

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, OCTOBER 21, 1997

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

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

Absent: Council Members: None.

Upon motion unanimously adopted, the City Council recessed to a Closed Session at 9:35 a.m. in Room 600 to (A) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider the cases of In re Phan; City of San José, et al. V. County of Santa Clara; Vahdani Construction Company v. City of San José; Richmond, et al. v. City of San Jose; Santa Clara County Concerned Citizens v. City of San José, et al.; San José Unified School District, et al. v. City of San Jose; (B) to confer with Legal Counsel regarding anticipated litigation and consideration of a matter pertaining to significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 of the Government Code, and the initiation of litigation in four matters pursuant to subdivision (c) of Section 54956.9 of the Government Code; and (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6 with respect to the following: City Negotiator–City Manager designee Lynn Boland, and the Association of Building and Mechanical and Electrical Inspectors Employee Organization.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:00 a.m. and reconvened at 1:38 p.m. in Council Chambers, City Hall.

Present: Council Members: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori (arrived at 1:45 p.m.), Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: None.

INVOCATION

Father Stout, Chaplain, City of San José Fire Department, delivered the invocation. (District 9)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Shirakawa, Jr., seconded by Council Member Diquisto and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 10-0-1-0. Absent: Pandori.

CEREMONIAL ITEMS

- 5a Presentation of the “Outstanding Leadership in the Development of Worksite Health and Fitness Promotion” Award from the Governor’s Council on Physical Fitness and Sports to the City of San José. (Human Resources)**

Documents Filed: None.

Discussion/Action: Joining Mayor Hammer at the Podium, Anna Kurimoto, Executive Director of the Governor’s Council on Physical Fitness and Sports, presented the commendation to Nona Tobin, Director of Human Resources, and Dave Armstrong, Kavita Bajaj, and Laurie Sherr, representing the Department of Human Resources.

Council Member Pandori arrived at 1:45 p.m.

- 5c Presentation of plaques to Joyce Rive Hunter for 1 year 2 months service on the Arts Commission; to Zeke Garcia for 5 years 11 months service on the Civil Service Commission; and to Gail Curtis for 1 year 5 months service on the MBE/WBE/DBE Committee. (Mayor)**

Documents Filed: None.

Discussion/Action: Vice Mayor Fernandes presented plaques to Joyce Hunter and Zeke Garcia with Council’s appreciation for the service rendered to the City of San José. The plaque for Gail Curtis will be mailed, as the honoree was unable to attend the meeting.

CONSENT CALENDAR

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

Minutes for Approval

- 6a(1) Regular Meeting of September 2, 1997**

Documents Filed: Minutes of the regular meeting of September 2, 1997.

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

- 6a(2) Regular Meeting of September 16, 1997**

Documents Filed: Minutes of the regular meeting of September 16, 1997.

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

Ordinances for Final Adoption

- 6b(1) **ORD. NO. 25436** - Amends Section 9.10.1210 of Chapter 9.10 of Title 9 of the San José Municipal Code to authorize the Director of Finance to waive late charges on delinquent payments for residential solid waste services under certain specified conditions and ratifying previous late charge waivers.

Documents Filed: Proof of publication of the title of Ordinance No. 25436 submitted by the City Clerk.

Discussion/Action: William J. Garbett spoke against the proposed action. Ordinance No. 25436 was adopted. Vote: 11-0-0-0.

- 6b(2) **ORD. NO. 25438** - Rezones certain real property situated on both sides of Gold Street northerly of Highway 237. PDC 97-01-002

Documents Filed: Proof of publication of the title of Ordinance No. 25438 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25438 was adopted. Vote: 11-0-0-0.

Public Hearings Set by Council

- 6c(1) Adoption of a resolution setting a public hearing on **November 18, 1997 at 1:30 p.m.** to approve a Disposition and Development Agreement with First Community Housing, or its assignee, for the property conveyance and business terms for a \$923,130 loan for the King Road Inn SRO Housing Project. (Housing)

Documents Filed: (1) Memorandum from Director of Housing, Alex Sanchez, dated October 17, 1997, submitting a supplemental report recommending Council approval of Staff recommendation with the clarification that the City loan amount is reduced to \$923,130. (2) Memorandum from Director of Housing, Alex Sanchez, dated October 2, 1997, recommending Council adopt proposed resolution.

Discussion/Action: Resolution No. 67685, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing Regarding An Approval of a Development and Disposition Agreement Between the City of San José and First Community Housing or Its Affiliate", was adopted. Vote: 11-0-0-0.

Plans and Specifications

- 6d(1) **TRACT NO. 8994** - West side of South White Road, approximately 400 feet northerly of Quimby Road - DKB Homes LLC (Developer) - 32 detached residential units. Adoption of resolutions approving the plans, final map, contract, water main extension agreement, and approval of the Parkland Agreement for Tract No. 8994. CEQA: ND. District 8. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 6, 1997, recommending Council adopt said resolutions.

Discussion/Action: Resolution No. 67686, 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. 8994"; Resolution No. 67687, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8994", Resolution No. 67688, entitled: "A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8994"; and Resolution No. 67689, entitled: "A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Agreement for the Water Main Extension, Tract No. 8994", were adopted Vote: 11-0-0-0.

- 6d(2) TRACT NO. 9008 - Bird Avenue, opposite Snyder Avenue - Iris Gardens Limited Partnership (Developer) - 14 detached residential lots. Adoption of resolutions approving the plans, final map, contract, and approval of the Parkland Agreement for Tract No. 9008. CEQA: ND. District 6. (Public Works)**

Documents Filed: None.

Discussion/Action: This item was deferred to October 28, 1997.

- 6d(3) TRACT NO. 8938 - Within the Evergreen Specific Plan Area (ESP) and is located on the south side of Aborn Road, on both sides of Avignon Lane - Shapell Industries, Inc., (Developer) - 61 detached residential lots. Adoption of resolutions approving the plans, final map, contract, and water main agreement, and approval of a Parkland Agreement for Tract No. 8938. CEQA: Resolution No. 24748. District 8. (Public Works)
(Rules Committee referral 10/15/97)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 14, 1997, recommending Council adopt said resolutions for Tract No. 8938.

Discussion/Action: Resolution No. 67690, 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. 8938"; Resolution No. 67691, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8938", Resolution No. 67692, entitled: "A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8938"; and Resolution No. 67693, entitled: "A Resolution of the Council of the City of San José Approving and Approving and Authorizing the Execution of Agreement for the Water Main Extension, Tract No. 8938", were adopted. Vote: 11-0-0-0.

- 6d(4) TRACT NO. 8740 - Northwest corner of Locust Street and Alma Avenue - George**

**and Evangelia-Lisa Vorgias, (Developer) - 4 single family attached residential units. Adoption of resolution the final map and approval of the Parkland Agreement for Tract No. 8740. CEQA: Exempt. District 3. (Public Works)
(Rules Committee referral 10/15/97)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 14, 1997, recommending Council adopt said resolution approving the final map for Tract No. 8740

Discussion/Action: This item was dropped.

Contracts/Agreements

- 6e(1) Approval of a commercial air cargo operating agreement and permit with ABX Air, Inc. for a five-year term, not to extend beyond March 31, 2001, with projected annual revenue to the City totaling \$100,000. CEQA: Resolution No. 67380. (Airport)**

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated October 3, 1997, recommending Council approve the proposed agreement and permit.

Discussion/Action: The commercial air cargo operating agreement and permit with ABX Air, Inc., was approved and execution of the documents authorized. Vote: 11-0-0-0.

- 6e(2) Approval of ramp area lease with Federal Express Corporation providing for the use of 21,105 square feet of existing space in the north air cargo ramp area, with an annual revenue of approximately \$28,500. CEQA: Resolution No. 67380. (Airport)**

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated October 3, 1997, recommending Council approve said lease.

Discussion/Action: The ramp area lease with Federal Express Corporation was approved and execution of the lease authorized. Vote: 11-0-0-0.

- 6e(3) Approval a first amendment to the employment agreement with Anthony J. Smith, DVM for services as Zoo Director at Happy Hollow Zoo, increasing the compensation by \$2,000, from \$63,000 to \$65,000. (Convention, Arts and Entertainment)**

Documents Filed: Memorandum from Director of Conventions, Arts and Entertainment, Nancy Johnson, dated October 6, 1997, recommending Council approve the proposed first amendment to the employment agreement.

Discussion/Action: The first amendment to the employment agreement with Anthony Smith was approved and execution of the amendment authorized. Vote: 11-0-0-0.

- 6e(4) Adoption of a resolution authorizing the Director of Conventions, Arts and Entertainment to execute a Festival, Parade and Celebration Grant with the Willow Glen Business and Professional Association for Founders Day 1997, as revised, in an amount not to exceed \$6,665.
(Conventions, Arts and Entertainment)**

Documents Filed: Memorandum from Director of Conventions, Arts and Entertainment, Nancy Johnson, dated October 9, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67694, "A Resolution of the Council of the City of San José Authorizing the Director of Conventions, Arts and Entertainment to Execute a Grant Agreement, as Revised, With the Willow Glen Business and Professional Association for Founders Day 1997, in an Amount Not to Exceed \$6,665", was adopted. Vote: 11-0-0-0.

- 6e(5) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1997-98 #9, 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 October 3, 1997, recommending Council award said open purchase orders list, and authorize the Director of General Services to execute the purchase orders.

Discussion/Action: The award of open purchase orders List No. 9 for FY 1997-98 was approved and execution of the purchase orders authorized. Vote: 11-0-0-0.

- 6e(6) Report on quotes and award of a service order for seawater sample analysis to the most advantageous vendor, Frontier Geosciences, Inc., for seawater sample analysis at the Water Pollution Control Plant for an amount not to exceed \$250,000, and authorization for the Director of General Services to execute the purchase order. (General Services)**

Documents Filed: (1) Memorandum from Director of General Services, Ellis M. Jones Jr., dated October 3, 1997, recommending Council award a service order for seawater sample analyses, and authorize the Director of General Services to execute the service order. (2) Letter from Treatment Plant Advisory Committee, dated October 10, 1997 recommending approval of the proposed award.

Discussion/Action: The award of the service order to Frontier Geosciences, Inc. was approved and execution of the purchase order authorized. Vote: 11-0-0-0.

- 6e(7) Approval of award of purchase of a 60' x 60' modular trailer for the Water Pollution Control Plant as an idle act to GE Capital Modular Space in the amount of \$127,745.83, including tax, and authorization for the Director of General Services to execute the purchase order. (General Services)**

Documents Filed: (1) Memorandum from Director of General Services, Ellis M. Jones Jr., dated October 3, 1997, recommending Council approve the proposed purchase. (2) Letter from Treatment Plant Advisory Committee, dated October 10, 1997, recommending award of the proposed purchase as an idle act purchase.

Discussion/Action: The award of purchase as an idle act to GE Capital Modular Space was approved and execution of the purchase order authorized. Vote: 11-0-0-0.

- 6e(8) Approval of the first amendment to the agreement with Rajappan & Meyer, Consulting Engineers, Inc. for the San Pedro/Santa Clara Streetscape Project in the amount of \$35,000, for a total agreement amount of \$511,820. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 3, 1997, recommending Council approve the proposed amendment.

Discussion/Action: The first amendment to the agreement with Rajappan & Meyer Consulting Engineers, Inc., was approved and execution of the amendment authorized. Vote: 11-0-0-0.

- 6e(9) Approval of Contract Change Order No. 6 for the Senter-Monterey Sanitary Sewer Rehabilitation Phase II Project with Detrick Corporation in the amount of \$99,500, for a total contract amount of \$934,396.50. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 3, 1997, recommending Council approve said contract change order.

Discussion/Action: Contract Change Order No. 6 with Detrick Corporation was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(10) Approval of Contract Change Order No. 1 for the South Bay Water Recycle Program Senter Road Project with Mountain Cascade, Inc. in the amount of a force account not to exceed \$150,000, pending concurrence by the Treatment Plant Advisory Committee (TPAC) at its November 13, 1997 meeting. CEQA: Resolution No. 64667. Council District: City-wide. (Public Works) (Orders of the Day 4a)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 17, 1997, noting the reason for the addendum and recommending Council approval of the proposed change order.

Discussion/Action: Contract Change Order No. 1 with Mountain Cascade, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

Routine Legislation

- 6f(1) (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)

[Deferred from 9/30/97 - Item 6f(4)]

Documents Filed: Memoranda from Director of Public Works, Ralph A. Qualls, Jr., both dated September 12, 1997, recommending Council adopt said resolutions authorizing negotiations and execution of necessary documents in connection with the easement.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 67695, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Negotiate and Execute a Grant of Easement to Pacific Gas & Electric Company to Effect the Relocation of Overhead Power Lines as Part of the Guadalupe River Flood Control Project"; and Resolution No. 67696, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Accept the Easement From Bruno J. Zulpo for the Relocation of a Sanitary Sewer Line as Part of the Guadalupe River Flood Control Project and to Execute the Certificate of Acceptance and Other Documents to Accept the Easement", were adopted. Vote: 11-0-0-0.

- 6f(2) Approval of the implementation of the Council Assistants' portion of Measure F as outlined in the staff recommendations dated June 20, 1997. (City Manager)**
[Deferred from 9/30/97 - Item 6f(10)]

Documents Filed: None.

Discussion/Action: This item was deferred to October 28, 1997 to be considered under General Government.

- 6f(3) Adoption of a resolution amending the Administrative Citation Schedule of Fines with regard to violations of various ordinances, permits, and regulations administered by the Police Department. (Police Department)**
[Deferred from 10/7/97 - Item 6f(3)]

Documents Filed: Memorandum from Chief of Police, Louis A. Cobarruviaz, dated October 15, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67697, “A Resolution of the Council of the City of San José Setting Forth the Administrative Citation Schedule of Fines for Certain Violations of the San José Municipal Code, Effective October 21, 1997”, was adopted. Vote: 11-0-0-0.

- 6f(4) Approval of an ordinance amending the Police and Fire Department Retirement Plan, adding a new window period for retirees and surviving spouses to elect an optional settlement for benefits.
(Board of Administration for the Police and Fire Department Retirement Plan)**

Documents Filed: Memorandum from Retirement Administrator, Edward F. Overton, dated October 2, 1997, recommending Council approve said ordinance.

Discussion/Action: Ordinance No. 25439, entitled: “Ordinance of the City of San José Amending Chapter 3.36 of Title 3 of the San José Municipal Code by Adding Section 3.36.1467 to Establish an Additional Window Period for Election of Optional Settlements for Certain Retired Persons and Surviving Spouses Receiving Benefits From the Police and Fire Department Retirement Plan”, was passed for publication. Vote: 11-0-0-0.

- 6f(5) Adoption of a resolution approving the use of a group bid construction process, and authorization for the Director of Aviation to solicit and award bids, and to execute and administer acoustical treatment construction contracts in accordance with the City Council-approved Annual Budget and Capital Improvement Program for Airport Noise Attenuation, so long as the amounts of any such contracts during a Fiscal Year do not exceed the amounts appropriated for such purpose. CEQA: Resolution No. 67380. (Airport)**

Documents Filed: Letter from Refugio Moreno, President, Guadalupe-Washington Neighborhood Association, dated October 20, 1997, requesting an opportunity to speak on the matter and that it be scheduled for an evening session.

Discussion/Action: Acknowledging the recommended deferral of this item, Council Member Pandori referenced a letter received from the Guadalupe-Washington Neighborhood Association in which President Refugio Moreno requested the removal of the Airport Noise Attenuation Program from the Consent Calendar of today’s meeting, and requested that Staff reschedule the discussion to an evening session, which would better accommodate community participation. Mayor Hammer urged the Administration to reschedule the public hearing to an evening prior to the Winter legislative recess. This item was deferred to October 28, 1997.

- 6f(6) Adoption of appropriation ordinance and funding sources resolution amendments in several funds to correct errors in the adopted Operating and Capital Budgets; to reflect changes in project estimates, schedule for funding sources; to add new capital projects, and to update revenue and expenditure estimates.
(City Manager)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated October 16, 1997, recommending Council adopt proposed appropriation ordinance and funding sources resolution amendments for various funds.

Discussion/Action: Ordinance No. 25440, entitled: “An Ordinance of the City of San José Amending Ordinance No. 25390 to Appropriate Moneys in Several Funds to Correct Errors in the Adopted Operating and Capital Budgets; to Reflect Changes in Project Estimates and Schedules for Funding Sources; to Add New Capital Projects, and to Update Revenue and Expenditure Estimates; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”; and Resolution No. 67698, 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 General Fund and the Services for Redevelopment Capital Projects Fund”, were adopted. Vote: 11-0-0-0.

6f(7) Approval of an ordinance amending Chapter 2.08 of Title 2 of the San José Municipal Code to establish the Commission on Disadvantaged Business Development. (City Attorney)

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated October 21, 1997, recommending Council approve said ordinance.

Discussion/Action: Ordinance No. 25441, entitled: “An Ordinance of the City of San José Amending Chapter 2.08 of Title 2 of the San José Municipal Code to Establish the Commission on Disadvantaged Business Development”, was passed for publication. Vote: 11-0-0-0.

6f(8) Adoption of a resolution approving the map and summarily vacating a portion of the public service easement across Lot 1, Tract No. 8705, located at 1199 Pheasant Hill Court. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 3, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67699, “A Resolution of the Council of the City of San José Summarily Vacating a Portion of the Public Service Easement Across Lot 1, Tract No. 8705 at 1199 Pheasant Hill Court”, was adopted. Vote: 11-0-0-0.

**6f(9) Adoption of a resolution accepting a progress report demonstrating achievement of the October 7, 1997, New Realities Suspension Triggers and Goals. (City Manager)
(Rules Committee referral 10/15/97)**

Documents Filed: Memorandum from City Manager, Regina V.K. Williams, dated October 20, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67700, entitled: "A Resolution of the Council of the City of San José Accepting a Progress Report Demonstrating Achievement of the October 7, 1997 New Realities Suspension Trigger and Goals", was adopted. Vote: 11-0-0.

- 6f(10) Approval of recommendations and adoption of a resolution to amend Salary Resolution No. 51872 to provide a 4% wage increase (8 pay ranges) effective June 29, 1997 and a 3% wage increase (6 pay ranges) effective June 28, 1998 for Management Employees in Units 4, 15, 21, 99 and Unrepresented Employees in Units 16 and 19. (City Manager)
(Rules Committee referral 10/15/97)**

Documents Filed: None.

Discussion/Action: This item was deferred to October 28, 1997.

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - Meeting of October 1, 1997

Documents Filed: Rules Committee Report of October 1, 1997.

- (1) Review of October 14 Council Agenda

This Item was dropped - The meeting was cancelled.

- (2) Add New Items to October 7 Amended Council Agenda and reconsider cancellation of October 7 Evening Session

The Committee recommended four additions and six changes to the October 7, 1997 Council Agenda.

- (3) The Public Record. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated September 25, 1997, listing the items transmitted to the Administration for the period September 17-23, 1997. (2) Memorandum from Council Liaison, Norberto L. Duenas, dated October 1, 1997, summarizing the actions taken on items transmitted to the Administration and the items filed for the Public Record for the period September 17-23, 1997.

The Committee noted and filed the Public Record for the period September 17-23, 1997.

- (4) Boards and Commissions
(a) Minority, Women and Disadvantaged Business Development Commission

This item was reported to Council on October 7, 1997.

- (5) Approve recommended City positions for 25 League of California Cities resolutions. Attachments: (1) Memorandum from Director of Intergovernmental Relations, Georgiana Flaherty, dated September 26, 1997, recommending approval of the City positions for 225 resolutions to be considered at the Annual League of California Cities Conference to be held in San Francisco, October 12-14, 1997. (2) Undated copy of a document entitled “II. Proposed Revision to Resolution Number 14 Relating to Electricity Restructuring”.

The Committee approved the recommended City positions for 25 resolutions to be considered at the Annual League of California Cities Conference, held in San Francisco, October 12-14, 1997, with the following correction to Resolution 22—Local Government Funding Structure—Page 20: Change the last sentence in the second paragraph to read: “Therefore, staff recommends the resolution be amended to include a referral to the Fiscal Reform Task Force to continue working in a cooperative manner with the California Governance Consensus Project”.

- (6) Airport Commission recommendations concerning Reid-Hillview Airport

The Committee deferred this item to the October 22, 1997 Rules Committee meeting.

- (7) Report back on School Overcrowding

The Committee deferred this item to the October 15, 1997 Rules Committee meeting.

- (8) Request to use Council General Funds to attend the National League of Cities Conference in Philadelphia, PA, December 1997. Attachments: (1) Memorandum from Council Member Johnson, dated September 2, 1997, submitting authorization for the use of Council General funds to attend the NLC’s 1997 Congress of Cities Conference. (2) Memorandum from Council Member Powers, dated September 4, 1997, submitting travel authorization for the use of Council General funds to attend the NLC’s 1997 Congress of Cities Conference. (3) Memorandum from Council Member Woody, dated September 17, 1997, submitting authorization for use of Council General funds to attend the NLC’s Congress of Cities meeting in Philadelphia, PA. (4) Memorandum from City Clerk, Patricia L. O’Hearn, dated October 1, 1997, complying with City Council Policy 9-5 requirement when requests to use Council General Funds are considered by the Rules Committee.

The Committee approved the use of Council General Funds by Council Members Johnson, Powers and Woody to attend the National League of Cities Conference

in Philadelphia, PA, December, 1997

- (9) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee. Attachment: Memorandum from Vice Mayor Fernandes, dated September 25, 1997, recommending the Administration and the Police Department work with the Senior Advisory Commission, the Aging Leadership Council, and the Greater San Francisco Bay Area Alzheimer's Association to establish and promote the Safe Return program or similar program for Alzheimer's and dementia sufferers; and that the Police Department research other available technology that could be integrated with existing Department capabilities to establish a volunteer tracing system.

- (a) Recommendations to establish a program to assist in the location of wandering or lost Alzheimers and dementia sufferers

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

- (10) City Council and Rules Committee meeting schedules

None presented.

- (11) Oral communications

None presented.

- (12) Adjournment

The meeting was adjourned at 3:05 p.m.

Discussion/Action: Upon motion by Vice Mayor Fernandes, seconded by Council Member Dando and unanimously carried, the Rules Committee Report and actions of October 1, 1997 were accepted. Vote: 11-0-0-0.

7b Report of the Rules Committee - Meeting of October 8, 1997

Documents Filed: Rules Committee Report of October 8, 1997.

- (1) Review of October 21 Council Agenda

The Committee approved the October 21, 1997 Council Agenda with three additions and four changes.

- (2) Add New Items to October 14 Amended Council Agenda

Meeting Cancelled - Item Dropped.

- (3) The Public Record. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated October 2, 1997, listing the items transmitted to the Administration for the period September 24-30, 1997. (2) Memorandum from Council Liaison, Norberto L. Duenas, dated October 8, 1997, summarizing the actions taken on items transmitted to the Administration and the items filed for the Public Record for the period September 24-30, 1997.

The Committee noted and filed the Public Record for the period September 24-30, 1997.

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

None presented.

- (5) City Council and Rules Committee meeting schedules

None presented.

- (6) Oral communications

None presented.

- (7) Adjournment

The meeting was adjourned at 2:55 p.m.

Discussion/Action: Upon motion by Vice Mayor Fernandes, seconded by Council Member Dando and unanimously carried, the Rules Committee Report and actions of October 8, 1997 were accepted. Vote: 11-0-0-0.

7c Report of the Finance/Agency Finance Committee - October 8, 1997

Documents Filed: None.

- (1) Monthly Investment Report for August 1997
- (2) Report on Business Tax Current Program to Educate Businesses of their Responsibilities
- (3) Monthly Financial Report for August 1997
- (4) Report on Technology-Delivered Services (New Realities Recommendation #6.03)
- (5) Presentation of City's Comprehensive Annual Financial Report
- (6) Public Works Engineering and Inspection Costs Audit
See Item 9f for Council action to be taken.

- (7) Quarterly Follow-Up Report ending July 31, 1997
- (8) Monthly Report for August 1997

Discussion/Action: This item was deferred to October 28, 1997.

7d Report of the Housing and Community Development Committee - October 6, 1997

Documents Filed: Housing and Community Development Committee Report of October 6, 1997

- (1) Review of the requirements of Relocation Law

This item was dropped - Committee Agenda amended.

- (2) Update on Traffic and Parking (TTP) Plan for Simultaneous Events at Arena Green. Attachment: Memorandum from Director of Conventions, Arts and Entertainment, Nancy Johnson, dated September 30, 1997, reporting on the implementation of the Traffic and Parking Plan for Simultaneous Events for the Billy Graham Crusade's use of Guadalupe River Park and Gardens Arena Green, and recommending the Committee forward same to Council for approval.

The Committee accepted the staff report and referred to the Redevelopment Agency the issue of parking at the Ranger Station.

- (3) Live/Work Housing Options. Attachment: Memorandum from Director of Housing, Alex Sanchez, dated September 30, 1997, recommending that the Committee accept and file the report.

The Committee accepted the staff report and recommended that this issue be referred to the Housing Advisory Commission for the establishment of a working group with developers and experts in the area of live/work housing to investigate types of housing developments, and with the Agency to work with the Housing Department to develop live/work housing projects and identify potential sites, and to report back to the Housing and Community Development Committee in six months with a plan.

- (4) Section 8 Update. Attachment: Memorandum from Director of Housing, Alex Sanchez, dated September 24, 1997, submitting an informational report on the disposition of Section 8 Contracts and Federal Mark-to-Market/Portfolio re-engineering proposals.

The Committee noted and filed the report.

- (5) Oral petitions

None presented.

(6) Adjournment

None presented.

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 of October 6, 1997 were accepted. Vote: 11-0-0-0.

7e Report of the Transportation, Planning, and Environment Committee-October 9, 1997

Documents Filed: Transportation, Planning, and Environment Committee Report of October 9, 1997

- (1) Consent Calendar. Attachments: October 1997 Status Reports on the Federal Reauthorization of ISTEA and the State Transportation Improvement Program.
 - (a) Reauthorization of Federal ISTEA Funding Status Report
 - (b) 1997 State Transportation Improvement Program (STIP) Status Report

The Committee accepted the status reports and approved the Consent Calendar.

- (2) South Bay Water Recycle Program Quarterly Status Report. Attachment: Memorandum from Director of Environmental Services, Louis N. Garcia, dated September 22, 1997, recommending approval of the Third Quarter 1997 Status Report on the South Bay Water Recycling Program.

The Committee accepted the status report.

- (3) Report on the Work Program for the Parkland Dedication Fee Ordinance. Attachments: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 8, 1997, transmitting a supplemental report on the revised work program. (2) Memorandum from Director of Public Works Ralph A. Qualls, Jr., Director of Planning, Building and Code Enforcement James R. Derryberry, and Director of Parks, Recreation and Neighborhood Services Mark Linder, dated October 2, 1997, recommending approval of the work program with additional study of the information and recommendations on changes to the City's Parkland Dedication and Park Impact Fee Ordinance, and recommending the scheduling of the TP&E Committee meeting of October 23, 1997 during the evening or alternately schedule a special evening workshop prior to October 31, 1997.

The Committee accepted the work program as discussed.

- (4) Oral petitions. Attachments: Correspondence from Klay Lund of BFI CSW Contract Manager, dated September 30, 1997, and from Mark Arsenault, District Vice President of BFI, dated August 4, 1997, discussing the commercial franchise

system.

Mark Arsenault, District Vice President for Browning-Ferris Industries, spoke on the Commercial Solid Waste System.

(5) Adjournment

The meeting was adjourned at 3:50 p.m.

Discussion/Action: Upon motion by Council Member Johnson, seconded by Council Member Dando and unanimously carried, the Transportation, Planning, and Environment Committee Report and actions of October 9, 1997 were accepted. Vote: 11-0-0-0.

FISCAL AFFAIRS

**10a(1) Report and recommendation on an interim fee increase to the Parkland Dedication Ordinance and Park Impact Fee Ordinance which better reflects current land values in San José.
(Council referral 9/23/97 - Item 9f)**

**10a(2) Adoption of a resolution raising the fees for the Parkland Dedication Ordinance (PDO) and Park Impact Fee Ordinance (PIFO).
(Public Works/Planning, Building and Code Enforcement/Parks, Recreation and Neighborhood Services)**

Documents Filed: (1) Document entitled "Parkland Dedication Ordinance Interim Fee Proposal", dated October 21, 1997, submitted by Mayor Hammer. (2) Memorandum Director of Public Works Ralph A. Qualls, Jr., Director of Planning, Building and Code Enforcement James R. Derryberry, and Director of Parks, Recreation and Neighborhood Services Mark Linder, dated October 9, 1997, recommending Council adopt said resolution. (3) Letter from the Parks & Recreation Commission, Rudy Nasol, Chair, dated October 17, 1997, urging Council to adopt the staff's proposed resolution and to finalize the more comprehensive recommendations reviewed by TP&E Committee. (4) Notice of Public Hearing to consider adoption of said resolution increasing the fees required under the Parkland Dedication Ordinance, and Proof of Publication, executed on October 17, 1997, submitted by the City Clerk.

Discussion/Action: Director of Public Works, Ralph A. Qualls, presented a comprehensive overview of the Staff proposal and report which responds to various referrals and requests for information and Council direction of September 23, 1997 with respect to the Parkland Dedication and Impact Fee Ordinances and policy issues. He pointed out the involvement of City Staff and the Redevelopment Agency working in conjunction with the development industry, project applicants, and other stakeholders to address current and future parkland service levels. He stated the Parkland Dedication Ordinance fees established in 1988 were not directly based on land values, and that increasing the current fee schedule by fifty percent will not adequately address

neighborhood park needs for new housing. He stated the City's General Plan Goal for neighborhood parks is 3.5 acres of parkland per 1000 residents; however, during the past nine years, the actual service level has declined to its current level of 2.69 acres. He stated City Staff has explored an alternate fee level which after the net reduction for private recreation credits will provide approximately 1.5 acres of public neighborhood parks for every 1000 residents, coupled with the in-lieu fee for approximately 2.5 acres of private parkland. He stated this alternative would achieve an acceptable contribution level until policy discussions are complete, and is designed to provide a level of neighborhood parkland dedication that will better address the needs created by new housing currently in the planning stages without preempting the broader policy issues. He stated Staff is recommending Council approve fees of \$6900 for detached housing and \$5800 for attached housing, which net parkland dedication after private recreation credits would be \$4100 and \$3500, respectively. Relative to the timeline, he stated discussions of the Fee Resolutions and Ordinance will occur October 23, 1997 at the regular meeting of the Transportation, Planning and Environment Committee, and November 13, 1997 during a joint session of the Transportation, Planning and Environment Committee and the Parks & Recreation Commission, to which all stakeholders will be invited; after which, City Staff will compile and prepare analyses of the information and formulate the final recommendation for Council consideration. Endorsing the need to ensure that the City provide adequate recreational opportunities for its residents, Mayor Hammer introduced an interim fee proposal for Council approval with the notation that whatever new fee the Council adopts will not become effective for 60 days; namely: (1) The existing fee rate of \$2300 for single family detached and \$1500 for attached units should be applied to any project that receives tentative map approval during that 60-day effective period. (2) A fee rate of \$4600 for single family detached and \$3650 for attached units should be applied to any project that receives tentative map approval for the following 30 days. (3) Staff's proposal for a fee rate of \$6900 for single family detached and \$5800 for attached units should be applied to any project thereafter. (4) The Council's intent is that any new fee rate approved by the Council should apply to all projects, or that appropriate sunset dates should be adopted. She stated the timeline proposed in her memorandum will allow for a 90-day phase-in period and is less aggressive than Staff's proposal. The following individuals spoke in favor of the Parkland Dedication Ordinance: Jane Schwartz, Senior Citizens Commission; Virginia Holtz; Arlene Wagner, Senior Citizens Commission; Bob Llewellyn; Jeff Ota; and Ted Scarlett. The following individuals spoke against the proposed Parkland Dedication Ordinance: Terry Feinberg, Tri-County Apartment Association; David Poeschel; Jeff Schroeder, Ryland Homes. Steve Schott, Citation Homes, asked Staff to clarify whether properties, without tentative maps, located in specific plan areas would be subject to the new fees or exempt from the liability. Conveying the Association's support for a modest fee increase, Mark Lazzarini, Executive Director of the Homebuilders' Association, opposed the proposed fee structure as "extremely excessive", even on an interim basis, and requested clarification of the recommendations and that consideration be given to the development of a meaningful work program through the Transportation, Planning and Environment Committee; requested clarification regarding those projects in the process of obtaining tentative map or planning permit approvals and how they will be affected by the proposed fee increase; and requested additional consideration be given to how the

new fees will impact Specific Plan Areas where a Master Plan program exists and the projects for which tentative maps have not been filed. Steve Tedesco, President, San José Chamber of Commerce, asked that consideration be given to the cumulative impact the fees will have on new developments—whether multifamily housing or commercial developments, and that the report to Council include a definite time-dated sunset on the interim fees. Dan McCadden, Lensman, Inc., read into the public record excerpts from a letter faxed to Council Members, in which Lensman protests the imposition of the proposed fee and urged the City to reconsider the fee increase and provide exemptions to those developers who negotiated their acquisitions in good faith prior to the proposed fee increase; and highlighted the reasons why the proposed interim ordinance should not be enacted. For purposes of Council discussion, Council Member Johnson recommended Council approval of the Mayor's proposal with the concerns expressed by the speakers referred to the Administration for a report to Council via the October 23, 1997 Transportation, Planning and Environment Committee meeting. Speaking in support of the fee increase, Council Member Pandori asked that Staff submit a comparative analysis of the two proposals, specifically the revenue, include the parks that will not be funded and the amount of money in question and the projects that will be affected or exempted by the Mayor's proposal versus the Staff's proposal. Upon motion by Council Member Johnson, seconded by Council Member Dando and carried, (1) the Staff report and recommendation on an interim fee increase to the Parkland Dedication Ordinance and Park Impact Fee Ordinance was accepted; (2) the Parkland Dedication Ordinance Interim Fee Proposal submitted by Staff was conceptually approved in conjunction with Mayor Hammer's proposal with direction to Staff to submit to Council via the Transportation, Planning and Environment Committee a report responding to Council concerns and speakers' requests; (c) the City Attorney to incorporate the proposed fee rates and timeline into the resolution for adoption by Council, and (c) this item was deferred to October 28, 1997. Vote: 11-0-0-0.

LAND USE AND DEVELOPMENT

- 8b PUBLIC HEARING to determine whether the proposed request to modify the Greenline/Urban Growth Boundary (UGB) by expanding it to include approximately 1,817 acres of the Richmond/Young Ranches and other properties, located approximately 2,500 feet southerly of the intersection of Silver Creek and San Felipe Roads and adjacent to the southern boundary of the Silver Creek Planned Residential Community, constitutes a *Minor Modification* of the UGB and take appropriate action based on this determination. CEQA: Exempt.
(Planning, Building and Code Enforcement)
District 2 & 8**

Documents Filed: None.

Discussion/Action: This item was dropped.

GENERAL GOVERNMENT

- 9b Approval of implementation of the Police Automated Information System consisting**

of the following elements:

- (1) Adoption of a resolution authorizing the City Manager to execute an agreement with TRW, Inc. for the Police Automated Information System in the amount of \$10,448,272, and authorization for the City Manager to execute change orders up to a maximum of \$500,000.
- (2) Adoption of appropriation ordinance amendments to transfer \$2,075,000 from the Contingency Reserve to the AIS Project that is anticipated to be repaid from the Federal Local Law Enforcement Block Grant, the State Supplemental Law Enforcement Service Fund Block Grant, or other police related sources.
- (3) Adoption of a resolution authorizing the City Manager to execute all documents necessary to add a portion of the purchase of the Police Automated Information System to the Pitney Bowes Master Equipment Lease in the amount of \$5,647,420, at an estimated interest rate of 5%, and with estimated annual lease payments of \$1,452,916 for four (4) years with a final estimated payment of \$726,458 in the fifth year, for a total lease cost of \$6,538,122; balance remaining in the Master Equipment Lease would be \$7,082,047.
- (4) Adoption of appropriation ordinance amendments to eliminate the earmarked reserve for Police Automated Information System of \$4,047,430.
- (5) Adoption of appropriation ordinance amendments to appropriate \$6,047,430 in Citywide for the Police Automated Information System Project.
- (6) Approval of the first year project staffing of:
 - (a) 1.0 Project Manager (Contract employee)
1.0 Data Base Analyst
1.0 Information Systems Analyst in Information Technology Department
 - (b) 1.0 Network Engineer in the Police Department
- (7) Approval of an employment agreement with Dan Smith to serve as project manager for one (1) year in the amount of \$150,000.
- (8) Approval of an Information Technology Specialist function in the City Manager's Office and an appropriation of \$75,000 in the City Manager's Office to fund this function for a portion of 1997-98.

(City Manager's Office)

(Deferred from 9/2/97 - Item 9c and 9/16/97 - Item 9c)

Documents Filed: (1) Memorandum from Budget Director, Larry D. Lisenbee, dated October 20, 1997, correcting the Staff memorandum on the captioned action with respect to the overstated amount and the revenue certification statement. (2) Memorandum from City Manager, Regina V.K. Williams, dated October 3, 1997, recommending Council approve implementation of the Police Automated Information System consisting of the specified elements.

Discussion/Action: Noting a technical correction to Item 9b(5), Director of General Services, Ellis M. Jones Jr., stated the total appropriation of funds for the Police Automated Information System Project should not include the lease amount; therefore,

the amount specified should be changed to \$6,047,430. As a point of clarification, Staff advised Council that the amounts transferred to and eliminated from the Contingency Reserve and the Police Automated Information System are itemized in the 1997-98 Appropriation Ordinance Amendment - Exhibit A; therefore, separate actions are unnecessary for the elements contained in Items 9a(2) and 9a(4). William J. Garbett spoke against the proposed action. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Fernandes and unanimously carried, Resolution No. 67701, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Executive an Agreement for the Purchase and Installation of a Police Automated Information System With TRW, Inc., in an Amount Not to Exceed \$10,448,272", Resolution No. 67702, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute All Documents Necessary to Add a Portion of the Purchase of the Police Automated Information System in An Amount Not to Exceed \$5,6447,420 to the Master Equipment Lease Agreement With Pitney Bowes Credit Corporation", Ordinance No. 25444, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25390 Which Appropriates Moneys in the General Fund in the Amount of \$6,047,430 for the Police Automated Information System; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted; and the first year project staffing of the Project Manager, Data Base Analyst, Information Systems Analyst, and Network Engineer, was approved; and the employment agreement with Dan Smith was approved and execution of the employment agreement and the second-year option, authorized; and the Information Technical Specialist function in the City Manager's Office, was approved. Vote: 11-0-0-0.

Council Member Diquisto left the meeting during discussion of Item 9c(2)(b).

9c Campaign Finance:

- (1) Report and recommendations of the Ethics Board.**
- (2) (a) Approval of an ordinance amending Chapter 12.06 of Title 12 of the San José Municipal Code to establish a Voluntary Campaign Spending Limitations Program.**
 - (b) Adoption of an urgency ordinance amending Chapter 12.06 to set the period for collection and expenditures of officeholder funds from the beginning of the contribution collection period through the date of the election.**
 - (c) Approval of an ordinance amending Chapter 12.04 relating to the definition of lobbyists and various amendments to the City's Campaign Contribution Ordinance (Chapter 12.06).**

(City Attorney's Office/City Clerk)

Documents Filed: (1) Memorandum from Mayor Hammer, dated October 17, 1997, requesting deferral of the Report and recommendations of the Ethics Board from the October 21, 1997 City Council Agenda. (2) Memorandum from City Attorney, Joan R. Gallo, dated October 17, 1997, addressing provisions of the proposed Voluntary Expenditure Ordinance as allowed under Proposition 208 and as recommended by the Ethics Board. (3) Memorandum from Vice Mayor Fernandes, dated October 17, 1997,

recommending Council adopt the voluntary campaign spending limit proposal recommended by the Ethics Board with the substitution of 50 cents per resident per election for a Mayoral race. (4) Memorandum from Council Members Diaz and Fiscalini, dated October 20, 1997, recommending Council approve the voluntary spending limits recommended by the Ethics Board in City Attorney Gallo's memorandum of October 17, 1997. (5) Memorandum from City Attorney, Joan R. Gallo, dated October 17, 1997, recommending Council adopt the urgency ordinance adjusting the officeholder freeze period. (6) Memorandum from City Attorney, Joan R. Gallo, dated October 17, 1997, submitting the results of the review of the Ethics Board recommendations and presenting for Council consideration amendments to the Campaign Contribution Ordinance.

Discussion/Action: Referencing the memorandum of October 17, 1997, Mayor Hammer stated the City Charter requires the Mayor to review the City's Code of Ethics, including any related ordinances, and make recommendations to the City Council for amendments or changes on a biennial basis. She stated a blue-ribbon panel has been appointed to advise the Mayor's Office about the future of the Campaign Finance Review and Ethics Board and better enforcement of the City's ethics standards and campaign finance ordinance. She stated results of the charter-mandated review will be presented to Council with recommendations following submission of the panel's report; therefore, a deferral of the report, Item 9c(1) is requested. She stated the remaining campaign finance issues on today's Council Agenda and other related matters will be discussed separately. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Report and recommendations of the Ethics Board, Item 9c(1), was deferred to December 9, 1997. Vote: 11-0-0-0. Regarding Item 9c(2)(a), the Voluntary Campaign Spending Limitations Program, Ethics Board Member Alex Stuart stated Proposition 208 accomplishes the objective sought by voters when they passed Measure H on November 5, 1996; except for local computerized reporting obligations and a local pre-election fund raising deadline, there appear to be no significant substantive differences between Proposition 208 and the City of San Jose's local Campaign Finance Ordinance. He stated the Ethics Board reviewed the spending levels of the 1990 contested mayoral campaign and reviewed data from the CPI and attempted to project, with new residents in the City, what the cost would be if the same level of spending per resident occurred in future elections. He stated the Ethics Board concluded the requirements of the City Ordinance are in accordance with that of Proposition 208 and recommended the City of San José adopt that position for the next election cycle. Pointing out the amounts expended in past primary and general elections by both Mayoral and City Council candidates, Vice Mayor Fernandes stated the Ethics Board recommended and Council approved establishing a spending cap equal to one dollar per resident per election for both the Mayoral and City Council races. By reducing the spending cap to half, she stated the combined total that could be spent in a Mayoral race would be less than the \$1.7 million spent in 1990 and in keeping with true campaign reform which the voters overwhelmingly support. She recommended that Council adopt the voluntary campaign spending limit proposed by the Ethics Board with the substitution of \$.50 per resident per election for a Mayoral race, setting the limit at approximately \$850,000 for primary and general elections combined. Council Member Fiscalini expressed support for campaign reform and opposition to any change that will differ from

Proposition 208 provisions and the Ethics Board recommendation, and that the decision of the two entities should not be unilaterally changed by the City Council. Council Member Shirakawa, Jr., stated the \$.50 limit would not affect an incumbent but would unfairly penalize the “grass roots” candidates in their efforts to communicate adequately to a large number of voters. Mayor Hammer stated the proposed reduction in the spending limit is less than the amount spent on the Mayoral race in 1990, and that she could not support the recommendation. Given current inflation factors, she stated a spending limit of \$.75 per resident/district per election is unrealistic, but is closer aligned with the intent of the voters. Council Member Pandori stated the spending limit should be set at a lower amount than \$.50; that the current discussion of campaign spending limits by the City Council is moot, given the passage of Proposition 208; and that the recommended expenditure level will not reduce campaign spending. Council Member Johnson stated the Department of Planning compiles annual population growth estimates that make certain calculations based on the last census, however, by the end of the decennial, the statistics become less accurate because of population changes, e.g., deaths/births, in migrations/out migrations, housing changes. She queried Staff on the accuracy of the census at the District level. As a point of clarification, City Attorney Gallo stated the Ethics Board has recommended a voluntary spending limit, however, Citywide and District resident figures should be set by resolution of the Council and the number specifying the expenditure limits could be based on census data supplied by the Director of Planning, Building and Code Enforcement. She stated the Council can either set the spending limit at the actual number of residents in each separate District, or at a flat dollar amount based on the District with the least number of residents; should Council approve amending the ordinance, Planning should expedite compilation of the census information for completion of the ordinance. With respect to the constitutionality of Proposition 208, she stated appeals are inevitable and therefore, rapid resolution of the issues is not expected; however, the City Attorney’s Office will come back to Council with rulings on specific provisions as Court decisions are rendered. Noting his opposition to the recommendation for the \$.50 spending cap, Council Member Diaz suggested an amendment of \$.75 for the Mayoral race and \$1 per resident of a district per election for City Council candidates. Council Member Fiscalini pointed out the disparity between expenditure limits of the larger Districts compared to that of Districts with smaller populations, and noted his preference for expenditure limits to be determined on a district-by-district basis, using census data provided by the Department of Planning. Mayor Hammer stated Council should give policy direction to the City Attorney to base the resolution as accurately as possible on population per District. The motion by Vice Mayor Fernandes and seconded by Council Member Johnson to adopt the voluntary campaign spending limit proposal recommended by the Ethics Board with the substitution of \$.50 per resident per election for a Mayoral race and \$1.00 per resident of the district for candidates for Council office, with direction to the City Attorney to review the amount of the limits nine months in advance of each election, failed. Vote: 4-7-0-0. Noes: Diaz, Diquisto, Fiscalini, Pandori, Powers, Shirakawa, Jr.; Hammer. Speaking in opposition to the recommendation for the \$.75 spending limit, Council Members Dando and Pandori stated the expenditure level is not the lowest possible and is not a spending limitation. Upon motion by Council Member Diaz, seconded by Council Member Fiscalini and carried, the recommendation to adopt the voluntary campaign spending

limit proposal for \$.75 per resident per election for a Mayoral race and \$1.00 per voter per election for City Council races, was approved, and Ordinance No. 25445, entitled: "An Ordinance of the City of San José Amending Chapter 12.06 of Title 12 of the San José Municipal Code by Amending Sections 12.06.210, 12.06.320, 12.06.330 and Adding a New Part 8 to Establish a Voluntary Campaign Spending Limitations Program", was passed for publication. Vote: 6-5-0-0. Noes: Dando, Johnson, Pandori, Shirakawa, Jr., Woody. Regarding the use of census information to determine expenditure limits, City Manager Regina Williams stated the Department of Planning, Building and Code Enforcement will use census data to determine expenditure limits, however, to update that information on an interim basis will require the Department to manually calculate the population based on building permits, and that is unacceptable. City Attorney Gallo advised Council to use the census data to specify expenditure limits with a reevaluation process occurring prior to an election. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, individual Expenditure Limits for Districts was approved to be calculated on Census information, set by Council Resolution and reviewed nine months prior to each election, to determine if any change is warranted. Vote: 11-0-0-0. Regarding the officeholder funds, Item 9c(2)(b), Mayor Hammer stated the Council approved the Rules Committee direction to the City Attorney to prepare an amendment to the Campaign Contribution Ordinance which would change the freeze period for soliciting and the expenditure of officeholder funds during an election cycle. She suggested Council further amend the provision to change the freeze period to allow for the expenditure of officeholder funds until the start of campaign fundraising, or six months prior to an election, and to adopt an urgency ordinance, effective immediately, to allow collections and expenditure of officeholder funds before the beginning of fund raising on December 4, 1997. Upon motion by Council Member Johnson, seconded by Council Member Powers and unanimously carried, Ordinance No. 25446, entitled: "An Urgency Ordinance of the City of San José Amending Section 12.06.520, Adding a New Section 12.06.525 and Amending Section 12.06.540 of Chapter 12.06 of Title 12 of the San José Municipal Code to Set the Period for Collection and Expenditures of Officeholder Funds From the Beginning of the Campaign Contribution Collection Period Through the Date of An Election and Setting Forth the Facts Constituting Such Urgency", was adopted; and Ordinance No. 25447, entitled: "An Ordinance of the City of San José Amending Chapter 12.04 of Title 12 of the San José Municipal Code: to Change the Definition of Lobbyist in Section 12.04.060; to Change the Definition of Committee in Section 12.06.040; Repealing Section 12.06.090 Relating to the Definition of Election Period; Amending Sections 12.06.240 and 12.06.250 to Prohibit Contributions From Businesses; Amending Section 12.06.370 to Change the Contribution Limit to Independent Committees; Amending Section 12.06.390 to Set a Contribution Period for Independent Committees; Amending Sections 12.06.520, 12.06.525, and 12.06.540 With Regard to Officeholder Account Freeze Period and Amending Section 12.06.720 to Include Transfers to a Candidate's Own City Campaign", was passed for publication. Vote: 11-0-0-0. Regarding amendments to campaign contribution provisions, City Attorney Gallo stated the Ethics Board recommended in February of 1996 that Council prohibit contributions from businesses, to which Attorney Chuck Reed suggested an alternative. She stated Council referred back to the Ethics Board for review the recommendation to prohibit and

an alternative to the complete elimination of contributions from a business entity. She stated the Fair Political Practices Commission (FPPC), after the passage of Proposition 208, adopted a regulation similar to the alternative; after reviewing each version, the Ethics Board still recommends that contributions from businesses be eliminated because of a concern that regulating concurrent contributions from limited partners and similar entities would be difficult to trace and therefore, enforce. She stated the Council policy decision on this issue should include either the use of an attribution methodology or the prohibition proposed by the Ethics Board. Vice Mayor Fernandes agreed with the Ethics Board recommendation to prohibit contributions from businesses. Upon motion by Council Member Fiscalini, seconded by Council Member Dando and unanimously carried, campaign contributions from businesses as recommended by the Ethics Board were prohibited. Vote: 11-0-0-0. Regarding the definition of lobbyist, Vice Mayor Fernandes stated the Ethics Board reviewed the definition provided in Proposition 208, and recommended that the State definition be used rather than the current City definition. She stated the draft ordinance contains this change and will be incorporated in the final version, should Council approve the definition. Upon motion by Council Member Fiscalini, seconded by Council Member Dando and unanimously carried, the use of the definition of "lobbyist" as contained in Proposition 208 was approved for use in the City's Lobbyist Ordinance. Vote: 11-0-0-0. Related to the section on "Restriction on Transfers to Other Candidates", City Attorney Gallo stated the City's Campaign Contribution Ordinance prohibits transfers from a candidate to that candidate's own City campaign as well as to any other City candidate campaign. She stated the Ordinance does not prohibit transfers to any non-city campaign, whether the candidate's own or another candidate's campaign, but requires a disclosure in advance that the funds might be transferred. She stated Proposition 208 prohibits the transfer of funds from one candidate to another; therefore, the City ordinance should be amended to reflect the changes. Upon motion by Council Member Fiscalini, seconded by Council Member Dando and unanimously carried, the amendments prohibiting the transfer of funds from one candidate to another candidate's campaigns, was approved and the transfers to the candidate's own non-city campaign with disclosure, allowed. Vote: 11-0-0-0. Regarding contribution limitations to independent committees, City Attorney Gallo stated the City's Ordinance must be changed to be consistent with Proposition 208 limits. Upon motion by Council Member Fiscalini, seconded by Council Member Dando and unanimously carried, the City's Campaign Ordinance regarding contributions to independent committees was amended to incorporate the Proposition 208 limits. Vote: 11-0-0-0. Regarding pre-election contribution collection time limits, Council Member Pandori stated the determination of whether time limits can be imposed for campaign contribution collections by independent committees was considered by Council and resulted in a provision only for candidate-controlled committees and not independent committees. He stated the same provisions should apply consistently to all committees active in political campaign expenditures. For clarification, City Attorney Gallo stated the issues of curtailing contributions to independent expenditure committees, as well as the contribution collection time limits or "blackout" period for all candidates, are before the trial court in the Proposition 208 litigation and that Council consideration of the matters should be postponed until further clarification is obtained from the litigation. Upon motion by Council Member Pandori, seconded by Council Member Dando and carried,

application of the 15-day time limit restrictions on contributions to controlled committees will be the same for independent committees. Vote: 7-3-1-0. Noes: Shirakawa, Jr., Woody; Hammer. Absent: Diquisto. City Attorney Gallo stated the current City Ordinance, compared to the State law, contains different threshold amounts which establish a campaign committee. She stated the City Clerk has suggested the City change the threshold amounts in the City Ordinance to be the same as State law. Upon motion by Council Member Dando, seconded by Council Member Powers and unanimously carried, the campaign committee threshold amounts to establish a committee were changed to be consistent with State law. Vote: 11-0-0-0.

- 9d**
- (1) Acceptance of the 1996-97 City Manager’s Annual Report.**
 - (2) Adoption of appropriation ordinance and funding sources resolution amendments in various funds to implement 1996-97 Annual Report recommendations.**
- (City Manager’s Office)**

Documents Filed: (1) 1996-97 Annual Report submitted by City Manager, Regina V.K. Williams, dated September 1997. (2) Memorandum from Budget Director, Larry D. Lisenbee, dated October 21, 1997, transmitting corrections and adjustments to the fund balance reconciliation contained in “Attachment 2” of the October 17, 1997 memorandum from the Budget Director. (3) Memorandum from Budget Director, Larry D. Lisenbee, dated October 17, 1997, recommending Council approve proposed appropriation ordinance and funding sources resolution amendments in various funds as detailed in Attachments 1, 2, and 3.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Diaz and unanimously carried, the City Manager’s Annual Report was accepted and the amendments in various funds to implement 1996-97 Annual Report recommendations were approved; and Ordinance No. 25448, entitled: “An Ordinance of the City of San José Amending Ordinance No. 25390 to Appropriate Moneys in Various Funds to Implement 1996-97 Annual Report Recommendations; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”; and Resolution No. 67702.1, 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 Various Funds”, were adopted. Vote: 11-0-0-0.

- 9f**
- Public Works Engineering and Inspection Costs Audit.**
[Finance/Agency Finance Committee referral 10/8/97 - 7c(6)]

Documents Filed: None.

Discussion/Action: This item was deferred to October 28, 1997.

- 9g**
- Adoption of a resolution:**
- (1) Approving a conditional fund reservation of up to \$2,368,000 to CORE Development Inc., or its designated partnership, for the development of an**

83-unit housing project affordable to low- and very low-income seniors on a 1.75 acre site located on Vista Park Drive.

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

(3) Finding that the use of 20% Housing Funds for the project is of benefit to the Redevelopment Project Areas in San José.

(Housing)

Documents Filed: Memorandum from Director of Housing, Alex Sanchez, dated October 2, 1997, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Upon motion by Council Member Shirakawa, Jr., seconded by Council Member Johnson and unanimously carried, Resolution No. 67703, “A Resolution of the Council of the City of San José (I) Approving a Conditional Fund Reservation of Up to \$2,368,000 to CORE Development Inc., or Its Designated Partnership, for the Development of an 83-Unit Housing Project Affordable to Low- and Very Low-Income Seniors on a 1.75 Acre Site Located on Vista Park Drive, (II) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents on Behalf of the City and (III) Finding That the Use of 20% Housing Funds for the Project is of Benefit to the Redevelopment Project Areas in San José”, was adopted. Vote: 11-0-0-0.

9h Report on bids and award of contract for the Meadowfair Park Phase I Improvements Project to the low bidder, Perma-Green Hydroseeding, Inc., to include the Base Bid and Add Alternates in the amount of \$589,000, and approval of a contingency in the amount of \$58,000. CEQA: ND. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 3, 1997, recommending Council approve the report on bids and award of contract to the low bidder, Perma-Green Hydroseeding, Inc.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Powers and unanimously carried, the award of contract to Perma-Green Hydroseeding, Inc., the low bidder, was approved and execution of the contract authorized. Vote: 11-0-0-0.

**9i Adoption of a resolution supporting the Women’s Cup 1999 Organizing Committee, Inc. bid for the 1999 Women’s World Cup to be in the San José Arena. (Mayor/San José Sports Authority)
(Rules Committee referral 10/15/97)**

Documents Filed: None.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, Resolution No. 67704, entitled: “A Resolution of the Council of the City of San José Supporting the Women’s Cup 1999 Organizing

Committee, Inc. Bid for the 1999 Women's Cup to be in the San José Arena", was adopted. Vote: 11-0-0-0.

JOINT CITY COUNCIL/REDEVELOPMENT AGENCY ITEMS

The Redevelopment Agency Board of Directors convened at 4:45 p.m. to consider Item 11a in a joint session with the City Council.

11a Adoption of City and Agency resolutions amending the Nondiscrimination/ Nonpreferential Treatment Program applicable to contracts for Public Works construction projects to revise and clarify provisions of the program. (Equality Assurance)

Documents Filed: (1) Memorandum from Council Member Diaz, dated October 20, 1997, recommending Council adopt the proposed resolutions. (2) Memorandum from Acting Director of Equality Assurance, Nina S. Grayson, dated October 15, 1997, recommending adoption of said resolutions.

Discussion/Action: Upon motion by Council Member Diaz, seconded by Council Member Fiscalini and carried, Resolution No. 67705, entitled: "A Resolution of the Council of the City of San José Amending the City of San José Nondiscrimination/ Nonpreferential Treatment Program for Construction Projects", and Agency Resolution No. 4327 amending the Nondiscrimination/ Nonpreferential Treatment Program for construction projects, were adopted. Vote: 10-1-0-0. Noes: Diquisto.

The Redevelopment Agency Board portion of the meeting was adjourned at 4:48 p.m.

ORAL COMMUNICATIONS

- (1) Cathy S. Brandhorst spoke on various societal issues.
- (2) Gilbert Marosi submitted for the public record a copy of his comments on code enforcement violations, investigations and related penalties imposed by the City in the enforcement of the R1 law.
- (3) Ted Scarlett spoke on matters pertaining to Police Department staffing and inappropriate use of authority by law enforcement officers.

RECESS/RECONVENE

Following Oral Communications, Council recessed at 5:00 p.m. and reconvened at 7:15 p.m., Council Chambers, City Hall.

Present: Council Members: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer (arrived at 7:30 p.m.).

Absent: Council Members: None.

City Clerk, Patricia L. O'Hearn, read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member Shirakawa, Jr.,

seconded by Council Member Diquisto and unanimously carried, the below noted continuances and other actions were granted. Vote: 10-0-1-0. Absent: Hammer.

PUBLIC HEARINGS

- 15a PUBLIC HEARING ON APPEAL OF SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT for a Planned Development Rezoning and Historic Preservation Permit for property located on the block bounded by South 2nd Street, East Santa Clara Street, South 3rd Street, and East San Fernando Street in Downtown San José. Staff recommends upholding Planning Commission's decision.
PDC 96-12-082 - District 3
(Continued from 8/5/97 - Item 15b et al., and 9/16/97 - Item 15b)**

Documents Filed: None.

Discussion/Action: This item was continued to October 28, 1997 to be heard during a special evening session.

- 15b PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the northwest corner of East San Fernando Street and South Third Street, from C-3 Commercial to A(PD) Planned Development, to allow up to 124 multi-family attached residential units and 21,100 square feet of commercial/retail uses on 1.8 gross acres (Green Valley Corporation, Owner; Redevelopment Agency of the City of San José, Developer). CEQA: Resolution to be adopted. Director of Planning recommends denial. Planning Commission recommends approval with condition to retain and reuse the Jose Theatre and Hong Kong Market, redesign Third Street Building, architecture and massing to be compatible with the Historic District (4-1-1-1).
PDC 96-12-082 - District 3
(Continued from 6/17/97 - Item 15m et al., and 9/16/97 - Item 15c)**

Documents Filed: None.

Discussion/Action: This item was continued to October 28, 1997 to be heard during a Special Evening Session.

- 15c PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southwest corner of Hazlett Way and Sierra Road, from A-Agricultural and A(PD) Planned Development to A(PD) Planned Development, to allow construction of 5 single-family detached residences on 0.58 gross acre (Kaufman & Broad, Owner/Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (5-0-2).
PDC 97-03-018 - District 4
(Continued from 8/19/97 - Item 15c et al., and 9/16/97 - Item 15d)**

Documents Filed: (1) Memorandum from the Planning Commission, dated August 1,

1997, recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC 97-03-018, dated July 2, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: This item was dropped.

- 15d PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on both sides of Technology Drive, between Sonora Avenue and Skyport Drive, from A(PD) Planned Development to I-Industrial Zoning District, to allow additional industrial development on a 40.9 gross acre site (Alma Properties, Owner/Developer). CEQA: Resolution No. 60197. C 96-07-040 - District 3**

Documents Filed: None.

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

CEREMONIAL ITEMS

- 5b Swearing in of Youth Commissioners, James Zoulas, District 3; Daniel Michalek, District 7; and Emily Kane, District 9. (Mayor)**

Documents Filed: Memorandum from City Clerk, Patricia L. O’Hearn, dated October 10, 1997, submitting to Council the names of the Youth Commissioners who will be appointed and sworn in during the evening session of the October 21, 1997 City Council meeting.

Discussion/Action: Council Members Pandori, Shirakawa, Jr., and Diquisto introduced and congratulated each student, and joining Vice Mayor Fernandes at the Podium, City Clerk, Patricia L. O’Hearn, administered the Oath of Office to newly appointed Commissioners James Zoulas who is a student at Bellarmine, Daniel Michalek who attends Andrew Hill, and Emily Kane who will be graduated from Willow Glen in 1998.

- 5d Presentation of a commendation to the San José Spitfires for their outstanding 1997 season. (Mayor)**

Documents Filed: None.

Discussion/Action: Vice Mayor Fernandes presented the commendation to John Oldum, former baseball coach at San José City College and Santa Clara University, and current coach of the San José Spitfires Baseball Team, and congratulated the Team on its impressive 26-7 record, winning the first “Ladies League Baseball World Series”, and an outstanding 1997 season.

PUBLIC HEARING

- 15e PUBLIC HEARING ON CONFORMING REZONING of the property located on**

the west side of Union Avenue, northerly of Highway 85, from A(PD) Planned Development to I-Industrial, to allow industrial and R & D uses on a 31.5 gross acre site (Carl Berg, Owner/Developer). CEQA: ND. Director of Planning recommends approval. No Planning Commission action required.

C 97-09-060 - District 9

Documents Filed: (1) Department of Planning, Building and Code Enforcement Staff Report, C 97-09-060, dated October 3, 1997, recommending approval of the proposed conforming rezoning. (2) Notice of Public Hearing to consider a change in Zoning for C 97-09-060, dated September 22, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Vice Mayor Fernandes opened the public hearing on the conforming rezoning of the subject property. Director of Planning, Building and Code Enforcement, James R. Derryberry, acknowledged receipt of a letter from a resident pointing out equipment located at the site which generates excessive noise in the evenings and during weekends. He stated Staff will work with Zilinx to address the noise issues through the Planned Development Permit process. David O'Hare, representing Zilinx, spoke in support of the rezoning. Upon motion by Council Member Diquisto, seconded by Council Member Shirakawa, Jr., and unanimously carried, the public hearing was closed and Ordinance No. 25449, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Union Avenue, Northerly of Highway 85", was passed for publication. Vote: 10-0-1-0. Absent: Hammer

Mayor Hammer entered Council Chambers at this point in the meeting and assumed the Chair.

LAND USE AND DEVELOPMENT

8a PUBLIC HEARING on the designation of the Montgomery Hotel for consideration as a landmark of special historic, architectural, cultural, aesthetic, or engineering interest or value of a historic nature. CEQA: Exempt. (Planning, Building and Code Enforcement)

Documents Filed: (1) Memorandum from Historic Landmarks Commission, dated October 3, 1997, recommending Council adopt said resolution. (2) Notice of Public Hearings on the Proposed Designation of the Montgomery Hotel as a Historic Landmark in the City of San José, HL 97-107, dated August 22, 1997, and Proof of Publication submitted by the City Clerk. (3) Affidavit of Posting of the Notice of Public Hearing regarding the proposed designation, dated September 12, 1997.

Discussion/Action: Mayor Hammer opened the public hearing on the designation of the Montgomery Hotel and site as a historic landmark. Director of Planning, Building and Code Enforcement, James R. Derryberry, summarized for the record the recommendation of the Historic Landmarks Commission. He stated the Draft Environmental Impact Report on the proposed project has been completed and distributed to the City Council for review. With the use of transparencies, he described the building height conflicts

produced by the Fairmont expansion and the negative impact to the Tway Building and the Retail Pavilion, and explained that the proposed expansion would require demolition of the Montgomery Hotel. He stated the Draft EIR identifies no mitigation for that demolition, but would have significant unavoidable impacts which require findings of overriding considerations, should Council allow the annex proposal to proceed. He stated the proposed alternative as analyzed in the EIR shows how the Montgomery Hotel and the annex could be incorporated into a redesign and expansion of the Fairmont Hotel, which would accomplish the project objective of 300 hotel rooms and 36,000 square feet of retail space. He stated the Historic Landmarks Commission held noticed public hearings to consider the proposal and has forwarded to Council a recommendation for approval of the designation of the Montgomery Hotel as a City Historic Landmark. David Gazek, Director of Program Development for the Redevelopment Agency, pointed out the advantages of preparing the site for expansion of the Fairmont Hotel and the addition of suites and retail space provided by that development. He stated the Montgomery Hotel has been vacant for approximately 12 years, requires extensive remodeling and repair necessary to address issues which would destroy or cover up much of the original architecture, and is not consistent with the revitalization of the Downtown. The following individuals spoke in support of the landmark designation of the Montgomery Hotel: Tom Simon, Preservation Action Council of San José; Jim Zetterquist, Chair of the San José Historic Landmarks Commission; former Council Member Judy Stabile; Ellen Garboske, Preservation Action Council of San José; Karita Hummer, President of the California Preservation Foundation; Judi Henderson, Vice Chair of the San José Historic Landmarks Commission; James A. Salado; William J. Garbett; Jack Douglas; Andre Luthard, Preservation Action Council of San José; and Franklin Maggi. Endorsing the Historic Landmarks Commission recommendation, Council Member Pandori stated the Montgomery Hotel merits the designation of landmark status and that collaborative efforts of all interested parties could produce positive alternatives and viable options for the building's continued existence and use. Speaking in opposition to the proposed recommendation, Mayor Hammer stated the demolition of the Montgomery Hotel should not be postponed and the Fairmont Hotel expansion should be allowed to proceed. Speaking in support of Council Member Pandori's recommendation, Council Member Dando stated the Montgomery Hotel qualifies for the historic landmarks status, and to withhold that designation would be a disservice to the community and City Staff who have worked so hard on the issue. Council Member Johnson commented on the lengthy and time-consuming process required to qualify a structure for historic landmark status and agreed with previous comments that the Montgomery meets established criteria and should be granted landmark status; to do anything less at this time, could be construed as precedent setting by the Council and would render the City's historic landmark process ineffective; by contrast, the Council's approval of the landmark status tonight and the probability of approving the building's demolition a few months later conveys the wrong message to owners of potential historical structures and is an embarrassment to the City of San José. She urged Council to consider the recommendation from the Historic Landmarks Commission and City Staff; for to deny the proposal is to abandon the process which has qualified every other building in the City of San José considered a landmark of special historic, architectural, cultural, aesthetic, or engineering interest or value of a historic nature. Given future consideration of the Fairmont Hotel expansion,

she stated the design proposal is an unacceptable mass of material, is out of scale with the current Fairmont Hotel, the Tway Building and the Paseo, and creates a “dismal” alley through which to walk—a development which she would not support. Upon motion by Council Member Pandori, seconded by Council Member Dando and carried, the recommendation to approve the Historic Landmarks Commission recommendation to adopt a resolution designating the Montgomery Hotel and site as a City Historic Landmark, failed. Vote: 5-6-0-0. Noes: Diquisto, Fernandes, Powers, Shirakawa, Jr., Woody; Hammer. Council Member Powers recommended Council not designate the Montgomery Hotel and site as a historic landmark. Upon motion by Council Member Powers, seconded by Council Member Fiscalini and carried, the public hearing was closed, the recommendation not to designate the Montgomery Hotel and site as a historic landmark, was approved. Vote: 7-4-0-0. Noes: Dando, Diaz, Johnson, Pandori.

GENERAL GOVERNMENT

- 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 et al., and 9/23/97 - Item 9a)

Documents Filed: Memorandum from Director of Economic Development, Leslie S. Parks, dated June 19, 1997, recommending Council amend the Performance Based Incentive Development Policy to exclude subsidies for “big box” retail uses larger than 100,000 square feet, and adopt the Community Employment Standards as previously proposed by staff.

Discussion/Action: Director of Economic Development, Leslie S. Parks, summarized the findings of the Focus Group of Stakeholders and reviewed Staff recommendation regarding subsidies for specific retail uses. Council Member Powers recommended approval of the Staff proposal and requested that the consideration of the wages and benefits package include discussion of a strategy to attract high-wage, high-value jobs to the South Bay Area. Upon motion by Council Member Powers, seconded by Council Member Woody and unanimously carried, the recommendation that (a) the City Council amend the Performance Based Incentive Development Policy to exclude subsidies for “big box” retail uses larger than 100,000 square feet, and (b) to not adopt the Community Employment Standards as previously proposed by Staff, was approved with the consideration of standards regarding wages and benefits deferred to future Council discussion of impacts of welfare reform and prevailing wage. Vote: 11-0-0-0.

- 9e**
- Adoption of a resolution endorsing a boycott of Super K-Mart as recommended by the Human Rights Commission. (Diaz, Fernandes)**

Documents Filed: (1) Memorandum from Vice Mayor Fernandes and Council Member Diaz, dated October 7, 1997, recommending Council accept the recommendation of the Human Rights Commission and adopt said resolution. (2) Letter from the Human Rights Commission of the City of San José, Craig A. Mann, Chair, dated October 6, 1997, recommending Council adopt a resolution supporting a boycott of the Super K-Mart store in San José. (3) Memorandum from John E. Neece, Chief Executive Officer of the Santa Clara & San Benito Counties Building & Construction Trades Council, dated October 21, 1997, submitting chronological accounting of K-Mart's interaction with the Trades Council over a one-year period. (4) Statement from Super K-Mart Center read into the public record by Shawn Kahle, Vice President of Corporate Affairs of K-Mart Corporation based in Troy, MI. (5) Copies of an undated document entitled "Support the San José Super K-Mart Center" - "Associate Petition Opposing a City Boycott", bearing 21 signatures. (6) Letter from Raymond Lester, Lester Brothers Orchards and Business Properties, dated October 17, 1997, urging all the members of the Council to oppose the proposal for a living wage policy based upon prevailing wages common to the industry. (7) Approximately 3,000 "I Pledge" cards and petitions, bearing signatures of individuals endorsing the K-Mart Boycott, submitted into the public record.

Discussion/Action: Mayor Hammer stated the recommendation to boycott K-Mart has been submitted by the Human Rights Commission for Council consideration, and that representatives of the Human Rights Commission, Super K-Mart, Santa Clara County Catholic Diocese and the Council of Churches, as well as various labor unions will be allowed 10 to 15 minutes to make their presentations to Council; after which, each individual speaker will be allowed one minute to comment on the issue. The following speakers addressed Council in support of the boycott sanctions against Super K-Mart: The Reverend Vaughn Beckman, Director, Council of Churches of Santa Clara County; Ron Lind, United Food & Commercial Workers Union Local 428; Amy Dean, Executive Director and CEO, South Bay Labor Council; Father Eugene Boyle, Catholic Diocese of San José; Father Timothy Kidney, Human Concerns Commission, Catholic Diocese of San José; Claudia Shopz; Anthony Alexander, President, NAACP/UFCW; John E. Neece, Chief Executive Officer, Santa Clara & San Benito Counties Building & Construction Trades Council; Ron Johnson; Mary Bernier, Green Party of Santa Clara County; Louie Rocha, Communications Workers of America, Local 9423; Maria D. Normantas; Anabel Ibanez; Al Traggott; Phil Woodhouse; Patricia VanDurk; Deborah Powell, AFSCME, Local 101; Paul Fечи, UFCW, Local 428; Robert E. Acosta; Steven Pyka; Sandy Perry; Miguel Acosta; Rick Callender; Roger R. Rivera; Mary K. Parks; Earl Edwards; and Lisa Hoyos. The following spoke on various issues related to the boycott: Nancy Biagini, representing CWA, introduced into the record a "neutrality agreement"; Tommy Fulcher, Chairman of the Board, San José Chamber of Commerce; Ron McPherson, President, Santa Clara County Black Chamber of Commerce. The following opposed the boycott of K-Mart: Shawn Kahle, Vice President of Corporate Affairs of K-Mart Corporation, read into the public record a statement urging Council to defeat the resolution; Josie Romo; Steve Tedesco, President, San José Metropolitan Chamber of Commerce; Rito Ramirez; Janna Fox; Daniel Hernandez; Marcial Figueroa; Valerie Lozano; Nora Macias-Maldonado; Maggie Villa; Lynnetta Foy; Suni Rose; The Reverend Sal Alvarez, representing National Association of Hispanic Clergy/Vice Chair,

Community Coalition; Maria Parra Urrutia; William J. Garbett; Denice Encinas; Maricela Lizarraga; Ajanta Major; David Erickson; Terry Feinberg, Tri-County Apartment Association; and Sarah Hess. Expressing her disappointment at K-Mart's lack of initiative in addressing the issues and averting the boycott, Mayor Hammer stated primary responsibility is that of K-Mart Management to resolve the wage and benefit disparity issues through dialogue with community and Labor representatives, not of the City Council. Beginning with the final approval of the big-box retail facility and subsequent opening of the new Super K-Mart in San José, she catalogued the attempts made by the Mayor's Office to meet with K-Mart's Chief Executive Officers, Vice Presidents, or their designees at the corporate level, to discuss allegations of substandard wages and employee benefit compensation; however, the meetings were unsuccessful and all attempts to effect resolution, short of a neutrality agreement or any commitment from either the Union or K-Mart, failed. She stated labor union officials agreed, as did the two Council Members who brought forth the resolution on behalf of the Human Rights Commission, to withdraw the boycott, if in fact K-Mart executives would meet with union leadership and discuss a process which could avert a boycott and initiate meaningful dialogue toward an agreement on the wage and benefit issues. She stated Council's decision on the boycott is symbolic and will either condone or condemn the practices of K-Mart. She stated the Human Rights Commission has forwarded the strongest possible recommendation to Council, and that she fully supports the boycott until Super K-Mart provides a livable wage and benefits package for its workers. Council Member Powers expressed support of the boycott as a condemnation of K-Mart and its practices. Council Member Shirakawa, Jr., stated his position is not to condemn or promote the Unions or K-Mart but to serve his constituency as the District 7 Council Member. He stated the involvement of the City Council in the boycotting of a private enterprise is inappropriate and "disastrous", and that he would not support the recommendation, but would continue to work with the Unions and K-Mart toward an amicable agreement and reconciliation. Council Member Woody stated the City has the responsibility to assume moral leadership in the proposed action, that she supports the Union's right to boycott Super K-Mart, and that she supports the boycott; however, the City Council should adopt a resolution condemning nationally the practices of Super K-Mart. Council Member Fiscalini commented on the inappropriateness of the proposed action taken by a governmental agency against private enterprise, and stated he would not support the boycott because, in his opinion, the end result will be detrimental to the City of San José. Council Member Pandori stated the action by the City Council to support the boycott is not symbolic, but will negatively impact the employees of K-Mart, and that he would not support the recommendation of the Human Rights Commission. As Council Liaison to the Human Rights Commission and co-author of the recommendation to boycott San José Super K-Mart, Council Member Diaz endorsed the boycott and recommended Council approval. Upon motion by Vice Mayor Fernandes, seconded by Council Member Diaz and carried, Resolution No. 67706, entitled: "A Resolution of the City of San José Supporting the Boycott of Super Kmart", was adopted. Vote: 6-5-0-0. Noes: Dando, Fiscalini, Pandori, Shirakawa, Jr., Woody.

CLOSED SESSION REPORT

Disclosure of Closed Session Action of October 21, 1997 submitted by City Attorney, Joan R. Gallo:

A. Pending Litigation - Settlement Authorized:

1. Case Name: In re *PHAN*
Substance of Settlement: Approval of Settlement of Workers' Compensation Claim in the Amount of \$79,000.

Council Vote:

Ayes: Dando, Diaz, Diquisto, Fiscalini, Johnson, Powers, Woody; Hammer.

Noes: None.

Absent: Fernandes, Pandori, Shirakawa, Jr.,

Disqualified: None.

B. Authority to Initiate Litigation:

1. Authority to initiate litigation was given in one (1) matter. The name of the action and the defendants as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action is formally commenced.

Council Vote:

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

Noes: None.

Absent: None.

Disqualified: None.

ADJOURNMENT

The Council of the City of San José adjourned at 11:00 p.m. in memory of Jackie Lauer, former board president of the YWCA of Santa Clara County, trustee of the San José Museum of Art for the past eleven years, active in San José arts and humanitarian organizations and endeavors.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK