

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, AUGUST 27, 2002

The Council of the City of San José convened in regular session at 9:30 A.M. in City Council Chambers at City Hall.

Present: Council Members - Campos, Chavez, Cortese, Diquisto, LeZotte, Reed, Shirakawa, Jr., Williams, Yeager; Gonzales.

Absent: Council Members - Dando (excused).

Upon motion unanimously adopted, Council recessed at 9:35 A.M. to a Closed Session in Room 600 to confer with Legal Counsel pursuant to Government Code Section 54956.9; under Subsection (a) to discuss existing litigation in the cases of (1) Chester H. Lehmann Co. dba Electrical Distributors Co. v. City of San José (2) Calderon, et al. v. Campos, et al.; to discuss anticipated litigation pursuant to Subsection (b) of Government Code Section 54956.9, in one matter involving significant exposure to litigation, pursuant to Subsection (b) of Government Code 549576.9.

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 - Campos, Chavez, Cortese, Dando, Diquisto, LeZotte, Reed, Shirakawa, Jr., Williams, Yeager; Gonzales.

Absent: Council Members - None.

INVOCATION

Shirakawa Elementary School Winds Ensemble, which consisted of: Flutists: Giang Mai, Julie Vu, Amy Nguyen, Kim Pham, Whitney Huynh; Clarinetists: Constance Bobb, Vivian Nguyen, Nhu-y Nguyen, delivered the invocation. (District 7)

PLEDGE OF ALLEGIANCE

Mayor Gonzales led in the Pledge of Allegiance.

ORDERS OF THE DAY

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

CEREMONIAL ITEMS

- 1.1 Presentation of plaques to E. Ronald Blake and Arthur Knopf, both for 4 years service on the Airport Commission; to Anne Marie Barrett and Robert Miller, both for 6 years service on the Arts Commission, and to Magda Madriz for 7 years service on the Arts Commission; to Rosa Campos for 2 years 11 months service on the CDBG Steering Committee; to Chris Luna for 3 years 7 months service on the CDBG Steering Committee; to Patricia Dunning and Marti Wachtel, both for 3 years 10 months service on the Historic Landmarks Commission; to Sharon Godbolt for 4 years service on the Planning Commission; to Gloria Chun Hoo for 8 years service on the Planning Commission; to Philip Barone, Evelyn Bitbadal, and Jennifer Faulkner for 4 years service on the Child Care Commission; and to Devonne MacLaren for 1 year 7 months service on the Child Care Commission. (Mayor)**

Documents filed: None.

Discussion/Action: Mayor Gonzales presented the plaques to the commissioners who were present. Plaques will be mailed to commissioners who were not present.

CONSENT CALENDAR

Upon motion by Council Member Diquisto, seconded by Council Member Reed, and unanimously carried, the Consent Calendar was approved and the below listed items taken as indicated. Vote: 10-0-1-0. Absent: Yeager.

- 2.3 Approval of a first amendment to the lease agreement with San José Jet Center for ramp and office space at Norman Y. Mineta San José International Airport to support its commercial airline fueling operations, extending the term of the agreement from September 11, 2002 through September 30, 2012, with annual revenue to the City of \$41,844. CEQA: Resolution No. 67380, PP 99-11-209. (Airport)**

Documents filed: Memorandum from Aviation Director Ralph G. Tonseth, dated August 7, 2002, recommending approval of said first amendment to the lease agreement with San José Jet Center.

Discussion/Action: The first amendment to said lease agreement with San José Jet Center was approved and its execution authorized. Vote: 9-0-2-0. Absent: Dando, Yeager.

- 2.4 Adoption of a resolution authorizing the City Manager to:**
- (a) Negotiate and execute no-fee equipment rental agreements with US Filters and Ionics Ultra Pure Water Corporation to obtain advanced water treatment (AWT) pilot test equipment for a study of advanced water treatment of recycled water;**

(Item continued on next page)

2.4 (Cont'd.)

- (b) Execute an agreement with the Santa Clara Valley Water District to receive an amount not to exceed \$113,678 towards the costs of the AWT study;**
- (c) Execute a continuation agreement with MWH Americas, Inc., extending the term of the agreement from March 31, 2002 to September 30, 2003, and increasing compensation by \$88,900, for a total agreement amount not to exceed \$3,663,900.**

CEQA: Exempt. (Environmental Services)

Documents filed: (1) Memorandum from Director of Environmental Services, Carl W. Mosher, dated August 7, 2002, recommending adoption of said resolution. (2) Letter from Treatment Plant Advisory Committee dated August 8, 2002, stating concurrence with the Staff recommendation.

Discussion/Action: Resolution No. 71175, entitled: "A Resolution of the Council of the City of San José Authorizing Various Agreements Relating to Advance Water Treatment Studies for Recycled Water", was adopted. Vote: 9-0-2-0. Absent: Dando, Yeager.

2.5 Adoption of appropriation ordinance amendments in the General Fund to:

- (a) Establish an appropriation to the Information Technology Department for the Geographic Information Systems Basemap Project in the amount of \$300,000.**
- (b) Decrease the Geographic Information Systems Improvements Earmarked Reserve by \$300,000.**

(Information Technology/City Manager's Office)

Documents filed: Memorandum from Chief Information Officer, Information Technology Department, Wandzia Grycz, and Budget Director Larry D. Lisenbee, dated August 7, 2002, recommending adoption of said appropriation ordinance amendments in the General Fund.

Discussion/Action: Ordinance No. 26720, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26674 to Appropriate Monies in the General Fund for the Graphic Information Systems Base Map Project; and Providing that this Ordinance shall become Effective Immediately Upon Adoption", was adopted. Vote: 9-0-2-0. Absent: Dando, Yeager.

2.6 Adoption of a resolution authorizing the Director of Public Works to negotiate and execute an agreement for the construction and installation of park improvements in a portion of Cahill Park by SummerHill Homes, Inc. (SHI), to be reimbursed by the City in an amount not to exceed \$200,000. (APN 261-36-074/078) CEQA: Negative Declaration, PDC00-11-116. Council District 6. SNI: Burbank/Del Monte. (Parks, Recreation and Neighborhood Services/Public Works)

2.6 (Cont'd.)

Documents filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara I. Hensley, and Director of Public Works Katy Allen, dated August 7, 2002, recommending adoption of said resolution authorizing the City Manager to negotiate and execute an agreement for construction and installation of park improvement in a portion of Cahill Park by SummerHill Homes, Inc.

Discussion/Action: Resolution No. 71176, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Negotiate and Execute an Agreement with Summerhill Homes, Inc. for the Construction and Installation of Park Improvements in a Portion of the Future Cahill Park that provides for City Reimbursement of Actual Costs in an Amount Not To Exceed \$200,000", was adopted. Vote: 9-0-2-0. Absent: Dando, Yeager.

2.7 **Adoption of a resolution of intention to vacate a portion of a public service easement lying within Lot 6 as shown on that certain Tract No. 9380, recorded December 20, 2001 in Book 746 on pages 8-11, Official Records of Santa Clara County, California; and setting a public hearing on September 17, 2002 at 1:30 p.m. CEQA: Negative Declaration, PDC00-11-116. Council District 6. SNI: Burbank/Del Monte. (Public Works)**

Documents filed: Memorandum from Director of Public Works Katy Allen, dated August 7, 2002, recommending adoption of a resolution of intention to vacate a portion of a public service easement lying within Lot 6 as shown on that certain Tract No. 9380, and setting a public hearing on September 17, 2002.

Discussion/Action: Resolution No. 71177, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing to Consider Whether to Vacate a Portion of the Public Easement (PSE) within Lot 6 of Tract No. 9380", was adopted. Vote: 9-0-2-0. Absent: Dando, Yeager.

2.8 **Adoption of a resolution increasing the contingency for the San José Family Camp Restrooms, Phase II by \$28,000, and approval of Contract Change Order No. 3 to extend the construction completion date to January 13, 2003. CEQA: Exempt, PP 01-01-010. (Public Works)**

Documents filed: Memorandum from Director of Public Works Katy Allen, dated August 7, 2002, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71178, entitled: "A Resolution of the Council of the City of San José Increasing the Contingency from \$38,000 to \$66,000 for the San Jose Family Camp Restrooms, Phase 2 Project and Authorizing the Director of Public Works to Execute Contract Change Orders within the Approved Contingency of \$66,000", was adopted. Vote: 9-0-2-0. Absent: Dando, Yeager.

2.9 Acceptance of the Second Quarter 2002 San José Arena Authority Ticket Distribution Program Report. (San José Arena Authority)

Documents filed: Memorandum from Executive Director of San José Arena Authority Chris Morrissey, dated August 7, 2002, transmitting said report and recommending acceptance of report.

Discussion/Action: The Second Quarter 2002 San José Arena Authority Ticket Distribution Program Report was accepted. Vote: 9-0-2-0. Absent: Dando, Yeager.

**2.10 Approval of a continuation agreement with the University of California Cooperative Extension, Santa Clara (UCCE) for research on the use of municipally generated yard waste and food waste products and clopyralid contaminated compost to extend the contract term from August 1, 2002 through August 1, 2003, and increase the maximum compensation by \$30,000, for a total agreement amount not to exceed \$121,000. (Environmental Services)
(Deferred from 8/13/02 – Item 2.7 and 8/20/02 – Item 2.11)**

Documents filed: Memorandum from Director of Environmental Services, Carl W. Mosher, dated July 24, 2002, recommending approval of an amendment to the consultant agreement with the University of California Cooperative Extension, Santa Clara.

Discussion/Action: The continuation agreement with the University of California Cooperative Extension, Santa Clara (UCCE) was approved and its execution authorized. Vote: 9-0-2-0. Absent: Dando, Yeager.

**2.11 Approval of the Freeway Maintenance Agreement with the State of California providing for the maintenance of the proposed Bailey Avenue/Route 101 Interchange. CEQA: Resolution No. 68705. Council District 2. (Public Works)
(Deferred from 8/13/02 – Item 2.9 and 8/20/02 – Item 2.12)**

Documents filed: None.

Discussion/Action: This Item was deferred to September 3, 2002.

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules Committee – August 14, 2002

Documents filed: Rules Committee Report of August 14, 2002.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
 - (b) City Council
 - (1) Review August 27, 2002 Draft Agenda
 - (2) Add New Items to August 20, 2002 Agenda
- These items were reported at the August 20, 2002 Council meeting.

3.2 Report of the Rules Committee – August 14, 2002 (Cont'd.)

- (c) City Council Committees
 - (1) Amendments to Council Committee Agendas
 - (a) Finance and Infrastructure Committee
 - (b) Economic Development and Environment Committee
 - (c) Education, Neighborhoods, Youth, and Seniors CommitteeNone filed.
- (d) Meeting Schedules - There were none.
- (e) The Public Record. Attachment: Memorandum from City Clerk Patricia O'Hearn dated August 8, 2002 transmitting items received for the Public Record for July 31-August 6, 2002.

The Committee noted and filed the Public Record.

- (f) Boards, Commissions and Committees. Attachment: Memorandum from Council Member Chuck Reed dated August 13, 2002 requesting re-advertisement for a District 4 Youth Commissioner.

The Committee directed the City Clerk to re-advertise for a District 4 Youth Commissioner.

- (g) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee. Attachment: Memoranda from Council Members Pat Dando and Dave Cortese dated August 9, 2002 regarding the West Nile Virus; and from Assistant City Manager Mark Linder dated August 14, 2002 regarding the Black Chamber of Commerce.

The Committee directed Staff to report back to the City Council in 60 days with an appropriate plan to deal with the anticipated arrival of the West Nile Virus. The Committee directed the City Auditor to review the Black Chamber of Commerce's City-funded programs and requested Staff to return to Rules Committee next week with a workload assessment to complete the audit.

- (h) Administrative Reviews and Approval
 - (1) Approve request from Council Member Campos to use Council General funds to attend League of California Cities Policy Committee Meetings in Sacramento, CA, August 16, 2002. Attachment: Memoranda from Council Member Nora Campos dated August 5, 2002 requesting use of Council General funds; and from City Clerk Patricia O'Hearn dated August 9, 2002 summarizing the use of Council General Travel Budget to date.

The Committee recommended approval for Council Member Campos' use of Council General funds to attend the League of California Cities Policy Committee Meetings in Sacramento, CA, August 16, 2002.

3.2 Report of the Rules Committee – August 14, 2002 (Cont'd.)

- (h) Administrative Reviews and Approval (Cont'd.)
 - (2) Approve request from Council Member Dando to use Council General funds to attend National Association of Latino Elected & Appointed Officials Conference in Albuquerque, NM, June 27-30, 2002. Attachment: Memoranda from Council Member Pat Dando dated June 20, 2002 requesting use of Council General funds; and reference memorandum from City Clerk Patricia O'Hearn dated August 9, 2002 summarizing the use of Council General Travel Budget to date, and filed at Item 3.2(h)(1).

The Committee recommended approval for Council Member Dando's use of Council General funds to attend the National Association of Latino Elected & Appointed Officials Conference in Albuquerque, NM, June 27-30, 2002.

- (i) Oral communications - None were presented.
- (j) Adjournment - The meeting adjourned at 2:25 P.M.

Discussion/Action: Upon motion by Vice Mayor Shirakawa, Jr., seconded by Council Member Chavez, and unanimously carried, the Rules Committee report and actions of August 14, 2002, were accepted. Vote: 9-0-2-0. Absent: Dando, Yeager.

3.3 Report of the Finance and Infrastructure Committee – August 14, 2002

Documents filed: Finance and Infrastructure Committee Report of August 14, 2002.

- (a) Consent Items
 - (1) Monthly Investment Report for May 2002 and June 2002. Attachment: Memoranda from Director of Finance Scott P. Johnson, dated June 25 and July 29, 2002, transmitting said reports
 - (2) Minutes from the Second Quarter Investment Committee Meeting. Memorandum from Director of Finance Scott P. Johnson, dated July 30, 2002, transmitting said minutes.

The Committee accepted the Consent Items.

- (b) Unfunded Projects Appropriation Report. Attachment: Memorandum from Director of Public Works Katy Allen, dated July 29, 2002, transmitting said report.

The Committee accepted the staff report.

- (c) June Monthly Report. Attachment: Correspondence from City Auditor Gerald A. Silva, dated July 16, 2002, transmitting said report.

The Committee accepted the staff report.

3.3 Report of the Finance and Infrastructure Committee – August 14, 2002 (Cont'd.)

(d) An Audit of City Hall Department's Petty Cash and Change Funds. Report entitled: *An Audit of City Hall Departments' Petty Cash and Change Funds*, dated June 2002, from the Office of the City Auditor.

The Committee accepted the staff report.

(e) Oral petitions - None.

(f) Adjournment - The Committee was adjourned at 2:45 P.M.

Discussion/Action: Upon motion by Council Member Reed, seconded by Council Member Chavez, and unanimously carried, the Finance and Infrastructure Committee report and actions of August 14, 2002, were accepted. Vote: 9-0-2-0. Absent: Dando, Yeager.

3.4 Adoption of an ordinance ratifying final expenditures in various appropriations for FY 2001-2002. (City Manager's Office)

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated August 6, 2002, recommending adoption of an ordinance ratifying final 2001-2002 appropriation increases in the Construction and Conveyance and Disaster Funds.

Discussion/Action: Upon motion by Council Member Diquisto, seconded by Council Member Cortese, and unanimously carried, Ordinance No. 26721, entitled: "An Ordinance of the City of San José Authorizing and Ratifying Certain Encumbrances and/or Expenditures in Various Funds made during City's 2001-2002 Fiscal Year in Excess of Sums Appropriated Therefore", was adopted. Vote: 10-0-1-0. Absent: Yeager.

3.5 Interview of the remaining candidate to fill the attorney's position on the Appeals Hearing Board, for an unexpired term ending December 31, 2004. (City Clerk) (Continued from 8/13/02 – Item 3.4)

Documents filed: See Item 3.4 in City Council minutes of August 13, 2002.

Discussion/Action: The City Council interviewed the last of four candidates for the attorney's position on the Appeals Hearing Board and upon the 4th ballot, selected Kelly Raftery for the position. Vote: 10-0-1-0. Absent: Yeager.

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

4.2 Adoption of a resolution:

(a) **Approving an amendment to the \$1,000,000 grant agreement with Neighborhood Housing Services Silicon Valley (NHSSV) to enable a geographic expansion of the Mayfair Neighborhood Acquisition/Rehabilitation Pilot Program into all Strong Neighborhoods Initiative (SNI) areas.**

(Item continued on next page)

4.2 (Cont'd.)

- (b) Approving a contract with NHSSV for acquisition and loan financing services, and for a contract term from July 1, 2002 to June 30, 2003, for a contract amount not to exceed \$100,000.**
- (c) Finding that the use of 20% Housing Funds to capitalize the expanded Acquisition/Rehabilitation Program and to underwrite expenses by NHSSV to administer the Program are a benefit to redevelopment project areas in San José.**

CEQA: Exempt, PP 02-07-200. (Housing) (Deferred from 8/13/02 – Item 4.2)

Documents filed: Memorandum from Director of Housing Leslye Corsiglia, dated July 24, 2002, recommending approval of said resolution.

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

4.3 PUBLIC HEARING ON PETITION FOR TENTATIVE PARTIAL CANCELLATION OF LAND CONSERVATION CONTRACT (Williamson Act), for property consisting of 3.5 acres located on the northeast corner of Fleming Avenue and Warner Drive (Rolando Loera, Owner). CEQA: Negative Declaration. Director of Planning, Building, and Code Enforcement recommends approval. No Planning Commission action required.

**Contract No. 71-234 - District 5
(Continued from 8/20/02 – Item 11.3)**

Documents filed: None.

Discussion/Action: This item was continued to September 17, 2002.

RECREATION & CULTURAL SERVICES

5.2 Acceptance of staff's quarterly status report on the Parks and Recreation and Branch Library Bond Projects. (City Manager's Office)

Documents filed: (1) Memorandum from City Manager Del D. Borgsdorf, dated August 14, 2002, transmitting said report and recommending acceptance of the report. (2) Hard copies of the Administration's presentation of the Quarterly Status Report.

Discussion/Action: Terry Roberts, Deputy City Manager, provided a slide presentation on the quarterly report of the Parks, Recreation and Library Bond Projects. He reported that of 116 projects, 82 will be under way by June 2002, 96 underway by June 2003, and 77 anticipated to be completed by June 2004. He reviewed the following highlights: progress to date; project update; award 24 more projects in 2002; and Community Center and Library contract awards. He stated that, using this monitoring report as a guideline, Staff hopes to bring forward a program for citywide project monitoring. Council Member Chavez stated that she would like to see in the Quarterly Report if there are changes in the systems that keep the projects on track and what those changes are, if projects are

5.2 (Cont'd.)

moved only as a result of Staff effort, why the projects are on time, why they are not on time, and why they fall off or if they fall off. Deputy City Manager Roberts responded that there is team leadership in place for timeline and system improvements to focus on projects that are not moving. Council Member Chavez stated that she does not understand why some projects do not move when they are funded, and asked if it is because of an internal or restructure issue. She indicated that she receives complaints from people who do business with the City about interaction with them, and stated that if there is some method to quantify changes, she would be interested in seeing them; that it would be helpful to those doing business with the City as well as internally. Council Member Reed asked about the budget in terms of gross dollars. Deputy City Manager responded that the projects have not reached full expenditure yet, as some projects have not been awarded; and that virtually all projects have been within budget. Upon motion by Vice Mayor Shirakawa, Jr., seconded by Council Member Chavez, and unanimously carried, the Quarterly Status Report on the Parks and Recreation and Branch Library Bond Projects, was accepted. Vote: 10-0-1-0. Absent: Yeager.

5.3 **Adoption of a resolution authorizing for the City Manager to negotiate and execute agreements with the County of Santa Clara and the Santa Clara County Open Space Authority for use of the City's share of Twenty Percent (20%) Open Space Funding Program up to \$900,000 to equally fund, with the County of Santa Clara, the acquisition of the Pyzak Property (APN 704-11-010) for open space. CEQA: Exempt, PP02-06-142. Council District 2. (Parks, Recreation and Neighborhood Services)**

Documents filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara L. Hensley, dated August 7, 2002, recommending authorizing the City manager to negotiate and execute said agreements with the County of Santa Clara and the Santa Clara County Open Space Authority

Discussion/Action: Upon motion by Vice Mayor Shirakawa, Jr., seconded by Council Member Williams, and unanimously carried, Resolution No. 71179, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Agreements with the Santa Clara Open Space Authority and the County of Santa Clara for use of the City's Share of the 20 percent Open Space Funding Program in amount up to \$900,000 to Fund Equally with the County of Santa Clara the Acquisition of the Pyzak Property for Open Space Purposes", was adopted. Vote: 10-0-1-0. Absent: Yeager.

5.4 **Adoption of a resolution modifying the in-lieu fee schedule and credits associated with Table 1 of the Park Impact and Parkland Dedication Ordinances (PIO and PDO) Resolution No. 71120 for projects in-process based on one hundred percent (100%) of the land values indicated in the 1997 Residential Land Value Study by allowing the in-process projects to have until January 1, 2004 to either file for a building permit application for PIO projects, or an application for a final map for PDO projects. CEQA: Exempt, PP02-05-131. (Parks, Recreation and Neighborhood Services/Planning, Building and Code Enforcement)**

5.4 (Cont'd.)

Documents filed: (1) Memorandum from Director of Planning, Building & Code Enforcement, Stephen M. Haase, and Director of Parks, Recreation and Neighborhood Services, Sara L. Hensley, dated August 7, 2002, recommending adoption of said resolution. (2) Proofs of publication of notice of hearing, executed on August 21 and 24, 2002, submitted by the City Clerk.

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Discussion/Action: Upon motion by Vice Mayor Shirakawa, Jr., seconded by Council Member Chavez, and unanimously carried, Resolution No. 71180, entitled: "A Resolution of the Council of the City of San José Setting Forth Revisions to the Schedule of In-Lieu Fees Charged and Credits Issued by Establishing a Deadline Date of January 1, 2004 for PDO/PIO Projects In Process Based on One Hundred Percent (100%) of the Land Values Indicated in the 1997 Residential Land Value for PDO Projects In Process to File for a Final Map and for PIO Projects In Process to file for Building Permit Application, Pursuant to Chapters 14.25 and 19.38 of the San José Municipal Code", was adopted. Vote: 10-0-1-0. Absent: Yeager.

- 5.5 (a) Report on bids and award of contract for the Kelley Park Maintenance Area Project to the low bidder, JFC Construction, Inc., for the base bid in an amount of \$657,750, and approval of a ten percent contingency in an amount of \$66,000. CEQA: Exempt, PP01-10-186.**
- (b) Adoption of the following appropriation ordinance amendments in the Parks Maintenance Yards Fund:**
- (1) Increase the Kelley Park Maintenance Yard Renovation project by \$145,000.**
 - (2) Decrease the Ending Fund Balance by \$145,000.**
- (Public Works/City Manager's Office)**

Documents filed: Memorandum from Director of Public Works Katy Allen, and Budget Director Larry D. Lisenbee dated August 7, 2002, recommending award of said contract, with related contingency to the low bidder, JFC Construction, Inc., and recommending adoption of said appropriation ordinance.

Discussion/Action: Upon motion by Vice Mayor Shirakawa, Jr., seconded by Council Member Chavez, and unanimously carried, Ordinance No. 26722, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26674 to Appropriate Monies in the Construction Tax and Property Conveyance Tax Fund; Parks Maintenance Yards Purposes for Kelley Park Maintenance Yard Renovation Project; and Providing that this Ordinance shall become Effective Immediately Upon Adoption", was adopted. Vote: 10-0-1-0. Absent: Yeager.

TRANSPORTATION SERVICES

- 6.1 **Approval of the report from the San José Taxicab Advisory Team (“Team”) and:**
- (a) **Direction to the City Manager and San José Redevelopment Agency Director to work with the Team to identify the funding needed to support the marketing and customer evaluation components of their recommendations;**
 - (b) **Direction to the Chief of Police to approve the proposed pilot temporarily suspending the issuance of permits to additional taxicab companies not licensed as of July 1, 2002; and,**
 - (c) **Amend the Taxicab Rate, Fares and Tariffs Resolution to increase the current per mile rate of \$2.25 per mile (.25 per 1/9 mile) to \$2.50 (.25 per 1/10), amending the flag drop from \$2.00 (including 1/9 mile) to \$2.00 per 1/10 mile), and maintain the same wait time calculation of \$.20/36 seconds (\$20 hour).**
- (City Manager’s Office/San José Taxicab Advisory Team)**
(Deferred from 6/18/02 – Item 6.4 et al., and 8/6/02 – Item 6.1)

Documents filed: None.

Discussion/Action: This item was deferred to September 17, 2002.

- 6.2 **Approval of a fifth amendment to the consultant services agreement with Parsons Transportation Group, Inc. relating to the Route 87 Freeway Project, extending the term of the agreement from August 31, 2002 to June 30, 2003, and increasing the total amount of compensation by \$510,000, for a total agreement amount not to exceed \$3,363,000. CEQA: Resolution No. 65071. Council District 3. (Transportation)**

Documents filed: Memorandum from Acting Director of Transportation James R. Helmer, dated August 7, 2002, recommending approval of said fifth amendment to the consultant services agreement with Parsons Transportation Group, Inc. relating to the route 87 Freeway Project.

Discussion/Action: Upon motion by Vice Mayor Shirakawa, Jr., seconded by Council Member Chavez, and unanimously carried, the fifth amendment to said agreement with Parsons Transportation Group, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Yeager.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 **PUBLIC HEARING on the Commercial Solid Waste and Recyclables Collection Franchise application of Mesloh Demolition and Recycling (M.D.R.), approval of an ordinance granting the franchise, and approval of Commercial Solid Waste and Recyclables Collection Franchise agreement with Mesloh Demolition and Recycling (M.D.R.). CEQA: Negative Declaration, PP92-11-308. (Environmental Services)**

7.1 (Cont'd.)

Documents filed: Memorandum from Director of Environmental Services, Carl W. Mosher, dated August 7, 2002, recommending approval of an ordinance grant the franchise, and approval of a Commercial Solid Waste and Recyclables Collection Franchise Agreement with Mesloh Demolition & Recycling.

Discussion/Action: Upon motion by Vice Mayor Shirakawa, Jr., seconded by Council Member Cortese, and unanimously carried, Ordinance No. 26723, entitled: "An Ordinance of the City of San José Granting a Commercial Solid Waste and Recyclables Collection Franchise to Mesloh Demolition and Recycling", was passed for publication. Vote: 10-0-1-0. Absent: Yeager.

7.2 **Approval of an agreement with Malcolm Pirnie, Inc., for design and support services of the Fiscal Year 2002-2003 Capital Improvement Projects at the San José/Santa Clara Water Pollution Control Plant, in an amount not to exceed \$875,000, and additional services in an amount not to exceed \$115,000, for a total agreement amount not to exceed \$990,000. (Environmental Services)**

Documents filed: Memorandum from Director of Environmental Services, Carl W. Mosher, dated August 7, 2002, recommending approval of said agreement with Malcolm Pirnie, Inc.

Discussion/Action: Upon motion by Vice Mayor Shirakawa, Jr., seconded by Council Member Chavez, and unanimously carried, the agreement with Malcolm Pirnie, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Yeager.

7.3 **Authorization to submit the Urban Runoff Management Plan Annual Report and certification to the Regional Water Quality Control Board in conformance with the City's Municipal Separate Storm Sewer System National Pollutant Discharge Elimination System (NPDES) permit requirements, pursuant to the Federal Clean Water Act by the September 15, 2002 due date. (Environmental Services)**

Documents filed: None.

Discussion/Action: This item was deferred to September 3, 2002.

7.4 **Direct the City Attorney to clarify the language included in the Disposal Facility Tax Ordinance definition changes made and approved by the City Council on June 18, 2002, revise the definition of cover material for the purpose of the Disposal Facility Tax, wherein exemptions for petroleum contaminated soils and sludge materials are continued and are therefore not subject to the fee. (Mayor) (Rules Committee referral 8/21/02)**

7.4 (Cont'd.)

Documents filed: Memorandum from Mayor Gonzales dated August 20, 2002, recommending directing the City Attorney to clarify the language included in the Disposal Facility Tax Ordinance definition changes made and approved by the City Council on June 18, 2002; revise the definition of cover material for the purpose of the Disposal Facility Tax, wherein exemptions for petroleum contaminated soils and sludge materials are continued and are therefore not subject to the fee.

Discussion/Action: Council Member LeZotte stated that she thought sludge was part of the calculation. Steve Willis, Acting Deputy Director, Environmental Services, responded that Staff held a series of stakeholder meetings and there will be a report to Council on September 3 as to what they believe the impact would be in terms of revenue. City Attorney Rick Doyle clarified that Council action at this meeting is only to direct the Attorney's Office to draft a report to come back to Council with the financial impact. Council Member Dando expressed concern that taxing demolition material encourages developers to take the material to landfill and stated that she thought demolition recycling was exempt. Staff responded that if material is separated at a recycle center it is tax exempt and only the residual is taxable; however, if all the material is taken directly to a landfill, it is taxable. Council Member Dando stated that she believes it is important for Council to understand the impacts of this program. Mayor Gonzales requested that a full report be brought back to Council to clarify questions and concerns raised by Council Members. Upon motion by Vice Mayor Shirakawa, Jr., seconded by Council Member Williams, and unanimously carried, the Staff recommendation was approved and the City Attorney directed to clarify the language included in the Disposal Facility Tax Ordinance definition changes made and approved by the City Council on June 18, 2002, to revise the definition of cover material for the purpose of the Disposal Facility Tax, wherein exemptions for petroleum contaminated soils and sludge materials are continued and are therefore not subject to the fee. Vote: 9-0-2-0. Absent: Chavez, Yeager.

IN ACCORDANCE WITH SEC. 19.16.140D OF THE SAN JOSE MUNICIPAL CODE, THIS IS NOTICE OF THE CITY ENGINEER'S RECEIPT OF THE FOLLOWING FINAL MAPS FOR REVIEW:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9446	S 3rd Street & Keyes Street	3	FF Development	176 units	Multi-Family Attached

OPEN FORUM

William Garbett spoke on legislative issues.

RECESS/RECONVENE

Following Open Forum, the City Council recessed at 2:35 p.m. and reconvened at 7:05 p.m.

RECESS/RECONVENE (Cont'd.)

Present: Council Members - Campos, Chavez, Cortese, Dando, Diquisto, LeZotte, Reed, Shirakawa, Jr., Williams, Yeager; Gonzales.

Absent: Council Members - None.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board was convened at 7:05 p.m. to consider Item 10.1 in a Joint Session with Redevelopment Item 7.6.

10.1 Public Hearing and

- (a) **Adoption of a superseding resolution by the City Council approving the sale of the project site (generally located on the commercial properties on the southwest and southeast corners of Story and King Roads) to BHV San Jose, LLC, accepting the 33433 Summary Report and Re-Use Appraisal, and finding that the sale of the property will assist in the elimination of blight, is consistent with the Implementation Plan for the Story Road Redevelopment Project Area and that the consideration for the property is not less than the fair reuse value for the proposed use, with the covenants and conditions and development costs authorized by the Disposition and Development Agreement (DDA); and,**
- (b) **Adoption of a superseding resolution by the Agency Board approving the proposed DDA between BHV San Jose, LLC, and the Redevelopment Agency for the redevelopment of the commercial property at the southeast and southwest corners of Story and King Roads, authorizing the Executive Director to negotiate and execute purchase and sale agreements for site acquisition required under the DDA, technical amendments required by the Developer's lender, and the master lease and sublease agreement for the Mercado, and authorizing the Executive Director to convey property to the developer once the conditions of conveyance have been met; and,**
- (c) **Adoption of a superseding resolution by the Agency Board approving the Business Relocation Program for the proposed retail redevelopment of the southwest and southeast corners of Story and King Roads.**

CEQA: Mitigated Negative Declaration. (STORY ROAD) (Redevelopment Agency)

Documents filed: (1) Memorandum from City Manager Del Borgsdorf and Redevelopment Executive Director Susan Shick, dated August 27, 2002, recommending the adoption of said resolutions by the City Council and Redevelopment Agency Board approving of the sale and Disposition and Development Agreement with BHV San José, LLC, for development of the southwest and southeast corners of Story and King Roads as a neighborhood retail project and acceptance of the 33433 Summary Report and Reuse Evaluation. (2) Report entitled: *Summary Report Pursuant to Section 33433 of the California Community Redevelopment Law on a Disposition and Development Agreement By and Between the Redevelopment Agency of San José and BHV San José, LLC.*, prepared by Keyser Marston Associates, Inc., dated June 17, 2002. (3) Report

10.1 (Cont'd.)

entitled: *Reuse Valuation, Story and King Retail District, San José*, prepared by Keyser Marston Associates, Inc., for the Redevelopment Agency of the City of San José, dated June 2002. (4) Memorandum from Redevelopment Executive Director Susan Shick, dated August 27, 2002, recommending the Agency Board adopt a resolution approving an attached Business Relocation Program for the proposed retail redevelopment of the southwest and southeast corners of Story and King Roads. (5) Supplemental memorandum from Redevelopment Executive Director Susan Shick, dated August 27, 2002, providing supplemental information documenting blight on the site of the proposed neighborhood retail project on the southeast and southwest corners of Story and King Roads. (6) Correspondence from a speaker at the City Council public hearing on August 27, 2002, pertaining to issues relating to a DDA between the City of Redwood City, CA. and the Redwood City Redevelopment Agency.

Discussion/Action: Mayor Gonzales called the meeting to order at 7:05 p.m. Council Member Dando requested Staff to explain why the City Council is not rescinding the action taken on June 25, or what is superseding that action. City Attorney Rick Doyle explained that the item was agendaized because of allegations of violations of the Brown Act; and to be sure there is no uncertainty, Council is to take possible action to repeal prior resolutions, or repeal prior resolutions and approve new resolutions which would supersede the prior action. Mayor Gonzales opened the public hearing, with the following individuals speaking about the issue: Rosalie Aratzen, John Zamora, Beth Shafran-Mukai, Pete Campbell, Dennis Umphress, Allen Rice, Sistilio Testa, Bud Beacham, Neil Struthers of the Building Trades Council, Kathleen Dolci, Amy Dean of the South Bay Labor Council, Judy Soito, Joe Nieto, Saralo Lopez, Josue Garcia of the Building Trades Council, Ted Johnson, Luciano Villarreal, Ron Golart, Rubie Golart, Daniel Reyes, Terry Tanner of IBEW Local 332, Daniel Garcia, Louie Rocha, Sabas Arenas, George Swenson, Angelina Coronado, Billy Wang, Herminio Torres, Ben Garza, Douglas Adams, Rudy Coronado, Lupe Chavez, Jose Mendoza, J. Ascencion Calderon, Anne Marie Mellado, Teresa Mendoza, Jesus Orozco, Art Calderon, Frank Chavez, Dennis Fong, Rich De La Rosa, Eugenio Ramirez, Enrique Arguello, William Garbett, Jack Davis, Keith DeFilippis, Sue Burnham, Thomas Rowe, Stephanie Carles, Yolanda Reynolds, Loraine Wallace Rowe, Zander Collier, Daniel Chavez, Stan Barone, Donna Courtright, Aleja Ricerdez, Al Roosma, Victor Garza, Marianna Tinoco, and Elizabeth Brierly. Mayor Gonzales closed the public hearing.

Council Member Campos stated that she was elected to the City Council by a majority of people in her District to represent the whole community, and that her decisions are based on what she has heard and lived her entire life. She stated that she has talked to neighbors to find out what they want, and that the Strong Neighborhoods Initiative (SNI) gives neighborhoods the power to decide what they want in the community. She stated that she believes this shopping center will be a place that will have services and goods not currently provided the Eastside, and that with the support of the community, she will continue to make it a reality. She explained that in order to remove any questions as to the validity of the action taken on June 25, 2002, and for the express purpose of clarifying the effective date of the Disposition and Development Agreement (DDA), she moved to

10.1 (Cont'd.)

adopt a resolution by the City Council repealing Resolution No. 71140; adopt a resolution by the Agency Board repealing Resolution Nos. 5322 and 5323; adopt a superseding resolution by the City Council approving the sale of the property site to Blake-Hunt Venture San Jose, LLC, accepting the summary report and reuse appraisal, finding that the sale of the property will assist in elimination of blight, is consistent with the implementation plan for the Story Road Redevelopment Project Area, and that consideration to be received for the property is not less than fair reuse value; adopt a superseding resolution by the Agency Board approving the DDA with Blake-Hunt Venture San Jose, LLC, for the redevelopment of the property, authorizing the Executive Director to negotiate and execute purchase and sale agreement for the site acquisition required under the DDA technical amendment required by the developer's lender and the master lease and sublease agreement for the Mercado, and authorizing the Executive Director to convey property to the developer once the conditions of the conveyance have been met; adoption of the superseding resolution by the Agency Board approving the Business Relocation Program for the proposed retail development of the property; in addition, existing tenants of the Tropicana Shopping Center will be provided the opportunity to negotiate leases which will evenly phase in rent increases from current rates to fair market rates over the first five years after construction is completed. Vice Mayor Shirakawa, Jr. seconded the motion.

Vice Mayor Shirakawa, Jr., stated that he and Council Member Campos are asking for support on this project based on decades of neglect on the Eastside. He expressed concern with some of the tactics that have been used over the last year, one being to attack everywhere to take away from the focus of what is important here – the investment in the Eastside. He stated that he believes once the community is informed exactly of the facts, the truth of the project, and what the City is trying to do not only in the Eastside but in the entire City, people are in favor of what the City is doing. He added that he is concerned with people attacking the project and making it look like the majority of the community are not supportive, this is not the case here, and there are people who are misinformed or do not understand the project. He stated that he believes when this is all done, the project will create a dynamic for the entire Eastside.

Council Member Reed stated that he would not be supporting the motion. He explained that it is not that he disagrees with his Council colleagues who want to do something about the Tropicana, and it is not that he disagrees with the neighbors who want to fix up the Tropicana, as they deserve to have it fixed up, it is that he disagrees with the plan which is so heavily opposed by the merchants in Tropicana. He stated that he is opposed to the use of Eminent Domain just because the City is unhappy with the pace at which the property owner is moving, and believes there are alternatives that could work and should be pursued without using Eminent Domain. He added that each of these small businesses represents a family, it is their livelihood that is at risk, and the City should at least have a plan that has their support. Council Member Yeager stated that he believes the Council cannot satisfy everyone, but represents the majority view and pushes projects along that have the support of constituents and Council Members, and believes the majority of people supports this project. He asked what kind of neighborhood input will there be on

10.1 (Cont'd.)

the project as it moves forward. Susan Shick, Executive Director of the RDA, responded that Staff is working with the Offices of Council Member Campos and Vice Member Shirakawa, Jr. to put together several neighborhood areas of input. She explained that an Oversight Committee has been put together that combines members of the retail community, members of the residential community, members of the business community in the Story and King area, and this group will be used as a sounding board for the implementation of the Development Agreement, the design of the Center, the overall architecture of the Center, and all of the leasing policy and relocation oversight needed to implement this project. She explained that Staff will be working with the Neighborhood Action Committees (NAC) in the area, as well as PACs, and informing them on a regular basis of the shopping center, the progress being made, seeking their advice and input on issues that may come up, and then going back to the Oversight Committee, until Staff is comfortable with a plan and the community supports and embraces it. She added that she believes there are tremendous opportunities for input and a system that will maximize those opportunities.

Council Member Yeager indicated that someone pointed out that this plan will drive out current shoppers, and he asked if Staff knows who those shoppers are now and what plans are for the future to make sure that this is a shopping center they will use and have the merchandise they want to purchase. Director Shick responded that the plan has been structured through the Development Agreement to ensure that merchants at the site will be able to remain, although there are several auto-related uses that will be relocated outside the center – that has been part of the process from the very beginning of the discussion about Story and King. She explained that the Redevelopment Agency Relocation Staff is interviewing the rest of the merchants to determine their needs and interest in the center; after which all this will be put together into a Relocation Plan and come back to the Board in the next month-and-a-half. She added that this would be the basic guideline Staff will use for the relocation process. She explained that the Development Agreement has numerous provisions to safeguard the interest of the residents and the merchants; and the concept of the Mercado, which is a centerpiece of this shopping center, is to be a relocation resource to see that over 50 or 60 small merchants on the site can be handily relocated into the Mercado and have a highly successful business. Council Member Yeager stated that it is his understanding that the RDA's intent and the developer's intent is to make sure that all of those shoppers will return to the center once it is completed, and that the City wants to make sure it is a center that they want to use. Director Shick responded that this is correct.

Council Member Dando stated that she has heard a lot about safety and the crime level being high in Tropicana and she visited the Police Department web site to compare crime statistics for the Tropicana Center and the Oakridge Mall, with the following results:

10.1 (Cont'd.)

Tropicana had 38 crimes, Oakridge 37; therefore, statistically there is nothing to back up those concerns. She indicated that if Tropicana is crime ridden as some people have said, there is a Police Center out there to handle the problem. She stated that she has heard other comments about the timeliness in which this property has or has not been improved, and she believes it is important to remember that the current property owner has not had this shopping center for decades, but rather acquired this site in the last eight-ten years. She added that there were numerous changes made to the owner's plans that were required by the RDA, and that there have been opportunities to move this along quicker, but because of bureaucracy the process slowed down. She commented that she believes the Council is in no position to judge people on how quickly we finish projects and how safe they are. She stated that she believes everyone agrees the shopping center needs improvement, but the areas that have been rehabilitated look nice and the one building that is under construction will be nice if the project is completed. She stated that if the RDA Board wants to set aside \$50 million for the Eastside, it would be money well invested, and recommended that the City let the community determine where they want that money to go – into a shopping center with a private developer; or if that private developer is willing to rehabilitate the shopping center with his own money, would they rather take that \$50 million and put it into other needs in the neighborhood. She expressed concern about Eminent Domain, which she has a difficult time using, and explained that it is a very valuable tool that government has which should be used cautiously and very rarely, and should not be used to take a person's property. She commented that if the City wanted to work with the current owner and give him money to build according to City plans, that is fine, but the City does not have the right to take property from an owner and give it to someone else and pay them to do the same thing that the private individual was attempting to do. She expressed concern about the 60 small businesses that know when this shopping center is redeveloped, they may be able to stay there for five years; but when the subsidies run out they will not be able to afford it. She explained that historically, when the City has subsidized businesses, they have struggled and then find it very difficult for to make their way. She stated that she would not be supporting the motion.

Council Member Williams stated that he has talked to Council Members Campos and Shirakawa, the RDA, merchants, and property owners, and has visited the site, to try and get a sense of what the Council should be about this particular project. He explained that his major concerns are about the merchants - they are viable, active, and trying to make a living - and he was assured by Council Members Campos and Shirakawa and the RDA that the merchants would be protected, that they would be taken care of and would not be cast away. He stated that he would hold them to that. Regarding affordability, he stated that in looking at the future and the growth of those merchants as they continue to be in the shopping center, their profitability will increase; they will grow, so as the lease cost increases, hopefully their investment will pay off and they can afford to be in that marketplace. He asked the City Attorney to clearly explain what Eminent Domain means, and stated that even if Eminent Domain were not included in this project, the City at any time has the option to exercise that process. City Attorney Doyle explained that Eminent Domain is a power inherent in any government, and specifically with respect to the RDA,

10.1 (Cont'd.)

it is a power conferred by the State of California in establishing RDAs. He stated that the power has to be used for a public purpose - public purpose is broadly defined in the State of California - and a valid public purpose is to cure blight, which is what the City is attempting to do in moving forward on this proposition. He stated that he is comfortable that the Agency does have the power of Eminent Domain and that it is not before the Council at this time. He further explained that if at some point in time the RDA has to come forward using Eminent Domain, it will have to come forward with justification for the Council to make the findings of being a necessity; and it would come only at a time after the RDA has attempted to negotiate a deal and has appraisals for fair market value. He added that there has to be fair compensation, which is fair market value.

Council Member Williams stated that as the City looks at the development and the progress that has been made, and there is something that is useful or something where an investment has been made and the City tears it down, he would have to look at that before it happens; and if it comes back to Council before it happens, he is sure that the Council has the option to decide whether or not they approve it. He added that as long as the Council has that option, he is comfortable. Regarding local contractors and local skilled people, he asked if they would be used in the project. Director Shick responded that Blake-Hunt has advised her that they will use San Jose Construction as their contractor. Council Member Williams stated that he would be supporting the motion based on the answers he received. On a call for the question, the motion carried, Resolution No. 71187, entitled: "A Resolution of the Council of the City of San José Superseding its previous Action of June 25, 2002, and Approving the Sale of the Project Site (generally located on the Commercial Properties on the Southwest and Southeast Corners of Story and King Roads) to BHV San José, LLC, Accepting the 33433 Summary Report and Reuse Appraisal; and Finding that the Sale of the Property will assist in the Elimination of Blight, is consistent with the Implementation Plan for the Story Road Redevelopment Project Area and that the Consideration for the Property is not less than the Fair Reuse Value for the Proposed Use, with the Covenants and Conditions and Development Costs Authorized by the Disposition and Development Agreement", and Resolution No. 71187.1, entitled: "A Resolution of the Council of the City of San José Repealing its Prior Resolution No. 71140", and Redevelopment Agency Resolution Nos. 5341, 5342 and 5343 were adopted, and the City Council and Redevelopment Agency Board directed that existing tenants of the Tropicana Shopping Center will be provided the opportunity to negotiate leases, which will evenly phase in rent increases from current rates to fair market rents over the first five years after construction is completed. Vote: 9-2-0-0. Noes: Dando and Reed.

OPEN FORUM

Gregory D. Nichols commented on illegally parked police vehicles.

ADJOURNMENT

The Joint City Council and Redevelopment Agency Board meeting was adjourned at 9:34 p.m.

RON GONZALES, MAYOR

ATTEST:

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

dc/mp-8-27-02