

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, NOVEMBER 4, 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, Diquisto, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: Diaz, Fernandes, Fiscalini (all excused)

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 pertaining to existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider the cases of In re Bynoe; Ludwig v. City of San José; and Beck, et al. v. Mazda, et al.; (B) to confer with Legal Counsel - Anticipated Litigation - concerning one (1) matter pertaining to the initiation of litigation 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 Darrell Dearborn, and Employee Organizations—San José Police Officers' Association and International Association of Firefighters.

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

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

Absent: Council Members: Diaz, Fernandes, Fiscalini (all excused)

### INVOCATION

Father Paul Weisbeck, Holy Spirit Catholic Church in the Almaden Valley, Chaplain of the Santa Clara County Sheriff's Department, delivered the Invocation. (District 10)

### PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

### ORDERS OF THE DAY

Upon motion by Council Member Johnson, seconded by Council Member Powers and unanimously carried, the Orders of the Day and the Amended Agenda, to remove from the Council Agenda Item 9c, were approved. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

### CEREMONIAL ITEMS

**5a Presentation of a commendation to KPMG Peat Marwick for helping to improve the local community as part of KPMG's World of Spirit Day. (Pandori)**

Documents Filed: None.

Discussion/Action: This item was deferred to November 18, 1997.

- 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)**  
**[Deferred from 10/28/97 - Item 5b]**

Documents Filed: None.

Discussion/Action: Joining Mayor Hammer at the Podium, Council Member Johnson read portions of the sixth grader’s award-winning book, entitled “Mr. Sniff’s New Name”, which will be catalogued and placed in the San José Library System for circulation. Mayor Hammer presented the commendation to Breanna, acknowledged the student’s parents—Rick and Shelly Castro, sister—Niki, and the school administrators and teachers attending the ceremony, and encouraged Breanna to continue to exercise her imagination in such a delightful manner.

## **CONSENT CALENDAR**

Upon motion by Council Member Powers, seconded by Council Member Johnson and unanimously carried, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

### **Minutes for Approval**

#### **6a(1) Regular Meeting of September 23, 1997**

Documents Filed: Minutes of the regular meeting of September 23, 1997.

Discussion/Action: The Minutes were approved. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

### **Ordinances for Final Adoption**

- 6b(1) ORD. NO. 25439 - Amends 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.**

Documents Filed: Proof of publication of the title of Ordinance No. 25439 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25439 was adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

**6b(2) ORD. NO. 25441 - Amends Chapter 2.08 of Title 2 of the San José Municipal Code to establish the Commission on Disadvantaged Business Development.**

Documents Filed: Proof of publication of the title of Ordinance No. 25441 submitted by the City Clerk.

Discussion/Action: William J. Garbett spoke against the proposed action. Ordinance No. 25441 was adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

**6b(3) ORD. NO. 25449 - Rezones certain real property situated on the west side of Union Avenue, northerly of Highway 85.  
C 97-09-060**

Documents Filed: Proof of publication of the title of Ordinance No. 25449 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25449 was adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

**Public Hearings Set by Council**

**6c(1) Adoption of a resolution initiating a conforming rezoning from County to R-1: B-8 Residence Zoning District, and setting a public hearing on December 16, 1997 at 7:00 p.m.**

**CC 97-10-069 - District 9  
(Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated October 17, 1997, requesting that Staff place on the Consent Calendar for November 4, 1997 the subject rezoning for Council consideration and adoption of a resolution.

Discussion/Action: Resolution No. 67723, entitled: "A Resolution of the Council of the City of San José Initiating Proceedings On Its Own Motion to Prezone Certain Real Property Situated on the Northerly Side of Curtner Avenue Centerline Between Salerno Drive and South Bascom Avenue, 530 Feet Easterly of Salerno Drive From County to R-1:B-8 Residence Zoning District", was adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

**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.**

**(Public Works) District 6**

**[Deferred from 10/21/97 - Item 6d(2), 10/28/97 - Item 6d(1)]**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 7, 1997, recommending Council adopt said resolutions for Tract No. 9008.

Discussion/Action: Resolution No. 67724, 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. 9008"; Resolution No. 67725, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 9008", Resolution No. 67726, 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. 9008", were adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6d(2) 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 a resolution approving the final map for Tract No. 8740. CEQA: Exempt.  
(Public Works) District 3.  
(Rules Committee referral 10/29/97)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 28, 1997, recommending Council adopt said resolution for Tract No. 8740.

Discussion/Action: Resolution No. 67727, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8740", was adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6d(3) TRACT NO. 8819 - South side of Brodie Drive, 100 feet westerly of Kauai Drive - Sylvandale Partners, L.P. (Developer) - 26 detached residential units. Adoption of resolutions approving the plans, final map, and contract for Tract No. 8819. CEQA: ND.  
(Public Works) District 7.  
(Rules Committee referral 10/29/97)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 28, 1997, recommending Council adopt said resolutions for Tract No. 8819.

Discussion/Action: Resolution No. 67728, 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. 8819 "; Resolution No. 67729, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8819"; and Resolution No. 67730, 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. 8819", were adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

## Contracts/Agreements

- 6e(1) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1997-98 #11, 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 17, 1997, recommending Council award proposed 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. 11 for FY 1997-98 was approved and execution of the purchase orders authorized. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6e(2) Approval of an agreement with the San José Public Library Foundation and Los Amigos de la Biblioteca Latinoamericana establishing the structure for the fund raising campaign in support of the new Biblioteca Latinoamericana. (Library)**

Documents Filed: Memorandum from City Librarian, Jane Light, dated October 17, 1997, recommending Council approve the agreement for the new Biblioteca.

Discussion/Action: The agreement with the San José Public Library Foundation and Los Amigos de la Biblioteca Latinoamericana was approved and execution of the agreement authorized. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6e(3) Approval of a third amendment to the lease agreement with Brandenburg Family Associates One, a California Limited Partnership, for 29,009 square feet of warehouse space located at 330 Terraine Street for the storage of impound evidence vehicles by the Police Department, increasing the base rent of the agreement by \$2,610.81, from \$8,702.70 to \$11,313.51, and extending the term of the agreement by four (4) months, from October 31, 1997 to February 28, 1998. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 17, 1997, recommending Council approve the amendment to the lease agreement with Brandenburg Family Associates One.

Discussion/Action: The third amendment to the lease agreement with Brandenburg Family Associates One, a California Limited Partnership, was approved and execution of the amendment authorized. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6e(4) Approval of a second amendment to the agreement with Metcalf & Eddy for the South Bay Water Recycling Pump Stations and Reservoir Project, increasing the additional services amount by \$100,000, from \$1,475,000 to \$1,575,000. CEQA: Resolution No. 64667. (Public Works)**

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

dated October 17, 1997, recommending Council approve the second amendment to the proposed agreement.

Discussion/Action: The second amendment to the agreement with Metcalf & Eddy was approved and its execution authorized. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6e(5) Approval of a first amendment to the agreement with CH2M Hill, Inc. for the Coleman Avenue Improvement Project increasing the compensation by \$20,000, from \$79,000 to \$99,000, and extending the term of the agreement by one (1) year, from December 1, 1997 to December 1, 1998. CEQA: ND. (Public Works)**

Documents Filed: None.

Discussion/Action: This item was deferred to November 18, 1997.

- 6e(6) (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)**

**[Deferred from 10/28/97 - Item 6e(8)]**

Documents Filed: None.

Discussion/Action: This item was deferred to November 18, 1997.

- 6e(7) Approval to reject all yard trimmings transfer station proposals and adoption of a resolution authorizing the City Manager to negotiate and execute contract amendments for yard trimmings processing services with International Disposal Corporation and Zanker Road Resource Management. CEQA: ND.**

**(Environmental Services)**

**(Rules Committee referral 10/29/97)**

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated October 31, 1997, recommending Council approve staff recommendations to reject all proposals and adopt proposed resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. All yard trimmings transfer station proposals were rejected, and Resolution No. 67731, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Amendments to the Yard Wastes Processing Agreements With International Disposal Corporation of California and Zanker Road Resource Management, Ltd., to Increase the Tons Per Day of Yard Trimmings Processed and to Extend the Term of the Agreements to June 30, 2002", was adopted. Vote: 8-0-3-0.

Absent: Diaz, Fernandes, Fiscalini.

- 6e(8) (a) Adoption of a resolution authorizing the City Manager to accept and execute a three (3) year San José AmeriCorps grant agreement in the amount of \$255,983 for the first year of the grant and to negotiate the grant award for years two (2) and three (3) of the grant.**
- (b) Adoption of related appropriation ordinance and funding source resolution amendments in the General Fund.**
- (Parks, Recreation and Neighborhood Services/City Manager's Office)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Mark Linder, and Budget Director Larry D. Lisenbee, dated October 17, 1997, recommending Council adopt said resolutions and related appropriation ordinance.

Discussion/Action: This item was renumbered from Item 6f(2), and Resolution No. 67732, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute the Three Year Grant Agreement for AmeriCorps Funding and to Negotiate the Amount of the Grant Award in Years Two and Three of the Grant Term"; Ordinance No. 25456, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 25390 Which Appropriates Moneys in the General Fund in the Amount of \$255,983 for the First Year of the AmeriCorps Three Year Grant; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 67733, 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", were adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

### **Routine Legislation**

- 6f(1) Adoption of appropriation ordinance amendments in the General Fund to shift funds from Non-Personal and Equipment appropriations to Personal Services appropriations for the Mayor and City Council. (City Manager)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated October 17, 1997, recommending Council approve said appropriation ordinance amendments in the General Fund to increase/decrease personal and nonpersonal services.

Discussion/Action: Ordinance No. 25457, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25390 Which Appropriates Moneys in the General Fund in Various Amounts to Shift Funds From Non-Personal and Equipment Appropriations to Personal Services Appropriations for the Mayor and City Council; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6f(2) (a) Adoption of a resolution authorizing the City Manager to accept and execute a three (3) year San José AmeriCorps grant agreement in the amount of**

**\$255,983 for the first year of the grant and to negotiate the grant award for years two (2) and three (3) of the grant.**

- (b) Adoption of related appropriation ordinance and funding source resolution amendments in the General Fund.**

**(Parks, Recreation and Neighborhood Services/City Manager's Office)**

Documents Filed: See Item 6e(8).

Discussion/Action: This item was renumbered to Item 6e(8). See Item 6e(8) for Council action.

- 6f(3) Approval of the Community Development Block Grant (CDBG) Fourth Quarter Monitoring Report for the 1996-97 Program Year.**  
**(Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services, Mark Linder, dated October 30, 1997, recommending Council accept the fourth quarter report on the status and performance of 134 projects.

Discussion/Action: The fourth quarter monitoring report was approved. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6f(4) (a) Adoption of a resolution:**
- (1) Declaring that seasonal and recurrent weeds and refuse are a public nuisance.**
  - (2) Accepting the 1998 Report of Seasonal and Recurrent Weeds and Refuse (Report) and the Weed Abatement Master List (Master List) compiled by the Office of the Santa Clara County Fire Marshal.**
  - (3) Directing the Office of the Santa Clara County Fire Marshal to mail notices of a public hearing before the City Council on the Report and Master List to property owners of affected real properties pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement with the County of Santa Clara.**
    - (b) Direction to the City Clerk to set a public hearing on November 18, 1997 at 7:00 p.m. on the Report and the Master List.**
- (Planning, Building and Code Enforcement)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated October 17, 1997, recommending Council adopt proposed resolution. (2) Affidavit of Posting of the Santa Clara County Fire Marshal's 1998 Weed Abatement Parcel List for the City of San José, dated October 29, 1997, and Receipt for Public Posting submitted by the Santa Clara County Fire Marshall's Office.

Discussion/Action: Resolution No. 67734, entitled: "A Resolution of the Council of the City of San José Accepting and Confirming the Report of the Department of Planning,

Building and Code Enforcement That Seasonal and/or Recurrent Weeds Are Growing or Are Likely to Grow Upon Certain Public and Private Properties or That Refuse is Situated Upon Certain Properties Within the City of San José; Declaring Such Seasonal and/or Recurrent Weeds and Refuse a Public Nuisance; and Directing That Notice of This Resolution Be Given Pursuant to Chapter 9.12 of the San José Municipal Code”, was adopted, and the City Clerk directed to set the public hearing. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 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)  
[Deferred from 10/21/97 - Item 6f(5) and 10/28/97 - Item 6f(8)]**

Documents Filed: (1) Memorandum from Council Member Pandori, dated October 16, 1997, recommending Council reaffirm its support for noise mitigation within the 65 dB CNEL contour and direct Airport staff to implement the ACT program for Washington Elementary School and portions of the Guadalupe-Washington Neighborhood within the 65 dB CNEL contour. (2) Memorandum from Director of Aviation, Ralph G. Tonseth, dated October 9, 1997, recommending Council adopt the proposed resolution. (3) Letter from Guadalupe - Washington Neighborhood Association, Refugio Moreno, President, dated October 20, 1997, requesting the removal and rescheduling of the matter to an evening session. (4) Memorandum from City Manager, Regina V.K. Williams, dated November 3, 1997, responding to Council Member Pandori’s concerns regarding noise mitigation of the Guadalupe-Washington neighborhood. (5) Memorandum from Director of Aviation, Ralph G. Tonseth, dated October 27, 1997, recommending Council adopt proposed resolution.

Discussion/Action: Resolution No. 67735, entitled: “A Resolution of the Council of the City of San José Approving the Use of a Group Bid Construction Process for the Airport Acoustical Treatment Program and Authorizing the Director of Aviation to Solicit and Award Bids, and to Execute and Administer Acoustical Treatment Construction Contracts”, was adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6f(6) Approval of City Auditor Gerald Silva’s travel to Albany, New York, on November 24, 1997, to present a workshop at the Association of Government Accountants conference, at no cost to the City. (City Auditor)  
(Rules Committee referral 10/29/97)**

Documents Filed: Letter from City Auditor, Gerald A. Silva, dated October 24, 1997, requesting approval to travel to Albany, New York, to attend the Conference of Government Financial Managers.

Discussion/Action: The travel for City Auditor Gerald Silva to conduct a workshop at the conference was approved. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6f(7) Adoption of a resolution approving a Memorandum of Agreement with the Association of Building, Mechanical and Electrical Inspectors (ABMEI). (City Manager's Office) (Rules Committee referral 10/29/97)**

Documents Filed: Memorandum from Employee Relations Manager, Lynn M. Boland, dated October 31, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67736, entitled: "A Resolution of the Council of the City of San José (1) Approving the Memorandum of Agreement Between the City of San José and City of San José Association of Building, Mechanical and Electrical Inspectors; (2) Providing for the Payment of Salary and Benefits Pursuant to the Memorandum of Agreement; and (3) Providing That Any Conflict Between the Memorandum of Agreement and Salary Resolution Nos. 51870, 51871, and 51872, the Memorandum of Agreement Shall Prevail", was adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6f(8) Approval of the following appointments to the Board of Directors of the Silicon Valley Pollution Prevention Center:**  
**(a) Chris Elias for a term ending December 1998.**  
**(b) June Anderson for a term ending December 1999.**  
**(Environmental Services)**  
**(Rules Committee referral 10/29/97)**

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated October 29, 1997, recommending Council approve said appointments to the Board of Directors.

Discussion/Action: The appointment of Chris Elias and June Anderson to serve on the Board of Directors of the Silicon Valley Pollution Prevention Center was approved. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

- 6f(9) Approval of City Attorney Joan Gallo's travel to the International Municipal Lawyers Association's Annual Conference, November 16-19, 1997, in Phoenix, Arizona. (City Attorney's Office) (Rules Committee referral 10/29/97)**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated November 3, 1997, requesting authorization for travel to Phoenix, Arizona, to attend the International Municipal Lawyers Association's Annual Conference.

Discussion/Action: The travel for City Attorney Joan Gallo to attend the conference in Phoenix, Arizona, was approved. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

**6f(10) Adoption of an ordinance of the City of San José amending Section 23.04.020 of Chapter 23.04 of Title 23 of the San José Municipal Code for commercial zones to increase the maximum size of allowable signage and to increase the maximum number of attached signs under certain circumstances. CEQA: Exempt. (Planning, Building and Code Enforcement)  
(Rules Committee referral 10/29/97)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated October 31, 1997, recommending Council approve the proposed ordinance change.

Discussion/Action: William J. Garbett spoke against the proposed action. Ordinance No. 25458, entitled: "An Ordinance of the Council of the City of San José Amending Section 23.04.020 of Chapter 23.04 of Title 23 of the San José Municipal Code for Commercial Zones to Increase the Maximum Size of Allowable Signage on and to Increase the Maximum Number of Attached Signs Under Certain Circumstances", was passed for publication. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

**END OF CONSENT CALENDAR**

**COMMISSION, COMMITTEE, AND STANDING REPORTS**

**7b Report of the Rules Committee - October 22, 1997**

Documents Filed: Rules Committee Report of October 22, 1997.

(1) Review of November 4 Council Agenda

The Committee approved the November 4, 1997 Council Agenda with two additions and one change.

(2) Add New Items to October 28 Amended Council Agenda

The Committee recommended nine additions and two changes to the October 28, 1997 Amended Council Agenda.

(3) The Public Record. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated October 16, 1997, listing the items transmitted to the Administration for the period October 8-14, 1997. (2) Memorandum from Council Liaison, Norberto L. Duenas, dated October 22, 1997, summarizing the actions taken on items transmitted to the Administration and the items filed for the Public Record for the period October 8-14, 1997.

The Committee noted and filed the Public Record for the period October 8-14, 1997 and directed the City Clerk to write to the General Counsel for Triple Play Gaming USA (Item (b) on the Public Record) to inform him that it is not appropriate to place his request to approve "Triple

Play” as a permissible game in cardrooms on the Council Agenda until a consultant has made recommendations for changes to the Cardroom Ordinance and to the City’s regulatory organization and administration respecting cardrooms.

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

The Committee deferred this item to the November 5, 1997 Rules Committee meeting.

- (5) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee
  - (a) Reconsideration of Neighborhood Block Party Fees. Attachment: Memorandum from Council Member Pandori, dated October 14, 1997, requesting reconsideration of block party fees.

The Committee referred to the Administration Council Member Pandori’s request for Council to either eliminate the Block Party Permit Fee or reduce the fee back to \$35.

- (6) City Council and Rules Committee meeting schedules

None presented.

- (7) Oral communications

None presented.

- (8) Adjournment

The meeting was adjourned at 2:50 p.m.

Discussion/Action: Upon motion by Council Member Powers, seconded by Council Member Johnson and unanimously carried, the Rules Committee Report and actions of October 22, 1997 were accepted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

## **7c Report of the Finance/Agency Finance Committee - October 22, 1997**

Documents Filed: Finance/Agency Finance Committee Report of October 22, 1997.

- (1) Annual Financial KPMG Audit of RDA for FY 1996-97
- (2) Debt Profile
- (3) Variable Rate Bond Program Update
- (4) Monthly Financial Statements for September 1997
- (5) Capital Cost Report for September 1997
- (6) Cash Flow Forecast for September 1997

Items 1-6 were referred to the November 20, 1997 Redevelopment Agency Board meeting.

(7) Monthly Report for September 1997. Attachment: Letter from City Auditor, Gerald A. Silva, dated October 15, 1997, submitting a written report of the Office of the City Auditor's activities for the month of September 1997.

The Committee noted and filed the Report.

(8) Audit of ESD - Integrated Waste Management. Attachment: City Auditor's report on *An Audit of the City of San Jose's Integrated Waste Management Services*, in accordance with City Charter Section 805, dated October, 1997.

The Committee recommended approval of the report.

(9) Adjournment

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

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Johnson and unanimously carried, the Finance/Agency Finance Committee Report and actions of October 22, 1997 were accepted with Items 7c(1)-(6) to be reported at the Redevelopment Agency Board meeting on November 20, 1997.

**7e Report of the Transportation, Planning, and Environment Committee - October 23, 1997**

Documents Filed: Transportation, Planning, and Environment Committee Report of October 23, 1997.

(1) Consent Calendar

None presented.

(2) Annual Report on the Rule 20B (In-Lieu Fee) Underground Utility Program. Attachment: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 23, 1997, recommending Council approve the proposed report.

The Committee accepted the report and forwarded same to Council for consideration on November 4, 1997.

(3) Report on Street Tree and Sidewalk Ordinance. Attachments: (1) Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated October 23, 1997, recommending (a) approval of an ordinance amending the Municipal Code to eliminate protest hearings for the removal of street trees and direction to report on city services related to street trees, and (b) direction to report to the TP&E Committee the status of City services related to street trees and alternatives of program and service improvements. (2) Document entitled "Tree And Sidewalk Ordinance Information Packet", submitted by the Department of Streets & Traffic.

The Committee forwarded the report and recommendation to Council for consideration on the November 4, 1997 City Council Agenda under General Government.

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

- (4) Discussion Regarding the Watershed Management Programs Status Report

The Committee accepted the status report .

- (5) Workshop Discussion and Further Direction from Staff on the Parkland Dedication Fee Ordinance (PDO) Revisions

The Committee accepted the report and directed Staff to research the items discussed and forward for consideration to the November 13, 1997 TP&E joint meeting with the Parks and Recreation Commission.

- (6) Oral petitions

None presented.

- (7) Adjournment

The meeting was adjourned at 4:05 p.m.

Discussion/Action: Upon motion by Council Member Johnson, seconded by Council Member Woody and unanimously carried, the Transportation, Planning, and Environment Committee Report and actions of October 23, 1997 were accepted with Item 7e(3) acted upon at Item 9b. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

**7f Report of the Youth, Seniors, and Neighborhood Services Committee - October 20, 1997**

Documents Filed: Youth, Seniors, and Neighborhood Services Committee Report of October 20, 1997.

- (1) Status of Washington Area Youth Center Operator Negotiations. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services, Mark Linder, dated October 9, 1997, submitting a status report on the Washington Youth Center Operator negotiations.

The Committee accepted the report.

- (2) School Age Growth and Enrichment Program (S.A.G.E.) Staffing Strategies. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services, Mark Linder, dated October 9, 1997, submitting a status report on the School Age Growth and Enrichment Program (SAGE) staffing strategies.

The Committee accepted the report.

(3) S.A.G.E. Expansion of Additional School Sites. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services, Mark Linder, dated October 15, 1997, submitting a status report on the progress of implementing new SAGE after school programs.

The Committee accepted the report.

**7f Report of the Youth, Seniors, and Neighborhood Services Committee - October 20, 1997**

(4) Additional Review of Graffiti Proof Containers. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services, Mark Linder, dated October 17, 1997, recommending the acceptance of the staff report and direct Staff to return with an update for the April, 1998 YSNS Committee meeting.

The Committee accepted the report.

(5) Verbal Report on Request for Qualifications for Child and Elder Care Referral Service. Attachment: Copies of materials used by the RFQ Rating Panel in the selection process.

The Committee accepted the report.

(6) Oral communications

Bill Chew addressed the Committee relative to youth who purchase nitrous oxide for use as an intoxicant.

(7) Adjournment

The meeting was adjourned at 3:15 p.m.

Discussion/Action: Upon motion by Council Member Shirakawa, Jr., seconded by Council Member Diquisto and unanimously carried, the Youth, Seniors, and Neighborhood Services Committee Report and actions of October 20, 1997 were accepted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

GENERAL GOVERNMENT

**9b Direction to the City Attorney to draft an ordinance eliminating protest hearings prior to issuance of a permit to remove a street tree that is dead, dying or in a hazardous condition.**  
[Transportation, Planning, and Environment Committee referral 10/23/97 - Item 7e(3)]

Documents Filed: See Transportation, Planning, and Environment Committee Report of

October 23, 1997, Item 7e(3).

Discussion/Action: Upon motion by Council Member Johnson, seconded by Council Member Woody and unanimously carried, the direction to the City Attorney to prepare the ordinance and submit for Council consideration, was approved. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

#### FISCAL AFFAIRS

#### **10a PUBLIC HEARING on the formation of Community Facilities District (CFD) No. 4 (Evergreen Improvements) and, at its conclusion, adoption of the following:**

- (1) Resolution forming CFD No. 4 (Evergreen Improvements) authorizing the levy of a special tax within CFD No. 4, preliminarily establishing an appropriations limit for CFD No. 4, and submitting levy of the special tax to the qualified electors in CFD No. 4.
- (2) Resolution calling for special mailed ballot election in CFD No. 4.
- (3) Resolution of Intention to Annex Annexation Area 1 into CFD No. 4, authorizing the levy of special taxes within Annexation Area 1, and setting a public hearing on December 9, 1997 at 1:30 p.m. regarding the annexation of Annexation Area 1.
- (4) Resolution of Intention to Annex Annexation Area 2 into CFD No. 4, authorizing the levy of special taxes within Annexation Area 2, and setting a public hearing on December 9, 1997 at 1:30 p.m. regarding the annexation of Annexation Area 2.

#### **CEQA: Resolution No. 63179. (Public Works)**

Documents Filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 17, 1997, recommending Council adopt said resolutions. (2) Affidavit of Posting of the Public Hearing Notice regarding the establishment of Community Facilities District No. 4 (Evergreen Improvements), dated October 27, 1997. (3) Notice of Public Hearing Regarding Establishment of City of San José Community Facilities District No. 4 (Evergreen Improvements), dated October 20, 1997, and Proof of Publication of the entire contents, dated October 27, 1997, submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing to consider actions related to the formation of Community Facilities District No. 4 (Evergreen Improvements). There was no discussion from the Floor. Upon motion by Council Member Powers, seconded by Council Member Woody and unanimously carried, the public hearing was closed, and Resolution No. 67737, entitled: "A Resolution of the Council of the City of San José Forming Community Facilities District No. 4 (Evergreen Improvements), Authorizing the Levy of a Special Tax Therein, Preliminarily Establishing an Appropriations Limit Therefor and Submitting Levy of the Special Tax and the Establishment of the Appropriations Limit to the Qualified Electors Thereof"; Resolution No. 67738, entitled: "A Resolution of the Council of the City of San José Calling a Special Election Regarding the Levy of Special Taxes and the Establishment of an Appropriations Limit"; Resolution No. 67739, entitled: "A Resolution of Intention of the Council of the City of San José to Annex Territory Into Community Facilities District No. 4 (Evergreen Improvements) and to Authorize the Levy of Special Taxes"; and Resolution No. 67740, entitled: "A Resolution of Intention of the Council of the City of San José to Annex Territory Into Community Facilities District No. 4 (Evergreen

Improvements) and to Authorize the Levy of Special Taxes”, were adopted. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

**9a Interview applicants and appoint two to the San José Appeals Hearing Board for terms ending December 31, 2001. (Mayor)**

Documents Filed: Memorandum from City Clerk, Patricia L. O’Hearn, dated October 27, 1997, recommending Council interview applicants to fill two terms ending December 1, 2002.

Discussion/Action: The City Council interviewed six applicants qualified by the Project Diversity Screening Committee, to fill two terms ending December 31, 2001. City Clerk, Patricia L. O’Hearn, distributed ballots to the City Council and read into the record the results of the first written ballots: None of the applicants received six or more votes on the first ballot cast; therefore, the City Council cast a second ballot and Anastasia Steinberg was appointed to fill one of the two designated terms on the San José Appeals Hearing Board. Mayor Hammer expressed the Council’s appreciation to the applicants for their interest in city government, and recommended a week’s deferral of the second appointment, given the absence of three Council Members. The City Clerk stated Council Members Diaz, Fernandes, and Fiscalini would be provided audio tapes of today’s interviews in preparation for the appointment to fill the second vacancy on the Board. Upon motion by Council Member Johnson, seconded by Council Member Powers and unanimously carried, the second appointment was deferred to November 18, 1997. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

**9c Discussion of salary range for the position of Chief Building Official. (Pandori)**  
(Orders of the Day Item 4a)

Documents Filed: Memorandum from Mayor Hammer, dated November 4, 1997, recommending Council action to remove this item from the Council Agenda.

Discussion/Action: In response to Council Member Pandori’s request for Council discussion of the salary range for the subject position, Mayor Hammer stated the urgency to consider this item during today’s Council meeting has not been established. She stated the Council Rules Resolution allows matters to be added to the Council Agenda by a Councilmember, but only if necessary and with proper findings. She stated this item is not a matter of necessity requiring action by the City Council today and should be dropped from the Agenda, and that the Chair would entertain a motion to do so. Upon motion by Council Member Johnson, seconded by Council Member Powers and unanimously carried, under Orders of the Day, this item was removed from the Council Agenda. Vote: 8-0-3-0. Absent: Diaz, Fernandes, Fiscalini.

**ORAL COMMUNICATIONS**

(1) Cathy S. Brandhorst commented on the lack of housing accommodations for the homeless in San José.

- (2) Dail Simons requested help from Council in eliminating violence, substance abuse, and prostitution at one of the homeless shelters in San José. City to investigate.
- (3) Bill Chew addressed Council on the necessity to broadcast/televise meetings of the City Council.
- (4) Blanca E. Miller addressed Council on the collection of tenants' fines resulting from code violations. City Manager and City Attorney to investigate and meet with property owner.

#### RECESS/RECONVENE

Following Oral Communications, Council recessed at 3:05 p.m. and reconvened at 7:08 p.m., Council Chambers, City Hall.

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

Absent: Council Members: Fiscalini (excused)

City Clerk, Patricia L. O'Hearn, read the request for one item as recommended. Upon motion by Council Member Johnson, seconded by Council Member Powers and unanimously carried, the below noted action on the application was granted. Vote: 10-0-1-0. Absent: Fiscalini.

#### PUBLIC HEARINGS

**15c PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the east side of North First Street, 150 feet northerly of Bassett Street, from M-4 Manufacturing to A(PD) Planned Development, to allow up to 34 residential loft units and up to 900 square feet of commercial/retail uses on a 0.43 gross acre site (Barry Swenson Builder, Owner/Developer). CEQA: ND.**

PDC 97-04-025 - District 3

(Continued from 6/17/97 - Item 15u et al., and 9/2/97 - Item 15i)

Documents Filed: Public Hearing Notice to consider a change in zoning for PDC 7-04-025, dated May 21, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: This item was dropped.

**15e 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. Director of Planning recommends approval. Planning Commission recommends approval (4-0-3).**

C 96-07-040 - District 3

(Continued from 10/21/97 - Item 15d)

Documents Filed: (1) Memorandum from Planning Commission, dated October 17, 1997,

recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning C 96-07-0400, dated September 3, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. There was no discussion from the Floor; however, Council Member Pandori noted concerns as expressed in the letter from the Rosemary Gardens Association Board to the Planning Commission regarding impacts from the Airport and Guadalupe Parkway expansions and developments along North First Street. He asked that Council approval of the proposed rezoning include direction to the Planning Staff to coordinate a meeting with the Association, during the site development permit phase of the project, to ensure the neighborhood's continued involvement in the process, and to explain the changes that will affect the community. Upon motion by Council Member Pandori, seconded by Council Member Dando and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25459, entitled: "Ordinance of the Council of the City of San José Rezoning Certain Real Property Situated on Both Sides of Technology Drive Between Sonora Avenue and Skyport Drive", was passed for publication. Vote: 10-0-1-0. Absent: Fiscalini.

**15f PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the northeast corner and southeast corner of Capitol Expressway and Nieman Boulevard, from County to A(PD) Planned Development, to allow 36 single-family detached residences and 132 multi-family attached residences on a 9.2 gross acre site (McTavish Corp., Owner; Ryland Homes and Lincoln Properties, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (5-0-2).**

PDC 97-06-037 - District 8

Documents Filed: (1) Memorandum from the Planning Commission, dated October 23, 1997, recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC 97-06-037, dated September 12, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. There was no discussion from the Floor; however, Council Member Woody asked that the extension of the median island beyond the project boundary be considered during the PD Permit process and that Staff and the developers continue to work with the community with regards to traffic issues and proposed changes that will impact the neighborhood. Upon motion by Council Member Woody, seconded by Council Member Powers and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25460, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the northeast Corner and Southeast Corner of Capitol Expressway and Nieman Boulevard", was passed for publication. Vote: 10-0-1-0. Absent: Fiscalini.

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

PDCSH 96-11-072 - District 9

(Continued from 5/20/97 - Item 15g et al., and 9/16/97 - Item 15a)

Documents Filed: (1) Memorandum from Council Member Diquisto, dated November 3, 1997, recommending Council deny the Planned Development Rezoning for the project. (2) Memorandum from Council Member Pandori, dated November 3, 1997, recommending Council clarify the School Availability Ordinance with regards to the City Council's authority to deny, phase, or alter a residential project that causes school overcrowding. (3) Memorandum from the Planning Commission, dated May 8, 1997, recommending Council adopt an ordinance approving the subject rezoning. (4) Approximately 500 letters and a petition bearing signatures of residents opposed to the Eden Housing development. (5) Notice of Public Hearing to consider a protest of a Planned Development Rezoning, dated April 16, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. In his presentation, James R. Derryberry, Director of Planning, Building and Code Enforcement, summarized the extensive process that has occurred with the applicant, the Staff, and the neighborhood. He stated the project conforms to the General Plan Land Use/Transportation designation for the site, complies with provisions of the School Availability Ordinance, and conceptually meets the Residential Design Guidelines and requirements of the Level of Service Policy. He stated the Planning Commission has unanimously approved the project and that Planning Staff recommends Council approval of the Planned Development Rezoning to allow construction of residential units, retail commercial uses, day care center and community facility space. The following individuals spoke in support of the proposed project: Anthony Flanagan, Director of Development, Eden Housing, Inc., Developer; Jim Pierson, Director of Planning & Development, Santa Clara Valley Transportation Authority, Owner; Leslee Coleman, Vice President, Santa Clara Valley Manufacturing Group; Hien Do, Santa Clara Human Relations; Beth Wyman, Santa Clara Valley Manufacturing Group; Phyllis A. Ward, President, Affordable Housing Network; Rebecca Elliot, Public Affairs Director, San José Real Estate Board; Gertrude Welch, Council of Churches; Joe Zenk, Santa Clara County Office of Human Relations; Ed Davidson; Dede Smullen; and John Fioretta, Greenbelt Alliance. The following individuals spoke in opposition to the proposed development: Tony James, Pinehurst Residents Association; Greg West, President, Gunderson High School PTSA; Robert T. Aguino, V.E.P. Homeowners Association; Dave Fadness; V.E.P. Homeowners Association; Bandish Shah, Stefania Gutowski, and Helen Kim, Sixth Grade Students at Parkview Elementary School; G. DeHaeseleer; Gene Koutz; Mike Blackwell; Marty

Bell; Margaret Reiss; Bob MacDonald; Lori Raymaker, President, Erickson Elementary School PTA; William J. Garbett, Meadows Association; and Bill Cilker. Veronica Lewis, President of the Board of Trustees, San José Unified School District, read a statement from the Board of Education and School Superintendent Dr. Linda Murray, expressing concern about significant cumulative impacts of new developments on the City's schools and playgrounds, especially those in the proposed service area. Jim Derryberry commented on speakers' comments with respect to phasing development of the project, evaluating cumulative impacts on a community, and the inability of school districts to accommodate increased student population resulting from new developments and increased economic growth. He assured the community that the City's General Plan is the strategy by which development in the City of San José is realized, and that the process for evaluating the impacts on service levels for residential developments and meeting the needs of new growth in the City are addressed through the City's Five Year Capital Improvement Program. In summarizing background information on the proposed development, Council Member Diquisto stated the Council approved in May of 1966 the fund reservation that provided for sufficient equity proceeds to make the project feasible without an increase in the City's fund reservation for the project, and approved in March of 1997 "fund reservation conditions" from which only two projects in San José have received funding: Eden Housing does not qualify for the 9% tax credit allocation because the location has not been rezoned for the development. He stated the significant number of developments occurring in this area, the fact that developer fees are insufficient to pay for needed classroom facilities, and the inaccurate student generation rates for multi-family housing have created neighborhood concerns which have been communicated to the City for resolution. He stated the environmental clearance has identified the presence of the "burrowing owl" on the site and provided certain mitigation measures which the State Department of Fish and Game ruled to be "entirely inadequate". With regard to the traffic congestion in the Almaden Expressway and Blossom Hill areas, he stated a report was presented to the Committee of the Whole in Spring of 1996 which identified congestion beyond the Level of Service "F"; Staff was directed to conduct appropriate traffic studies and to develop measures to mitigate those impacts. He stated the results of the traffic studies will be complete by mid-1998; therefore, a two-year delay in approving the project will enable the School District to review the impacts and work on potential solutions, allow the Department of Fish and Game to mitigate potential impacts on protected species, and will provide ample opportunity for the City of San José to complete traffic studies of areas impacted by congestion beyond acceptable levels of service. For the aforementioned reasons, he recommended Council deny the Planned Development Rezoning for the Ohlone/Chynoweth Commons Family Housing Project. Council Member Pandori commented on the area traffic and parking issues discussed by the speakers and asked that Staff address the traffic impacts, if the proposed development is approved by Council, to evaluate the distribution of trips and their mitigation on an intersection. He expressed concern that the City's School Availability Ordinance and Policy can be interpreted as limiting the authority of the City Council to deny, phase or alter a residential rezoning, which can result in school overcrowding. With regard to the application of the provisions to the subject development and location, he stated the School Availability Ordinance was not intended to eliminate the Council's authority to avoid school impacts through the use of its zoning powers, but was to develop means to

help schools impacted by residential growth. He asked the City Attorney to clarify or amend, if necessary, the law and policy for future developments. In response to Council Member Pandori's question regarding the imposition of developer fees, City Attorney Gallo stated the City of San José is precluded by State legislation from imposing fees; however, a methodology was developed, via the School Impact Task Force, that would survive legal challenge and create additional funding for schools by providing for the payment of fees in accordance with a resolution; if those fees were paid, then it would be conclusively presumed that the standard was met. She stated Council cannot deny the project based on school impacts but must approve the zoning according to the development plan. Council Member Pandori recommended Council approve the proposal as contained in his November 3, 1997 memorandum regarding the School Availability Ordinance and Policy. City Attorney Gallo stated the City Council is precluded by the Brown Act from acting on Council Member Pandori's motion during tonight's public hearing; the policy discussion has not been properly scheduled for Council consideration in accordance with the City's Rules Resolution, and the stakeholders have not been notified. Council Member Pandori's rephrased motion, seconded by Council Member Dando to defer development of the Eden Housing project and refer the discussion of the School Availability Ordinance to a future Council meeting, failed passage. Vote: 3-7-1-0. Noes: Diaz, Fernandes, Johnson, Powers, Shirakawa, Jr., Woody; Hammer. Absent: Fiscalini. Mayor Hammer stated the deferral of Council action on the proposed development is not a viable alternative; however, the targeting of resources through the budget process is an option that should be considered. She stated the development of a specific plan is not necessary to explore the use of resources to achieve desired levels of service, but the City should reexamine developer fees, update the school population projections, and communicate to Sacramento the City's concern about potential school impacts and the necessity for State reform. She endorsed the project as a "winner" and recommended Council approval with the understanding all stakeholders work together toward resolution of the outstanding issues. Following substantial discussion of traffic impacts, project density issues, possible development of a senior housing component, and specific modifications and conditions of approval, the City Council took action to approve the planned development rezoning as proposed. Upon motion by Council Member Powers, seconded by Council Member Johnson and carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25461, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeast Corner of Chynoweth Avenue and Pearl Avenue", was passed for publication. Vote: 7-3-1-0. Noes: Dando, Diquisto, Pandori. Absent: Fiscalini.

**15a PUBLIC HEARING ON APPEAL OF THE PLANNING COMMISSION'S DECISION to approve (4-0-3) a Conditional Use Permit for a project located at the north side of Barnard Avenue, 150 feet east of Stone Avenue, on a 1.25 gross acre site in the M-4 Manufacturing Zoning District for a concrete/asphalt recycling heavy processing facility including a concrete crusher (Galante Bros., Owner/Developer). CEQA: ND. Staff recommends upholding the appeal and denying the project.**

CP 96-05-042 - District 7

(Continued from 4/15/97 - Item 15i and 10/7/97 - Item 15b)

Documents Filed: (1) Supplemental memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated November 4, 1997, recommending Council not support the Planning Commission approval of the Conditional Use Permit and deny the subject Permit. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated September 22, 1997, recommending Council not support the Planning Commission approval of the Conditional Use Permit and to deny the subject permit. (3) Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated April 9, 1997, recommending Council not support the Planning Commission approval of the Conditional Use Permit and deny the subject Permit. (4) Letter from Andrew L. Faber of Berliner Cohen, Attorneys At Law, dated April 14, 1997, requesting Council grant the appeal and deny the project. (5) Video recording “Re: Conditional Use Permit Application, File No. CP96-05-042, Concrete Recycling Operations by Galante Brothers”, submitted into the public record. (6) Letter from Peter F. Pfaff, President, GlasForms, Inc., dated April 14, 1997, urging Council to deny the Conditional Use Permit. (7) Correspondence and petitions of individuals supportive of and opposed to the continued operation of the asphalt and concrete crushing facility.

Discussion/Action: Mayor Hammer opened the public hearing on the appeal of the Planning Commission’s decision to approve the Conditional Use Permit for the subject project. Director of Planning, Building and Code Enforcement, James R. Derryberry presented a status report on compliance issues affecting Galante Bros.’ unpermitted cement and asphalt recycling operations. He stated the current use of the facility has resulted in land-use impacts on adjacent uses for approximately two years. He stated the City Council on March 12, 1997 approved Galante’s application to operate the facility which was appealed by an adjacent property owner; during the September 22, 1997 public hearing, the City Council continued the permit appeal for six months to allow the applicant time to relocate the operation; to date, insufficient progress has been made in obtaining permits to relocate the crusher—yet the facility continues to operate without the required permits. Noting the relevant facts regarding the proposed operation, he stated the use will adversely affect the community, impair utility or property values in the vicinity of the site, and negatively impact the quality of life of area residents. He recommended Council deny the Conditional Use Permit as an inappropriate land use at the Barnard Avenue site, and instruct the applicant to cease and desist until appropriate permits are obtained. Representing Galante Brothers, Barton Hechtman of Matteoni, Saxe & Nanda, asked Council to approve a two-month continuance hearing to allow completion of existing contracts and the crusher to be relocated. The following spoke in favor of granting the appeal: Jack and Tom Galante, Robert Pera, and Frank Devine, representing the Neighborhood Community Against Annexation. Andrew Faber of Glasforms, Inc., urged Council to deny the Conditional Use Permit. Council Member Dando stated Galante Bros. has in good faith endeavored to locate a suitable site; that she could not close down a business that is attempting to work with the City, especially one that provides a necessary recycling process for materials and employs 27 people. She urged Council to approve an extension of the operations through January of 1998. Upon motion by Council Member Shirakawa, Jr., seconded by Council Member Diaz and

carried, the public hearing was closed, Staff recommendation to uphold the appeal and deny the project was approved, and Resolution No. 67741, entitled: "Resolution of the Council of the City of San José Denying a Conditional Use Permit to Use Certain Real Property Described Herein for the Purpose of Allowing a Concrete Recycling Facility", was adopted. Vote: 8-2-1-0. Noes: Dando, Pandori. Absent: Fiscalini.

**15d PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the west side of Bernal Road, between San Ignacio Avenue and Via Del Oro, from I-Industrial to A(PD) Planned Development, to allow up to approximately 200,000 square feet of commercial uses on 22 gross acres (SRDC, Inc., Owner/Developer). CEQA: ND. Director of Planning recommends approval.**

Planning Commission recommends approval (5-0-2).

PDCSH 96-07-039 - District 2

(Continued from 9/16/97 - Item 15g and 10/7/97 - Item 15c)

Documents Filed: (1) Memorandum from Planning Commission, dated October 17, 1997, recommending Council adopt an ordinance approving the subject rezoning with the conditions as recommended by City Staff. (2) Approximately fifty letters from residents and business entities expressing support of the new San Ignacio Center and providing additional comments with regards to the Rezoning. (3) Notice of Public Hearing to consider a change in zoning for PDCSH 96-07-039, dated July 22, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. Director of Planning, Building and Code Enforcement, James R. Derryberry, stated the proposed development is consistent with the General Plan and the Commercial Design Guidelines, and that extensive remediation activities by the Regional Water Quality Control Board have occurred on site to remove the contamination. He stated the development adequately addresses the issues raised by the neighborhood, and recommended Council approval of the rezoning. The following spoke in support of the proposed rezoning: Representing the applicant, Norm Matteoni of Matteoni Saxe & Nanda; representing American Stores/Lucky, Henry W. Cord of Cord Associates; Lynn Rodrigues; Joan Peck; and Lorraine Clements. Representing Santa Teresa Village, Joe Barker, Ted and Tom Biagini of Hopkins & Carey, Dan Orloff, and Pam Stearns addressed Council in opposition to the proposal. Mayor Hammer encouraged Staff to continue working with the Biaginis and existing retailers of the Santa Teresa Center to resolve their concerns. Council Member Pandori expressed a preference for extensive evaluation of the area prior to approving development on the subject site. Upon motion by Council Member Powers, seconded by Council Member Shirakawa, Jr., and carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25462, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Westerly Side of Bernal Board, Between San Ignacio Avenue and Via Del Oro", was passed for publication. Vote: 9-1-1-0. Noes: Pandori. Absent: Fiscalini.

CLOSED SESSION REPORT

Disclosure of Closed Session Action of November 4, 1997 submitted by City Attorney, Joan R. Gallo:

A. Authority to Enter Litigation Case As *Amicus Curiae*:

1. Case Name: Long Beach Heritage v. Board of Harbor Commissioners, et al.

Adverse Party or Parties: Board of Harbor Commissioners, et al.

Substance of Litigation: This is an appeal of a decision on an action brought under the California Environmental Quality Act challenging a project to convert the Long Beach Naval Station.

Council Vote:Ayes: Dando, Diquisto, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Noes: None.

Absent: Diaz, Fernandes, Fiscalini.

Disqualified: None.

ADJOURNMENT

The Council of the City of San José adjourned at 11:30 p.m.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK