

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, NOVEMBER 18, 2003

The Council of the City of San José convened in Regular Session at 9:00 a.m. in Council Chambers at City Hall.

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

Absent: Council Members - Gregory. (Excused)

Upon motion unanimously adopted, the City Council recessed to Closed Session at 9:02 a.m. in Room 600 to (A) confer with Legal Counsel with respect to existing litigation pursuant to Government Code Section 54956.9 subsection (a) to consider the cases of (1) Tran, et al. v. City of San José, et al.; (2) Chegwin Construction, Inc. v. City of San José; (3) Horta LLC v. City of San José; (4) Willow Glen Storage v. Santa Clara County, et al. (B) confer with Legal Counsel with respect to anticipated litigation of one (1) matter where there is significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code. (C) Public employee performance evaluation pursuant to Government Code Section 54957, Title: Independent Police Auditor.

By unanimous consent, Council reconvened from Closed Session and recessed at 10:45 a.m. and reconvened at 1:35 p.m. in Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

INVOCATION

The Holy Spirit Elementary School Choir comprised of 23 girls, grades Third through Seventh, led by Director Joan Lang, sang two songs “Grant Us Peace” in Latin, and “God Bless the USA”. (District 10)

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Dando, and seconded by Council Member Chavez, and carried unanimously, the Orders of the Day, and the Amended Agenda were approved. Vote: 11-0-0-0.

Mayor Gonzales announced Harry Mavrogenes has been appointed as Interim Director of the San José Redevelopment Agency beginning December 2003, as reported in Closed Session.

Mayor Gonzales announced as a part of a project to upgrade cable television service in San José, Comcast Cable will be changing the channel location of Civic Center Television, which is operated by the City of San José carrying the City Council Meetings live, as well as other Civic information about City Government. Mayor Gonzales stated beginning Wednesday, December 3, 2003, Civic Center Television will be seen on Comcast Cable Channel 26 or 26A throughout San José.

CEREMONIAL ITEMS

- 1.4 Presentation of plaques to Harold Cole for 2 years 8 months service on the Disability Advisory Commission; to Patsy Storie for 1 year service on the Early Care and Education Commission; to Nancy Marcus for 3 years 3 months service on the Senior Citizens Commission; to Davlyn Jones for 1 year 10 months service on the Small Business Development Commission; to Carolyn Shadle for 1 year 3 months service on the Small Business Development Commission; and to Jim McBride for 4 years 10 months service on the Suggestion Award Commission. (Mayor)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales stated occasionally the City Council has the opportunity to thank people in the community who have served the City of San José on the various Boards and Commissions who provide advice, and counsel to the City Council on a variety of public policies as well as efforts that the City may be launching in the community's areas of interest. Mayor Gonzales recognized and commended the following people for their service, Harold Cole for 2 years, 8 months of service on the Disability Advisory Commission, Patsy Storie for 1 year service on the Early Care and Education Commission, and Jim McBride for 4 years, 10 months service on the Suggestion Award Commission. Plaques will be mailed to Nancy Marcus for 3 years 3, months service on the Senior Citizens Commission, Davlyn Jones for 1 year, 10 months service on the Small Business Development Commission, and Carolyn Shadle for 1 year, 3 months service on the Small Business Development Commission, who were not present.

CEREMONIAL ITEMS

Police Officer Pete Lovecchio, representing the Military Reservists of the San José Police Department expressed gratitude to the Mayor and City Council for their efforts to help the reservists with their financial and moral support. Officer Lovecchio stated in March 2003 the City Council acted to help them by updating the supplemental pay and benefits for mobilized reservists. Officer Lovecchio expressed appreciation for the Council's efforts. Fellow Police Officers Margie Thompson, Brian Christian, and Brett Linden also expressed appreciation to the Mayor and the City Council. Officer Lovecchio presented to the Mayor and City Council, individual certificates from the National Committee for Employer's Support of the Guard and Reserve (ESGR), and a lapel pin. Officer Lovecchio stated the ESGR is an Agency within the Office of the Assistant Secretary of Defense for the Reserve Affairs, and the Police Officer reservists submitted the San José City Council to receive recognition as patriotic employers. The Police Officer reservists passed out the certificates and pins to the Mayor and each Council Member.

CONSENT CALENDAR

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

- 2.1 Approval of City Council Minutes for:**
- (a) Regular meeting of June 17, 2003**
 - (b) Regular meeting of June 24, 2003**
 - (c) Joint Council/Redevelopment Agency Board meeting of June 24, 2003**
 - (d) Regular meeting of August 12, 2003**
 - (e) Joint Council/Redevelopment Agency Board/San José Financing Authority meeting of August 12, 2003**
 - (f) Regular meeting of August 19, 2003**
 - (g) General plan meeting of August 19, 2003**
 - (h) Joint Council/Redevelopment Agency Board meeting of August 19, 2003**
 - (i) Joint Council/Redevelopment Agency Board/San José Financing Authority meeting of August 19, 2003**

Documents Filed: The Minutes of Regular Council Meetings dated June 17, 2003, June 24, 2003, August 12, 2003, and August 19, 2003; and Joint Council/Redevelopment Agency Board Meetings dated June 24, 2003, and August 19, 2003; and Joint Council/Redevelopment Board/San José Financing Authority Meetings dated August 12, 2003, and August 19, 2003; and the General Plan Meeting dated August 19, 2003.

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

2.2 Final adoption of ordinances:

- (a) **ORD. NO. 27008 – Amends Section 4.46.039.8 of Chapter 4.46 of Title 4 of the San José Municipal Code to extend the period of suspension of collection of the Building and Structure Construction Tax for the construction of special industrial use tenant improvements, and adds a new Section 4.46.039.9 to provide for the suspension of collection of the Building and Structure Construction Tax for the construction of office use tenant improvements in the downtown core.**

Documents Filed: Proof of Publication of the title of Ordinance No. 27008 executed on November 4, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition on the issue. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, Ordinance No. 27008 was adopted. Vote: 11-0-0-0.

- (b) **ORD. NO. 27010 – Amends Chapter 11.48 of Title 11 of the San José Municipal Code to add a new Section 11.48.180 to establish a Santana Area Neighborhood Residential Permit Parking Program.**

Documents Filed: Proof of Publication of the title of Ordinance No. 27010 executed on November 11, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27010 was adopted. Vote: 11-0-0-0.

- (c) **ORD. NO. 27011 – Amends certain time limitations with respect to redevelopment plans.**

Documents Filed: Proof of Publication of the title of Ordinance No. 27011 executed on November 11, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition on the issue. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, Ordinance No. 27011 was adopted. Vote: 11-0-0-0.

- (d) **ORD. NO. 27012 – Rezones certain real property situated at the southeast corner of E. Virginia and S. Fifth Streets. PDCSH 03-022**

Documents Filed: Proof of Publication of the title of Ordinance No. 27012 executed on November 11, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27012 was adopted. Vote: 11-0-0-0.

2.2 Final adoption of ordinances (Cont'd.)

- (e) **ORD. NO. 27013 – Rezones certain real property situated on the west side of S. Eleventh Street, approximately 140 feet north of Margaret Street (671 S. Eleventh Street), to A(PD) Planned Development Zoning District. PDC 00-115**

Documents Filed: Proof of Publication of the title of Ordinance No. 27013 executed on November 11, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27013 was adopted. Vote: 11-0-0-0.

- (f) **ORD. NO. 27014 – Rezones certain real property situated at the northwest corner of Hillsdale Avenue and Almaden Expressway to A(PD) Planned Development Zoning District. PDC 03-027**

Documents Filed: Proof of Publication of the title of Ordinance No. 27014 executed on November 11, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27014 was adopted. Vote: 11-0-0-0.

- 2.3 Approval of an agreement with the Santa Clara Valley Water District (District) for cost sharing associated with implementation of water conservation programs in 2003-2004, under which the City will receive an amount not to exceed \$362,500 from the District, and the District will receive an amount not to exceed \$446,847 from the City. CEQA: Not a Project. (Environmental Services) (Deferred from 10/28/03 – Item 2.5)**

Documents Filed: None.

Discussion/Action: The Rules Committee deferred Item 2.3 to November 25, 2003.

- 2.4 Approval of appointments to the HNVF Advisory Committee. (Mayor) (Deferred from 11/4/03 – Item 2.12)**

Documents Filed: Memorandum from Mayor Gonzales recommending approval of appointments to the Healthy Neighborhood Venture Fund Advisory Committee.

Discussion/Action: The reappointment of Max Crumley, and the new appointment of Patricia Brown Moriarty to the Healthy Neighborhood Venture Fund Advisory Committee, was approved. Vote: 11-0-0-0.

- 2.5 Approval of the fourth amendment to the legal services agreement with Bingham McCutchen to increase the compensation by \$125,000, for a total not to exceed \$925,000. CEQA: Not a Project. (Boards of Administration for Federated City Employees' Retirement System and Police & Fire Department Retirement Plan)**

2.5 (Cont'd.)

Documents Filed: Memorandum from Secretary Boards of Commission Edward Overton, dated October 29, 2003, recommending approval of the fourth amendment to the said agreement with Bingham McCutchen.

Discussion/Action: The fourth amendment to the legal services agreement with Bingham McCutchen for a total not to exceed fee of \$925,00, was approved and its execution authorized. Vote: 11-0-0-0.

2.6 Recommendation: Acceptance of the Office of the City Auditor's monthly Report of Activities and Findings through October 15, 2003. (City Auditor)

Documents Filed: Report of Activities and Findings through October 15, 2003 from the Office of the City Auditor.

Discussion/Action: The Report of Activities and Findings from the Office of the City Auditor was accepted. Vote: 11-0-0-0.

2.7 Acceptance of the finding reports from Kafoury, Armstrong, & Company, LLP for the quarter ending June 30, 2003, relating to Bay 101 Conditional Approval of Stock Transfer. (City Auditor)

Documents Filed: Memorandum from City Auditor Gerald Silva, dated October 24, 2003, transmitting the findings reports from Kafoury, Armstrong & Company, LLP for the quarter ending June 30, 2003.

Discussion/Action: The report from Kafoury, Armstrong & Company, LLP, for the quarter ending June 30, 2003, was accepted. Vote: 11-0-0-0.

2.8 Adoption of a resolution amending the City Council Rules Resolution, Rule 2, and order of business to add a new section on the Council Agenda entitled "GENERAL PLAN HEARINGS." CEQA: Not a Project. (City Manager's Office/City Clerk)

Documents Filed: Memorandum from City Manager Del Borgsdorf, and City Clerk Patricia L. O'Hearn, dated October 29, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71820, entitled: "A Resolution of the Council of the City of San José Amending the Rules for the Conduct of its Meetings, and Superseding Resolution No. 71388", was adopted. Vote: 11-0-0-0.

2.9 Adoption of an appropriation ordinance and funding sources resolution amendments for various projects supported by the San José Redevelopment Agency and adoption of a resolution making certain determinations regarding the expenditure of Agency funds on certain public improvements. CEQA: Resolution No. 65459, PP03-10-343. Council Districts 3 and 7. SNI Areas: Winchester, 13th Street, and West Evergreen. (City Manager's Office)

2.9 (Cont'd.)

Documents Filed: Memorandum from Budget Director Larry Lisenbee, dated October 29, 2003, recommending adoption of said appropriation ordinance and funding sources resolution amendments.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition on the issue. Upon motion by Council Member Reed, seconded by Council Member Williams, and carried unanimously, Ordinance No. 27015, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the Multi-Source Housing Fund and the Services for Redevelopment Capital Projects Fund for Various Projects; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 71821, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the Multi-Source Housing Fund and the Services for Redevelopment Capital Projects Fund"; and Resolution No. 71822: entitled: "A Resolution of the Council of the City of San José Making Certain Determinations Regarding the Expenditure of Redevelopment Agency Funds for Certain Public Improvements in the Towers Land Improvement Project", were adopted. Vote: 11-0-0-0.

2.10 **Adoption of a resolution establishing the Redevelopment Manager Money Purchase Retirement Plan, authorizing the Director of Employee Services to execute the Declaration of Trust of the ICMA Retirement Trust and to execute all necessary agreements incidental to the establishment and administration of the Plan, and naming the Benefits Manager as coordinator for the Plan. CEQA: Not a Project. (Employee Services)**

Documents Filed: Memorandum from Director Employee Services Mark Danaj, dated October 29, 2003 recommending adoption of said resolution.

Discussion/Action: Resolution No. 71823, entitled: "A Resolution of the Council of the City of San José Establishing the Redevelopment Manager Money Purchase Retirement Plan, Authorizing the Director of Human Resources or his Designee to Execute the Declaration of Trust of the ICMA Retirement Trust, Authorizing the Director of Human Resources to Execute all Necessary Agreements with the ICMA Retirement Corporation Incidental to the Establishment and Administration of the Plan, and Naming the Benefits Manager as Coordinator for the Plan", was adopted. Vote: 11-0-0-0.

2.11 (a) **Report on bids and award of contract for the San José/Santa Clara Water Pollution Control Plant, Diversion Pipeline Mid Point Chlorination Project to the low bidder, D.W. Nicholson Corporation, in the amount of \$622,000, and approval of a contingency in the amount of \$62,000. CEQA: Exempt, PP02-04-077. (Environmental Services)**

(Item continued on the next page)

- 2.11 (b) **Report on a bid and award the purchase of two SCAT 4441 sludge aerator/mixer and bioremediation blenders, to Nixon-Egli (Tracy, CA) at a total cost of \$622,293.38 including tax and delivery, and authorize the Director of General Services to: (Cont'd.)**
- (1) **Execute a purchase order for the immediate purchase of two SCAT 4441 sludge aerator/mixer bioremediation blenders; and**
 - (2) **Approve a contingency of 5% for any unforeseen engineering changes that may arise.**
- CEQA: Not a Project. (General Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services Carl Mosher, dated October 29, 2003, recommending award of said contact, with related contingency, to the low bidder, D.W. Nicholson Corporation, in the amount of \$622,000. (2) Memorandum from Director of General Services Jose Obregon, dated October 29, 2003, recommending award of said purchase to Nixon-Egli, and authorization for the Director of General Services to execute purchase order and approval of related 5% contingency. (3) Letter from the Treatment Plant Advisory Committee, dated November 13, 2003, stating concurrence with the Staff recommendation from Director of Environmental Services Carl Mosher.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition on the issue. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and unanimously carried, the award of the contract to the low bidder, D. W. Nicholson Corporation, with related contingency, for the San José/Santa Clara Water Pollution Control Plant, Diversion Pipeline-Mid Point Chlorination Project was approved and its execution authorized, and the Director of General Services was authorized to execute the purchase of two SCAT 4441 sludge aerator/mixer and bioremediation blenders, from Nixon-Egli for a total cost of \$622,293.38, with approved 5% contingency that may arise. Vote: 11-0-0-0.

- 2.12 **Adoption of a resolution authorizing the City Manager to execute a grant agreement to accept up to \$3,654,544 in funding from the State Water Resources Control Board (SWRCB) for reimbursement of costs associated with the South Bay Water Recycling (SBWR) Silver Creek Pipeline. CEQA: Resolution No. 64667, and Addenda thereto, PP01-09-162. Council Districts 2 and 8. (Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services Carl Mosher, dated October 29, 2003, recommendation approval of said resolution. (2) Supplemental memorandum from Director of Environmental Services Carl Mosher, dated November 13, 2003, replacing the table on page (2) of the original memorandum. (3) Letter from the Treatment Plant Advisory Committee, November 13, 2003, stating concurrence with the Staff recommendation.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition on the issue. Upon motion by Council Member Williams, seconded by Council Member Cortese, and carried unanimously, Resolution No. 71824, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to

2.12 (Cont'd.)

Execute a Grant Agreement to Accept Up to \$3,654,544 in Funding from the State Water Resources Control Board (SWRCB) for Reimbursement of Costs Associated with the South Bay Water Recycling (SBWR) Silver Creek Pipeline”, was adopted. Vote: 11-0-0-0.

2.13 Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 2003-2004 #5, and authorization for the Director of General Services to execute the purchase orders. CEQA: Not a Project (General Services)

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated October 29, 2003, recommending award of said open purchase orders list for FY 2003-2004, and authorize the Director of General Services to execute the purchase orders.

Discussion/Action: The award of open purchase orders List No. 5 for FY 2003-2004 was approved and its execution authorized. Vote: 11-0-0-0.

2.14 Adoption of a resolution authorizing the reorganization of territory designated as Franklin No. 51, which involves the annexation to the City of San José of 0.503 acre of land, located on the southeastern corner of Garden Avenue and Southside Drive, generally bounded by the City of San José Annexation Franklin 28, and the detachment of the same from the Central Fire Protection, County Library Service Area, County Sanitation 2-3, and the County Lighting Service. CEQA: Resolution No. 71359. Council District 7. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 29, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71825, entitled: “A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as Franklin No. 51 Subject to Liability for General Indebtedness of the City” was adopted. Vote: 11-0-0-0.

2.15 Adoption of a resolution authorizing the reorganization of territory designated as McKee No. 120 which involves the annexation to the City of San José of 5.37 acres of land, more or less, consisting of three parcels totaling approximately 4.80 acres and a portion of Hyland Avenue totaling approximately 0.57 acre, located at Hyland Avenue between Marian Lane and Maro Drive, and adjacent to the City of San José annexation McKee No. 91, and the detachment of the same from Santa Clara County Central Fire Protection District, Santa Clara County Lighting District, Santa Clara (Library Services) County Service, Area No. 01 and the Library Benefit Assessment County Service Area No. 01. CEQA: Mitigated Negative Declaration, PDC 01-082. Council District 5. (Planning, Building and Code Enforcement)

2.15 (Cont'd.)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 29, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71826, entitled: "A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as McKee No. 120 Subject to Liability for General Indebtedness of the City", was adopted. Vote: 11-0-0-0.

2.16 Adoption of a resolution authorizing the reorganization of territory designated as Winchester No. 39 which involves the annexation to the City of San José of 0.16 acre of land, located on the west side of Henry Avenue, approximately 380 feet southerly of Stevens Creek Boulevard and generally bounded by the City of San José Annexation Winchester No. 6, and the detachment of the same from the appropriate special districts including: Central Fire Protection, West Valley Sanitation District, Santa Clara County Lighting Service Area, and the County Service Area No. 1 (County Library Services Area). CEQA: Resolution No. 65459. Council District 1. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 29, 2003, recommendation adoption of said resolution.

Discussion/Action: Resolution No. 71827, entitled: "A Resolution of the Council of the City of San José Ordering the Reorganization of Certain Uninhabited Territory Designated as Winchester No. 39 Subject to Liability for General Indebtedness of the City After Finding Protests Insufficient to Terminate Such Proceedings", was adopted. Vote: 11-0-0-0.

2.17 Adoption of the following amendments to the annual appropriation ordinance and funding sources resolution in the General Fund as follows:

- (a) Establish an appropriation in the City-wide Expenses to the Police Department for the Office of Traffic Safety California Seat Belt Compliance Campaign Program Grant in the amount of \$49,998; and**
- (b) Increase the Earned Revenue Estimate from the State of California by \$49,998.**

CEQA: Not a Project. (Police/City Manager's Office)

Documents Filed: Memorandum from Acting Chief of Police Thomas Wheatley, and Budget Director Larry Lisenbee, dated October 29, 2003, recommending adoption of said annual appropriation ordinance and funding sources resolution.

2.17 (Cont'd.)

Discussion/Action: Upon motion by Council Member Campos, seconded by Council Member Chavez, and carried unanimously, Ordinance No. 27016, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the General Fund for the Office of Traffic Safety California Seat Belt Compliance Campaign Program Grant; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 71828, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the General Fund", were adopted. Vote: 11-0-0-0.

- 2.18 (a) Adoption of a resolution to accept the U.S. Department of Justice 2003-05 COPS Interoperable Communications Technology grant in the amount of \$3,692,162 and authorize the City Manager to execute the related grant agreement.**
- (b) Adoption of a resolution to accept the cash match contribution totaling \$1,130,722 from the City of Palo Alto (\$93,000), the County of Santa Clara - SB720 Funds (\$739,680), and the Silicon Valley Regional Interoperability Project Group (\$298,042).**
- (c) Adoption of the following amendments to the annual appropriation ordinance and funding sources resolution in the General Fund for Fiscal Year 2003-04:**
- (1) Establish a City-wide appropriation to the Police Department for COPS 2003-04 Interoperable Communications Grant in the amount of \$4,822,884;**
 - (2) Increase the Earned Revenue Estimate from the Federal Government by \$3,692,162;**
 - (3) Increase the Earned Revenue Estimate from Local Agencies by \$1,130,722.**

CEQA: Resolution No. 65459, PP03-10-345. (Police/City Manager's Office)

Documents Filed: Memorandum from Budget Director Larry Lisenbee, and Acting Chief of Police Thomas Wheatley, dated October 29, 2003, recommending adoption of said resolutions and amendments to the Annual Appropriation Ordinance and Funding Sources Resolution.

Discussion/Action: Ordinance No. 27017, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the General Fund for the Community Oriented Policing Services 2003-2004 Interoperable Communications Grant; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 71829, entitled: "A Resolution of the Council of the City of San José Accepting the Department of Justice 2003-2004 Community Oriented Policing Services ("COPS") Grant and Authorizing the City Manager to Execute the Grant Agreement"; and Resolution No. 71830, entitled: "A Resolution of the Council of the City of San José Accepting the Cash Match Contribution from the City of Palo Alto, the County of Santa Clara, SB720 Funds and the Silicon Valley Regional Interoperability Project Group for

2.18 (Cont'd.)

the Department of Justice 2003-2004 Community Oriented Policing Services Grant (“COPS”); and Resolution No. 71831, entitled: “A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the General Fund”, were adopted. Vote: 11-0-0-0.

2.19 Adoption of a resolution:

- (a) **Authorizing the City Manager to accept a public utility easement from Bedford Property Investors, Inc., for a public utility easement located near the Concourse and Lundy intersection for a cost not to exceed \$1,159, and to execute all documents necessary to complete the transaction; and**
- (b) **Approving an agreement for purchase of a public utility easement located north of the Concourse and Lundy intersection, by and between the City of San José and Flextronics International USA, Inc., for \$1,230.**

CEQA: Exempt, PP01-11-193. Council District 4. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated October 29, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71832, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to: (1) Accept a Public Utility Easement from Bedford Property Investors, Inc., for a Cost Not To Exceed \$1,159.00; and (2) Execute an Agreement with Flextronics International USA, Inc. for Purchase of a Public Utility Easement at a Cost Not to Exceed \$1,230.00; and (3) Execute all Documents Necessary to Complete the Transaction”, was adopted. Vote: 11-0-0-0.

2.20 Report on bids and take appropriate action based on the evaluation of bids for the Plaza de Cesar Chavez Electrical Upgrades Project, and approval of a fifteen percent contingency. CEQA: Exempt, PP03-06-202. Council District 3. (Public Works/ Parks, Recreation and Neighborhood Services)

Documents Filed: None.

Discussion/Action: Item 2.20 was deferred to November 25, 2003.

2.21 Approval of one proposed City Event for use at the HP Pavilion at San José on December 7, 2003, for the First Annual Winter Concert. (San José Arena Authority)

Documents Filed: Memorandum from Chis Morrissey, Executive Director, dated October 23, 2003, recommending approval of said proposed City Event for use at the HP Pavilion.

Discussion/Action: The First Annual Winter Concert at the HP Pavilion at San José on December 7, 2003, was approved, and its execution authorized. Vote: 11-0-0-0.

- 2.22 Adoption of a resolution authorizing the City Manager to negotiate and execute a fund transfer agreement with the County of Santa Clara (County) for the receipt of \$2,000,000 for the potential acquisition of property associated with the Willow Glen Spur Trail Project. CEQA: Exempt, PP02-12-370. Council District 6. (Parks, Recreation and Neighborhood Services)
(Rules Committee referral 11/12/03)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated November 12, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71833, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Fund Transfer Agreement with the County of Santa Clara For the Receipt of \$2,000,000 for Potential Acquisition of Property Associated with the Willow Glen Spur Train Project", was adopted. Vote: 11-0-0-0.

- 2.23 Report on a Request for Proposal and adopt a resolution authorizing the Director of General Services to:**

- (a) Negotiate and execute a one-year agreement with four, one-year options with Browning-Ferris Industries, Inc. for the removal, transportation, and beneficial reuse of biosolids, with the first year compensation not to exceed \$1,185,730; and**
- (b) Execute each of the options to renew without further City Council action other than the appropriation of necessary funds.**

CEQA: Exempt, PP 03-09-300. (General Services)

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated October 29, 2003, recommending adoption of said resolution. (2) Letter from the Treatment Plant Advisory Committee, dated November 13, 2003, stating concurrence with the Staff recommendation.

Discussion/Action: Item 2.23 was renumbered from 7.1. Mayor Gonzales called for public testimony. William Garbett spoke in opposition on the issue. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and unanimously carried, Resolution No. 71834, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Negotiate and Execute an Agreement with Browning-Ferris Industries, Inc. for the Removal, Transportation and Beneficial Reuse of Biosolids", was adopted. Vote: 11-0-0-0.

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.1 Report of the Study Session Mayor Gonzales, Chair

- (a) **May 21, 2003 – 2003-2004 Proposed Operating Budget**
- (b) **May 22, 2003 - 2003-2004 Proposed Operating Budget**

Documents Filed: The 2003-2004 Proposed Operating Budget Study Sessions, dated May 21, 2003, and May 22, 2003.

Discussion/Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Reports of the Study Sessions dated May 21, 2003, and May 22, 2003, were accepted. Vote: 11-0-0-0.

3.2 Report of the Rules Committee - Meeting of October 29, 2003 Vice Mayor Dando, Chair

Documents Filed: The Rules Committee Report dated October 29, 2004, and November 5, 2003.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting

- (b) City Council

- (1) Review November 11, 2003 Draft Agenda

Dropped - Meeting Cancelled/City Holiday.

- (2) Add New Items to November 4, 2003 Amended Agenda

The Committee recommended nine additions to the November 4, 2003 City Council Agenda.

- (3) List of Reports Outstanding. Attachment: Report from the City Manager, dated October 28, 2003, transmitting reporting outstanding for November 4, 2003.

The Committee noted and filed the City Manager's report listing three staff reports outstanding for the November 4, 2003 Council agenda.

- (c) Legislative Update

- (1) State

There was no report.

- (2) Federal

There was no report.

**3.2 Report of the Rules Committee - Meeting of October 29, 2003 (Cont'd.)
Vice Mayor Dando**

- (d) Meeting Schedules. Attachment: Memorandum from Assistant to the City Manager Deanna Santana, dated October 28, 2003, transmitting a request to schedule a Study Session from the City Manager.

The Committee recommended approval to schedule a Study Session on the Economic Strategy immediately following the November 18, 2003 Council Meeting.

- (e) The Public Record. Attachment: Memorandum from City Clerk Patricia L. O'Hearn, dated October 23, 2003, transmitting the items filed for Public Record for the period October 15-21, 2003.

The Committee noted and filed the Public Record.

- (f) Appointment to Boards, Commissions and Committees

There were none.

- (g) Rules Committee Reviews, Recommendations and Approvals

- (1) Proposal for posting high-risk sex offender data on the San José Police Department website

This item was reported at the November 4, 2003 Council Meeting.

- (2) Review workload assessment to develop an ordinance to allow disability payments to be excluded from income taxes. Attachment: Memorandum from City Attorney Richard Doyle, dated October 21, 2003, recommending review of workload assessment.

The Committee continued this item to the November 12, 2003 Rules Committee meeting.

- (3) Request for workload assessment to develop a position on a resolution supporting a statewide ballot initiative to require voter approval before state government may confiscate local tax funds. Attachment: Memorandum from Council Member Cortese, dated October 23, 2003, recommending Staff be directed to report back to the Rules Committee in two weeks with a workload assessment.

The Committee dropped this item.

**3.2 Report of the Rules Committee - Meeting of October 29, 2003 (Cont'd.)
Vice Mayor Dando**

- (g) Rules Committee Reviews, Recommendations and Approvals (Cont'd.)
(4) Request for item to be placed on Council agenda regarding selection of Redevelopment Agency Director. Attachment: Letter from Pete Campbell, a member of the public, dated October 20, 2003, regarding the selection of a Redevelopment Agency Director.

The Committee recommended no action on this item, but reached consensus that the City solicit public input in the selection of a Redevelopment Agency Director in a manner akin to the current outreach for Police Chief and Fire Chief.

- (h) Oral communications

There were none presented.

- (i) Adjournment - The meeting was adjourned at 2:30 p.m.

**3.2 Report of the Rules Committee - Meeting of November 5, 2003
Vice Mayor Dando, Chair**

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting

- (b) City Council

- (1) Review November 18, 2003 Draft Agenda

The Committee recommended approval of the November 18, 2003 City Council agenda with four additions and two changes.

- (2) Add New Items to November 11, 2003 Amended Agenda

- Mayor and Council Member Requests
- City Manager Requests
- City Attorney Requests
- City Clerk Requests

Dropped. Meeting cancelled/City Holiday.

- (3) List of Reports Outstanding

No reports submitted.

- (4) Review November 18, 2003 General Plan Agenda

The General Plan Meeting for November 18, 2003 was cancelled.

**3.2 Report of the Rules Committee - Meeting of November 5, 2003 (Cont'd.)
Vice Mayor Dando**

- (c) Legislative Update
(1) State

There was no report.

- (2) Federal

There was no report.

- (d) Meeting Schedules

There were none.

- (e) The Public Record. Attachment: Memorandum from City Clerk Patricia L. O'Hearn, dated October 30, 2003, transmitting the items filed for Public Record for the period October 22-28, 2003.

The Committee noted and filed the Public Record.

- (f) Appointment to Boards, Commissions and Committees

There were none.

- (g) Rules Committee Reviews, Recommendations and Approvals

- (1) Review of City ordinances and policies related to dangerous domestic animals. Attachment: Memorandum from Vice Mayor Dando, dated October 31, 2003, directing City Attorney and City Manager to review the criteria and policies the City uses when determining the seizure of dangerous animals from their owners.

Council Member Williams raised the question of defining a dangerous animal. Council Member Chavez requested the following also be reviewed: dog parks, dogs free to run in parks, inconsistent enforcement of animal ordinances, dogs knocking over strollers. Council Member Cortese suggested looking at State Regulations around the turn of the 20th Century when laws were enacted to protect livestock against other animals, etc. The Committee directed the City Attorney and the City Manager to return to the Rules Committee in thirty days with a report on the criteria and policies the City uses when determining the seizure of dangerous animals from their owners and also incorporating responses to the issues raised by the Rules Committee.

- (h) Oral communications

There were none presented.

**3.2 Report of the Rules Committee - Meeting of November 5, 2003 (Cont'd.)
Vice Mayor Dando**

(i) Adjournment

The meeting was adjourned at 2:20 p.m.

Discussion/Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Reports of the Rules Committee and the actions of October 29, 2003, and November 5, 2003, were accepted. Vote: 11-0-0-0.

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

**4.2 Report of the Driving a Strong Economy Committee – October 27, 2003
Council Member Williams, Chair**

Documents Filed: The Driving a Strong Economy Committee Report dated October 27, 2003.

- (a) Report on the Business Area Update. Attachment: Memorandum from Director of Economic Development Paul Krutko, and Deputy Executive Director Redevelopment Agency John Weis, dated October 15, 2003, transmitting the Neighborhood Business District Assistance Update Report.

The Committee accepted the Staff Report.

- (b) Report and Review of the Housing Rehabilitation Program. Attachment: Memorandum from Director of Housing Leslye Corsiglia, dated October 10, 2003, transmitting the Housing Rehabilitation Program Report.

The Committee accepted the Staff Report.

- (c) Update Secondary Units. Attachment: Memorandum from Director of Housing Leslye Corsiglia, and Director of Planning, Building and Code Enforcement Stephen Haase, dated October 20, 2003, transmitting the Policy Review of Secondary Units.

The Committee accepted the Staff Report, as amended.

- (d) Discussion on the Sign Ordinance for the high-rise building. Attachment: Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 10, 2003, recommending adoption of said ordinance, and discussion at November meeting regarding additional amendments.

The Committee accepted Staff's recommendation to return on November 24, 2003 with this Staff Report. See Item 4.3 for Council action taken.

**4.2 Report of the Driving a Strong Economy Committee – October 27, 2003
Council Member Williams, Chair**

- (e) Oral petitions - There were none.
- (f) Adjournment - The meeting was adjourned at 3:10 p.m.

Discussion/Action: Council Member Williams clarified that Item D is to be considered under Agenda Item 4.3, and stated Council Member Gregory made a request during the committee meeting that the ordinance should consider allowing one roof and one skyline sign on the same building. Council Member Williams stated he discussed this issue with Director of Planning, Building and Code Enforcement Stephen Haase. Council Member Reed commented on the Business Area Update from the Office of Economic Development and the Redevelopment Agency regarding what has happened in the neighborhood business district since 1982. He stated there is good data about the successes with the programs, and a copy will be provided to the Council. Upon motion by Council Member Williams, seconded by Council Member Cortese, and carried unanimously, the Report of the Driving a Strong Economy Committee and the actions of October 27, 2003, were accepted.

**4.3 Approval of an ordinance amending Title 23, the Sign Code, of the San José Municipal Code as it pertains to skyline signs and roof signs in the Edenvale Industrial Redevelopment Area. CEQA: Exempt, PP03-10-307. Council District 2. (Planning, Building & Code Enforcement)
[Driving a Strong Economy Committee referral 10/27/03 – Item 4.2(d)]**

Documents Filed: Supplemental memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated November 3, 2003, responding to a question presented by Council Member Gregory.

Discussion/Action: Upon motion by Council Member Williams, seconded by Vice Mayor Dando, and carried unanimously, Ordinance No. 27018, entitled: “An Ordinance of the City of San José Amending Chapter 23.04 of Title 23 of the San José Municipal Code to Establish Regulations for Skyline Signs and Roof Signs in the Edenvale Industrial Redevelopment Area”, was passed for publication, with Staff directed to include the recommended change of allowing a combination skyline and roof sign on a single building. Vote: 11-0-0-0.

4.5 Adoption of a resolution authorizing the Director of Public Works to:

- (a) **Execute an agreement with Malcom H. Martin, Surviving Trustee of the Murray L. Martin 2002 Living Trust, for the purchase of land and improvements located at 1015 South Bascom Avenue in the amount of \$3,472,000, and any additional documents necessary to complete this transaction;**
- (b) **Settle the relocation claim for the business operated on the subject property. CEQA: Exempt, PP03-09-286. Council District 6. (Public Works/Library)**

4.5 (Cont'd.

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated October 29, 2003, recommending adoption of said resolution.

Discussion/Action: Council Member Yeager stated this is one of San José's new libraries that Council Member LeZotte's District, and his District share. He stated for the last two years Library Director Jane Light, Library Deputy Director Richard Desmond, Council Member LeZotte and he have been meeting regularly in order to find a new location for this library, and it turned out to be very challenging. He stated initially they could not find property available on Winchester Boulevard, but eventually discovered a location on Bascom Avenue. Council Member Yeager expressed excitement because the new library will serve an unutilized area, which currently does not have a library, and once the library is built, it will set the tone and incorporate a new style for Bascom Avenue. Council Member LeZotte stated the library would be a benefit to the people that live in that community, and to both Council Districts. Council Member Cortese mentioned that during the budget process City Manager Del Borgsdorf forwarded a memorandum per Council Member Cortese's request to Council that reflected the remaining balance of \$3 million, which was the land acquisition money for all the remaining libraries that needed land, and asked if that means this amount has already been appropriated prior to that memorandum or does it mean the fund is now wiped out. Library Deputy Director Richard Desmond replied that Staff has over \$9 million appropriated in the current year, and there is only one library left requiring land.

Mayor Gonzales called for public testimony. Randi Kinman spoke in favor of the issue. Upon motion by Council Member Yeager, seconded by Council Member LeZotte, and carried unanimously, Resolution No. 71835, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to (1) Execute an Agreement with Malcolm H. Martin for the Purchase of Land and Improvements Located at 1015 South Bascom Avenue in the Amount of \$3,472,000; and (2) Settle the Relocation Claim for the Business Operated on the Property; and (3) Execute all Documents Necessary to Complete the Transactions", was adopted. Vote: 11-0-0-0.

4.4 **PUBLIC HEARING ON HISTORICAL PROPERTY CONTRACT for The Hotel Metropole, City Landmark No. HL 88-046, located at the northwest corner of South Market and Post Streets (35 South Market Street), and The Sunol Building (City Landmark No. HL 01-129), located at 127-145 Post Street, in the CG Commercial General Zoning District. (Florin I. LTD., Owner).**

(Continued from 10/28/03 - Item 4.4)

CEQA: Exempt. (Planning, Building, and Code Enforcement)

MA 02-003 - District 3

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 6, 2003, recommending adoption of said resolution. (2) Proofs of Publications of Notice of Public Hearings, executed on November 4, 2003, and September 19, 2003, submitted by the City Clerk.

4.4 (Cont'd.)

Discussion/Action: Mayor Gonzales opened the Public Hearing on the Historical Property Control for the subject properties, and there was no discussion from the floor. Upon motion by Council Member Chavez, seconded by Council Member Cortese, and carried unanimously, the public hearing was closed, and Resolution No. 71836, entitled: "A Resolution of the Council of the City of San José Approving a Historic Landmark Preservation Agreement with Florin I LTD. for the Sunol Building (City Landmark No. HL01-129) and The Hotel Metropole (City Landmark No. HL88-046)", was adopted. Vote: 11-0-0-0.

TRANSPORTATION SERVICES

6.1 Report of the Building Better Transportation Committee – November 3, 2003 Council Member Cortese, Chair

Documents Filed: The Building Better Transportation Committee Report dated November 3, 2003.

- (a) Expansion and Improvement of Transit and Transportation Systems
 - (1) Light Rail Projects Report and Policy Discussion. Attachment: Memorandum from Director of Transportation James Helmer, dated October 29, 2003, transmitting the Light Rail Projects Update.

The Committee Accepted the Report.

- (b) Traffic Relief/Safe Streets
 - (1) Traffic Management Center Operation Presentation and Discussion. Attachment: Memorandum from Director of Transportation James Helmer, dated October 22, 2003, transmitting the Transportation Incident Management Center Report.

The Committee Accepted the Report.

- (c) Supporting Smart Growth
 - (1) No items

There were no items.

- (d) Regional Relationships/Funding/Policy
 - (1) Update on State, Federal and Local Legislative. Attachment: Memorandum from Director of Transportation James Helmer, and Director Intergovernmental Relations Betsy Shotwell, dated October 23, 2003, transmitting the Legislative Report.

The Committee Accepted the Report.

**6.1 Report of the Building Better Transportation Committee – November 3, 2003
Council Member Cortese, Chair (Cont'd.)**

- (d) Regional Relationships/Funding/Policy (Cont'd.)
 - (2) Update on the Santa Clara Valley Transportation Authority (VTA), Valley Transportation Plan (VTP) 2020. Attachment: Memorandum from Director of Transportation James Helmer, dated October 24, 2003, recommending review and comment on the VTP Plan 2030.

The Committee accepted the report as an entering report with the primary objective of referring the list to all other Council Members so that they may make comments and return them to the Director of Transportation by November 21, 2003. Staff will report back to the Committee on December 1, 2003 with an informal memorandum with the results of any questions or concerns from the Council Members.

- (e) Oral petitions - There were none.
- (f) Adjournment - The meeting was adjourned at 3:55 p.m.

Discussion/Action: Upon motion by Council Member Cortese, seconded by Council Member LeZotte, and carried unanimously, the Report of the Building Better Transportation Committee, and the actions of November 3, 2003, were accepted, and the Council Members were directed to refer any comments regarding the Santa Clara Valley Transportation Authority (VTA), Valley Transportation Plan (VTP) 2020, to the Director of the Department of Transportation by November 21, 2003. Vote: 11-0-0-0.

ENVIRONMENTAL & UTILITY SERVICES

7.1 Report on a Request for Proposal and adopt a resolution authorizing the Director of General Services to:

- (a) **Negotiate and execute a one-year agreement with four, one-year options with Browning-Ferris Industries, Inc. for the removal, transportation, and beneficial reuse of biosolids, with the first year compensation not to exceed \$1,185,730; and**
- (b) **Execute each of the options to renew without further City Council action other than the appropriation of necessary funds.**

CEQA: Exempt, PP 03-09-300. (General Services)

Documents Filed: See Item 2.23.

Discussion/Action: Item 7.1 was renumbered to Item 2.23.

PUBLIC SAFETY SERVICES

- 9.1 Approval of an ordinance amending Title 17 of the San José Municipal Code by adding a new Chapter 17.82 relating to fire safety during construction. (City Attorney's Office)
(Deferred from 10/14/03 – Item 9.1)**

Documents Filed: None.

Discussion/Action: The Rules Committee deferred Item 9.1 to November 25, 2003.

JOINT COUNCIL/REDEVELOPMENT AGENCY

- 10.1 Presentation on proposed Design Guidelines for Downtown Development. (City Manager's Office/Redevelopment Agency)**

Documents Filed: None.

Discussion/Action: Item 10.1 was deferred to December 2, 2003 to be heard concurrently with Items 11.2 and 11.5.

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/ Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9353	N/s Hillsdale Ave. e/o Narvaez Ave.	7	KB Homes South Bay	6 lots	Condo	Approve

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:
None.

OPEN FORUM

- (1) Ross Signorino stated San José is the number three “fun” City in the United States per KLIV; and the people of San José also deserve thanks by helping the reservists financially.
- (2) William Garbett requested information on the availability of City Committee Meetings and Study Sessions on audio tapes.

ADJOURNMENT

The Council of the City of San José adjourned at 2:30 p.m. to convene in Joint Session with the Redevelopment Agency Board.

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

4.6 Council Study Session on the Economic Strategy. (Economic Development)

Documents Filed: (1) Memorandum from City Manager Del Borgsdorf, dated November 17, 2003, transmitting the project schedule for the study session. (2) Memorandum from City Manager Del Borgsdorf, dated November 6, 2003, transmitting the Draft Economic Development Strategy, November 2003. (3) Letter from Gloria Sciara, Chair, Historic Landmarks Commission, dated November 3, 2003.

Discussion/Action: Item 4.6 was heard following the Joint Council/Redevelopment Agency Meeting. See separate Meeting Minutes for Item 4.6. The Council Study Session on the Economic Strategy convened at 3:12 p.m. in the Health Building. Mayor Gonzales directed each Council Member to choose 3 top priority initiatives from the 15 Strategic Initiatives on Page 7 of the *Draft Economic Development Strategy, November 2003*. Mayor Gonzales will present the list, as prioritized with the top 3 initiatives, at the November 25, 2003 Council Meeting. Mayor Gonzales commented that all 15 initiatives would continue to move forward with the top 3 priorities chosen moving at a higher accelerated rate.

RECESS/RECONVENE

The City Council recessed at 5:32 p.m. from the Special City Council Study Session Meeting, and reconvened at 7:02 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - Chirco. (Excused)

CEREMONIAL ITEMS

1.2 Presentation of a commendation to the outstanding San José Police Department Mounted Unit for winning a competition for best law enforcement mounted unit and best color guard at the Grand National Rodeo. (Dando)

Documents Filed: None.

1.2 (Cont'd.)

Discussion/Action: Mayor Gonzales was joined at the podium by Vice Mayor Dando to commend Sergeant Greg Trapp and the members of San José Police Mounted Unit for their outstanding accomplishments by becoming the Color Guard Champion and their continuing effective representation of good will as the ambassadors of San José. On behalf of the City Council, Mayor Gonzales presented the award to Sergeant Greg Trapp. The San José Police Mounted Unit is responsible for patrolling and protecting the public safety downtown in San José, has established very high standards for its conduct and its appearance, makes over 300 appearances each year at schools, churches, community groups, assists with dignitary protection, crowd control of public events, and searches for missing children. The members of the San José Police Mounted Unit regularly enter the Grand National Rodeo and the Annual Equestrian Competition at the San Francisco Cow Palace, and in order to compete against the best in their field, their efforts entail many hours of hard work to prepare their horses, equipment, and uniforms to represent the very best of San José. The San José Police Mounted Unit has won the Color Guard Competition for 7 years in a row, and for the first time this year they received the prestigious overall Color Guard Competition out of 32 Color Guards represented across the United States.

Vice Mayor Dando welcomed Den 6 of the Sabertooth Webelos Den of Pack 286 from Holy Family Church from her District, and thanked them for their interest in the democratic process, and for participating earlier this evening in a Founder's Day Celebration for the City of San José.

1.1 **Presentation of a commendation to the Santa Clara County Office of Education "Teacher of the Year 2003" awardees that are teaching in our San José schools. (Chirco, Cortese, Gregory, Williams, Yeager)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Council Members Chirco, Cortese, Gregory, Williams and Yeager to present commendations to the Santa Clara County Office of Education "Teacher of the Year 2003" awardees, who have dedicated their lives to teach our children, and are the heroes of our community. The Council Members presented the commendations to Tami McMillan, Lynbrook High School, Nancy Schwalen, Santa Teresa High School, Takako Nishihara, Baldwin School, Juanita Ryan, Toyon School, Diane Gardner, Hubbard School, Robyn Better, Kennedy School, Carolyn Rogozen, Boeger Junior High School, Betty Parsons, Dartmouth Middle School, Richard Alipaz, Leigh High School, Eileen Beckley, Price Middle School, and Dayle Land-Moore, Hacienda Magnet School. Plaques will be sent to Tom Mullin, Central County Occupational Center, and Harriette Fisher, Anderson Elementary School, who were not present.

1.3 Presentation of a commendation to History San José and the Sponsors of Founders Day 2003. (Dando)

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Vice Mayor Dando to present commendations to the History San José and the Sponsors of the Founders Day 2003. Vice Mayor Dando stated San José is 226 years old this month, and it is important for us to remember San Jose's history. Mayor Gonzales, on behalf of Vice Mayor Dando and the Council Members presented commendations to recognize and commend the volunteers, the staff and the supporters of History San José, for their time and dedication in keeping San José's history alive, and preserving the character of our City and ensuring it remains for future residents to enjoy, and Mark Ritchie, Board President accepted the award; David Crosson, President/CEO was also present. Mayor Gonzales recognized and commended the members of the Preservation Action Council for their time and dedication in keeping our history alive, and Alex Marthews, Executive Director accepted the award. Mayor Gonzales recognized and commended all of the participants of Los Lupenos de San José for their time and dedication in keeping our past alive, preserving our historic culture and art of our City, and ensuring it will remain for future residents, and Dennis Thomatos, Executive Director accepted the award. Los Lupenos de San José is the oldest folkloric dance company in the United States and exists to share, promote the awareness, appreciation and understanding of the rich, passionate culture of Mexico.

PUBLIC HEARINGS

City Clerk Patricia L. O'Hearn read the requests for continuance of the applications. Upon motion by Council Member Chavez, seconded by Council Member Yeager, and carried unanimously, the below noted continuances were granted. Vote: 11-0-0-0.

- 11.1 PUBLIC HEARING ON APPEAL of the Planning Commission's decision to approve, with standard and special conditions, a Conditional Use Permit to allow an addition to an existing public utility facility (San José Water Company) located on the northwest corner of San Tomas Expressway and Williams Road in the R-1-8 Residence Zoning District on a 17 acre site. The proposed addition consists of two settling ponds and three storage bins for temporary storage of excavated soil, asphalt, concrete, and base rock. (San José Water Company, Owner/Developer). CEQA: Exempt, CP03-009. Director of Planning, Building and Code Enforcement recommends upholding the decision of the Planning Commission to approve.
CP 03-009 - District 1
(Continued from 6/17/03 – Item 11.3 et al., and 11/4/03 – Item 11.1)**

11.1 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP-03-009, dated April 3, 2003, recommending approval of the Conditional Use Permit for the subject property. (2) Memoranda from Director of Planning, Building and Code Enforcement Stephen Haase, dated May 27, 2003, and September 17, 2003, recommending upholding the decision of the Planning Commission to conditionally approve the Conditional Use Permit. (3) Proof of Publications of Notices of Public Hearings, executed on June 3, 2003, and June 8, 2003, submitted by the City Clerk.

Discussion/Action: Item 11.1 was dropped.

11.2 PUBLIC HEARING on approval of an ordinance amending Chapter 20.70 of Title 20 of the San José Municipal Code by modifying the provisions of the Downtown Zoning Regulations. CEQA: Resolution No. 65459, PP03-05-169. (Planning, Building, and Code Enforcement) (Continued from 6/3/03 – Item 11.3 et al., and 10/21/03 – Item 11.1)

Documents Filed: None.

Discussion/Action: Item 11.2 was continued to December 2, 2003 to be heard concurrently with Items 10.1 and 11.5.

11.4 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the east side of Bird Avenue, approximately 490 feet northeasterly of Snyder Avenue (1023 Bird Avenue), from R-1-8 Residence Zoning District to A(PD) Planned Development Zoning District, to allow a 530 square foot, half-story living area in an existing accessory structure in conjunction with an existing single-family residence on a 0.15 gross acre site. (Stanley M. Davis et al. Owner/Developer). CEQA: Exempt. Director of Planning, Building, and Code Enforcement and Planning Commission recommend denial. (7-0-0). PDC 03-060 - District 6 (Continued from 10/21/03 – Item 11.6)

Documents Filed: None.

Discussion/Action: Item 11.4 was continued, on contingency of no longer than 6 months, to allow development of a policy for “granny units”.

11.5 PUBLIC HEARING ON DIRECTOR-INITIATED CONVENTIONAL REZONING of the property located within the area generally bounded 4th Street, Interstate 280, State Route 87 (Guadalupe Parkway), and Bassett Street, from CG General Commercial, R-M Multiple Residence, R-2 Two-Family Residence, LI Light Industrial Districts to DC Downtown Commercial District and DC-NT 1 Downtown Commercial-Neighborhood Transition 1 Districts, to allow mixed use, commercial, and residential uses on approximately 389 gross acres. CEQA: Resolution No. 65459. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). (Planning, Building, and Code Enforcement)

C 03-072 - District 3

(Continued from 10/21/03 – Item 11.9)

Documents Filed: None.

Discussion/Action: Item 11.5 was continued to December 2, 2003 to be heard concurrently with Items 10.1 and 11.2.

11.8 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the southeasterly corner of Edenvale Drive and Monterey Road, from CP Commercial Pedestrian to A(PD) Planned Development Zoning District, to allow an existing approximately 2,200 square foot retail building, and the construction of a new, approximately 3,922 square foot retail building and associated improvements on 0.55 acre. (Messina Richard V Trustee & Et Al, Owner). CEQA: Exempt. SNI: Edenvale/Great Oaks.

PDC 03-069 - District 2

Documents Filed: None.

Discussion/Action: Item 11.8 was continued to December 2, 2003.

11.3 PUBLIC HEARING ON APPEAL of the Planning Commission's decision to approve a Conditional Use Permit to allow operation until 2:00 a.m., and entertainment until 1:00 a.m. at an existing restaurant (Tacos Al Carbon), located on the east side of King Road, approximately 350 feet northerly of Story Road (1733 Story Road), on a 1.17 gross acre site in the CG General Commercial Zoning District. (Hoady Family LLC, Mr. Danny Hoady, Owner; Tacos Al Carbon & Video Amparo Guizar, Developer). CEQA: Exempt. SNI: East Valley/680 Communities. Director of Planning, Building and Code Enforcement recommends to uphold the appeal and approve the Conditional Use Permit to allow operation of a restaurant until 3:00 a.m. on Saturdays, Sundays, and selected holidays and to allow associated entertainment activity until 2:00 a.m. Planning Commission approved maintaining operating hours until 2:00 a.m. with entertainment activities ceasing at 1:00 a.m.

CP 03-021 - District 5

11.3 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Campos, dated November 17, 2003, recommending support of the staff recommendation included in the supplemental memorandum dated November 6, 2003. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated November 6, 2003, recommending approval of the Conditional Use Permit to allow the restaurant to have entertainment to 2:00 a.m. daily and to allow operation of the restaurant as follows: Sunday – Thursday from 7:00 a.m. to 2:00 a.m.; Friday and Saturday from 7:00 a.m. to 3:00 a.m.; and selected holidays from 7:00 a.m. to 3:00 a.m. (3) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. CP-03-021, dated September 18, 2003, recommending approval of a Conditional Use Permit at the subject property. (4) Memorandum from Director of Planning, Building and Code Enforcement Stephen Haase, dated October 29, 2003, transmitting the Planning Commission recommendation for approval of the Conditional Use Permit at the subject property.

Discussion/Action: Mayor Gonzales opened the Public Hearing on the Appeal of the Planning Commission's decision to approve a Conditional Use Permit, and there was no discussion from the floor. Council Member Campos introduced the members of the community that reside around the Tacos Al Carbon restaurant, which has been in the area for many years. She stated the reason she wanted to introduce the community is because the vision that has been talked about for the past few years is creating gathering places, and this is one of the only restaurants in the area that it is sit-down restaurant with "Mariachis", and to lose this would be a great loss within this community. Upon motion by Council Member Campos, seconded by Council Member Reed, and carried unanimously, the public hearing was closed, and the recommendation of the Planning Commission and the Planning Director was approved, and Resolution No. 71838, entitled: "A Resolution of the Council of the City of San José Granting, Subject to Conditions, a Conditional Use Permit to Use Certain Real Property Described Herein for the Purpose of Allowing After Midnight Operation to 3:00 a.m. on Fridays, Saturdays and Specified Holidays, and Entertainment until 2:00 a.m. at an Existing Restaurant", was adopted. Vote: 10-0-1-0. Absent: Chirco.

- 11.6 PUBLIC HEARING ON PLANNED DEVELOPMENT PREZONING of the property located at the south side of Curtner Avenue, approximately 630 feet westerly of Bascom Avenue (620 Curtner Avenue), from County to A(PD) Planned Development Zoning District, to allow up to 15 single-family attached residential units on a 1.02 gross acre site. (K. Naderzad, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building, and Code Enforcement and Planning Commission recommend approval (6-1-0).
PDC 03-046 - District 9**

11.6 (Cont'd.)

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC-03-046, dated October 16, 2003, recommending approval of the Planned Development Rezoning. (2) Memorandum from Secretary of Planning Commission Stephen Haase, dated October 29, 2003, transmitting the Planning Commission recommendation for approval of the Planned Development Rezoning of the subject property. (3) Proof of Publications of Notices of Public Hearings, executed on October 8, 2003, and October 19, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the Public Hearing on the Planned Development Rezoning of the subject property, and there was no discussion from the floor. Upon motion by Council Member Reed, seconded by Vice Mayor Dando, and carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and Planning Director was approved, and Ordinance No. 27019, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated Southside of Curtner Avenue Approximately 630 Feet Westerly of Bascom Avenue to A(PD) Planned Development Zoning District", was passed for publication. Vote: 10-0-1-0. Absent: Chirco.

11.7 PUBLIC HEARING ON CONVENTIONAL PREZONING of the property located at the east side of Ruby Avenue, approximately 780 feet northerly of Murillo Avenue (2430 Ruby Avenue), from County to R-1-2 Residence District, to allow a single-family use on a 0.52 gross acre site. (Thuoc Dinh Nguyen & Minh Thu Thi Doan, Owners. CEQA: Resolution No. 65459. Director of Planning, Building, and Code Enforcement recommends approval. No Planning Commission action required.

C 01-032 - District 8

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C-01-032, dated October 27, 2003, recommending approval on the Conventional Rezoning of the subject property. (2) Proof of Publications of Notices of Public Hearings, executed on October 28, 2003, and November 16, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the Public Hearing on the Conventional Rezoning of the subject property. Sarafina Garcia spoke on the issue. Upon motion by Council Member Cortese, seconded by Council Member Campos, and carried unanimously, the public hearing was closed, the recommendation of the Planning Director was approved, and Ordinance No. 27020, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Ruby Avenue Approximately 780 Feet Northerly of Murillo Avenue (2430 Ruby Avenue) to R-1-2 Single Family Residence Zoning District", was passed for publication. Vote: 10-0-1-0. Absent: Chirco.

**11.9 PUBLIC HEARING ON CONVENTIONAL REZONING of the property located at the southwest corner of Story Road and Adrian Way (2198 Story Road), from CO Office Commercial Zoning District to CP Pedestrian Commercial Zoning District, to allow commercial uses on a 0.533 gross acre site. (Javier and Beatriz Martinez, Owner). CEQA: Resolution No. 65459. SNI: East Valley/680 Communities. Director of Planning, Building, and Code Enforcement recommends approval. No Planning Commission action required.
C 03-058 - District 5**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C-03-058, dated October 29, 2003, recommending approval of the Conventional Rezoning of the subject property. (2) Proof of Publication of Notice of Public Hearing, executed on November 16, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the Public Hearing on the Conventional Rezoning of the subject property, and there was no discussion from the floor. Upon motion by Council Member Campos, seconded by Council Member Williams, and carried unanimously, the public hearing was closed, the recommendation of the Planning Director was approved, and Ordinance No. 27021, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of Story Road and Adrian Way to CP Commercial Pedestrian Zoning District", was passed for publication. Vote: 10-0-1-0. Absent: Chirco.

OPEN FORUM

- (1) Danny Garza spoke of issues relating to Plata Arroyo Park.
- (2) Marc Boyd spoke of future medical services in San José and to look at saving San José Medical Center.
- (3) Wayne Hall, Winchester NAC, spoke of improving the communication between the City of San José and the NAC.

ADJOURNMENT

The Council of the City of San José was adjourned in memory of Hugo Joseph Bellardi, who is survived by his wife Evelyn, their daughter Maya Murphy, grandchildren, Mark Rapazzini, Todd Rapazzini, Jim Teague, Wendy Teague, and six great-grandchildren.

The Council of the City of San José was adjourned at 7:40 p.m.

RON GONZALES, MAYOR

ATTEST:

DEANNA J. SANTANA, CITY CLERK

smd/11-18-03min