Approving a \$56,116 permanent grant increase from \$550,000 to \$606,116 for MACSA Housing Corporation No. 1, for the 43-unit Jardines Paloma Blanca senior rental housing project, affordable to very-low income households, located at the north side of Madden Avenue just east of Jackson Avenue.**

(b) **Authorizing the Director of Housing to negotiate and execute all necessary documents on behalf of the City.**

(Housing)

Documents filed: Memorandum from Director of Housing, Alex Sanchez, dated September 12, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67663, entitled: "A Resolution of the Council of the City of San José Increasing the MACSA Housing Corporation No. 1 Grant from \$550,000 to \$606,116 for the Jardines Paloma Blanca Senior Housing Project", was adopted. Vote: 10-0-1-0. Absent: Hammer.

6e(7) Approval of an employment agreement with Mike Yaghmai. (Johnson)

Documents filed: None.

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

6e(8) Approval of a Memorandum of Understanding with the Cities of Milpitas and Santa Clara, the County of Santa Clara, and the Santa Clara Valley Transportation Authority/Congestion Management Program for the preparation of a Traffic and Engineering Study and Environmental Document for Montague Expressway, requiring a financial contribution in the amount of \$125,000 from each city and in-kind services in the amount of \$125,000 from the County, from the date of execution to June 30, 1998. (Public Works)

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

Discussion/Action: The Memorandum of Understanding with the Cities of Milpitas and Santa Clara, the County of Santa Clara, and the Santa Clara Valley Transportation Authority/Congestion Management Program for the preparation of a Traffic and Engineering Study and Environmental Document for Montague Expressway was approved and its execution authorized. Vote: 10-0-1-0. Absent: Hammer.

6e(9) Approval of a first amendment to the agreement with Brian Kangas Foulk for consultant services for the South Bay Water Recycling Project (SBWRP) Golden Triangle Project, increasing the compensation for additional services by \$20,000, from \$49,000 to \$69,000, and expanding the scope of services to include inspection and project administration services in the amount of \$125,000, from \$727,000 to \$852,000, pending concurrence by the Treatment Plant Advisory Committee at its October 9, 1997 meeting. CEQA: Resolution No. 64667. (Public Works)

Documents filed: None.

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

6e(10) (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)

[Deferred from 9/23/97 - Item 6c(2)]

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 5, 1997, recommending adoption of said resolution and approval of a second amendment to said agreement with Evergreen Specific Plan (ESP) Developers.

Discussion/Action: Resolution No. 67664, entitled: "A Resolution of the Council of the City of San José of Intention to Establish Community Facilities District No. 4 (Evergreen Improvements) and to Authorize the Levy of Special Taxes", was adopted, and the second amendment to said cooperation agreement with the Evergreen Specific Plan (ESP) Developers, was approved. Vote: 10-0-1-0. Absent: Hammer.

6e(11) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the County of Santa Clara for the temporary loan of Nancy Wiener to implement the Regional Cultural Plan in an amount not to exceed \$81,000. (Mayor)

(Rules Committee referral 9/24/97)

Documents filed: None.

Discussion/Action: This item was dropped due to duplication of Item 6e(14).

6e(12) Approval of Contract Change Order No. 1 with Frank Surian & Sons, Inc. (FSSI), for the San Jose International Airport Vehicle Gate Pads and Gate Operator Retrofits Project in the amount of \$33,448.90, for a total contract amount of \$233,336.90, and a thirty (30) calendar day time extension extending the contract to December 9, 1997. CEQA: Exempt. (Public Works)

(Rules Committee referral 9/24/97)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated September 23, 1997, recommending approval of said contract change order with Frank Surian & Sons, Inc.

Discussion/Action: Contract Change Order No. 1 with Frank Surian & Sons, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Hammer.

6e(13) Adoption of a resolution authorizing the City Manager to execute a second amendment to the continuation agreement with U.S. Public Technologies for consultant services related to the Neighborhood Automated Speed Compliance Program (NAS COP), increasing the compensation by \$37,280, from \$75,000 to \$112,280, and extending the term of the agreement by three (3) months, to December 31, 1997. (Streets and Traffic) (Rules Committee referral 9/24/97)

Documents filed: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated September 10, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67665, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Second Amendment to the Continuation Agreement with U.S. Public Technologies to Operate the Neighborhood Automated Speed Compliance Program (NAS COP) was adopted. Vote: 10-0-1-0. Absent: Hammer.

6e(14) This item was removed from the Consent Calendar to be heard later in the meeting.

Routine Legislation

6f(1) Adoption of a resolution accepting a progress report demonstrating achievement of the September 29, 1997 New Realities Suspension Triggers and Goals. (City Manager’s Office)

Documents filed: Memorandum from City Manager Regina V.K. Williams, dated September 24, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67666, entitled: “A Resolution of the Council of the City of San José Accepting a Progress Report Demonstrating Achievement of the September 29, 1997, New Realities Suspension Triggers and Goals”, was adopted. Vote: 10-0-1-0. Absent: Hammer.

6f(2) Approval for City Manager Regina V.K. Williams to travel to Okayama, Japan, October 8-17, 1997, as a participant in the City of Okayama’s 40th anniversary celebration of the San José/Okayama Sister City relationship. (City Manager’s Office)

Documents filed: Memorandum from City Manager Regina V.K. Williams, dated September 25, 1997, requesting authorization for said travel.

Discussion/Action: The travel of City Manager Williams to travel to Okayama, Japan, October 8-17, 1997, was approved. Vote: 10-0-1-0. Absent: Hammer.

6f(3) Adoption of a resolution establishing retail recycled water rates at \$1.35 per hundred cubic feet, and establishing that customers will receive a credit in an amount equal to the sum of the Santa Clara Valley Water District Treated Water Surcharge plus the South Bay Water Recycling Discount; and establishing monthly service charges within the San José Municipal Water System effective October 1, 1997. (Environmental Services)

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated September 12, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67667, entitled: “A Resolution of the Council of the City of San José Adopting Retail Recycled Water Rates and Service Charges for the San José Municipal Water System”, was adopted. Vote: 10-0-1-0. Absent: Hammer.

- 6f(4) (a) Adoption of a resolution authorizing the Director of Public Works to negotiate and execute a grant of easement to Pacific Gas and Electric to effect the relocation of overhead power lines as part of the Guadalupe River Flood Control Project. CEQA: Resolution No. 61620.**
- (b) Adoption of a resolution accepting an easement from Mr. Bruno J. Zulpo for the relocation of a City of San José sanitary sewer line as part of the Guadalupe River Flood Control Project, and authorization for the Director of Public Works to execute any necessary documents in connection with the easement. CEQA: Resolution No. 61620.**
- (Public Works)**

Documents filed: None.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Council Member Pandori expressed concern the proposed relocation of the PG&E overhead power lines for which the City is being asked to grant easements, could limit future options for the Guadalupe River Park, since actual sites and appearance of the lines are unknown, and suggested deferral until after the October, 1997 meeting of the Guadalupe River Park Task Force. Director of Public Works Qualls stated he would meet with PG&E and coordinate with the Council to ensure that placement of the lines does not interfere with plans for the park. By unanimous consent, the item was deferred to October 21, 1997. Vote: 10-0-1-0. Absent: Hammer.

- 6f(5) Approval of one (1) proposed City Event date at the San José Arena: The Annual Simpson/Silva Memorial Basketball Classic, Winter 1997-98 sponsored by the Police Amateur Athletic Foundation. (San José Arena Authority)**

Documents filed: Memorandum from San José Arena Authority, dated September 12, 1997, recommending approval of the proposed City Event date at the San José Arena: The Annual Simpson/Silva Memorial Basketball Classic, Winter 1997-98.

Discussion/Action: Council Member Shirakawa, Jr. expressed concerns that dates for City Events are often midweek dates and unavailable to school-age youth and requested Staff discuss with the San José Arena Authority the need for weekend dates. Vice Mayor Fernandes stated an additional consideration are costs, which can be prohibitive for certain community groups. The proposed City Event date at the San José Arena: The Annual Simpson/Silva Memorial Basketball Classic, Winter 1997-98, was approved and Staff directed to follow-up on Council concerns. Vote: 10-0-1-0. Absent: Hammer.

- 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) et al., and 9/23/97 - Item 6f(6)]**

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

Discussion/Action: This item was dropped from the agenda. Vote: 10-0-1-0. Absent: Hammer.

6f(7) Adoption of appropriation ordinance and funding sources resolution amendments to various capital projects in the Services for Redevelopment Capital Projects Fund with a net total impact on the fund of \$143,257. (City Manager) (Rules Committee referral 9/24/97)

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated September 19, 1997, recommending approval of said appropriation ordinance and related revenue resolution amendments.

Discussion/Action: Ordinance No. 25435, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25390 which Appropriates Moneys in the Services for Redevelopment Capital Projects Fund in the Amount of \$143,257 for Various Capital Projects; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 67668, 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 Services for Redevelopment Capital Projects Fund", was adopted. Vote: 10-0-1-0. Absent: Hammer.

6f(8) Adoption of a resolution approving a Memorandum of Agreement with the Confidential Employees' Organization, AFSCME, AFL-CIO (CEO). (City Manager) (Rules Committee referral 9/24/97)

Documents filed: Memorandum from Employee Relations Manager Lynn M. Boland, dated September 23, 1997, recommending adoption of said resolution.

Discussion/Action: Council Member Pandori stated he is supportive of the agreement as a whole, but for the same reasons he voted against the Municipal Employees Federation agreement, he opposes the process because the public was not involved in the development of the policy on the domestic partner benefit. Council Member Dando registered a no vote on this item, for the reasons previously given. Resolution No. 67669, entitled: "A Resolution of the Council of the City of San José (1) Approving the Memorandum of Agreement Between the City of San José and the Confidential Employees Organization, Unit 50, (2) Providing for the Payment of Salary and Benefits Pursuant to the Memorandum of Agreement and, (3) Providing that any Conflict Between the Memorandum of Agreement and Salary Resolutions 51870, 51871 and 51872, the Memorandum of Agreement Shall Prevail", was adopted. Vote 8-2-1-0. Noes: Dando, Pandori. Absent: Hammer.

6f(9) Approval of Council Member Alice Woody's travel to Colorado Springs, Colorado,

October 2-6, 1997, for an on site visit of real estate property acquisition for the Police and Fire Retirement Board. Funding: Police and Fire Retirement Fund. (Woody) (Rules Committee referral 9/24/97)

Documents filed: None.

Discussion/Action: This item was dropped from the agenda at the request of Council Member Woody.

6f(10) Approval of the implementation of the Council Assistants' portion of Measure F as outlined in the staff recommendations dated June, 20, 1997. (City Manager) (Rules Committee referral 9/24/97)

Documents filed: Memorandum from City Manager Regina V.K. Williams, dated September 30, 1997, recommending deferral of said item.

Discussion/Action: This item was deferred to October 21, 1997. Vote: 10-0-1-0. Absent: Hammer.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - September 17, 1997

Documents filed: Rules Committee report of September 17, 1997.

(1) Review of September 30 Council Agenda

The Committee approved the September 30, 1997 Council agenda with one addition.

(2) Add New Items to September 23 Amended Council Agenda

The Committee recommended six additions to the September 23, 1997 Council agenda.

(3) The Public Record. Attachment: (1) Memorandum from City Clerk Patricia L. O'Hearn, dated September 16, 1997, listing the items transmitted to the Administration and those items filed for the Public Record for the period September 3-9, 1997 (2) Memorandum from Council Liaison Norberto Dueñas, dated September 17, 1997, summarizing actions taken on the items transmitted to the Administration and those items filed for the Public Record for the period September 3-9, 1997.

The Committee noted and filed the Public Record.

(4) 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: Memorandum from Council Member Shirakawa, Jr. dated September 3, 1997, requesting use of Council General Funds.

The Committee accepted the withdrawal of Council Member Shirakawa's request to use Council General Funds.

- (5) Report back on the need to adopt a resolution regarding the Jet Fuel Sales Tax Allocation. Attachment: Memorandum from Georgiana Flaherty, Director, Intergovernmental Relations, dated September 8, 1997, providing a brief background to the jet fuel sales tax allocation issue and a chronology of the City's efforts to date.

The Committee accepted City Attorney Gallo's opinion that there is no need to adopt a resolution regarding the Jet Fuel Sales Tax Allocation.

Discussion/Action: Council Member Dando suggested a letter be sent to the new Chair of the Assembly Revenue and Taxation Committee to reinforce the City's concern for a positive vote on this issue.

- (6) Report back on Display or Sale of "Harmful Matter" in Newsracks. Attachment: Memorandum from Chief of Police, Louis A. Cobarruviaz, dated September 10, 1997, regarding display or sale of "harmful matter" in newsracks.

The Committee recommended acceptance of the Police Department's report on the enforcement of the law prohibiting the sale or display of any "harmful matter" from a coin-operated newsrack that is located in a public place and not supervised by an adult.

- (7) Discussion of Council Member Liaison/Commissioner/Boardmember - Code of Conduct and Ethics. Attachment: (1) Memorandum from City Attorney Joan R. Gallo, dated September 15, 1997, regarding Commission/Liaison - Code of Conduct and Ethics. (2) Memorandum from Council Member Pandori, dated September 17, 1997, recommending two items be added to the scope of review.

The Committee appointed Member Trixie Johnson as Chair of an ad-hoc committee to discuss Council Member Liaison/Commissioner/Board Member - Code of Conduct and Ethics and the issues raised in City Attorney Gallo's and Council Member Pandori's memoranda.

- (8) Policy discussion on use of Council General Travel Funds. Attachment: Memorandum from Council Member Johnson, dated September 9, 1997, addressing the use of Council General funds for Sister City travel, and start date for freezing officeholder funds.

The Committee directed the City Attorney to draft an amendment to the campaign ordinance restoring the traditional relationship between the freezing of officeholder funds and the start of campaign fund raising.

Discussion/Action: In response to questions from Council Member Pandori and Council Member Diquisto about proposed changes to the Office Holder fund requirements, City Attorney Gallo explained direction from the Committee and the Council, if approved, is to amend the ordinance regulating Office Holder funds, which are now frozen on July 1st of the year preceding an election year, to allow use of those funds until campaign funds may be collected beginning six months prior to an election, effectively eliminating the period between July and December when no funds are available; City Attorney Gallo will bring the ordinance change to the Council on October 21, 1997 for consideration.

- (9) 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 Powers, dated September 4, 1997, requesting use of Council General funds. (2) Memorandum from City Clerk Patricia O'Hearn, dated September 15, 1997, summarizing the use of Council General Travel Funds to date.

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

- (10) Request to use Council General Funds to attend California League of Cities' Annual Conference in San Francisco, October 12-14, 1997. Attachment: Memorandum from Council Member Diaz, dated September 5, 1997, requesting use of Council General funds.

The Committee approved the use of Council General funds for Council Member Diaz to attend the California League of Cities' Annual Conference in San Francisco October 12-14, 1997.

- (11) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee
 - (a) Park Ranger Safety Equipment. Attachment: Memorandum from Council Member Dando, dated September 10, 1997, recommending the Rules Committee direct the Administration prepare a policy proposal to allow park rangers with full peace officer training to carry collapsible batons and standard-issued, metal hand cuffs, and forward the proposal to the Parks and Recreation Commission and the City Council for consideration. The Committee referred the issue of park ranger safety equipment to the Administration for a report back to the Rules Committee with an assessment of the time and resources involved to complete the request.

- (12) City Council and Rules Committee meeting schedules

There were none.

- (13) Oral communications

None presented.

- (14) Adjournment

The meeting adjourned at 3:05 p.m.

Discussion/Action: Upon motion by Council Member Powers, seconded by Council Member Woody and unanimously carried, the Rules Committee report and actions of September 17, 1997 were accepted, and Staff directed to send a letter to the new Chair of the Assembly Revenue and Taxation Committee to reinforce the City of San José's concern for a positive vote on the Jet Fuel Sales Tax Allocation issue. Vote: 10-0-1-0. Absent: Hammer.

7f Youth, Seniors, and Neighborhood Services Committee - September 15, 1997

Documents filed: Youth, Seniors and Neighborhood Services Committee report dated September 15, 1997.

- (1) San José B.E.S.T. Cycle VI Program Evaluation. Attachment: (1) Memorandum from Mark Linder, Acting Director, Department of Parks, Recreation and Neighborhood Services, dated September 4, 1997, transmitting said report. (2) Report entitled: "B.E.S.T. Cycle VI Program Evaluation", dated August 6, 1997, prepared by Community Crime Prevention Associates.

The Committee accepted the B.E.S.T Cycle VI Program Evaluation Report.

- (2) Approve the Master Plan for Truancy Prevention and Intervention. Attachment: (1) Memorandum from Mark Linder, Acting Director, Department of Parks, Recreation and Neighborhood Services, dated September 5, 1997, transmitting said report. (2) Report entitled: "Master Plan for Establishing A Truancy Prevention, Intervention and Law Enforcement Continuum of Services", dated July 30, 1997, prepared by Truancy Continuum of Services Task Force of the Mayor's Gang Prevention Task Force.

The Committee recommended approval of the Master Plan for Truancy Prevention and Intervention.

- (3) Office of Child Care Workplan FY 1997-98 Budget Allocation. Attachment: Informational memorandum from Mark Linder, Acting Director, Department of Parks, Recreation and Neighborhood Services, dated September 5, 1997,

responding to Council Referral 5-6-97-7f(2).

Information item only - No Committee action required.

- (4) Approve a Council Policy entitled *The San José Schools and the City Collaborative ... A Policy*, Regarding Cooperation Between the City and Schools on Their Mutual Interests. Attachment: Memorandum from Mark Linder, Acting Director, Department of Parks, Recreation and Neighborhood Services, dated September 3, 1997, recommending approval of said policy.

The Committee recommended acceptance of the Council Policy entitled, "San José Schools and the City Collaborative...a Policy".

Discussion/Action: See Item 9a for Council action taken.

- (5) Approve the Youth, Seniors and Neighborhood Services Workplan, August - December 1997

The Committee accepted the Youth, Seniors and Neighborhood Services Workplan.

- (6) Oral communications

None.

- (7) Adjournment

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

Discussion/Action: The Youth, Seniors and Neighborhood Services Committee report and actions of September 15, 1997 were accepted, with Item 7f(4) heard under 9a. Vote: 10-0-1-0. Absent: Hammer.

LAND USE AND DEVELOPMENT

- 8a PUBLIC HEARING ON 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. Director of Planning recommends approval. Planning Commission recommends approval (5-1-1).**

PDC 97-01-002 - District 4

Documents filed: (1) Report from the Department of Planning, Building and Code Enforcement, dated September 3, 1997, recommending approval of the subject project.

(2) Affidavit of Mailing, dated September 10, 1997, submitted by the City Clerk. (3) Supplemental memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated September 24, 1997, revising the recommended conditions of approval regarding pile driving and treatment of the buffer area between the Summerset Mobile Estates Mobile Home Park and the project parking lot. (4) Memorandum from the Planning Commission, dated September 26, 1997, recommending that Council adopt an ordinance approving the subject rezoning with staff recommended conditions. (5) Proof of publication of notice of hearing, dated August 20, 1997, submitted by the City Clerk.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the planned development rezoning of subject property to allow office, R&D and commercial development on the site. Director of Planning, Building and Code Enforcement James R. Derryberry recommended support for the subject rezoning on behalf of Staff and the Planning Commission, stated the majority of conditions of approval suggested by the Planning Commission have been incorporated into the revised plans submitted by the applicant, and that additional conditions approved by the Planning Commission are addressed by the Staff report and will be implemented by Staff at the Planned Development permit stage. He stated the Planning Commission requested Staff convey to the Council their concerns about cumulative development in the area and resulting environmental impacts and recommend that Council consider a reduction in the scale of the development in the area. Steve Dunn, Lincoln Property Company, spoke on behalf of the applicant. Council Member Pandori stated it is unusual to address rezoning for a non-user type of "spec" project in an afternoon rather than evening session and, given that three Planning Commissioners had significant concerns about the intensity of the development, and had requested the Council seriously consider a reduction of the scale of the development, he suggested continuing the issue to an evening meeting and directing Staff to summarize environmental impacts of the reduced scale alternative compared to the proposed project. He questioned how Council could make the necessary findings of overriding considerations without reviewing the EIR. Director Derryberry explained the scheduling of the project was due to a noticing error, that Staff had worked with the applicant and the community including the Alviso Task Force, had resolved all community issues, and stated the project is appropriate for the site. He stated there was a thorough environmental process, the applicant has resolved environmental issues on the site, and additional information from the biologist will be used at the permit stage to resolve site design issues that are conditions of approval. He stated concerns about the project were resolved at the Planning Commission hearing and comments in the report pertain to future development in the area. Responding to concerns voiced by Council Member Pandori regarding distribution of the EIR, City Attorney Gallo recommended tabling the item until later in the meeting for Staff to research that question. Council Member Johnson inquired about the availability of technologies to control runoffs into the storm drains from parking lots, pertaining not only to this project, but also to parking lot controls in general. Director Derryberry replied that prior to the PD permit stage, arrangements for carrying storm and sanitary sewer discharge to the City of Santa Clara must be negotiated and concluded by the Department of Public Works. Public Works Director Qualls stated that storm and sanitary sewer alternatives are identified in the EIR, and are design detail decisions that will be finalized at the PD planning stage according

to City standards at that time. Council Member Johnson requested Staff report back on City efforts to clean up storm waters pursuant to National Pollution Discharge Elimination System (NPDES) requirements. Council Member Diquisto inquired about impacts of the project on burrowing owl habitats, on migrating patterns of ducks, and on the Guadalupe River, and asked if the U.S. Department of Fish and Game had been contacted. Environmental consultant Rick Hopkins stated that Fish and Game had been contacted and a comment letter included in the First Amendment to the EIR. Council Member Diquisto asked for clarification on the monetary contribution to be made by the developer. Director Derryberry explained a study is done for each site, the monetary contributions are based on a pro-rata share of the habitat area on the site and are held by the City for a consultant to conduct a study of public lands and other suitable habitat in North San José, for preparation of a regional conservation plan. Consultant Hopkins clarified there are no owls on the site, but there are owls on nearby property belonging to the State. Responding to questions from Council Member Dando, he elaborated that the relatively poor quality of habitat on the site did not result in a site specific effect to burrowing owls, but there is a cumulative effect with all projects in North San José; therefore, applicants are asked to contribute based on impacts of the cumulative impact to the area. Vice Mayor Fernandes, in whose district the site lies, assured the Council that numerous meetings had been held with the community and residents of Alviso support the project. Council Member Fiscalini expressed concerns, since this is the first major project in the area, that the quality of the project be the highest possible and suggested that as the project goes through the Planned Development process, Staff review carefully the quality of materials and the architectural and esthetic elements of the project. Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, the public hearing was continued to October 7, 1997, to be heard in the evening session, if it is reinstated, to allow circulation of the EIR. Council Member Pandori requested Staff provide the Council with a summary of relative traffic impacts of the reduced scale alternative compared to the proposed project, to include review of the project's conformity to the City's floor area ratio policy. William J. Garbett addressed the Council in opposition to the proposal.

**6e(14) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the County of Santa Clara for the temporary loan of Nancy Wiener to implement the Regional Cultural Plan in an amount not to exceed \$81,000. (Mayor)
(Rules Committee referral 9/24/97)**

Documents filed: Memorandum from Mayor Susan Hammer, dated September 30, 1997, recommending adoption of said resolution.

Discussion/Action: This item was removed from the Consent Calendar by City Attorney Gallo to be heard later in the meeting following additional review by Staff. Upon motion by Council Member Johnson, seconded by Council Member Fiscalini and unanimously carried, Resolution No. 67670, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the County of Santa Clara for the Loan of Nancy Wiener for the Implementation of Portions

of the Cultural Plan”, was adopted. Vote: 9-1-1-0. Noes: Pandori. Absent: Hammer.

GENERAL GOVERNMENT

9a Approval of a Council policy entitled *The San José Schools and the City Collaborative ... A Policy*, regarding cooperation between the City and schools on their mutual interests.

[Youth, Seniors, and Neighborhood Services Committee referral 9/15/97 - Item 7f(4)]

Documents filed: See Item 7f(4) for the Staff Report and subject proposed policy.

Discussion/Action: Acting Director of Parks, Recreation and Neighborhood Services, Mark Linder, stated the issue of school collaboration was first presented to the Council as part of the City’s Youth Services Master Plan, following which Council Members Diaz and Powers took the lead in organizing the first Education Summit, held April 19, 1997 among Council Members and all 19 school districts in Santa Clara County. He reported the summit identified major areas for collaboration: Efficient and Joint Use of Facilities, Joint Planning, Reaffirmation of Before- and After-School Programs and the need to coordinate them, Funding Issues, Promoting Safety, Preventing Violence and Abuse, Promoting Youth Employment, and development of a collaborative steering committee to oversee the efforts. With Council approval, he stated the next steps are to present the policy to the 19 school districts by the end of November, 1997, meeting with the superintendents at the Mayor’s Superintendents Roundtable in October, 1997, and developing task forces around each policy composed of practitioners from schools and the City. He stated the Task Forces will report at Education Summit II, to be held in May or June, 1998. Vice Mayor Fernandes thanked Council Members Shirakawa, Diaz and Powers for their work on these issues. Council Member Powers concurred, thanked the Staff for their work, and stated the issues that emerged from the summit are those which the school board members and the Council Members are interested in working on as a collaborative effort, and moved approval of the proposed policy. Council Member Diaz seconded the motion. Council Member Diaz thanked Staff for their work on this historic step, which ties in well with the Youth Services Master Plan and should facilitate progress on issues such as cost efficiencies, sharing resources, clarification of issues such as truancy, overcrowding of school, and effective utilization of funding resources. Council Member Dando expressed interest in the issue of truancy and concerns about the land use impacts on schools, and hoped that issue could be addressed prior to the next meeting with school board representatives. Council Member Diaz requested the motion be amended to include the following language on Page 2 of the Policy Statement, under Guiding Principles, first bullet: “All school districts that operate in San José.” William J. Garbett addressed the Council in opposition to the proposal. On a call for the question, the motion by Council Member Powers carried unanimously and the Council Policy entitled: *The San José Schools and the City Collaborative ... A Policy*, as amended to include: “All school districts that operate in San José” on Page 2, Guiding Principles first bullet, was approved. Vote: 10-0-1-0. Absent: Hammer.

JOINT CITY COUNCIL/REDEVELOPMENT AGENCY ITEMS

The Council of the City of San José convened the Redevelopment Agency Board at 2:50 p.m. to consider Item 11a in a joint session.

- 11a Report on automatic public toilets in the Downtown and direction to Agency staff to proceed with negotiations for the lease of up to six (6) toilets.**
[Transportation, Planning and Environment Committee referral 6/12/97 - Item 7e(2)]
(Deferred from 6/17/97 - Item 9n et al., and 9/2/97 - Item 9a)

Documents filed: None.

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

The Redevelopment Agency Board portion of the meeting was adjourned at 2:51 p.m.

ADJOURNMENT

The Council of the City of San José adjourned at 2:58 p.m. in memory of Richard Lewis Swig, Chairman of the Fairmont Hotel Management Company and a philanthropist who supported a wide range of causes.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK