

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, OCTOBER 28, 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, Council recessed at 9:35 a.m. to a Closed Session in Room 600 to confer with Legal Counsel pursuant to Government Code Section 54956.9; under Subsection (a) to discuss existing litigation in the cases of (1) People v. MTS, Inc., City of San José v. Peery, et al.; and to confer with Labor Negotiator Pursuant to Government Code 54957.6: (1) City Negotiator: City Manager designee Lynn Boland; Employee Organizations: Association of Building and Mechanical and Electrical Inspectors.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:45 a.m. and reconvened at 1:37 p.m. in the Council Chambers.

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

Absent: Council Members: None.

### INVOCATION

**Rabbi Schifton, Temple Emmanuel, gave the invocation.**  
(District 9)

### PLEDGE OF ALLEGIANCE

**Mayor Hammer led the Pledge of Allegiance.**

### ORDERS OF THE DAY

Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, Item 6d(1) was deferred to November 4, 1997 and the Orders of the Day and Amended Agenda were approved. Vote: 11-0-0-0.

### CEREMONIAL ITEMS

**5a Presentation of a commendation to Kathleen Kellett for outstanding work as a grandparent caregiver. (Fernandes)**

Documents filed: None.

Discussion/Action: Mayor Hammer and Vice Mayor Fernandes were joined by Mary Lou

Cristina and Linda Mullings of Catholic Charities for presentation of a commendation to Kathleen Kellett for outstanding work as a grandparent caregiver. Kathleen Kellett thanked the Council for the honor, introduced her first grade class from Mulberry School and a student presented Mayor Hammer with a memento.

**5b Presentation of a commendation to Breanna Castro, District 1 student who won First Prize in the Reading Rainbow “Young Writers and Illustrators” Contest. (Johnson)**

Documents filed: None.

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

**5c Presentation to the Mayor and Council of a facsimile check from the California Retired Teachers Association, Santa Clara County Division, representing volunteer hours that the retired teachers have given to the community over the past year. (Rules Committee referral 10/22/97)**

Documents filed: October 20, 1997 letter from Evelyn Ayres, President, California Retired Teachers Association, regarding the presentation to the Mayor and Council.

Discussion/Action: Mayor Hammer accepted on behalf of the City Council a facsimile check for the volunteer hours worked by members of the California Retired Teachers Association, Santa Clara County Division, which numbered over 200,000 hours; the presentation was made by Evelyn Ayres, President of the Santa Clara County Division, Lucy Messiner, Community Services, and Marie Fowler, Treasurer.

**5d Presentation of proclamation declaring the week of October 27 as “Winter Storm Preparedness Week”. (Mayor)  
(Rules Committee referral 10/22/97)**

Documents filed: None.

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

**5e This item was heard in the evening session.**

**5f Presentation of proclamation declaring the commencement of South Bay Water Recycling. (City Manager’s Office)  
(Orders of the Day 4a)**

Documents filed: None.

Discussion/Action: On behalf of Treatment Plant Advisory Committee members Margie Fernandes, Alice Woody and Pat Dando, Mayor Hammer presented to Public Works Director Ralph Qualls a proclamation declaring the commencement of South Bay Water

Recycling. Director Qualls, also a member of TPAC, acknowledged the work of Eric Rosenblum of Environmental Services and the leadership of Director Lou Garcia.

## **CONSENT CALENDAR**

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

### **Minutes for Approval**

#### **6a(1) Joint City Council/Redevelopment Agency Meeting of September 18, 1997**

Documents filed: Minutes of September 18, 1997.

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

### **Ordinances for Final Adoption**

#### **6b(1) ORD. NO. 25445 - Amends Chapter 12.06 of Title 12 of the San José Municipal Code by amending Sections 12.06.210, 12.06.320, and 12.06.330 and adds a new Part 8 to establish a Voluntary Campaigns Spending Limitations Program.**

Documents filed: Proof of publication of title of Ordinance No. 25445 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25445 was adopted. Vote: 6-5-0-0. Noes: Dando, Johnson, Pandori, Shirakawa, Jr., Woody.

#### **6b(2) ORD. NO. 25447 - Amends 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 certain contributions from businesses; amending Section 12.06.370 to change 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.**

Documents filed: (1) Proof of publication of title of Ordinance No. 25447 submitted by the City Clerk. (2) Memorandum from Council Members Diaz and Diquisto, dated October 28, 1997, recommending Council amend the proposed campaign contribution ordinance to allow businesses to participate in local elections by keeping their right to make contributions to local candidates.

Discussion/Action: Council Member Diquisto explained the memorandum dated October

28, 1997 in which he and Council Member Diaz request the ordinance be amended to allow businesses to make contributions to local candidates, which would be in keeping with the recommendation of the Ethics Board and State Proposition 208, and moved approval of that amendment. Council Member Diaz seconded the motion, stating he was concerned about creating a double standard and sending the wrong message to the business community. Council Member Pandori asked for clarification on what is being proposed relative to the current law, Proposition 208, and the options discussed the previous week. City Attorney Gallo explained that the FPPC is stricter than the City's current law relative to the 50% ownership provision and an individual can be precluded from making a contribution under the FPPC rule who would have previously been allowed to contribute under the City's ordinance. She stated she will translate the FPPC into language similar to the City's and provide it to the Council, along with updates on FPPC interpretations of particular situations relative to Proposition 208 as they are released. Vice Mayor Fernandes stated she does not favor adding business contributions, which differ from organizations such as labor unions. Council Member Powers stated she supports being consistent with Proposition 208 provisions. Mayor Hammer stated she would support the motion. On a call for the question, the motion by Council Member Diquisto carried and the recommendations to amend the proposed ordinance to allow certain business contributions, pursuant to Proposition 208 was approved and Ordinance No. 25447, as amended, was adopted. Vote: 8-3-0-0. Noes: Dando, Fernandes, Pandori.

### **Plans and Specifications**

- 6d(1) 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)**  
[Deferred from 10/21/97 - Item 6d(2)]

Documents filed: None.

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

- 6d(2) TRACT NO. 8996 - South side of Westmont Avenue, opposite Kingston Way - Gibson Speno Silvercreek Associates (Developer) - 8 single family attached residential units. Adoption of a resolution approving the final map for Tract No. 8996. CEQA: ND. District 1. (Public Works)**  
**(Rules Committee referral 10/22/97)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 17, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67707, entitled: "A Resolution of the Council of the City of San José Approving and Accepting the Final Map of Tract No. 8996", was adopted. Vote: 11-0-0-0.

- 6d(3) TRACT NO. 9013 - South 16th, South 17th and San Fernando Streets - Classic Communities, Inc. (Developer) - 30 detached residential units. Adoption of resolutions approving the plans, final maps, and contract for Tract No. 9013. CEQA: ND. District 3. (Public Works) (Rules Committee referral 10/22/97)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 21, 1997, recommending adoption of said resolution.

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

### **Contracts/Agreements**

- 6e(1) Approval of a second continuation agreement with Economics Research Associates for consultant services for the Singleton Landfill Site Softball Complex feasibility study, increasing the compensation by \$16,931, from \$87,200 to \$104,131, and extending the term of the agreement by twelve (12) months, from January 1, 1997 to December 31, 1997. (City Manager)**

Documents filed: Memorandum from Deputy City Manager, Darrell Dearborn, dated October 8, 1997, recommending approval of said agreement with Economics Research Associates.

Discussion/Action: The second continuation agreement with Economics Research Associates, was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(2) Report on bids and approval of award of contract for the construction project entitled "San José/Santa Clara Water Pollution Control Plant, Electric Cart Storage Buildings" to the low bidder, Jim Duffy Construction, in the amount of \$263,387, and approval of a contingency in the amount of \$25,000. CEQA: Exempt. (Environmental Services)**

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated October 9, 1997, recommending award of said contract to the low bidder, Jim Duffy Construction.

Discussion/Action: The award of contract and said contingency to the low bidder, Jim Duffy Construction, was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(3) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the Santa Clara Valley Water District to accept a base subsidy of \$115 per acre-foot for recycled water delivered by the South Bay Water Recycling Program from the Santa Clara Valley Water District. CEQA: Resolution No. 64667. (Environmental Services)**

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

Garcia, dated October 9, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67708, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute a Reimbursement Agreement to Accept a Base Subsidy of \$115 Per Acre-Foot from the Santa Clara Valley Water District for Recycled Water Delivered by South Bay Water Recycling”, was adopted. Vote: 11-0-0-0.

**6e(4) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1997-98 #10, 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 9, 1997, recommending award of said open purchase order list.

Discussion/Action: The open purchase order list for FY 1997-98 #10 was approved and the Director of General Services authorized to execute the purchase orders. Vote: 11-0-0-0.

**6e(5) Approval of amendments to the 1993/94, 1994/95, and 1996/97 clean air grant agreements with the Bay Area Air Quality Management District to allow the City the option of auctioning existing gasoline powered vehicles to be replaced by grant funded clean air vehicles. (General Services)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated October 9, 1997, recommending the amendments to said agreements with the Bay Area Air Quality Management District.

Discussion/Action: The amendments to the 1993/94, 1994/95, and 1996/97 Clean Air grant agreements with the Bay Area Air Quality Management District were approved. Vote: 11-0-0-0.

**6e(6) Adoption of a resolution amending the June 24, 1997, Eligible Service Provider List for San José B.E.S.T. Cycle VII and Youth Employment Program designating ROHI Alternative Community Outreach, Inc. as the operator of the Midnight Basketball League.**

(Parks, Recreation and Neighborhood Services)

Documents filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services, Mark Linder, dated October 8, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67709, entitled: “A Resolution of the Council of the City of San José Amending the Eligible Service Provider List for San José B.E.S.T. Cycle VII and the Youth Employment Programs to Designate ROHI Alternative Community Outreach, Inc., as an Eligible Service Provider”, was adopted. Vote: 11-0-0-

0.

- 6e(7) (a) Approval of an amendment to the annual agreement with the Drug Enforcement Administration of the United States Department of Justice for the continuation of the San José Drug Enforcement Task Force, extending the term of the agreement by one (1) year, from October 1, 1997, to September 30, 1998, in the amount of \$144,484.**
- (b) Adoption of appropriation ordinance and funding sources resolution in the General Fund in the amount of \$146,581. (Police/City Manager)**

Documents filed: Memorandum from Chief of Police, Louis A. Cobarruviaz and Budget Director Larry D. Lisenbee, dated October 9, 1997, recommending approval of the amendment to said agreement with the Drug Enforcement Administration of the United States Department of Justice, and adoption of said appropriation and related revenue resolution.

Discussion/Action: Ordinance No. 25450, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25390 which Appropriates Moneys in the General Fund in the Amount of \$144,484 for Amendment and Continuation of the Annual DEA Task Force Agreement; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 67709.1, entitled, "A Resolution 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", were adopted. Vote: 11-0-0-0.

- 6e(8) (a) Approval of a first amendment to a joint-use agreement with PG&E for the City's use of PG&E property located at Sierra Meadow Drive between Sierra Monte Way and Muirfield Drive for recreational purposes, in order to include property currently leased to Mayfair Nurseries, Inc. by PG&E.**
- (b) Approval of an agreement with Mayfair Nurseries, Inc. for Mayfair's release of its interest in the PG&E property in an amount not to exceed \$12,916. CEQA: Exempt. (Public Works)**

Documents filed: None.

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

**6e(9) Adoption of a resolution:**

(a) Authorizing the City Manager to execute the first amendment to the Interim Operating Agreement with History Museums of San José (HMSJ), extending the term for an additional thirty (30) days until November 30, 1997.

(b) Authorizing the City Manager to negotiate and execute three (3) monthly extensions of the first amendment including increasing the base monthly grant by no more than 20% for additional services provided by HMSJ during the extension periods.

(City Manager's Office) (Rules Committee referral 10/22/97)

Documents filed: Memorandum from Deputy City Manager, Kay Winer, dated October 23, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67710, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Extension to the Agreement with the History Museums of San José Related to the San José Historical Museum", was adopted. Vote: 11-0-0-0.

**6e(10) (a) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with David Powers and Associates for the preparation of an Environmental Impact Report for the Urban Growth Boundary.**

(b) Adoption of an appropriation ordinance amendment in the General Fund in the amount of \$200,000.

(Planning, Building and Code Enforcement)

**(Rules Committee referral 10/22/97)**

Documents filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated October 22, 1997, recommending authorization to negotiate and execute said agreement and adoption of said appropriation ordinance.

Discussion/Action: Resolution No. 67711, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with David J. Powers & Associates, Inc. for the Preparation of an Environmental Impact Report for the Urban Growth Boundary in an Amount Not to Exceed \$200,000", and Ordinance No. 25451, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25390 which Appropriates Moneys in the General Fund in the Amount of \$200,000, for the Preparation of an Environmental Impact Report by David Powers and Associates for the Urban Growth Boundary in the San José 2020 General Plan Ordinance; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. Vote: 11-0-0-0.

Routine Legislation

**6f(1) Acceptance of the Third Quarter 1997 San José Arena Authority Ticket Distribution Program Report. (San José Arena Authority)**

[Deferred from 10/7/97 - Item 6f(7)]

Documents filed: Memorandum from Chris Morrisey, Executive Director, San José Arena Authority, dated October 9, 1997, transmitting said report.

Discussion/Action: The Third Quarter 1997 San José Arena Authority Ticket Distribution Program Report was accepted. Vote: 11-0-0-0.

**6f(2) Adoption of an appropriation ordinance amendment in the Municipal Golf Course Fund to provide additional funding in the amount of \$16,931 for services from Economic Research Associates associated with the potential softball complex**

**development on Singleton Landfill. (City Manager)**

Documents filed: Memoranda from Budget Director Larry D. Lisenbee, dated October 8 and 22, 1997, recommending approval of said appropriation ordinance and related revenue resolution amendments. Vote: 11-0-0-0.

Discussion/Action: Ordinance No. 25452, entitled: “An Ordinance of the City of San José Amending Ordinance No. 25390 which Appropriates Moneys in the Municipal Golf Course Fund in the Amount of \$16,931, for Additional Funding for the Economic Research Associates Services Associated with Potential Softball Complex Development on Singleton Landfill; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. Vote: 11-0-0-0.

**6f(3) Acceptance of the Report of Activities for the Office of Economic Development for the period January 1, 1997 to June 30, 1997.**

(Economic Development)

Documents filed: Memorandum from the Director of Economic Development, Leslie S. Parks, dated October 9, 1997, transmitting said report.

Discussion/Action: The Report of Activities for the Office of Economic Development was accepted. Vote: 11-0-0-0.

**6f(4) Adoption of an appropriation ordinance and funding sources resolution amendments in the General Fund to accept a grant in the amount \$75,000 for the Environmental Services Department’s Electric Utility Research and Renewable Energy Technology Transfer Projects. (Environmental Services)**

Documents filed: (1) Memorandum from Director of Environmental Services, Louis N. Garcia and Budget Director Larry D. Lisenbee, dated October 7, 1997, recommending adoption of said appropriation ordinance and related revenue resolution amendments. (2) Memorandum from Budget Director Larry D. Lisenbee dated October 22, 1997, revising Item 1 of the Staff recommendation.

Discussion/Action: Ordinance No. 25453, entitled: “An Ordinance of the City of San José Amending Ordinance No. 25390 which Appropriates Moneys in the General Fund to Accept Grant Funds in the Amount of \$75,000 for Electric Utility Research and Renewable Energy Technology Transfer Project in the Environmental Services Department; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 67712, entitled, “A Resolution 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 , were adopted. Vote: 11-0-0-0.

**6f(5) Adoption of a resolution summarily vacating portions of a storm drainage and**

**sanitary sewer easement within private property between Four Oaks Road and State Highway 680. CEQA: ND. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 9, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67713, entitled: “Resolution of the Council of the City of San José Summarily Vacating a Portion of the Storm and Sanitary Sewer Easement Lying Within Private Property”, was adopted. Vote: 11-0-0-0.

- 6f(6) Adoption of a resolution authorizing the Director of Public Works to extend for a period of eighteen (18) months retroactive to August 31, 1997, the Revocable Encroachment Permit to the underlying fee owners, Norsca Associates, L.P., and Heberlein Trust, L.L.C., for the exclusive use of the public right-of-way on North Eighth Street between vacated Warren Way and vacated Mission Street, pending the owners’ transfer of the fee title to the right-of-way to the City, the City’s subsequent vacation of the right-of-way as public street, and lease-back of the affected property to Norsca. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 9, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67714, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Extend the Revocable Encroachment Permit to Norsca, L.P. and Heberlein Trust, L.L.C., for the Exclusive Use of Public Right-of-Way Pending Acquisition, Vacation and Lease Back”, was adopted. Vote: 11-0-0-0.

- 6f(7) Adoption of a resolution summarily vacating a portion of Saint John Street between North Twenty-seventh and North Twenty-eighth Streets. CEQA: ND. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 9, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67715, entitled: “Resolution of the Council of the City of San José Summarily Vacating a Portion of St. John Street”, was adopted. Vote: 11-0-0-0.

- 6f(8) 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)**

[Deferred from 10/21/97 - Item 6f(5)]

Documents filed: None.

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

- 6f(9) 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) and benefits effective June 28, 1998 for Management Employees in Units 4, 15, 21, 99, and Unrepresentative Employees in Units 16 and 19, and authorization to the Council Appointees to grant up to six (6) months of severance pay to unclassified employees. (City Manager) [Deferred from 10/21/97 - Item 6f(10)]**

Documents filed: (1) Memorandum from City Manager Regina V.K. Williams, dated October 23, 1997, recommending amending Salary Resolution No. 51872 to modify wages and benefits for management employee groups including Unit 4, (registered Engineers and Architects), Unit 15 (unregistered Engineers and Architects), Unit 21 (City Association of Management Personnel) and Unit 99 (Executive Management), and non-management employee groups Units 16 and 19 (unrepresentative unclassified employees) as contained therein. (2) Supplemental memorandum from City Attorney Joan R. Gallo, dated October 28, 1997, clarifying that the resolution will provide the discretion for other Council Appointees to similarly provide severance pay to unclassified employees in their Offices.

Discussion/Action: Council Member Dando stated she does not support the issue of domestic partner benefits, or the authorization of the City Manager to provide six months severance pay. She stated six months severance is excessive, and anything beyond a 2-3 month severance should come to the City Council for approval. Council Member Pandori stated he had similar concerns and in response to his inquiry about precedence and applicability of the provision, was informed the provision would be available to Council Appointees and would apply to department head level employees and is needed in order to be competitive in attracting quality employees. Council Member Pandori withdrew his objections and requested the Administration provide Council with an annual summary of funds used under this provision. As part of the Consent Calendar action, Resolution No. 67716, entitled: "A Resolution of the Council of the City of San José Approving a 4.0% Wage Increase Effective June 29, 1997 and a 3.0% Increase Effective June 28, 1998 for Management Units 4 (Registered Engineers and Architects), 15 (Unregistered Engineers and Architects), and 99 (Executive Management, Excluding Senior Executive Management), and Unrepresentative, Unclassified Employees in Unit 16 and Unit 19; Approving Benefits for Employees in Designated Units and Authorizing Appointing Authorities with the Discretion to Provide Severance Pay, Not to Exceed 6 Months Salary to an Unclassified Employee", was adopted, and the Administration directed to provide annual summaries of funds expended under the provisions. Vote: 10-1-0-0. Noes: Dando.

## COMMISSION, COMMITTEE, AND STANDING REPORTS

### 7b Report of the Rules Committee - October 15, 1997

Documents filed: Rules Committee report of October 15, 1997.

- (1) Review of October 28 Council Agenda

The Committee approved the October 28, 1997 Council agenda with two additions and one change.

- (2) Add New Items to October 21 Amended Council Agenda

The Committee recommended four additions and two changes to the October 21, 1997 Council Agenda.

- (3) The Public Record. Attachment: (1) Memorandum from City Clerk Patricia L. O'Hearn, dated October 9, 1997, listing the items transmitted to the Administration and those items filed for the Public Record for the period October 1-7, 1997. (2) Memorandum from Council Liaison Norberto Dueñas, dated October 15, 1997, summarizing actions taken on the items transmitted to the Administration and those items filed for the Public Record for the period October 1-7, 1997.

The Committee noted and filed the public record.

- (4) Report back on School Overcrowding. Attachment: (1) Memorandum from City Attorney Gallo, dated September 26, 1997, recommending that the City Council not establish a Work Group on school overcrowding. (2) Supplemental Memorandum from City Manager Regina V.K. Williams, dated October 28, 1997, summarizing on-going efforts between City staff and various school districts.

The Committee approved City Attorney Gallo's memorandum dated September 26, 1997, which concluded that the issue of school overcrowding be brought directly to the City Council with a recommendation not to create a working group to assess the impact of infill development on school attendance.

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

There were none.

- (6) City Council and Rules Committee meeting schedules

The Committee rescheduled the Board and Commission Recognition Night on

October 28, 1997 to 5:30-6:30 p.m. rather than 7-9 p.m. as previously scheduled.

(7) Oral communications

None presented.

(8) Adjournment

The Committee adjourned at 2:45 p.m.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Council Member Fiscalini, and unanimously carried, the Rules Committee report and actions of October 15, 1997 were accepted. Vote: 11-0-0-0.

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

(Deferred from 10/21/97 - Item 7c)

Documents filed: Finance Committee report of October 8, 1997.

- (1) Monthly Investment Report for August 1997. Attachment: Executive Summary from Director of Finance, John V. Guthrie, dated September 24, 1997, transmitting the August 1997 Investment Report.

The Committee accepted the report.

- (2) Report on Business Tax Current Program to Educate Businesses of their Responsibilities. Attachment: Memorandum from Director of Finance, John V. Guthrie, dated September 23, 1997, transmitting said report.

The Committee accepted the report.

- (3) Monthly Financial Report for August 1997. Attachment: August 1997 Financial Report.

The Committee accepted the report.

- (4) Report on Technology-Delivered Services (New Realities Recommendation #6.03). Attachment: Memorandum from City Manager Regina V.K. Williams, dated October 2, 1997, recommending Council accept the report and direct the Administration to proceed with its workplan to (1) Develop a pre-authorized payment option for customers after the Utility Billing Services (UBS) has selected a new vendor to support its billing function and after the Municipal Water System's new billing software has been installed; (2) Include in future systems development the capability to offer a pre-authorized payment option to customers of other City programs with recurring payments from customers; (3) Maximize use of Automated Clearing House (ACH) transfers for payments and

disbursements as appropriate; (4) Continue to seek opportunities to implement other electronic commerce technologies; and (5) Include a provision in agreements to require that large dollar payments due to the City be submitted by electronic transfer.

The Committee accepted the report.

- (5) Presentation of City's Comprehensive Annual Financial Report. Attachment: Memorandum from Finance Director John Guthrie, dated September 30, 1997, transmitting the report entitled, *81st Comprehensive Annual Financial Report, City of San José Fiscal Year Ended June 30, 1997, prepared by Finance Department, Accounting Division.*

The Committee accepted the report.

- (6) Public Works Engineering and Inspection Costs Audit. Attachment: City Auditor's Executive Summary of *An Audit of the Department of Public Works Engineering and Inspections Costs*, dated October, 1997.

The Committee accepted the report.

Discussion/Action: See Item 9b for Council action taken

- (7) Quarterly Follow-Up Report ending July 31, 1997. Attachment: Memorandum from City Auditor Gerald A. Silva, dated October 2, 1997, transmitting the Follow-Up report on all outstanding recommendations for the three months ended July 31, 1997.

The Committee accepted the report.

- (8) Monthly Report for August 1997. Attachment: Memorandum from City Auditor Gerald A. Silva, dated September 25, 1997, transmitting the report of the Office of the City Auditor's activities for August, 1997.

The Committee noted and filed the report.

- (9) Adjournment

The meeting was adjourned at 11:20 a.m.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Fiscalini and unanimously carried, the Finance Committee report and actions of October 8, 1997, were accepted, with Item 7c(6) heard under Item 9b. Vote: 11-0-0-0.

## LAND USE AND DEVELOPMENT

- 8a PUBLIC HEARING and adoption of a resolution authorizing the reorganization of territory designated as Canoas No. 28, which involves the annexation to the City of San José of 127.15 acres of land, located on the north side of Hillsdale Avenue, approximately 200 feet easterly of Old Almaden Road, and the detachment of the same from the Central Fire District. CEQA: Exempt. Director of Planning recommends approval. No Planning Commission action required. (Planning, Building and Code Enforcement)**

Documents filed: (1) Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated October 22, 1997, recommending adoption of said resolution. (2) Proof of publication of notice of hearing of proposed reorganization dated September 2, 1997, submitted by the City Clerk.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Upon motion by Council Member Fiscalini, seconded by Council Member Diaz and unanimously carried, Resolution No. 67717, entitled: "Resolution of the Council of the City of San Jose Ordering the Reorganization of Certain Uninhabited Territory Designated as Canoas No. 28 Subject to Liability for General Indebtedness of the City After Finding Protests Insufficient to Terminate Such Proceedings", was adopted. Vote: 10-0-1-0. Absent: Hammer.

- 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.**

District 2 & 8

Documents filed: Proof of publication of notice of hearing dated September 12, 1997, and Proof of Publication of Revised Notice dated September 22, 1997, submitted by the City Clerk.

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

- 8c PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the south side of Channing Avenue, 230 feet westerly of Seaboard Avenue, from A(PD) Planned Development to A(PD) Planned Development, to allow a drive through restaurant on a 1.03 gross acre site (Al Sarti, Owner; Len Rotide, Developer). CEQA: ND.**

**PDC 97-09-062 - District 4**

Documents filed: None.

Discussion/Action: This item was continued to December 16, 1997, to be heard in the evening session.

- 8d PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the west side of Lucretia Avenue, opposite Taji Court, from County to A(PD) Planned Development, to allow 46 single-family detached residences on 12.35 gross acres (James & Meredith Brown, 1995 Trust, Owner; Gregory Brown, Developer). CEQA: ND.  
PDC 96-12-074 - District 7**

Documents filed: (1) Memorandum from James R. Derryberry, Secretary of the Planning Commission, dated October 23, 1997, recommending approval of the proposed rezoning of the subject property. (2) Proof of publication of notice of hearing, dated October 8, 1997, submitted by the City Clerk.

Discussion/Action: Upon motion by Council Member Powers, seconded by Council Member Johnson and unanimously carried, the recommendation of the Planning Commission was approved and Ordinance No. 25454, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Lucretia Avenue Opposite Taji Court", was passed for publication. Vote: 10-0-1-0. Absent: Hammer.

## GENERAL GOVERNMENT

- 9a Approval of a third amendment to the agreement with Montgomery Watson for program management services in support of the South Bay Water Recycling program, increasing the compensation by \$2,535,655, from \$10,010,270 to \$12,545,925, and extending the term of the agreement to December 15, 1999. (Environmental Services)**

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated October 9, 1997, recommending adoption of said resolution.

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

- 9b Public Works Engineering and Inspection Costs Audit.  
[Finance/Agency Finance Committee referral 10/8/97 - 7c(6)]  
(Deferred from 10/21/97 - Item 9f)**

Documents filed: (1) See Committee Item 7c(6) for Public Works Engineering and Inspection Costs Audit report. (2) Hard copies of overhead transparencies used in the presentation by Public Works Director Ralph Qualls.

Discussion/Action: Finance Committee Chair Woody introduced City Auditor Gerald F. Silva to report on the audit of Public Works Engineering and Inspection Costs, followed

by a presentation by Public Works Director Qualls. City Auditor Silva stated the audit made three findings: (1) The City should modify how it budgets and accounts for Department of Public Works costs charged to capital projects. He stated the audit recommends a concept called "Budget off the Top", which takes the Public Works labor costs and overhead burdens traditionally incorporated into Public Works costs and brings them above the line as personal and non-personal services so Council can budget for those costs as they do for other departments, leaving only those costs for Public Works projects that are associated with construction, land and contingencies in contracted services. (2) The Department of Public Works needs to improve procedures for controlling Engineering and Inspection costs, i.e., bidding, designing, constructing, inspecting, and accepting all capital projects. (3) The City Council does not receive sufficient information regarding capital project costs. He stated there are ten recommendations in the audit, including the recommendation that the Department develop a cost reporting system to integrate project schedules and costs for the purposes of comparing project plans and budgets versus actual performance. He stated the Administration concurred with all ten recommendations and the Finance Committee accepted all. Public Works Director Ralph Qualls presented the staff report and with the use of overhead transparencies, explained the relationship of various components of Engineering and Inspection Costs, involving design and development of plans and specifications, pre-engineering and construction. He reported on developments relating directly to Audit findings and noted a computerized timecard used by all Public works employees to account for labor costs in all capital projects and a database platform was developed for the program and responds directly to the Auditor's recommendations. He stated this system is in a pilot phase and will be fully operational and available for reporting information to the Council by July, 1998. He thanked City Auditor Silva and his staff and stated the Department has made a complete response with a very productive result. Council Member Woody moved approval of the Auditor's Report on Public Works Engineering and Inspection Costs and the recommendations contained therein. Council Member Johnson seconded the motion. Council Member Pandori asked how prevalent is the practice of allocating labor costs to General Fund and how the recommendation would affect administrative overhead costs charged to small projects. City Auditor Silva stated the practice of allocating labor costs to the General Fund is fairly common and several Bay Area cities are reviewing the "budget-off-the-top" method, i.e., the amount shown for the capital project would be the actual cost of constructing the project, exclusive of departmental labor costs and overhead charges, which will be appropriated as personal and non-personal charges and fringe benefits. This approach, he noted, is not a fund switch and does not eliminate the ability of the capital fund to pay for those costs, but will provide Council the ability to consider the Department as a whole, including total number of personnel costs involved, either by fund source, capital funds, or General funds. He explained how the different approach will affect small projects, where for every \$100 labor charges there are \$124 of other charges imposed on a project, which can result in the budget's being exceeded. In response to Council Member Pandori, he stated the relationship between personal services and capital projects would become evident as a percentage of the capital budget. Council Member Pandori stated he is concerned less with the accounting and convenience to the department than with amount of the 124% labor burden. Council

Member Johnson stated the actual time allocation will be advantageous to Council Members developing projects in their district by enabling discussions about a new concept or idea, which were previously difficult as there was no project to which to charge the time, and will facilitate substantive privatization and in-house contracting and outsourcing discussions. On a call for the question, the motion by Council Member Woody carried unanimously, and the report and recommendations on the Public Works Engineering and Inspection Costs Audit were accepted. Vote: 11-0-0-0.

**9c Approval of recommendations implementing Charter Amendment (Measure F) relating to salaries, benefits, and retirement for Mayor and Council Assistants. (City Manager)**  
**[Deferred from 9/30/97 - Item 6f(10) and 10/21/97 - Item 6f(2)]**

Documents filed: Memorandum from City Manager Regina V.K. Williams, dated October 27, 1997, recommending Council: (1) Discontinue the City-paid salary continuation insurance, but place Mayor and Council Assistants at a pay step in their new salary range to compensate for the loss of the City paying this benefit, consistent with the same adjustment that was made for all other City employees in 1991; (2) Consistent with their appointing authority, the Mayor and each Council Member would determine the salary for their individual employees within the compensation structure established for Mayor and Council Assistants; (3) Consistent with their appointing authority, the Mayor and each Council Member would approve all vacation and executive leave requests for Council Assistants, consistent with other Unit 99 employees; (4) Implement the Charter change effective November 1, 1997, and (5) In a separate action on June 24, 1997, Council authorized the Administration to conduct a city-wide review to determine the feasibility, cost, and impact of a provision in the Federated, Police & Fire and the PERS elected officials plans that would provide for the purchase of service credit prior to the effective date of inclusion in the appropriate retirement plan. Include in the citywide review the feasibility of Mayor and Council Assistants' purchase of prior service credit in the Federated System.

Discussion/Action: Council Member Johnson referenced statements on page 3 of the Staff memorandum that if a buyback is done, the City and/or employee would need to contribute funds, and stated that in her opinion only the employee should be involved in a buyback and not the City. Mayor Hammer thanked Council Member Fiscalini on behalf of all Council and Mayoral Assistants for bringing the issue forward. Council Member Fiscalini requested that the costs attributable to the Assistants be broken out in the actuary study. Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, the recommendations in memorandum from City Manager Regina V.K. Williams, dated October 27, 1997, were approved. Vote: 11-0-0-0.

**9d Approval of direction to staff to prepare a preliminary assessment of the opportunity for the development of an indoor court sports facility, which would require City-owned property. (City Manager's Office)**  
**(Rules Committee referral 10/22/97)**

Documents filed: Memorandum from Senior Deputy City Manager, Darrell Dearborn, dated October 22, 1997, recommending the City Council authorize staff to prepare a preliminary assessment of the opportunities for the development of an indoor court sports facility, which would require City-owned land, and the investment of construction and operating capital by a private developer/operator. The results of this assessment would be presented to the City Council at its meeting of December 16, 1997 and will include: (1) Identification of potential City-owned sites suitable for this facility and , if such sites could be made available; (2) A recommended process through which the City would: (a) Retain a consultant to prepare a market analysis and financial feasibility study to determine if the facility is likely to be commercially successful, and (b) Solicit proposals from private developer/operators to construct and operate this facility on terms favorable to the City.

Discussion/Action: Senior Deputy City Manager Darrell Dearborn stated Staff will report back to the Council in December, 1997 with available sites and a recommendation to retain a consultant and proceed with a market analysis. Council Member Johnson requested Staff explore something similar to the Community Days which the City has at the Arena, stating that when considering a for-profit partner, a public use or repayment for the public land over time is appropriate. Mayor Hammer suggested reviewing with San José State University, Evergreen College, and San José City College the possibility of a joint project. Council Member Shirakawa, Jr., stated he thought the Singleton Landfill site is not a viable site and suggested that City-owned property on Tully Road next to the Police Stables might be a viable alternate if the constraints on using the Municipal Stadium parking lot adjacent to the Ice Centre cannot be resolved. Upon motion by Council Member Fiscalini, seconded by Council Member Diaz, and unanimously carried, the Staff recommendation dated October 22, 1997 was approved and Staff directed to review issues raised by the Council. 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)**
  - (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)  
(Deferred from 10/21/97 - Item 10a)**

Documents filed: (1) See Item 10a in City Council minutes of October 21, 1997 for the Staff report. (2) Supplemental memorandum by Planning Director James R. Derryberry, Public Works Director Ralph A. Qualls, Jr., and Parks, Recreation and Neighborhood Services Director Mark Linder, dated October 27, 1997, recommending that projects having or obtaining tentative map approval or planning permit approvals within 60 days following the adoption of the revised PDO/PIFO fee schedule be eligible to pay the

current fees for one year following adoption of the revised fee schedule; and projects obtaining tentative map approval or planning permit approvals during 61st to 90th day following the adoption of the revised PPDO/PIFO fee schedule be eligible to pay according to the phase-in fee schedule for one year following adoption of the revised fee schedule.

Discussion/Action: Public Works Director Ralph A. Qualls stated the Supplemental Staff report addresses questions asked the previous week by the Council, provides information about impacts of the phased fee implementation and addresses the sunset provision whereby the proposed fee would remain in place until Council adopts a new fee resolution or amends the PDO/PIFO ordinances subsequent to policy discussions taking place at the Committee level over the next several months. He stated the resolution provides for adoption of the recommended fee, amended to include a step down of thirty days following the 60 day effective period wherein developers receiving approvals and entitlements during that time would have a year to file their final map or obtain permits. Mark Lazzarini, Executive Director of the Homebuilder's Association, commented on the sunset provision and the accommodation of projects in the pipeline, stated that one year was too short a time period for large or phased projects to obtain the necessary permits, and suggested the timelines for the tentative map approval and the planned development permit process be used rather than an additional timeline. Director of Public Works, Ralph A. Qualls, explained the problems previously experienced with an open-ended fee and urged Council to approve the current recommendation and continue the pipeline issue to the policy discussions for report back to the Council. Director of Planning Derryberry stated tentative maps may be continued or remain viable for up to ten years under recent State legislation and PD permits are valid for two years and can be extended an additional year. Council Member Fiscalini expressed concerns that increasing fees could have an inhibiting effect on the cost of homes and stated another approach to obtaining park development is needed. Director Qualls responded to questions by Council Member Pandori regarding fee collection processes, stated Staff is recommending a window whereby developers can pay the fees at the time their entitlements are approved without penalty within a one-year period, allowing those within this 90-day time period to pay those fees that are current within the 60 days, or the phased-up portion in the next 30 days. City Attorney Gallo advised that with approval of the recommendation today, developers will be assured of a one-year extension and that period of time could be extended during the policy discussions, should Council wish to do so. Mayor Hammer stated the City is falling farther behind in providing open space and parks for families nearby homes, both old and new, and failing to approve this recommendation will be taking another step back; she encouraged Council to approve the proposed fee, pending the Committee discussions regarding a permanent fee and other related policies issues. Upon motion by Council Member Johnson, seconded by Council Member Woody, and unanimously carried, the motion carried, the report and recommendation were approved, and Resolution No. 67718, entitled: "A Resolution of the Council of the City of San José Increasing the Schedule of In-Lieu Fees Charged Pursuant to Chapters 14.25 and 19.38 of the San José Municipal Code", was adopted. Vote: 8-3-0-0. Noes: Diaz, Diquisto, Fiscalini.

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

The Council of City of San José convened the Redevelopment Agency Board at 3:37 p.m. to consider Items 11a and 11b in a joint session.

Items 11a and 11b were considered together.

- 11a Adoption of resolutions amending City and Redevelopment Agency policies regarding the 15% Redevelopment Inclusionary Housing Requirement for low and/or moderate income housing in residential developments within Redevelopment Project Areas to allow the City to accept in-lieu fees from developers of housing projects containing 10 or fewer units and later, to identify Alternative Designated Units for such low and/or moderate income housing. (City Manager's Office/Redevelopment Agency)  
(Rules Committee referral 10/22/97)**

Documents filed: Memorandum from City Manager Regina V.K. Williams and Redevelopment Agency Executive Director Frank Taylor, dated October 24, 1997, recommending adoption of said resolutions.

**11b Adoption of resolutions:**

- (1) Making a determination that the private developer of the 4165 Renaissance Drive residential development located in the Rincon de los Esteros Redevelopment Project Area would incur an unreasonable economic hardship in meeting the Redevelopment Inclusionary Housing Requirement as part of the development and that there are no feasible alternatives.**
- (2) Accepting the obligation to provide two (2) Alternative Designated Units in another residential development in the Rincon de los Esteros Redevelopment Project Area or four (4) Alternative Designated Units outside the Project Area in the future.**
- (3) Approving a modification to the affordability restriction on the 4165 Renaissance Drive property to provide payment by the developer to the City of an in-lieu fee of \$60,000 to relieve the developer of its obligation to provide two (2) affordable units within that project.**
- (4) Authorizing the Director of Housing and the Director of Planning, Building and Code Enforcement to negotiate and execute, on behalf of the City and the Agency, all necessary documents to effectuate this resolution.  
(Housing)  
(Rules Committee referral 10/22/97)**

Documents filed: Memorandum from Director of Housing, Alex Sanchez, dated October 24, 1997, recommending adoption of said resolutions.

Discussion/Action: Council Member Johnson expressed concerns about losing track of the cumulative number of in-lieu units and urged the tracking of these units to insure the funds are used for additional units and not become an extra source of money for projects

that are already funded in other ways, and to insure against an incremental loss of units over time. William Garbett spoke in opposition to allowing an in-lieu payment. Cathy Brandhorst spoke about the need for housing. Upon motion by Council Member Fiscalini, seconded by Council Member Johnson, and unanimously carried, Resolution No. 67719, entitled: "A Resolution of the Council of the City of San José Amending the Inclusionary Housing Policy"; Resolution No. 67720, entitled: "A Resolution of the Council of the City of San José (1) That Gibson Speno Company Would Incur an Unreasonable Economic Hardship in Meeting the Inclusionary Requirements and There is no Feasible Alternative Method of Providing for the Affordable Units; (2) The City Accepts the Obligation to Provide the Alternative Designated Units in the Future; (3) Approving a Modification to the Affordability Restrictions to Provide for an In Lieu Payment and (4) Authorizing the Director of Housing and the Director of Planning to Negotiate and Execute All Necessary Documents", and Redevelopment Agency Resolution Nos. 4328-4329, were adopted. Vote: 11-0-0-0.

The Redevelopment Agency Board portion of the meeting was adjourned at 3:42 p.m.

## **ORAL COMMUNICATIONS**

Cathy Brandhorst addressed the Council regarding societal issues.

## **RECESS/RECONVENE**

Following Oral Communications, Council recessed at 3:45 p.m. and reconvened at 7:08 p.m.

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

Absent: Council Members: None.

- 5e Presentation of a commendation to Bini's restaurant for 65 years of service to the community. (Pandori)**  
**(Rules Committee referral 10/22/97)**

Documents filed: None.

Discussion/Action: Council Member Pandori presented a commendation to Dale and Vicki Yoshihara and Dale's mother, Amy Yoshihara, proprietors of Bini's since the late 1970s, to honor the 65 years of continuous operation of the establishment.

## **PUBLIC HEARINGS**

Items 15a and 15b were considered together.

- 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 10/21/97 - Item 15a)**

- 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 Theater 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 10/21/97 - Item 15b)**

Documents filed: (1) Memorandum from James R. Derryberry, Secretary of the Planning Commission, dated July 18, 1997, recommending the City Council adopt an ordinance approving the subject rezoning with the following conditions: (a) The proposed project should retain and rehabilitate the Jose Theater in its entirety, and to the extent possible integrate it with the rest of the project, (b) The proposed project should retain and rehabilitate the Hong Kong Market building, and to the extent possible integrate it with the rest of the project, (c) The proposed San Fernando Street and Third Street facades should be redesigned to ensure that the building's scale, massing, and architecture is consistent with the character, rhythm and architectural context of the Downtown Historic Commercial District (4-1-1-1). (2) Proof of Publication of Notice of Public Hearing to consider a change in zoning for PDC 96-12-082, dated May 21, 1997, submitted by the City Clerk. (3) Proof of Publication of Notice of Public Hearing to consider the Final Environmental Impact Report (FEIR) for the project identified as PDC 96-12-082 and HP 96-12-014, dated July 17, 1997, submitted by the City Clerk. (4) Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated July 18, 1997, recommending the City Council uphold the certification by the Planning Commission of the Supplemental Environmental Impact Report (SEIR) for the *New Century Block Project*, finding it adequate and complete under the California Environmental Quality Act (CEQA). (5) Memorandum from Redevelopment Agency Executive Director Frank Taylor, dated August 26, 1997, stating the Urban Design Review Board, at its August 12, 1997, meeting, approved the design for the Century Center Housing Project. (6) Memorandum from James R. Derryberry, Secretary of the Planning Commission, dated October 21, 1997, recommending the City Council: (a) Defer action on the proposed project until the Commission completes its review and recommendation at its November 5, 1997 meeting after receiving a response from the State Historic Preservation Officer regarding the effect of the revised plan on the status of the Jose Theater as a Contributing Structure to the Downtown Commercial Historic District, (b) Require at the Planned Development Permit stage the redesign of the facades facing N. Third and E. San Fernando Streets to have a "multiple-building" appearance

consistent with the scale, massing, and architectural character of the Downtown Commercial Historic District, (c) Direct the Redevelopment Agency to provide information regarding estimated costs for the revised plan including: (i) rehabilitation of the facade, lobby and second floor interior, (ii) construction of the underground parking and the new gallery/museum, and (iii) ongoing operation of the new use within the combined building. (7) Supplemental memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated October 24, 1997, recommending the City Council modify the General Development Plan to incorporate the following revisions: (a) Rehabilitation of the Jose Theater, lobby and second floor and construction of a new structure on the footprint of the theater auditorium; uses allowed in the new structure would be a multi-purpose space for gallery, museum, and performance uses with one level of underground parking and a roof garden to serve the adjacent residential units; and (b) Redesign the architecture of the facades on Third and San Fernando Streets to be similar to the new construction proposed on Second Street, to have a “multiple building” appearance consistent with the scale, massing and architectural character of the Downtown Commercial Historic District. (8) Supplemental memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated October 27, 1997, commenting on the response from the State Office of Historic Preservation relative to the proposed plan. (9) Memorandum from Council Member Fiscalini, dated October 28, 1997, recommending that rezoning for the reuse and partial restoration of the Jose Theater be conditioned upon the recommendations contained therein. (10) Faxed correspondence from Jim Fox, Saratoga Capital, Inc., dated September 2, 1997, providing information in support of the proposed development plan. (10) Documents filed by speakers who addressed the City Council on this subject at the public hearing on September 16, 1997.

Discussion/Action: Mayor Hammer stated the Director of Planning will present an update, following which the Public Hearing, which was continued from October 21, 1997, will resume. Director of Planning, Building and Code Enforcement, James R. Derryberry, stated that the previous week Council had directed Staff to find a solution to the project relative to concerns generated about the issue of historic preservation of the Jose Theater, while providing a much needed housing and mixed use project for the Downtown Core. He commented briefly on three supplemental memorandums, from the Historic Landmarks Commission, the State Office of Historic Preservation (SHPO), and the Supplemental Staff report on the Planned Development Zoning. He stated the Historic Landmarks Commission requested a response be solicited from the SHPO on the revised plan relative to the status of the Jose Theater as a contributing structure to the Downtown Commercial District, recommended Council require at the Planned Development Permit stage the redesign of the facade on 3rd and East San Fernando Streets to create a multi-building appearance consistent with the scale, massing and architectural character of the Historic Commercial District, and direct the Redevelopment Agency to provide cost information for the revised plan, including rehabilitation of the facade, lobby, second floor interior, construction of the underground parking and new gallery/museum building and on-going operation. He stated Staff submitted the request to the State Office of Historic Preservation and received a strongly worded response indicating that retention of the facade and lobby alone would not maintain the integrity of the Jose Theater building

and the changed structure would not be able to retain its status as a contributing structure to the National Register's Downtown Historic District. He noted that the letter does include a qualification statement: "If this trend of demolition continues it would be incumbent upon the SHPO to submit the District to the National Register for removal", and stated his presumption that given recent experiences, the current trend of demolition will not continue. He stated it is Staff's opinion that to make the kind of modifications necessary to preserve the entire theater intact would require Council to ask the Redevelopment Agency and developer to go back to the drawing board and start over, an option which Council did not accept at the previous meeting. Instead, Staff was asked to develop a revised plan, which is being this date recommended. He commented on the supplemental report on the Planned Development zoning in which Staff recommends modifications to the General Development Plan: first, rehabilitation of the facade, lobby and second floor of the theater and construction of a new building on the footprint of the auditorium, and specifying in the zoning that the new structure would house a multi-purpose space for a gallery, museum, and other retail uses, including some performance activities, that underneath the building the allowed use would be parking and above the building would be a roof garden to serve adjacent residential units; secondly, the report recommends the General Development Plan be modified to redesign the architecture of the facade on 3rd and San Fernando Streets--which both the Planning and Historic Landmarks Commissions previously recommended--so that construction is similar to what is being constructed on 2nd Street next to the Jose Theater and has the appropriate historic character, scale and the multi-building appearance important for any new construction in a historic district. He stated Staff recommends Council consider the revised plan with the partial rehabilitation of the Jose Theater and direct the developer to modify the conceptual architecture so that in the Planned Development process the facades of the new structures on 3rd and San Fernando Streets are modified to reflect architectural elements of the historic character that are important for this district in the Downtown Corridor. David Gaze, Redevelopment Agency Program Director, stated Agency and Planning Staff have, at Council's direction, reexamined the development plan presented in September and come up with an alternative proposal for the theater part of the development which saves more of the Jose Theater building while maintaining the marketing and economic ability of the housing and retail components of the project. He stated the revised plan would save the facade, the entire ground floor lobby and entire second floor of offices, resulting in the loss of eight apartment units; would replace the theater and stage with a gallery, museum and retail space of approximately 52,000 square feet, 16 feet high, providing a cultural use for the community, with a roof garden above to enhance the open space and visual environment for the residents, resulting in the loss of approximately 33,000 square feet of leasable retail area and eleven parking spaces under the gallery/museum/retail space. He stated the previous plan called for the land under the entire development to be ground leased to, and eventually owned by the developer, whereas the revised plan calls for the Redevelopment Agency to purchase and maintain ownership of the Jose Theater property, saving as many of the fixtures and ornamentation as possible for reuse in the restored areas. He introduced the architect, Bruce Ross, Berger Detmer Architects, Inc., to detail the revised plan, to be followed by the principal architect for the Redevelopment Agency, Jeff Oberdorfer, to address specific building and historic issues, followed by the developer, Jim Fox. Architect Bruce Ross stated that

through the model and drawing, people who have observed the plan now understand his design approach on Second Street and its appropriateness, specifically duplicating the Zanotto building on the other side of the theater to infill the rich fabric on Second Street. He stated the new building will form the edge of the historic district and he does not subscribe to a design philosophy of creating fake pseudo-historic buildings in historic districts and in terms of maintaining compatibility with the historic district, his approach was to look at the scale, massing and size of the buildings in that area. He described the complex proposed on Third Street as consisting of three separate structures, each a different color, the two anchors a sienna or rust color to echo the brick of that historic district and the middle section yellow to reflect the yellow and gray color scheme of the new project which will be across the street. He stated his intent was to build a simple, elegant building as a background to the historic buildings, not to compete with them. In response to suggestions from the Urban Design Review Board, he stated he will continue to look at the appropriate level of richness for the building and consideration will be given to adding balconies and more detail while keeping to the intent of the elegant style of the building. Jeff Oberdorfer, Principal Architect for the Redevelopment Agency, stated a thorough survey was done of existing conditions at the theater and a number of items, such as deco water fountains, pressed tin ceilings under the balconies, wood ceiling frieze elements in the theater area and light fixtures throughout the building, dating from the 1940s, will be saved and reused in rehabilitation of the lobby and second floor, in addition to other elements discovered during the process. Regarding the Third Street facade, he stated Staff has proposed new construction on Third Street be similar to construction on Second Street. He stated he and Bruce Ross differ with that proposal and think the condition on Third Street, an arterial street, is very different from the scale and massing of the buildings on Second Street, and Third Street may have more relationship to Santa Clara Street than to Second Street. He noted the new housing project on Third Street will be five stories high, the same as the Forest City project across the Street and the Paseo Plaza Phase III now under construction, all three having radius corners on San Fernando Street. He disagreed with the proposition that a new building should reflect architecturally or advertise the Historic District and stated the Urban Design Review Board, which includes recognized architects, unanimously support the Third Street facade, and the entire project, and said it is one of the more striking projects in the entire downtown. Council Member Powers asked, for clarification purposes, if it is correct that the Redevelopment Agency is not in agreement with the second Staff recommendation having to do with redesign of Third Street and Mr. Oberdorfer responded in the affirmative. Jim Fox, Saratoga Capital, stated the revised project, while not the housing project originally intended, is a compromise wholeheartedly supported by Saratoga Capital. Regarding the Third Street elevation, he stated the historical section in the SEIR speaks of Third Street as having little historical value in that it is a transitional street to the surrounding neighborhood. He stated he sees Bruce Ross's architectural work as timeless and not a "period" statement. He stated the concerns expressed by the SHPO about a trend of demolition of historic structures in the Historic District are unjustified. Testimony was received from the Historic Landmarks Commission, beginning with Chair Jim Zetterquist, who cited the Costa Hall, the Montgomery Hotel, the Hong Kong Market, the Jose Theater, the Receiving Department for Allen's Furniture, as evidence that a demolition trend does exist. He stated the Historic Landmarks Commission is

appointed by the City Council to advise it on historic resource matters and is composed of professionals in the disciplines of architecture, design, planning, construction, and history, as well as a lawyer and a business person. He stated the Commission reviewed the revised plan and in light of the SHPO's ruling that demolition of the auditorium would result in the Jose Theater losing status on the National Register, voted unanimously not to support the proposal, and he urged Council not to support this or any proposal that would result in demolition of the auditorium. He stated the Commission found the new proposal replete with inaccurate assumptions, misinformation and a lack of critical cost analysis of viable alternative construction methods and requested Council appoint a special task force comprised of representatives of the Redevelopment Agency, Historic Landmarks Commission, PAC-SJ, the Planning Department and the developer to evaluate recently proposed alternatives which keep both the housing project and the Jose Theater intact. Mark Lazzarini, Historic Landmarks Commission, stated the fact the revised plan could jeopardize the status of the building as an historical landmark and the status of the historical district is a risk he is not prepared to take and such an action would cause a loss not only for the history of the City but also of important tax credits that could help with revitalization of the commercial district. He stated that as a taxpayer and commissioner, he does not support using city subsidies to destroy part of the City's history and heritage. Given possible outcomes, he stated the proposal is not a "win-win" situation, the City can do better and still have housing on the site, and recommended working toward that end, making the developer whole and creating a viable project which still retains the City's history for downtown and the Jose Theater for the enjoyment of all San José residents. Judi Henderson, Vice-Chair, Historic Landmarks Commission, echoed sentiments of Jim Zetterquist and Mark Lazzarini, adding that their proposal would go beyond a "win-win" scenario by saving the Jose Theater and allowing for housing, that funds identified to demolish the auditorium and rebuild a new structure could be used to seismically retrofit walls of the existing theater; she expressed concerns about losing the contributing status of the Jose and possible loss of the historic district and requested consideration of the Commission's recommendation. Representing the Preservation Action Council of San Jose, Andre Luthard, Karita Hummer, Ellen Garboske and Natalie Wells spoke in opposition to the proposal and in support of saving the Jose Theater, and Ms. Wells read a letter from the Assistant Director of Western Regional Office of Trust for Historic Preservation, in support of saving the Jose in its entirety. Judy Stabile, Carl Lindner, Sue Burnham, Olga Enciso-Smith for the Macchu Picchu Gallery and Inca Gardens Restaurant, Cathy Brandhorst, William J. Garbett, Linda Larson Boston, and Janet Olson, PAC-SJ spoke in opposition to the proposal. Barry Swenson spoke in support of the proposal, Jerry Gridsen spoke in opposition, and Clare Tuney, Santa Clara Manufacturing Group, spoke in support. Council Member Powers stated that while there is a need to preserve history, there also is a need for visual and performing arts and a desperate need for housing, that midsize theaters are needed to bring in performing arts groups for which the Jose stage would be inadequate, and stressed the importance of servicing the City's residents. Council Member Powers moved that Council find the Supplemental Environmental Impact Report (SEIR) is complete and conforms to the requirement of the California Environmental Quality Act (CEQA) and therefore, that the appeal be denied and the Commissions' certification of the Final SEIR upheld. She moved adoption of the New Century Block project and Staff's original

recommendation to rehabilitate the Jose Theater facade, lobby and second floor, and construction of a new structure on the footprint of the theater auditorium. She stated for the record that the SEIR for the project identified the following impacts as significant and unavoidable: Impacts to the downtown commercial historic district, including impacts to the Jose Theater, Hong Kong Market, Allen's Furniture Receiving Department, and the Second Street Plaza buildings; that the additional housing east of Market Street will invigorate the area as envisioned in the Downtown Strategy Plan and Downtown Housing Implementation Group Study and is consistent with the General Plan and Downtown Strategy Plan and Redevelopment Plan; the project will eliminate the physical and economic blight which necessitated the creation of the Redevelopment area and will support and enhance the value of private property and improvements in the project area, attract private investment, meet the strong demand for housing for an expanding downtown work force, restore the facade of the Jose Theater to its original 1904 appearance and enhance the South Second Street streetscape, and these benefits outweigh the significant unavoidable environmental impacts. Council Member Pandori seconded the motion. Council Member Fiscalini stated the Jose Theater is a valuable asset as a historical building; however, if rebuilt, it would not be the Jose but a modern theater designed for modern day needs, noted that most theaters today require large subsidies and stated his recommendation is a compromise between preservation and accommodation and would add to what can be preserved realistically to create an environment recalling the use of the facility and providing for historical purposes the recollection of events passed. He read into the record the recommendations in his memorandum dated October 28, 1997, and requested the motion be amended to include those suggestions which would place the following conditions on the rezoning for the reuse and partial restoration of the Jose Theater, as follows: (1) The Jose Theater facade, lobby, second-floor units, entry, and retail spaces shall be restored to Secretary of Interior Standards for Restoration. (2) The auditorium portion of the project will be restored or recreated to recall the Jose Theater as it once was; the auditorium has been drastically remodeled over the years, however, a number of historic elements remain; acknowledging that some changes to the auditorium need to be made, including lowering the ceiling and leveling the sloped floor, the developers should make their best effort to restore the original elements rather than replace them. The following items are critical: (a) The original walls shall be re-inspected to determine whether or not they can be stabilized seismically and structurally, at a reasonable cost, for reuse, (b) The wall plaster that was added during remodeling shall be carefully removed to determine the stencil designs used in the original auditorium so the artwork can be recreated by an established historic preservation artist, (c) Light fixtures original to the auditorium shall be restored and reused and missing fixtures should be replaced, (d) Ceiling panels and fixtures of the main auditorium ceiling shall be removed, restored, and reused when the ceiling is lowered, and (e) Study shall be made to determine the extent to which the proscenium can be recreated to recall the original use; there shall be a declaration that the stage is unusable for performance space to meet fire code requirements. He stated the last recommendation would eliminate a serious fire code restriction, that if some of the items cannot be accomplished, others can, and without these amendments he would have concerns with the motion on the floor. Council Member Powers stated she would accept the amendment as long as the recommendations are taken into consideration at the PD

permit stage rather than in the zoning, which is being considered tonight. Council Member Fiscalini concurred that conditions would be placed at the PD permit stage rather than the zoning. Mayor Hammer recognized Council Member Fiscalini for his leadership on efforts to reach a compromise to allow for adaptive reuse of the theater and still secure housing for the downtown. She commented on the extensive work and funding that have gone into revitalizing the downtown, explained the goal of creating jobs and housing as well as a cultural and art center and, to put the Jose Theater in perspective, stressed the importance of the housing component for that goal to be successful. She stated the revised proposal saves the best of the Jose, will create a unique space in the Downtown and, for the greater goal of making the downtown successful and viable, she supports the motion. Regarding Council Member Fiscalini's recommendations, she stated those items warrant consideration; however, she stressed that none of those issues, should they not prove feasible, should impede the ability of the project to move forward as quickly as possible. Council Member Fiscalini reiterated his intention to recreate as much as possible of the facility, whether in the old or the new portion of the building. Mayor Hammer thanked Council Member Fiscalini, Director Derryberry and Planning Staff, Agency Staff, including the project architect, members of the Historic Landmarks Commission, as well as PAC and all those concerned about saving the City's past. Council Member Diaz expressed preference for saving the Jose in its entirety but since that is not feasible, he supports saving as much as possible and reluctantly supports the motion. Council Member Dando expressed disappointment with the compromise position, stated the Jose could have been saved while increasing density of the housing project had that been the goal, and stated she will not support the motion. Vice Mayor Fernandes stated that without a viable user, saving the theater would be at great expense to the City, which would be faced with the operating costs as well and, while she hates to lose the Jose, housing is more important and for that reason she supports the motion. Council Member Woody expressed disappointment that proposed changes do not represent true landmark preservation, but lacking support for beginning the process again, stated she would support the motion. She commented on recommendations made by Council Member Johnson dated September 23 and 24, 1997 and referred to the Administration, the City Attorney and the Redevelopment Agency by the Rules Committee on September 24, 1997, calling for developers and Agency Staff to review all structures throughout the City, especially Downtown, to avoid this type of situation developing in the future. Council Member Johnson commented on the progression of the issue to this point, which began as the Redevelopment Agency considered a proposal for Luis Valdez and Teatro Campesino to use the Jose Theater. As problems emerged with the stage, the idea of tearing down the theater and building a new theater was entertained and the fact that the majority of the Council was willing to consider that route may have led to assumptions by the Agency that Council was willing to destroy the theater to produce needed housing. She expressed appreciation to Council Member Fiscalini, his and other staff who worked for a win-win solution, but noted the current proposal does not satisfy historic preservation proponents, nor does it retain the status of a contributing structure, and the motion attempts to satisfy those concerns with cosmetics and will cost the City nearly \$2 million, reduce housing and reduce retail. She stated the only historical preservation voice in the discussions was that of the developer, who has demonstrated his commitment to preservation, and noted that with either the

original or the revised plan, Third Street still has to be addressed since it will no longer be a part of the Downtown Historic District. She stated destruction of the theater would mean losing the theater forever, that 31 of the 40 contributing structures in the District will be gone; however, if the theater were saved, there would be opportunity for dialogue and consultation with nationally recognized experts who have offered their expertise and a redesign could maintain the original number of units. She described her vision for a downtown with lively performances, historic character, small unique retail, and a mix of housing for all people. Council Member Pandori explained his reasons for supporting the motion and cited past historic restorations, many that he worked on, as indication that there is not a trend solely toward demolition, and expressed admiration for all who have worked for historic preservation in the City. He stated the issue for him is not housing, but whether the theater could be preserved and reused as a theater. He noted that after the Historic Landmark designation was approved, he worked with others, including the Mayor's office, to find users for the theater, studies were commissioned and following a detailed review, not in the context of demolishing but of redesigning and reusing the theater, the conclusion was reached that it would not be possible to restore the Jose and attract a user to provide a consistent and economical reuse of it, citing the lack of necessary amenities, such as a staging area, room for props, sound and lighting rooms, stage director's area and adequate fire escapes, as indicated by the consultant's report. He stated the question arises as to whether a theater lacking the common amenities of a usable, practical theater of today should be restored, and in his opinion the answer would be yes in some cases, such as with the Fox Theater, but not the Jose. He stated the proposal attempts reuse of the building and, as a representative of the San José Downtown Association, commerce is an important goal; the trade-off is not one of housing but of commerce, of getting reuses for an old historic street in the Downtown Business Improvement District in the Core of the downtown. He stated there has been a heightened consciousness in the community on issues of historic preservation through the efforts of PAC, which he hopes will continue for future issues. On a call for the question, the motion by Council Member Powers carried, the appeal of the SEIR was denied and the Planning Commissions' certification of the Final SEIR was upheld; Resolution No. 67721, entitled: "A Resolution of the Council of the City of San José Making Certain Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Findings Concerning Alternatives and, Adopting a Statement of Overriding Considerations in Accordance with the California Environmental Quality Act for the New Century Block Project for Which a Supplemental Environmental Impact Report Has Been Prepared", was adopted; Ordinance No. 25455, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwest Corner of East San Fernando Street and South Third Street", was passed for publication, and the recommendations in Council Member Fiscalini memorandum dated October 28, 1997 were referred to Staff for consideration at the Planned Development Permit Stage. Vote: 8-3-0-0. Noes: Dando, Diquisto, Johnson.

## **ADJOURNMENT**

The Council of the City of San José adjourned at 9:23 p.m.

**SUSAN HAMMER, MAYOR**

**ATTEST:**

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