

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, NOVEMBER 25, 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.; Hammer.

Absent: Council Members: Woody (excused).

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room 600 to confer with Real Property Negotiator pursuant to Government Code Section 54956.8 to discuss the Property of the Ice Centre of San José, 1500 South 10th Street, San Jose, CA, Negotiating Parties: Darrell Dearborn for City of San José and Griffin Sports, Inc. for the Ice Centre of San José, Under Negotiation: Renegotiations of payment provisions of existing lease; to confer with Legal Counsel pursuant to Government Code Section 54956.9 Subsection (a) to discuss existing litigation in the cases of (1) Brown and Gray v. Santa Clara County Transit District, et al., (2) In re Bynoe, (3) Moss, et al. v. City of San José, et al. (4) State of California, et al. v. Bank of America, N.T.& S.A., et al., and to discuss anticipated litigation pursuant to Subsection (b) of Government Code Section 54956.9, in eight matters involving significant exposure to litigation and one matter regarding the initiation of litigation.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:55 a.m. and reconvened at 1:36 p.m. in the Council Chambers.

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

Absent: Council Members: Woody (excused).

INVOCATION

Gunderson High School Choral Group, under the direction of Music Director Bob Russell, presented a medley of popular and seasonal songs. (District 10)

PLEDGE OF ALLEGIANCE

Mayor Hammer led the Pledge of Allegiance.

Vice Mayor Fernandes introduced Colleen Ubhaus, newly appointed Council Assistant in District 4, and welcomed her to the City.

ORDERS OF THE DAY

Upon motion by Council Member Powers, seconded by Council Member Fiscalini, and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 10-0-1-0. Absent: Woody.

CEREMONIAL ITEMS

5a Presentation of a commendation to Greg P. Landers for his outstanding leadership

as chairman of the San José Veterans' Memorial Committee. (Shirakawa, Jr.)

Documents filed: None.

Discussion/Action: Mayor Hammer was joined by Council Member George Shirakawa, Jr. whose father, Council Member George Shirakawa, Sr. was instrumental in bringing to fruition the San José Veterans Memorial. Council Member Shirakawa, Jr. read from the commendation recognizing Greg P. Landers for his leadership as Chairman of the San José Veterans' Memorial Committee; Committee Members were recognized.

- 5b Presentation of a commendation to Andrew R. Bales who as consultant and project manager, successfully developed the Veterans' Memorial. (Shirakawa)**

Documents filed: None.

Discussion/Action: Mayor Hammer and Council Member Shirakawa, Jr. presented a commendation to Andrew Bales for his contributions as consultant and project manager of the Memorial. Greg Landers thanked the Mayor and Council on behalf of the distinguished veterans involved in the project and recognized the efforts of Consultant Bales, Dave Garretson and David Allen. Council Member Fiscalini recognized Colonel Mark Alexander in the audience, a WWII hero and Silver Star Recipient, and thanked him for his contribution to the country and his work on this project.

- 5c Presentation of proclamation to the Disability Advisory Commission of the City of San José supporting the 1997 World AIDS Campaign "Children Living in a World of AIDS" and declaring December 1, 1997 as "World AIDS Day." (Mayor)**

Documents filed: None.

Discussion/Action: Mayor Hammer presented a proclamation to Lila Kraai of the Disability Advisory Commission, declaring December 1, 1997 as "World AIDS Day", commented on the tragic impacts worldwide of this devastating illness, and expressed appreciation to the Commission for their work. Lila Kraai thanked the Commission and others who worked to make the declaration of "World AIDS Day" possible.

GENERAL GOVERNMENT

- 9e (1) Approval of the proposed modifications to the Civil Service system as outlined in the report and authorization for the City Manager to take the actions needed to implement those changes, including but not limited to:**
- (a) Initiation of a meet and confer process with the City's bargaining units relative to the proposed modifications.**
 - (b) Preparation of proposed ballot language in conjunction with the City Attorney's Office for Council approval by March 1998 so that affected sections of the City Charter might be considered for amendment by the voters in the June 1998 election.**
- (2) Approval of an ordinance establishing a pilot project on hiring methods and exempting certain management and entry-level job classifications from the Civil Service Rules on hiring and certification.**

- (3) **Authorization for the City Manager and the City Attorney to develop a proposed ordinance to expand the utilization of unpaid administrative leave in situations where an employee is either indicted or subject to other significant disciplinary proceedings.**

(Human Resources)

Documents filed: (1) Memorandum from William P. Brill, Chair of the Civil Service Commission, dated November 12, 1997, recommending the Council approve the implementation of the pilot project on hiring methods and approve, in concept, the “clean-up” Civil Service Rule changes recommended by the Task Force, submit to review and proper language as drafted by the City Attorney for an ordinance with other substantive changes to the Civil Service Rules, and refer meet and confer rule changes to the Office of Employee Relations. (2) Report entitled, *Revitalizing Civil Service, Report of the Civil Service Reform Task Force*, dated October 30, 1997. (3) Memorandum from City Manager Regina V.K. Williams, dated November 21, 1997, recommending Council action for (a) Approval of the proposed modifications to the Civil Service System as outlined in the report and authorization for the City Manager to take the actions needed to implement those changes, including but not limited to: (i) Initiation of a meet and confer process with the City’s bargaining units relative to the proposed modifications, and, (ii) Preparation of proposed ballot language in conjunction with the City Attorney’s Office for Council approval by March 1998 so that affected sections of the City Charter may be considered for amendment by the voters in the June 1998 election, and, (b) Approval of an ordinance establishing a pilot project on hiring methods and exempting certain management and entry level job classifications from the Civil Service Rules on hiring and certification, (c) Authorization for the City Manager and the City Attorney to develop a proposed ordinance to expand the utilization of unpaid administrative leave in situations where an employee is either indicted or subject to other significant disciplinary proceedings. (4) Memorandum from City Attorney Joan R. Gallo, dated November 25, 1997, regarding the Classifications to be covered by the Uncodified Ordinance for the Pilot Project on Hiring Methods.

Discussion/Action: Mayor Hammer thanked Staff Members and others whose work on this issue has resulted in the report and stated she supports the recommendations contained therein. Assistant City Manager Debra Figone stated one of the recommendations of the New Realities Task Force was to pursue Civil Service reform, that the focus of the Task Force included, but was not limited to, review of City practices pertaining to hiring, discipline, and modified duty. She stated this issue was a Suspension Trigger and the Administration is pleased the Task Force met its target date and to present the report. She stated the Task Force conducted extensive research and made a serious commitment to reform in a manner that has been open, inclusive and substantive. She asked Task Force members to stand to be recognized and thanked the employees who participated in stakeholder meetings as an integral part of the process. She stated on behalf of City Manager Williams that the Administration supports the Task Force’s recommendations, which are bold and innovative and should serve the City well in today’s competitive labor market. Although the recommendation will provide greater flexibility, she noted there will also need to be greater organizational and personal

accountability on behalf of all employees in the organization. She stated that while Civil Service rules have evolved to be somewhat rigid, in some respects they have also provided a guaranteed level of accountability, and in moving forward to amend those rules, it is incumbent that employees at all levels of the organization share in the responsibility for greater accountability in order to continue to effectively fulfill the City's mission as an organization. She stated that while the recommendations will result in greater organizational capacity and improved efficiency in the future, implementation of these recommendations will require a sizable investment of time and resources; consequently, the Administration will be submitting various requests for funding to be considered, beginning as early as mid-year and throughout the ensuing budget processes. She pointed out that many of the recommendations contained in the report are subject to meet and confer with City unions, the Administration is committed to open dialogue with its unions and will work in cooperation with the effected stakeholders to ensure that the City's Civil Service reforms are successful. Mayor Hammer thanked Chairman Norland for his availability to serve the City as both Chair of the Civil Service Commission and Chair of the Civil Service Reform Task Force. Chairman Norland made a brief presentation on the report, comprised of 44 recommendations and 41 rule revisions designed to prepare the City and its work force to meet the challenges of effectively and efficiently delivering services to its citizens into the 21st century. He noted the Civil Service Reform Task Force acted on the mandate of the New Realities Task Force to review hiring, discipline, and modified duty placement, and after focusing on accountability as the overarching principle that should guide Civil Service and the reform effort, the Task Force is making recommendations to improve the Civil Service system procedurally, as well as suggested improvements that could address concerns raised by the hundreds of stakeholders' comments that have been received. Making general observations, he stated the success of the reforms will be contingent on the adherence of all stakeholders to certain guiding principles, the most important being the notion of continuing to develop the highest quality work force possible based upon fair and open processes. While individual rights are important and have been addressed, he stated the City needs to take definitive steps away from a culture of entitlement to a culture of accountability. Many of the costs and delays in the current system result from building in external controls and the proposed reforms are engineered to internal controls, to empower employees and managers to take personal responsibility for their decisions, and to promote discipline through self-control. He stated the cost of the proposals are not cheap; \$675,000 in one-time costs is expected to result in substantial ongoing savings, the automated hiring system proposed has been reported to save other users up to half of the cost per hire, conversion to a positive discipline system creates a \$100,000 in annual savings and appeals processing, and more in the intangible benefits accruing from the anticipated improvement in employee moral and productivity, and upgraded return-to-work program can save the retirement fund from \$300,000 to \$500,000 for every early retirement that is avoided by successful internal placement. He thanked and congratulated members of the Task Force: Lynn Boland, Employee Relations, City of San José; Mary Ellen Bray, San José Police Department; Betsy Carroll, San José State University; William Chapman, Business Representative; Leslie Corsiglia, Housing Department, City of San José; Mike Eaton, Housing Department, City of San José; Russ Farrell, Streets and Traffic, City of San José; Peter Michel, San José State University; Sharon K. Pardun,

Equality Assurance, City of San José; Steve Snell, Business Representative; and Jim Tomaino, San José Police Officers Association. Without assistance from City of San José staff, Nona Tobin, Russ Strausbaugh, Jordan Mendoza, Mona Makashima, Rumi Portillo, and Patti Trantow, he stated the Task Force could not have achieved this accomplishment. He expressed special appreciation to Julie Carver Trujillo, who assisted in writing the report, and Consultant David Jones of Sentient Systems, as well as Norm Sato, liaison to City Attorney's Office, and Council Member Shirakawa, Jr., liaison to the City Council, and most importantly, to stakeholders who gave valuable input in coming to the conclusions and requested actions. In summation, he requested on behalf of the Task Force, that Council approve the recommendations for actions and budget, approve continuation of the Task Force to meet again in six months and again in 18 months to support the implementation, and to keep the momentum going on this massive undertaking for dozens of years into the future; he expressed Task Force's hope that true revitalization of the Civil Service can take place. Debra Powell, President of Confidential Employees Organization, and speaking for the City Labor Alliance, requested assurances in writing that the City will participate in meet and confer processes before any of the recommended changes are made to the City Charter. Mayor Hammer gave her personal assurances to that effect, and Assistant City Manager Debra Figone stated that when the ballot language is brought forward to the Council, the Staff report will provide those assurances, and also will provide assurances separately in writing. City Attorney Gallo advised that the Charter changes being considered would not change the City's meet and confer obligations. Council Member Pandori commented on the recommended policy, which gives internal candidates first consideration for vacant positions and while he agrees that can be an important incentive in offering employees the potential for advancement; however, having the openness and opportunity for competition and bringing in new people is also an important goal. He asked if written policies would be brought forward for evaluation, questioned how effectiveness will be measured against the competing values of rewarding employees and giving opportunity to people from outside the City. He stated he did not have problems with the pilot project but recommended more discussion be conducted on this issue before a blanket proposal is adopted. Council Member Diaz stated he supports creating promotion opportunities for employees internally, but questioned how the recommendations would affect affirmative action policies. Human Resources Director Nona Tobin stated the entire package is designed to create a more open system, allowing for targeted recruitment and making the City more accessible to the community on an ongoing basis, and simultaneously, will allow for consideration first of internal people and how their performance warrants promotion, and that nothing proposed would change the City's policies on having a diverse work force that is representative of the community. Council Member Diaz stated he would have concerns about restricting the pool of candidates. For clarification purposes, Assistant City Manager Debra Figone stated classes included in the pilot program are primarily promotional only recruitments, meaning only internal candidates can apply and be considered and while the pilot has yet to prove its ultimate worth, it is her belief that the process will be more inclusive because it will be position focused and not classification focused, meaning applications will be accepted on an ongoing basis and will have a targeted focus on the qualifications for the position as opposed to the classification. Council Member Pandori stated the policy appears restrictive and since it

would create a new written policy giving first consideration to existing employees, he requested a more complete description of the policy as well as how effectiveness would be measured. He stated support for the pilot program and the overall recommendations, which he thinks are excellent. City Attorney Gallo advised that the ordinance is on today's agenda, but will come back for a second reading and recommended it be approved at that time. Assistant City Manager, Debra J. Figone stated the Administration will bring back an Implementation Plan. Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, Item 9e(3) was dropped, the proposed modifications to the Civil Service system as outlined in the report and authorization for the City Manager to take the actions needed to implement those changes, including but not limited to: Initiation of a meet and confer process with the City's bargaining units relative to the proposed modifications, and Preparation of proposed ballot language in conjunction with the City Attorney's Office for Council approval by March 1998 so that affected sections of the City Charter may be considered for amendment by the voters in the June 1998 election, were approved, Ordinance No. 25469, entitled, "An Ordinance of the City of San José Adopting an Uncodified Ordinance to Establish a Pilot Project on Hiring Methods for Certain Civil Service Positions", was passed for publication, and the Administration was directed to provide an Implementation Plan. Vote: 10-0-1-0. Absent: Woody.

9o Report and recommendation on the Downtown Alignment for the Vasona Corridor. [Transportation, Planning and Environment Committee referral 11/13/97 - Item 7e(4)]

Documents filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 21, 1997, recommending: (a) Requesting the Santa Clara Valley Transportation Authority (VTA) to study both the San Fernando Street and the Delmas Street options as part of the Vasona Corridor Light Rail Project environmental document and that the Redevelopment Agency provide funding of \$50,000 to the City to support the EIR work administered by the VTA, and (b) Directing Staff to enter into an agreement with the VTA to provide \$50,000 in Redevelopment Agency funds to the City as a lump sum contribution associated with the preliminary engineering for the San Fernando alignment. (2) Memorandum from Council Member Pandori, dated November 24, 1997, recommending: (a) As recommended by City and Redevelopment Agency staff, include both the Delmas and San Fernando alignment with the Vasona Corridor in the proposed EIR/EIA process with the recommended cost sharing, and (b) As part of the environmental review process, request the VTA to enhance the Delmas Alternative by including a sub-option for a downtown shuttle as recommended by the Downtown Transit Alternatives Task Force. (3) Letter filed by William J. Garbett, dated November 25, 1997, commenting on the EIR process and suggesting alternatives for study.

Discussion/Action: Director of Public Works, Ralph A. Qualls, Jr., stated the Transportation, Planning, and Environment Committee had selected by majority vote a preferred alternative on Delmas, following which Staff had discussions with the VTA and the Downtown Association. He stated the Staff report dated November 21, 1997 should have indicated the Downtown Association voted 16-7 to endorse the Delmas alignment,

with the San Fernando Alignment to be studied further, and after meeting with the Redevelopment Agency and the Transportation Authority, Staff has made further recommendations in the Supplemental Staff Report, and introduced Barbara Keegan, Acting Chief of the Transportation Division, for a brief presentation on the alternatives. By way of background, Barbara Keegan explained that the Vasona Corridor Light Rail project--a 5.5-mile extension of the light rail system from downtown San José to downtown Campbell--has been under study for ten years and a special concern has been a connection into the downtown. She noted a Task Force co-chaired by Council Members Pandori and Powers studied transit options in the downtown San José area and in June 1995 the San José Downtown Transit Alternative Study was issued and as part of that study recommended that San Fernando Street be considered in addition to the Delmas-San Carlos alternative because it was thought San Fernando provided opportunity for adding transit service to new areas of the downtown and would provide better expandability of the system in the future. She stated in February of 1997 VTA staff considered in-depth both the Delmas and San Fernando options and, based on the results of the referenced study, made a preliminary recommendation that Delmas-San Carlos be the preferred alternative. She stated that City and Redevelopment Agency staff preferred the San Fernando alignment as better suited to the Redevelopment Agency development plans, specifically, the City Hall relocation as well as serving other major activity centers; therefore, Staff is asking Council to approve the Staff recommendation to request the VTA to study Delmas and San Fernando in their environmental document and also to request that the Redevelopment Agency fund \$50,000 for that study work to continue, enabling early identification of utility issues, both in terms of time and money and report back to the Council in Spring 1998. Mayor Hammer left the Chambers at 2:42 p.m. and Vice Mayor Fernandes assumed the Chair. William J. Garbett addressed the Council in opposition to the San Fernando Street option. Clarifying statements in the Staff report which indicate the San Fernando Alternative would be more costly due to utility conflicts, Director Qualls stated the extra costs are due not just to utility conflicts, but to the length of the line and other issues. Mark Walker, Executive Director, Pacific Bell, spoke in support of the Staff recommendation and expressed support for any transit route except San Fernando, which he stated contains the nerve center and life blood of telecommunications in the Valley, due to the cabling which runs down three parts of the street, and requested assurances of the safety and ability of the network to remain intact, describing the risks as very high, both for a short-term construction period and for the long-term viability of the project. Should San Fernando be chosen, he asked that Pacific Bell be involved in the planning stages, but requested that some other alternative be selected. Mayor Hammer stated there are many unanswered questions on this issue and gave her assurances that the City will work closely with Pacific Bell to ensure that services are not disrupted, and concurred with the Staff recommendations to analyze both the San Fernando and Delmas Alternatives. Council Member Pandori expressed support for the Staff recommendation, stressed the need to move forward on the project, and stated it was his understanding that including the San Fernando alignment in the Environmental Impact Statement (EIS) will not substantially delay the work that needs to be done on Delmas anyway and the Agency cost sharing is in the order of magnitude needed for that additional cost. He stated that having both options available with full information will ultimately save time and more review is needed on utility issues,

construction impacts, and other issues, which emerge through the EIS. He commented that one potential outcome may be that the San Fernando alternative may not be the most attractive option, leaving only two options being studied from a downtown perspective, and in the EIR, only the Delmas option. From a downtown perspective, he expressed concerns about impacts on service from the uneven configuration of Delmas Street, and recommended considering a sub option to the Delmas alternative that has shuttle service, which would connect the University, and other employers to the Caltrain station. Council Member Pandori stated the estimated cost of a shuttle system would be less than 2% of the light rail system costs and if included as a sub option or as an enhancement to the Delmas Alternative, would not require separately funding an additional EIR or EIS, and would serve as an additional backup in case San Fernando does not prove viable, and requested inclusion as additional direction to the Staff recommendation. Regarding the issue of the shuttle alternative, Director Qualls stated the Redevelopment Agency contribution to the City of \$50,000 which would go to the VTA would concentrate on the San Fernando Alternative issues and include the alignment and the utility conflicts early in the process and since the EIR will take nearly a year, Staff would report back in the March-April 1998 timeframe with additional information about the San Fernando Alternative which would determine exactly what route would be taken and what decision would be needed, and any consideration of a shuttle alternative would be of importance at that time. He stated for the record that Staff understands this is an important option if the San Fernando Alternative is not selected and Staff would bring an appropriate recommendation at that time, and recommended Council not consider the shuttle option at this time. Council Member Pandori stated it was acceptable to him to discuss the issue further in the spring. Council Member Fiscalini moved recommendation of the Supplemental Staff Report, with the comments and issues raised in Council Member Pandori's memorandum dated November 21, 1997 relative to including a sub option to the Delmas alternative, if selected, to include shuttle service, to be reviewed by the Staff and brought back to Council for further discussion in the Spring of 1998. Council Member Dando seconded the motion. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

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: 10-0-1-0. Absent: Woody.

Public Hearings Set by Council

- 6c(1) Adoption of a resolution initiating proceedings to amend Section 20.38.600 Chapter 20.38 of Title 20 of the San José Municipal Code to correct the inadvertent deletion of properties subject to the Downtown Parking Management Zone, setting a public hearing for December 16, 1997, at 7:00 p.m. and referring said ordinance to the Planning Commission for its review and recommendation. (City Attorney's Office/Planning, Building and Code Enforcement/Redevelopment Agency) (Rules Committee referral 11/19/97)**

Documents filed: Memorandum from Director of Planning, Building and Code

Enforcement, James R. Derryberry, dated November 24, 1997, recommending adoption of said resolution.

Discussion/Action: William Garbett spoke in opposition to the proposal. Resolution No. 67758, entitled: “A Resolution of the Council of the City of San José Initiating Proceedings on its Own Motion Amending Section 20.38.600 Chapter 20.38 of Title 20 of the San José Municipal Code to Correct the Inadvertent Deletion of Properties Subject to the Downtown Parking Management Zone”, was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

Plans and Specifications

- 6d(1) TRACT NO. 9015 - East side of Lincoln Avenue approximately 170 feet southerly of Nevada Avenue - Lauraville Development, LLC (Developer) - 6 single-family detached residential units. Adoption of a resolution approving the final map for tract No. 9015. CEQA: ND. District 6. (Public Works) (Rules Committee referral 11/19/97)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 14, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67759, entitled: “A Resolution of the Council of the City of San José Approving and Accepting the Final Map of Tract No. 9015”, was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 6d(2) TRACT NO. 9024 - Southwest terminus of Valley Crest Road - Braddock & Logan Group, L.P. (Developer) - 115 detached residential lots. Adoption of resolutions approving the plans, final map, contract, and approval of the Parkland Agreement for Tract No. 9024. CEQA: ND. District 4. (Public Works) (Rules Committee referral 11/19/97)**

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

Discussion/Action: Resolution No. 67760, 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. 9024”; Resolution No. 67761, entitled: “A Resolution of the Council of the City of San Jose Approving and Accepting Final Map of Tract No. 9024”; Resolution No. 67762, entitled: “A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 9024”; were adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 6d(3) TRACT NO. 9026 - Southwest corner Berryessa Road and I-680 - M.J. Brock & Sons Inc. (Developer) - 66 detached residential units. Adoption of resolutions approving the plans, final map, contract, and approval of the Parkland Agreement for Tract No. 9026. CEQA: ND. District 4. (Public Works)**

(Rules Committee referral 11/19/97)

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

Discussion/Action: Resolution No. 67763, 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. 9026"; Resolution No. 67764, entitled: "A Resolution of the Council of the City of San Jose Approving and Accepting Final Map of Tract No. 9026"; Resolution No. 67765, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 9026"; were adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

Contracts/Agreements

- 6e(1) Approval of concession agreement with the Pepsi Cola Company to provide beverage products, equipment, marketing, and vending services at Happy Hollow Park and Zoo for a five-year term, in an amount not to exceed \$50,000 per year. (Convention, Arts and Entertainment)**

Documents filed: Memorandum from Nancy Johnson, Director of the Department of Conventions, Arts and Entertainment, dated November 7, 1997, recommending approval of said agreement with the Pepsi Cola Company.

Discussion/Action: The agreement with the Pepsi Cola Company was approved and its execution authorized. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 6e(2) Report on bids and approval of award of contract for construction project entitled "San José/Santa Clara Pollution Control Plant Old Laboratory Space Conversion in the Administration Building" to the low bidder, BCC, in the amount of \$158,606, 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 November 7, 1997, recommending award of said contract to the low bidder, BCC.

Discussion/Action: The award of contract to the low bidder, BCC, was approved and its execution authorized. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 6e(3) Adoption of a resolution authorizing the City Manager to execute second amendments to the agreements with participating plumbing wholesalers to extend the Ultra Low Flush Toilet (ULFT) Voucher Program to multi-family dwelling units and school districts throughout the San José/Santa Clara Water Pollution Control Plant's tributary area, at an additional amount not to exceed \$250,000. (Environmental Services)**

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated November 7, 1997, recommending adoption of said resolution.

Discussion/Action: William Garbett spoke in opposition. Resolution No. 67766, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute Second Amendments to Existing Agreements with Qualified Plumbing Wholesalers to Provide for Payment of Ultra Low Flush Toilet Vouchers for Multi-Family Dwelling and Public Schools Properties Outside the City of San José but Within the San José/Santa Clara Water Pollution Control Plant Service Area", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

6e(4) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1997-98 #13, 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 November 7, 1997, recommending award of said open purchase order list #13.

Discussion/Action: The award of open purchase orders for FY 1997-98 List #13 was approved and execution of the purchase orders authorized. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

6e(5) Adoption of a resolution authorizing the Director of General Services to:

- (a) Execute a one (1) year agreement for elevator/escalator maintenance with Millar Elevator Service Company for a total of first year base cost of \$121,680, including tax.**
 - (b) Authorize the Director of General Services to execute change orders totaling \$10,000 in supplemental moneys for the first year for unexpected repairs.**
 - (c) Execute three (3) one-year options contingent upon Council appropriation of funding.**
- (General Services)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated November 7, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67767, entitled: "A Resolution of the Council of the City of San José authorizing the Director of General Services to Execute a One-Year Agreement for Elevator/Escalator Maintenance Services with Millar Elevator Service Company for a Total First Cost in the Amount of \$121,680, Plus a Contingency of \$10,000; and to Exercise Three (3) One-Year Options in Future Years, Upon City Council Appropriation of Funding", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer. At Council Member Johnson's request, Staff was directed to review the issue of the reliability of existing elevators in City Hall and the feasibility of installing a freight elevator in consideration of the upcoming budget process.

6e(6) Approval of two (2) lease agreements with 777 Associates for office space at 777

North First Street and authorization for the Director of General Services to execute the following terms:

- (a) A 36-month lease for 865 usable square feet of office space for the Police Department, located on the third floor, at a rental rate of \$2.07 per square foot (\$1,790.55/month) for the first year, increasing to \$2.15 per square foot (\$1,859.75/month) for year two (2) and \$2.24 per square foot (\$1,937.60/mo.) for year three (3).**
- (b) A 36-month lease for 16,091 usable square feet of office space for the Environmental Services Department, located on the third and fourth floors, at a rental rate of \$1.90 per square foot (\$30,752.90/month) for the first year increasing to \$1.98 (\$31,860.18/month) for year two (2) and \$2.06 per square foot (\$33,147.46/month) for year three (3).**

(Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, dated November 7, 1997, recommending approval of said agreements with 777 Associates.

Discussion/Action: The agreements with 777 Associates were approved and its execution authorized. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

6e(7) Approval of an operating grant agreement with Our City Forest for the period July 1, 1997 to June 30, 1998, in an amount not to exceed \$130,000. (Streets and Traffic)

Documents filed: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated November 7, 1997, recommending approval of said operating grant agreement with Our City Forest.

Discussion/Action: The operating grant agreement with Our City Forest was approved and its execution authorized. Council Member Fiscalini requested, on behalf of Council Member Shirakawa, who left the meeting due to illness, that Staff be directed to report back through the Finance Committee with a specific date for completion of the cost benefit analysis. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

6e(8) Approval of amendment to the employment agreement with Kelly Kline. (Pandori) (Rules Committee referral 11/19/97)

Documents filed: None.

Discussion/Action: The amendment to the employment agreement with Kelly Kline was approved and its execution authorized. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

6e(9) Approval of amendment to the employment agreement with Margaret Tamisiea. (Pandori) (Rules Committee referral 11/19/97)

Documents filed: None.

Discussion/Action: The amendment to the employment agreement with Margaret Tamisiea was approved and its execution authorized. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 6e(10) Approval of an amendment to the agreement with KPMG Peat Marwick, LLP to reflect increase in test work and implementation of new Government Accounting Standard Board audit requirements (numbers 25, 26, and 28), in an amount not to exceed \$15,830, for a total amount of \$409,307 for 1996-97. (City Auditor)
(Rules Committee referral 11/19/97)**

Documents filed: Memorandum from City Auditor Gerald A. Silva, dated November 18, 1997, recommending approval of an amendment to said agreement with KPMG Peat Marwick.

Discussion/Action: The amendment to said agreement with KPMG Peat Marwick, LLP, was approved and its execution authorized. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 6e(11) Report on bids and award of purchase of thirteen (13) midsize sedans for the Planning, Building and Code Enforcement Department to the low bidder, Melrose Ford, at a total cost of \$214,287.55, including tax, and authorization for the Director of General Services to:**

- (a) Execute the purchase order for the immediate purchase of thirteen (13) vehicles. (Rules Committee referral 11/19/97)**
- (b) Approve an option to purchase additional vehicles at the same unit price of \$16,483.66, including tax, for one (1) year without further Council action other than the appropriation of necessary funds.**

(General Services)

(Rules Committee referral 11/19/97)

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated November 17, 1997, recommending award of said purchase to the low bidder, Melrose Ford.

Discussion/Action: The award of said purchase to the low bidder, Melrose Ford, was approved and issuance of the purchase orders authorized. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

Routine Legislation

- 6f(1) Adoption of an appropriation ordinance and funding sources resolution in the Low and Moderate Income Fund in the amount of \$7,000,000 as a technical correction to an adjustment approved as part of the 1996-97 Annual Report. (City Manager)**

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated November 13, 1997, recommending approval of said appropriation ordinance and related revenue resolution amendments.

Discussion/Action: Ordinance No. 25470, entitled: “An Ordinance of the City of San José Amending Ordinance No. 25390 which Appropriates Moneys in the Low and Moderate Income Housing Fund in the Amount of \$7.0 Million for Technical Correction to an Adjustment Approved as Part of the 1996-97 Annual Report; and Providing that this Ordinance Shall Become Effectively Immediately Upon Adoption”, and Resolution No. 67768, 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 Low and Moderate Income Housing Fund”, were adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 6f(2) Adoption of related amendments to the Annual Resolution on Fees and Charges for the reduction of the Police Block Party Permit Fee from \$65 to \$30 for initial block party permits and a permit renewal fee of \$19 for block party permits renewed within one (1) year of the prior application. (City Manager’s Office/Police)**

Documents filed: Memorandum from Chief of Police, Louis A. Cobarruviaz, dated November 20, 1997, recommending approval of said amendments to the Annual Resolution on Fees and Charges.

Discussion/Action: Resolution No. 67769, entitled, “A Resolution of the City of San José Amending Resolution No. 67425, the 1997-98 Schedule of Fees and Charges, to Reduce the Initial Block Party Permit Application Fee from \$65 to \$30, and to Reduce the Block Party Permit Renewal Application Fee for Permits Renewed Within One (1) Year of a Prior Application from \$65 to \$19 Effective November 25, 1997”, was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 6f(3) Adoption of a resolution authorizing the Director of General Services to:**
- (a) Purchase all petroleum energy supplies on the open market.**
 - (b) Amend purchase orders as required to purchase more or less petroleum products within the total authorized amount of all petroleum open purchase orders.**
- (General Services)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated November 7, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67770, entitled: “A Resolution of the Council of the City of San José Authorizing the Director of General Services to Purchase Petroleum Fuel Supplies on the Open Market and to Amend Purchase Orders to Various Vendors Within the Total Authorized Amount of All Petroleum Open Purchase Orders”, was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 6f(4) Adoption of a resolution:**
- (a) Rescinding previous Resolution No. 67587 and terminating those proceedings.**
 - (b) Initiating proceedings and setting December 9, 1997 at 1:30 p.m. for Council consideration of the reorganization of territory designated as Hamilton No.**

**58 which involves the annexation to the City of San José of 0.54 acre of land, located on the north side of East Hamilton Avenue, approximately 70 feet westerly of Norman Avenue and adjacent public right-of-way extending to the east side of Norman Avenue and the detachment of the same from the Central Fire District, the County Lighting Service District, the West Valley Sanitation District, and the Santa Clara County Library Service Area.
CEQA: ND.**

(Planning, Building and Code Enforcement)

Documents filed: Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated November 14, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67771, entitled: "A Resolution of the Council of the City of San Jose Initiating Reorganization Proceedings for Annexation and Detachment of Certain Uninhabited Territory Designated as Hamilton No. 58 and Described Herein, and Setting the Date and Place for Consideration of such Reorganization", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

6f(5) Adoption of a resolution summarily vacating a portion of San Felipe Road north of The Villages Parkway. CEQA: ND. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 6, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67772, "Resolution of the Council of the City of San José Vacating Right-of-Way on San Felipe Road, North of the Villages Parkway", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

6f(6) Adoption of a resolution accepting a Grant Deed from the County of Santa Clara for the Roberts Road property on which the former Santa Clara County Children's Shelter is located and authorization for the Director of Public Works to sign all necessary documents. CEQA: Exempt. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 7, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67773, entitled: "A Resolution of the Council of the City of San José Approving the Acceptance of a Grant Deed for Real Property on Roberts Road from the County of Santa Clara and Authorizing the Director of Public Works to Execute the Certificate of Acceptance and Any Other Documents Necessary to Accept the Grant Deed", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

**6f(7) Approval of City Auditor Gerald Silva's travel calendar through June 30, 1998, to attend various conferences at a cost to the City of \$1,519. Funding: Non-personal budget. (City Auditor)
(Rules Committee referral 11/19/97)**

Documents filed: Memorandum from City Auditor Gerald A. Silva, dated November 18, 1997, recommending approval of said travel calendar.

Discussion/Action: The travel calendar for City Auditor Gerald Silva through June 30, 1998, was approved. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 6f(8) Approval of one (1) proposed City Event date, as provided in the San José Arena Management Agreement, is approved for use at the San José Arena on Tuesday, December 2, 1997, for San José State University, Division of Intercollegiate Athletics for the 1997 Mayor's Cup. (San José Arena Authority)
(Orders of the Day 4a)**

Documents filed: Memorandum from the San José Arena Authority, dated November 20, 1997, recommending approval of one proposed City event date for San José State University, Division of Intercollegiate Athletics for the 1997 Mayor's Cup,

Discussion/Action: The City Event date for San José State University, Division of Intercollegiate Athletics for the 1997 Mayor's Cup, was approved. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

END OF CONSENT CALENDAR

- 9b Acceptance of the report on the City of San José Revolving Loan Fund for small business loans. (Economic Development)**

Documents filed: Memorandum from the Director of Economic Development, Leslie S. Parks, dated November 17, 1997, submitting said report.

Discussion/Action: Leslye Corsiglia, Assistant Housing Director, presented the activity report for the City's Revolving Loan Fund (RLF) Program, which has been assisting small businesses in San José since 1986, with primary funding for citywide loans coming from Community Development Block Grant funds. She stated that RLF lending practices are designed to accommodate some risk because of dealing with small businesses which may have difficulty in obtaining conventional financing; however, current default rates are less than ten percent, and the loans are leveraged with private banking loans to help businesses establish stable bank relationships and build credibility with conventional lenders, one of the program's key objectives. Since 1993 when the current Administrative plan was revised, she stated the RLF board has approved 35 loans to businesses throughout the City and serves a large number of minority-owned business that create jobs for disadvantaged residents and invest in neighborhoods that may be otherwise overlooked. She introduced Susan Arpan, Manager of the RLP and Development Enhancement Fund Program and Dick Hagarty, Chair of the RLF Advisory Board, who commented on the Board's activity. Council Member Dando, Council Liaison to the Advisory Board, thanked Dick Hagarty, Joe Bass and Nathaniel Lim for their service on the board, commented on a new aspect of the program which provides funding for

environmental jobs, noted that for every \$10,000 loaned by the program one new job is created, and urged the Mayor and Council to support additional funding for the RLF program in the upcoming budget process. Upon motion by Council Member Fiscalini, Council Member Dando, and unanimously carried, the report was accepted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - November 12, 1997

Documents filed: Rules Committee report of November 12, 1997.

(1) Review of November 25 Council Agenda

The Committee approved the November 25, 1997 Council agenda.

(2) Add New Items to November 18 Amended Council Agenda

The Committee recommended one addition and one change to the November 18, 1997 Council agenda.

(3) The Public Record. Attachment: (1) Memorandum from City Clerk Patricia L. O'Hearn, dated November 6, 1997, listing the items transmitted to the Administration and those items filed for the Public Record for the period October 29-November 4, 1997.

The Committee noted and filed the Public Record.

(4) Boards and Commissions

- (a) Child Care Commission
- (b) Commission on Disadvantaged Business Development
- (c) Disability Advisory Commission
- (d) Housing Advisory Commission
- (e) Human Rights Commission
- (f) Library Commission
- (g) Mobile Home Advisory Commission
- (h) Parks and Recreation Commission
- (i) Senior Citizens Commission
- (j) Traffic Appeals Commission

The Committee deferred this item to the November 19, 1997 Rules Committee meeting.

(5) Report back on Youth Crime Gun Interdiction Initiative. Attachment: Memorandum from Senior Executive Assistant Mike McInerney, dated November 7, 1997, replying to Council Member Pat Dando's request that the City make an official request to become a participating city in the Federal Youth

Crime Gun Interdiction Initiative.

The Committee accepted the Administration's report which concluded the following: There is no competitive selection process for cities to communicate their interest in participating in the Federal Youth Crime Gun Interdiction Initiative (the Initiative); the Initiative does not provide any funds to participating cities; expanding the number of participating cities is uncertain; and lastly, the San José Police Department will be using CLETS (the California Law Enforcement Telecommunications System) to trace crime guns recovered in San José to achieve the same law enforcement goal as the Initiative.

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

There were none.

- (7) City Council and Rules Committee meeting schedules

The Committee canceled the November 26, 1997 Rules Committee meeting and directed the City Clerk to schedule a Rules-in-Lieu meeting for that day.

- (8) Oral communications

None presented.

- (9) Adjournment

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

Discussion/Action: Upon motion by Vice Mayor Fernandes, seconded by Council Member Johnson, and unanimously carried, the Rules Committee report and actions of November 12, 1997, were accepted.

7c Report of the Finance/Agency Finance Committee - November 12, 1997

Documents filed: Finance/Agency Finance Committee report of November 12, 1997.

- (1) Monthly Investment Report for September 1997. Attachment: September 1997 Investment Report.

The Committee accepted the report.

- (2) Minutes of September 1997 Investment Committee. Attachment: September 1997 Investment Committee Minutes.

The Committee accepted the report.

- (3) Monthly Financial Report for September 1997. Attachment: Memorandum from Budget Director Larry D. Lisenbee, dated October 30, 1997, transmitting the September 1997 Financial Report.

The Committee accepted the report.

- (4) Police Staffing Report for Period Ending June 30, 1997. Attachment: Memorandum from Chief of Police, Louis A. Cobarruviaz, dated October 28, 1997, recommending the Police Staffing Report related to the Sworn Recruitment and Training Program for the period of January through June, 1997 be accepted.

The Committee accepted the report.

- (5) Review of Solid Waste Fees and Rates. Attachment: Memorandum from Director of Environmental Services, Louis N. Garcia, dated November 6, 1997, recommending Council adopt a policy that fees for the Residential and Commercial solid waste and recycling programs will be at full cost recovery by July 2002; initiate Proposition 218 noticing for a July 1, 1998 rate increase for the Recycle Plus Program (RP); the single-family dwelling (SFD) 32-gallon cart base would go from \$13.95 to \$14.95 per month and the released RP rates would change as indicated in Attachment A; the multi-family dwelling (MFD) rates would increase three percent; increase Commercial Solid Waste (CSW) Collection Franchise Fee from \$1.64 to \$2.41 per uncompacted cubic yard collected (excluding the first 29,200 cubic yards hauled in the fiscal year), effective January 1, 1998; and decrease the CSW AB 939 Fee from \$1.77 to \$1.44 uncompacted cubic yard collected, effective January 1, 1998.

The Committee accepted the report. See Item 9n for Council action taken.

- (6) Administration Workplan for Verifying Landfill Receipts. Attachment: Senior Deputy City Manager, Darrell Dearborn, dated November 4, 1997, recommending the Finance Committee accept the report.

The Committee requested the Chair review the minutes of September 10, 1997 and make a determination with respect to Staff's responsibilities and, if necessary, request assistance from the City Attorney's Office.

- (7) Update on Finance Committee Workplan

The Committee accepted the workplan.

- (8) Oral petitions

William Garbett requested that documents be made available at the beginning of the meeting.

(9) Adjournment

The meeting was adjourned at 11:25 a.m.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Fiscalini, and unanimously carried, the Finance/Agency Finance Committee report and actions of November 12, 1997, were accepted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

7e Report of the Transportation, Planning, and Environment Committee - November 13, 1997

Documents filed: Transportation, Planning, and Environment Committee report of November 13, 1997.

(1) Consent Calendar

- (a) Regional Transportation Funding Status Report. Attachment: November 1997 Status report.

The Committee accepted the report.

- (2) Adoption of Resolution Approving Proposed Projects for FY 1998-99 Transportation Development Act, Article 3 (TDA-3) Pedestrian and Bicycle Facilities Grant Program. Attachment: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated October 30, 1997, recommending adoption of said resolution.

The Committee recommended approval of the Staff recommendations.

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

- (3) Guadalupe River Park Rehabilitation of Contract 1 and 2 Status. Attachment: Memorandum from Nancy Johnson, Director of the Department of Conventions, Arts and Entertainment, dated October 30, 1997, transmitting said status report.

The Committee recommended approval of the Staff recommendation, Option 1, with the additional direction to Staff to provide public information signage, and to provide a quarterly status report on this issue.

- (4) Report and Recommendation on the Downtown Alignment for the Vasona Corridor. Attachment: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 13, 1997, recommending the Council: (1) Select San Fernando Street as the preferred alignment for connecting the Vasona Light Rail line into downtown San José; and (2) Request VTA that an option to extend the line east of 4th Street be included in the environmental documents.

The Committee recommended the Delmas alignment as the preferred alternative with the provision that a future corridor down San Fernando could be considered.

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

- (5) Oral petitions

None presented.

- (6) Report on the Parkland Dedication Fee Ordinance. Attachment: Memorandum from Public Works Director Qualls, Planning Director Derryberry, and Department of Parks, Recreation and Neighborhood Services Director Linder, dated November 4, 1997, recommending Council approve revisions to the Parkland Dedication and Park Impact Fee ordinances, as described, and direct the City Attorney to draft an ordinance to revise the existing PDO/PIFO and related ordinances to implement the recommendations; approve revisions to the private recreation credits and in-lieu fee provisions, as described, and direct the City Attorney to draft resolutions implementing these recommendations for adoption by the City Council.

The Parks and Recreation Commission moved to support Member Pandori's motion recommending to the City Council exemption be eliminated for all affordable housing projects with respect to the Parkland Dedication Fee with additional direction to Staff from the City and Redevelopment Agency to calculate supplement of Redevelopment Agency funds needed to assure the same production.

The next joint Parks and Recreation Commission and Transportation, Planning and Environment Committee meeting to be Wednesday, December 10, 4:00 to 6:00 p.m. in the Health Building, Rooms 202A&B.

- (7) Adjournment

The meeting was adjourned at 6:10 p.m.

Discussion/Action: Upon motion by Council Member Johnson, seconded by Council Member Fernandes, and unanimously carried, the Transportation, Planning, and Environment Committee report and actions of November 13, 1997 were accepted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

LAND USE AND DEVELOPMENT

- 8a PUBLIC HEARING and adoption of a resolution granting tentative approval of the partial cancellation of California Land Conservation (Williamson Act) Contract No. 76-004 for property located at the southwest corner of Berryessa Road and I-680. CEQA: ND. (Planning, Building and Code Enforcement)**

Documents filed: (1) Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated November 7, 1997, recommending adoption of said resolution. (2) Proof of publication of Notice Of Hearing, submitted by the City Clerk. (3) Affidavit of Posting of Notice of Hearing, submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing and there was no testimony from the floor. Upon motion by Council Member Fiscalini, seconded by Council Member Diaz, and unanimously carried, the public hearing was closed and Resolution No. 67774, entitled: "A Resolution of the Council of the City of San José Certifying to the County Auditor of Santa Clara County the Amount of Cancellation Fee to be Paid Upon Partial Cancellation of a Land Conservation Contract, Giving Tentative Approval to Such Partial Cancellation, Prescribing the Conditions Under Which this Resolution will be Effective, Directing the Director of Planning to Record a Certificate Relating to Such Partial Cancellation, Requiring Satisfaction of Such Conditions Prior to the Partial Cancellation Becoming Effective, and Prescribing Conditions in Connection Therewith, and Disestablishing the Agricultural Preserve Within Which the Land is Located", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

GENERAL GOVERNMENT

9a Appointments to:

- (1) Federated City Employees Retirement System Board of Administration - 1 employee vacancy for a term ending November 30, 2001.**
- (2) Police and Fire Retirement Plan Board of Administration - 1 Police vacancy for a term ending November 30, 2001.**
- (3) Suggestion Award Commission - 2 employee vacancies and one alternate for terms ending November 30, 1999.**

(City Clerk)

Documents filed: Memorandum from City Clerk, Patricia L. O'Hearn, dated November 13, 1997, recommending Council: (1) make the specified appointments, following the November 24, 1997, employee election, and (2) certifying the results of the City employees election pursuant to Section 1100 of the City of San José Election Procedure Governing Elections Conducted Among Officers and Employees.

Discussion/Action: Upon motion by Council Member Powers, seconded by Council Member Fiscalini, and unanimously carried, Council appointed Bradley Imamura to the employee vacancy for term ending November 30, 2001, David A. Bacigalupi to the Police vacancy for term ending November 30, 2001, Laretta A. Nawojski and Coleman Wright to the two employee vacancies and Ken Wright as alternate, all terms ending November 30, 1999. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

9c Adoption of a resolution authorizing the City Manager to negotiate and execute the following agreements:

- (1) An agreement with Carollo Engineers for consulting engineering services for dry weather Infiltration/Inflow Study, in an amount not to exceed \$775,000**

and for additional services in an amount not to exceed \$50,000, for a total amount not to exceed \$825,000.

- (2) A Cost Reimbursement Agreement with the City of Santa Clara for consultant engineering services solely in the City of Santa Clara service area in an amount not to exceed \$75,000.
(Environmental Services)**

Documents filed: None.

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

- 9d Adoption of a resolution authorizing the City Manager to negotiate and execute a construction agreement with the Mike Rawitser Golf Shop authorizing the City to perform all services required to retrofit the San José Municipal Golf Course for the use of recycled water from the South Bay Water Recycling Program.
(Environmental Services)**

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated November 19, 1997, recommending adoption of said resolution.

Discussion/Action: Upon motion by Council Member Diaz, seconded by Council Member Powers, and unanimously carried, Resolution No. 67775, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute a Construction Agreement with Mike Rawitser Golf Shop to Authorize the City to Perform All Services Required to Retrofit the San José Municipal Golf Course for the Use of Recycled Water from the South Bay Water Recycling Program", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 9f Approval of an agreement with Standard Insurance Company to provide a fully insured life insurance program for City employees, retirees, and dependents.
(Human Resources)**

Documents filed: None.

Discussion/Action: This item was deferred to December 9, 1997.

- 9g Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the County of Santa Clara for the construction of the Silicon Valley Smart Corridor Phase III Project, in an amount not to exceed \$1,785,000. CEQA: Exempt. (Streets and Traffic)**

Documents filed: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated November 21, 1997, recommending adoption of said resolution.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Diaz, and unanimously carried, Resolution No. 67776, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the County of Santa Clara for the Construction of Phase III of the Silicon Valley Smart Corridor Project, in an Amount Not to exceed \$1,785,000",

was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

9h Adoption of a resolution approving proposed projects for FY 1998-99 Transportation Development Act, Article 3 (TDA-3) Pedestrian and Bicycle Facilities Grant Program. CEQA: Exempt. [Transportation, Planning, and Environment Committee referral 11/13/97 - Item 7e(2)]

Documents filed: See Item 7e(2) for the Staff report and recommendation.

Discussion/Action: Council Member Powers expressed concerns about proposed bike lanes on Snell Avenue from Santa Teresa to Calera and from Calera to Blossom Hill Road and requested community input be considered concerning proposed No Parking Zones on Snell Avenue. She cited safety concerns, particularly near the Highway 85 Overpass where the street narrows, and requested the issue be thoroughly reviewed. Director Qualls stated that following public hearings in December, the Administration would review the issue, taking those considerations into account and adjustments made or if necessary, that part of the scope of the project could be dropped. Referencing Item No. 6 of the Proposed Projects, Director Qualls stated that in response to comments by Council Member Pandori about using concrete rather than a temporary AC path, Staff review determined there was little cost differential and if there are no objections from Council, Staff would change the scope of the project to reflect that modification. Upon motion by Council Member Fiscalini, seconded by Council Member Johnson and unanimously carried, Staff was directed to review safety concerns expressed by Council Member Powers regarding proposed bike lanes and No Parking Zones on Snell Avenue (Item No. 4e), the Staff recommendation was approved, with Item No. 6 modified, and Resolution No. 67777, entitled: "A Resolution of the Council of the City of San José Approving a List of Proposed Projects for Fiscal Year 1998-1999 Funding Through the Transportation Development Act, Article 3 (TDA-3) Pedestrian and Bicycle Facilities Grant Program", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

9i Adoption of a resolution:

- (1) **Approving a fund reservation of up to \$4,410,000 to Mid-Peninsula Housing Coalition or its designated partnership for the Italian Gardens Family Housing Project located on the east side of Almaden Road, approximately 800 feet south of Alma Avenue.**
- (2) **Expressing its intent to issue up to \$21,875,000 in Multifamily Tax Exempt Revenue Bonds as an alternative financing strategy for the subject project.**
- (3) **Setting a TEFRA public hearing on December 16, 1997 at 1:30 p.m. for the issuance of up to \$21,875,000 in Multifamily Tax Exempt Revenue Bonds.**
- (4) **Authorizing the Director of Housing to negotiate and execute all necessary documents evidencing such fund reservation and inducement on behalf of the City.**
- (5) **Finding that the use of 20% Housing Funds for the project is of benefit to the Redevelopment Project Areas in San José.**

(Housing)

(Rules Committee referral 11/19/97)

Documents filed: Memorandum from Director of Housing, Alex Sanchez, dated November 19, 1997, recommending adoption of said resolution.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Diaz, and unanimously carried, Item 9i(2) was dropped from the agenda, and Resolution No. 67778, entitled: “A Resolution of the Council of the City of San José (i) Approving an Acquisition Fund Reservation of up to \$4,410,000 for Mid Peninsula Housing Coalition or its Designee for the Development of a 147-Unit Rental Housing Project Affordable to Very Low- Income Persons and Families, (ii) Setting of a TEFRA Hearing for December 16, 1997 for the Issuance of up to \$21,875,000 in Multifamily Tax Exempt Revenue Bonds, (iii) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents Evidencing Such Reservation on Behalf of the City, and (iv) Finding that the Use of 20% Housing Funds for the Subject Property is a Benefit to the Redevelopment Project Areas in San José”, was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

9j Adoption of a resolution:

- (1) Approving business terms for a conditional increase of \$580,000 to an existing \$1,909,000 acquisition and development loan to Palm Court Senior Homes L.P. for a total loan of \$2,489,000, for a 66-unit senior rental housing project affordable to very low-income households, on a 1.3 acre site located on the south side of Humboldt Street, between Lick Avenue and Palm Street.**
- (2) Approving a permanent loan commitment to the subject project of up to \$2,489,000.**
- (3) Authorizing the Director of Housing to negotiate and execute all necessary documents evidencing such loan increase on behalf of the City.**

(Housing)

(Rules Committee referral 11/19/97)

Documents filed: Memorandum from Director of Housing, Alex Sanchez, dated November 19, 1997, recommending adoption of said resolution.

Discussion/Action: Upon motion by Council Member Johnson, seconded by Council Member Fiscalini, and unanimously carried, Resolution No. 67779, entitled: “A Resolution of the Council of the City of San José (i) Approving Business Terms for a Conditional Increase of \$580,000 to an Existing \$1,909,000 Acquisition and Development Loan to Palm Court Senior Homes L.P. for a 66-Unit Senior Rental Housing Project Affordable to Very Low-Income Households, on a 1.3 Acre Site Located on the South Side of Humboldt Street, Between Lick Avenue and Palm Street; and (ii) Approving a Permanent Loan Commitment to the Subject Project of Up to \$2,489,000; and (iii) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents Evidencing Such Loan Increase on Behalf of the City”, was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

9k Adoption of a resolution:

- (1) **Expressing its intent to issue up to \$12,500,000 in Multifamily Tax Exempt Revenue Bonds, and \$2,655,000 in Taxable Multifamily Housing revenue Bonds to finance the development of up to 130 units for the Carlton Plaza Senior Housing Project located at Branham Lane and Vista Avenue.**
- (2) **Authorizing the Director of Housing to file an application with the California Debt Limit Allocation Committee (CDLAC) for up to \$12,500,000.**
- (3) **Setting a TEFRA public hearing on December 16, 1997 at 1:30 p.m. for the issuance of up to \$12,500,000 in Multifamily Tax Exempt Mortgage Revenue Bonds.**
- (4) **Authorizing the City Manager to negotiate and execute an agreement in an amount not to exceed \$55,000, with E. Wagner and Associates, Inc. as Financial Advisor.**
- (5) **Authorizing the Director of Housing to negotiate and execute a Deposit and Escrow Agreement with Carlton Plaza of San José, LLP for the CDLAC Application for the Carlton Plaza Senior Housing Project.**
- (6) **Authorizing the City Attorney to negotiate and execute an agreement with Jones Hall for Bond Counsel services in an amount not to exceed \$59,000.**

(Housing/Finance)

(Rules Committee referral 11/19/97)

Documents filed: (1) Memorandum from Housing Director Alex Sanchez and Finance Director John Guthrie, dated November 19, 1997, recommending adoption of said resolution. (2) Supplemental memorandum from Housing Director Alex Sanchez and Finance Director John Guthrie, dated November 24, 1997, recommending the Council include in the recommended approval of the items contained in the Staff report for the Carlton Plaza Senior Housing Project, the amount of \$12,500,000 in all references to the tax exempt bond issuance and TEFRA hearing amounts, and the proposed structure of the bonds, and include a recommendation to allow the City Attorney to negotiate and execute an agreement with Jones Hall for bond counsel services in the amount not to exceed \$59,000; all other recommendations in the full report remain unchanged.

Discussion/Action: Upon motion by Council Member Dando, seconded by Council Member Fiscalini, and unanimously carried, Resolution No. 67780, entitled: "A Resolution of the City Council of the City of San José Declaring Intention to Reimburse Expenditures from the Proceeds of Tax-Exempt Obligations and Directing Certain Actions", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

91 Adoption of a resolution:

- (1) **Expressing its intent to issue up to \$9,000,000 in Multifamily Tax Exempt Revenue Bonds for the Development of an affordable 141-unit senior rental housing project on a 3.74-acre site located at the northwest corner of Coleman Road and Almaden Expressway.**
- (2) **Authorizing the Director of Housing to file an application with the California Debt Limit Allocation Committee (CDLAC) for up to \$9,000,000 for the Coleman Senior Housing Project.**

- (3) **Setting a TEFRA public hearing on December 16, 1997 at 1:30 p.m. for the issuance of up to \$9,000,000 in Multifamily Tax Exempt Revenue Bonds for the subject project.**
- (4) **Authorizing the Director of Housing to negotiate and execute a Deposit and Escrow Agreement for the CDLAC application for the Coleman Senior Project.**

(Housing/Finance)

(Rules Committee referral 11/19/97)

Documents filed: (1) Memorandum from Housing Director Alex Sanchez and Finance Director John Guthrie, dated November 19, 1997, recommending adoption of said resolution. (2) Supplemental memorandum from Housing Director Alex Sanchez and Finance Director John Guthrie, dated November 24, 1997, recommending the City Council include in the recommended approval of the items contained in the Staff report for the Coleman Senior Housing Project, the amount of \$9,000,000 in all references to the inducement resolution, bond issuance and TEFRA hearing amounts; all other recommendations in the full report remain unchanged.

Discussion/Action: Upon motion by Council Member Dando, seconded by Council Member Johnson, and unanimously carried, Resolution No. 67781, entitled: "Resolution of the Council of the City of San José Regarding its Intention to Issue Tax-Exempt Bonds (Coleman Senior Apartment Project)", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

9m Adoption of a resolution:

- (1) **Approving an acquisition and construction loan of up to \$3,340,000 to JSM Enterprises Inc., or its designated affiliate, for the 140-unit Italian Gardens Senior Housing Project located on the eastside of Almaden Road, 500 feet south of Alma Avenue.**
- (2) **Expressing its intent to issue up to \$9,000,000 in Multi-Family Tax Exempt Revenue Bonds for the Development of the 140-unit Italian Gardens Senior Housing Project.**
- (3) **Authorizing the Director of Housing to file an application with the California Debt Limit Allocation Committee (CDLAC) for up to \$9,000,000 for the Italian Gardens Senior Housing Project.**
- (4) **Setting a TEFRA public hearing for December 16, 1997 at 1:30 p.m. for the issuance of up to \$9,000,000 in Multifamily Tax Exempt Revenue Bonds for the subject project.**
- (5) **Authorizing the Director of Housing to negotiate and execute a Deposit and Escrow Agreement for the CDLAC application for the Italian Gardens Senior Housing Project.**
- (6) **Authorizing the City Manager to negotiate and execute an agreement in an amount not to exceed \$55,000, with Ross Financial Consulting Financial Advisor for the Coleman and Italian Gardens Senior Housing Projects.**
- (7) **Authorizing the Director of Housing to negotiate and execute all necessary documents evidencing such loan on behalf of the City.**

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

(Housing/Finance)

(Rules Committee referral 11/19/97)

Documents filed: (1) Memorandum from Housing Director Alex Sanchez and Finance Director John Guthrie, dated November 19, 1997, recommending adoption of said resolution. (2) Supplemental memorandum from Housing Director Alex Sanchez and Finance Director John Guthrie, dated November 24, 1997, recommending the City Council include in the recommended approval of the items contained in the Staff report for the Italian Gardens Senior Housing Project, the amount of \$9,000,000 in all references to the inducement resolution, bond issuance and TEFRA hearing amounts; all other recommendations in the full report remain unchanged.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Johnson, and unanimously carried, Resolution No. 67782, entitled: "Resolution of the Council of the City of San José Regarding its Intention to Issue Tax-Exempt Bonds (Italian Gardens Senior Apartment Project)", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

- 9n**
- (1) Adoption of a policy that fees for the Residential and Commercial solid waste and recycling programs will be at full cost recovery by July 2002.**
 - (2) Initiate Proposition 218 noticing for a July 1, 1998 rate increase for the Recycle Plus Program (RP); the single-family dwelling (SFD) 32-gallon cart base rate would go from \$13.95 to \$14.95 per month and the related RP rates would change as indicated in Attachment A; the multi-family dwelling (MFD) rates would increase three (3) percent.**
 - (3) Adoption of a resolution increasing the Commercial Solid Waste (CSW) Collection Franchise Fee from \$1.64 to \$2.41 per uncompacted cubic yard collected (excluding the first 29,200 cubic yards hauled in the fiscal year), for solid waste handling services performed on or after January 1, 1998.**
 - (4) Adoption of a resolution amending 1997-98 Schedule of Fees to reduce the Commercial Solid Waste Source Reduction and Recycling Fee from \$1.77 to \$1.44 per cubic yard of uncompacted material, effective January 1, 1998.**

[Finance/Agency Finance Committee referral 11/12/97 - Item 7c(5)]

Documents filed: (1) See 7c(5) for Staff report. (2) Supplemental memorandum from Director of Environmental Services, Louis N. Garcia, dated November 20, 1997, recommending deferral of the increase of the Commercial Solid Waste Franchise and AB 939 fees until December 16, 1997. (3) Memorandum from City Attorney Joan R. Gallo, dated November 25, 1997, advising that Proposition 218 required that "Property Related Fees" meet certain substantive requirements, and new or increased Property Related Fees may only be imposed after a 45-day notice and public protest hearing procedure, with an election also required unless the Property Related Fee is for water, sewer, and refuse collection. The City Attorney believes that Recycle Plus fees should not be considered as "Property Related" under Proposition 218; however, because the law in this area is

unsettled, the initiation of noticing and protest procedures for the proposed increase in Recycle Plus rates is being recommended even though there is a strong argument that these fees are not property related.

Discussion/Action: Council Member Fiscalini moved approval of the Staff recommendations dated November 6 and 20, 1997. Council Member Johnson seconded the motion. Council Member Pandori stated that Council had in the past discussed the feasibility of offering a supersaver container for households generating less than 32 gallons of waste, which would be consistent with the overall goals of encouraging waste reduction and providing the best possible service, and requested Staff provide information regarding offering a container of approximately 16-20 gallons. Council Member Diquisto expressed opposition to the proposal and stated the cost effectiveness of the entire program should be reviewed for other options. Council Member Fiscalini stated the City of San José is very competitive with a very complex garbage and yard waste system that is working well, aiding in conserving the bay and saving millions of dollars and stressed the dire consequences of not acting to secure the program for the future. He noted the residential program has never been on a cost recovery basis and has been subsidized by commercial rates, stressed the importance of noticing the program pursuant to Proposition 218 as provided in the Staff recommendation, and expressed his support. Council Member Johnson pointed out there has been no rate increase in the five years since the program's inception and commented on the competitiveness of San José rates compared to other jurisdictions. Council Member Dando stated the proposed increases are premature in light of recommendations by the auditor, which have not been studied or implemented by the department, and she does not support the recommendation. Council Member Johnson responded that the auditor had made a point of indicating that these fees directly tracked to his recommendation. On a call for the question, the motion carried and the November 6, 1997 Staff recommended Items 1 and 2 were approved, Item Nos. 3 and 4 were deferred to December 16, 1997, as recommended in the Supplemental Staff memorandum dated November 20, 1997, and Staff was directed to report back on a Super Saver container. Vote: 6-2-3-0. Noes: Dando, Diquisto. Absent: Hammer, Shirakawa, Woody.

PUBLIC SAFETY AND WELFARE

13a Public Hearing and adoption of a resolution:

- (1) Approving the 1998 Report of Seasonal and Recurrent Weeds and Refuse, as amended.**
- (2) Directing the Office of the Santa Clara County Fire Marshal to abate the seasonal and/or recurrent nuisances on identified 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.**

(Planning, Building and Code Enforcement)

(Continued from 11/18/97 - Item 15b)

Documents filed: (1) Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated October 31, 1997, recommending adoption of a resolution, overruling any and all objections to the 1998 Report of Seasonal and

Recurrent Weeds and Refuse; and Directing the Office of the Santa Clara Fire Marshall to abate the seasonal and/or recurrent nuisances on identified properties pursuant to Chapter 9.12 of Title 9 of the San José Municipal Code and the Weed Abatement Agreement between the City of San José and Santa Clara County. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated November 21, 1997, recommending acceptance of the 1998 Report of Seasonal and Recurrent Weeds and Refuse, as amended, and adopting said resolution. (3) Amended 1998 Report of Seasonal and Recurrent Weeds and Refuse. (4) Affidavit of Mailing of Notice of Hearing, dated November 5, 1997, submitted by the County of Santa Clara, Fire Marshall's Office.

Discussion/Action: The public hearing was continued from November 19, 1997. Director of Code Enforcement, Ed Gawf, reported that in response to comments the previous week by property owners and the City Council's subsequent direction, Staff had met with each owner to resolve the issues in question, and has undertaken a review of current procedures to improve upon the process. Upon motion by Council Member Fiscalini, seconded by Council Member Diaz, and unanimously carried, the public hearing was closed and Resolution No. 67783, entitled: "A Resolution of the Council of the City of San José Accepting the 1998 Report of Seasonal and Recurrent Weeds and Refuse, as Amended, and Directing the Santa Clara County Fire Marshal to Abate the Public Nuisances Consisting of Seasonal and Recurrent Weeds and Refuse on Certain Properties", was adopted. Vote: 8-0-3-0. Absent: Shirakawa, Woody; Hammer.

CLOSED SESSION REPORT

City Attorney Gallo disclosed the following Closed Session actions of November 25, 1997:

A. Authority to Seek Appellate Review or Further Appellate Review in a Litigation Case:

1. Case Name: *Moss, et al. v. City of San José, et al.*
Adverse party or parties: Moss, et al.
Substance of litigation: Action seeking damages for alleged civil rights violations and negligence as a result of a police action.

Council Vote:

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

Noes: None.

Absent: Diaz, Woody.

Abstain: None.

2. Case Name: *Poway Royal Mobilehome Owners Association v. City of Poway.*
Adverse party or parties: Poway Royal Mobilehome Owners Association.
Substance of litigation: An action seeking to require the City of Poway to comply with alleged promises made by Council Members to mobilehome park

residents and in recitals to a resolution.

Council Vote:

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

Noes: None.

Absent: Diaz, Woody.

Abstain: None.

ORAL COMMUNICATIONS

Cathy Brandhorst addressed the Council regarding civil rights issues.

ADJOURNMENT

The Council of the City of San José adjourned at 3:35 p.m.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK