

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, AUGUST 19, 2003

The Council of the City of San José convened in Regular Session at 9:32 a.m. in Council Chambers at City Hall.

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

Absent: Council Members - None.

Upon motion unanimously adopted, the City Council recessed to Closed Session at 9:32 a.m. in Room 600 to (A) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 subsection (a) to consider the cases of Evans v. All Persons interested, et al; Boulder Rock Landscape Construction v. City of San José; Comcast of California, II L.L.C. v. City of San José; and City of Long Beach v. State of California Department of Industrial Relations; (B) confer with Legal Counsel regarding anticipated litigation where is significant exposure to litigation pursuant to subsection (b) of Section 54956.9 of the Government Code in one (1) matter.

By unanimous consent, Council Convened from Closed Session and recessed at 11:25 a.m. and reconvened in Regular Session 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

Intergenerational Performing Group of Alma Community Center performed two traditional folk dances. The American and Auxiliary Legion Post 858 World War II Veterans sang "God Bless America." (District 7)

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Orders of the Day, the Amended Agenda were approved, and Ceremonial Item 1.1 was heard in the evening. Vote: 10-0-1-0. Absent: LeZotte.

CEREMONIAL ITEMS

1.2 Presentation of plaques to Colette Krinock for 1 year service on the Disability Advisory Commission; and to Gilbert Garcia for 2 years service on the Senior Citizens Commission. (Mayor)

Documents Filed: None.

Discussion/Action: Mayor Gonzales commended Colette Krinock for one year of service on the Disability Advisory Commission, and Gilbert Garcia for two years service on the Senior Citizens Commission. Ms. Krinock and Mr. Garcia were unable to attend the presentation.

CONSENT CALENDAR

Upon motion by Council Member Williams, seconded by Council Member Chavez and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 10-0-1-0. Absent: LeZotte.

2.1 Approval of City Council Minutes for:

(a) Regular meeting of December 17, 2002

Documents Filed: Minutes of the regular meeting of December 17, 2002.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: LeZotte.

(b) Joint Council/Redevelopment Agency Board meeting of December 17, 2002

Documents Filed: Minutes of the Joint Council/Redevelopment Agency Board meeting of December 17, 2002.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: LeZotte.

2.1 Approval of City Council Minutes (Cont'd.)

(c) General Plan Hearing of December 17, 2002

Documents Filed: Minutes of the General Plan Hearing of December 17, 2002.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: LeZotte.

(d) Regular meeting of January 14, 2003

Documents Filed: Minutes of the regular meeting of January 14, 2003.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: LeZotte.

(e) Joint Council/Redevelopment Agency Board meeting of January 14, 2003

Documents Filed: Minutes of the Joint Council/Redevelopment Agency Board meeting of January 14, 2003.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: LeZotte.

(f) Regular meeting of January 21, 2003

Documents Filed: Minutes of the regular meeting of January 21, 2003.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: LeZotte.

(g) Joint Council/Redevelopment Agency Board meeting of January 21, 2003

Documents Filed: Minutes of the Joint Council/Redevelopment Agency Board meeting of January 21, 2003.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: LeZotte.

(h) Joint Council/Redevelopment Agency Board/Santa Clara Valley Water District Board meeting of January 21, 2003

Documents Filed: Minutes of the Joint Council/Redevelopment Agency Board/Santa Clara Valley Water District Board meeting of January 21, 2003.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: LeZotte.

2.1 Approval of City Council Minutes (Cont'd.)

(i) Regular meeting of January 28, 2003

Documents Filed: Minutes of the regular meeting of January 28, 2003.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: LeZotte.

(j) Joint Council/Redevelopment Agency Board meeting of January 28, 2003

Documents Filed: Minutes of the Joint Council/Redevelopment Agency Board meeting of January 28, 2003.

Discussion/Action: The Minutes were approved. Vote: 10-0-1-0. Absent: LeZotte.

2.3 Acceptance of the finding reports from Kafoury, Armstrong, & Company, LLP, for the quarter ending March 31, 2003, relating to the Bay 101 Conditional Approval of Stock Transfer. (City Auditor)

Documents Filed: Memorandum from City Auditor Gerald A. Silva, dated July 18, 2003, submitting for acceptance, the findings reports from Kafoury, Armstrong, & Company, LLP, dated March 31, 2003, relating to the Bay 101 Conditional Approval of Stock Transfer.

Discussion/Action: The finding reports from Kafoury, Armstrong, & Company, LLP for the quarter ending March 31, 2003, was accepted. Vote: 10-0-1-0. Absent: LeZotte.

2.4 Approval of award for a sole source purchase of ten Wemco pumps to MuniQuip, Inc., (Roseville, CA) for a total cost of \$146,851.95 including tax and delivery, and authorization for the Director of General Services to execute the purchase order. CEQA: Not a project (General Services)

Documents Filed: (1) Memorandum from Director of General Services Jose Obregon, dated July 30, 2003, recommending approval for a sole source purchase of ten Wemco pumps to MuniQuip for a total cost of \$146,851.95. (2) Letter from the Treatment Plant Advisory Committee, dated August 14, 2003, stating concurrence with the Staff recommendation.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke on the issue. The award of the sole source purchase from MuniQuip was approved and execution of the purchase order authorized. Vote: 10-0-1-0. Absent: LeZotte.

- 2.5 (a) **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the Santa Clara County Open Space Authority (OSA) and to submit all necessary documents to effectuate funding actions connected to the 20 Percent Open Space Funding Program:**
- (1) **To reimburse OSA for the City contribution of \$400,000 toward the Furtado Property Acquisition by OSA.**
 - (2) **To fund the partial acquisition of land in Reach 1 adjacent to Penitencia Creek Road and associated survey work to determine the trail alignment in Reach 1 and part of Reach 2 of the Penitencia Creek Trail along with preparation of the master plan documents and environmental review and clearance in an amount not to exceed \$400,000.**
- (b) **Adoption of the following appropriation ordinance and funding source resolution amendments in the Council District 4 Construction and Conveyance Tax Fund:**
- (1) **Establish the appropriation to the Parks, Recreation and Neighborhood Services Department for the Penitencia Creek Reach 1 & 2 Trail Master Plan Project for \$200,000.**
 - (2) **Increase the Earned Revenues estimate by \$200,000.**

CEQA: Furtado Property Acquisition by OSA – Exempt, PP03-06-215; Penitencia Creek Grant Funding - Exempt, PP03-06-216. Council District 4. (Parks, Recreation and Neighborhood Services/City Manager’s Office)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara L. Hensley, and Budget Director Larry Lisenbee, dated July 30, 2003, recommending adoption of said resolution, and appropriation ordinance and funding source resolution amendments.

Discussion/Action: Mayor Gonzales called for public testimony. Dale Warner spoke on the issue. In regard to the funding of the Penitencia Creek Reach 1 Acquisition, Council Member Reed inquired about the timeline of the project. Deputy Director of Parks, Recreation and Neighborhood Services Scott Reese replied once the agreement is signed Staff will proceed immediately into the design process. Deputy Director Reese declared there are two aspects to the subject of the \$400,000, the surveying that must be done to identify the base information needed in order to accomplish the master planning effort, and the completion of the master plan. He pointed out that Staff is planning to accomplish the master plan in-house, the surveying crews are ready, and once the agreement is signed, and the funds are secured, Staff will move into the survey portion within the next 60 days. Resolution No. 71704, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the Santa Clara County Open Space Authority for Funding Actions Connected with the 20 Percent Open Space Funding Program for the Furtado Property Acquisition and Reach 1 and Reach 2 of the Penitencia Creek Trail, and to Submit all Necessary Documents to Effectuate the Funding Actions”, and Ordinance No. 26954, entitled: “An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Monies in the

2.5 (Cont'd.)

Council District 4 Construction and Conveyance Tax Fund for the Penitencia Creek Reach 1 and 2 Trail Master Plan Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 71705, 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 City Council District 4 Construction and Conveyance Tax Fund”, were adopted. Vote: 10-0-1-0. Absent: LeZotte.

2.6 Adoption of a resolution initiating proceedings and setting September 16, 2003 at 1:30 p.m. as the date for Council consideration of the reorganization of territory designated as Sunol No. 66, which involves the annexation to the City of San José of 0.34 acre of land, located on the east side of Meridian Way approximately 300 feet northerly of Pedro Street and generally bounded by the City of San José Annexations Sunol No. 49 and Sunol No. 21, and the detachment of the same from Sunol Sanitary, County Lighting Service, Central Fire Protection, and the County Library Service Area. CEQA: San José 2020 General Plan Environmental Impact Report, Resolution No. 65459. Council District 6. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen M. Haase, dated July 30, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71706, entitled: “A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Territory Designated as Sunol No. 66 and Described Herein, and Setting the Date and Place for Consideration of Such Reorganization”, was adopted. Vote: 10-0-1-0. Absent: LeZotte.

2.7 Adoption of a resolution to:

- (a) **Initiate proceedings to consider the Moody Flats Apartment Building, (311 N. Second St.) a landmark of special historic, architectural, cultural, aesthetic, or engineering interest or value of a historic nature.**
- (b) **Set a public hearing on September 30, 2003 at 1:30 p.m.**
- (c) **Refer the matter back to the Historic Landmarks Commission for its consideration at a public hearing, report, and recommendation.**

CEQA: Exempt, PP03-07-248. SNI: 13th Street. (Planning, Building and Code Enforcement)

HL 03-148 - District 3

Documents Filed: (1) Memorandum from Secretary, Historic Landmarks Commission Stephen M. Haase, dated July 30, 2003, recommending adoption of said resolution. (2) Affidavit of Routing, executed on August 25, 2003, submitted by the City Clerk.

2.7 (Cont'd.)

Discussion/Action: Mayor Gonzales called for public testimony. Rusty Lutz spoke on the issue. Mayor Gonzales stated he is disqualified from the vote, as he owns property adjacent to the subject property. Resolution No. 71707, entitled: "A Resolution of the Council of the City of San José Initiating Proceedings on its Own Motion, Pursuant to the Provisions of Chapter 13.48 of Title 13 of the San José Municipal Code, To Designate the Moody Flats Apartment Building, Presently Located at 311 N. Second Street, as a City Landmark of Special Historical, Architectural, Cultural, Aesthetic or Engineering Interest or Value of a Historic Nature", was adopted. Vote: 9-0-1-1. Absent: LeZotte. Disqualified: Gonzales.

2.8 Adoption of a resolution to:

- (a) Acknowledge that increasing traffic law enforcement is an important element in improving public safety and to support the California Highway Patrol (CHP) in their efforts to conduct a Driving Under the Influence (DUI) traffic safety project with the use of State Office of Traffic Safety (OTS) grant funds, and**
- (b) Authorize the City Manager to approve the related OTS grant sub-contractor's agreement with the CHP to allow the San José Police Department to participate in the DUI traffic safety project entitled "Removing Impaired Drivers Project."**

CEQA: Not a project. (Police)

Documents Filed: Memorandum from Chief of Police William M. Lansdowne, dated July 30, 2003, recommending adoption of said resolution.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke on the issue. Resolution No. 71708, entitled: "A Resolution of the Council of the City of San José Supporting the California Highway Patrol's Efforts to Conduct a Driving Under the Influence Safety Project, and Authorizing the City Manager to Execute an Agreement with the California Highway Patrol for Participation in the DUI Traffic Safety Project" was adopted. Vote: 10-0-1-0. Absent: LeZotte.

- 2.9**
- (a) Approval of a first amendment to the agreement for consultant services with Nolte Associates Inc. for the Coyote-Alamitos Canal Trail Survey, extending the term from December 31, 2003 to October 31, 2004, and decreasing the total compensation by \$30,319 from \$157,202, for a total agreement amount of \$126,883.**
 - (b) Approval of a first amendment to the agreement for consultant services with Amphion Environmental Inc. for the Coyote-Alamitos Canal Trail Feasibility Study, extending the term from December 31, 2003 to October 31, 2004, and increasing the total compensation by \$30,319 from \$224,495, for a total agreement amount of \$254,814.**

CEQA: Not a project. Council Districts 2 and 10. (Public Works)

2.9 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated July 30, 2003, recommending approval of first amendment to said agreement with Nolte Associates, Inc. for the Coyote-Alamitos Canal Trail Survey, and approval of first amendment to said agreement with Amphion Environmental Inc. for the Coyote-Alamitos Canal Trail Feasibility Study.

Discussion/Action: The first amendment to the agreement with Nolte Associates, Inc. for the Coyote-Alamitos Canal Trail Survey for a total agreement amount of \$126,883, was approved, and the first amendment to the agreement with Amphion Environmental Inc. for the Coyote-Alamitos Canal Trail Feasibility Study for a total agreement amount of \$254,814, were approved, and the execution of the agreements authorized. Vote: 10-0-1-0. Absent: LeZotte.

2.10 Approval of City Auditor Gerald Silva's travel calendar through December 31, 2003, at no cost to the City. Funding: AICPA. (City Auditor) (Rules Committee referral 8/13/03)

Documents Filed: Letter from City Auditor Gerald A. Silva, dated August 12, 2003, requesting approval of his travel calendar through December 31, 2003, at no cost to the City.

Discussion/Action: The travel calendar for City Auditor Gerald A. Silva through December 31, 2003, was approved. Vote: 10-0-1-0. Absent: LeZotte.

2.11 Adoption of a resolution: (1) declaring thirteen (13) parcels of City-owned property located in Council Districts 3, 4, 5, 6, 9, and 10, respectively, surplus to the needs of the City; and (2) setting the time and date for the opening of sealed bids and a verbal auction of the thirteen properties on October 20, 2003 at 7:00 p.m. Council Districts 3, 4, 5, 6, 9, and 10. CEQA: Exempt, PP00-02-023. (General Services) (Deferred from 8/12/03 – Item 2.8)

Documents Filed: None

Discussion/Action: Item 2.11 was deferred to August 26, 2003.

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

3.2 Report of the Rules in Lieu Committee – August 6, 2003 Vice Mayor Dando, Chair

Documents Filed: (1) Report of the In-Lieu Rules Committee Meeting of August 6, 2003. (2) Partial Report of the Rules Committee Meeting of August 13, 2003.

**3.2 Report of the Rules in Lieu Committee – August 6, 2003 (Cont'd.)
Vice Mayor Dando, Chair**

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review August 19, 2003 Draft Agenda
Action was taken to recommend approval of the August 19, 2003 City Council agenda.
 - (a) Additions/Changes
 - (1) Present commendations to the Vietnamese organizations of San José for helping organize, participate in, and support the Community Resource Fair 2003 to educate the Vietnamese community about services available from the City of San José and County of Santa Clara. (Cortese, Reed, and Williams)
 - (2) Present plaques to Colette Krinock for 1 year of service on the Disability Advisory Commission; and to Gilbert Garcia for 2 years service on the Senior Citizens Commission. (Mayor)
 - (2) Add New Items to August 12, 2003 Agenda
Action was taken to recommend the following addition to the August 12, 2003 City Council agenda.
 - (a) Present a commendation to the Fil-Am Veterans Rondalla for contributions to the community. (Reed)
 - (3) Staff Reports Outstanding

There were no reports filed. There was no discussion or action taken.
 - (4) Review August 19, 2003 General Plan Agenda

Action was taken to recommend approval of the August 19, 2003 General Plan agenda.
 - (c) Legislative Update
 - (1) State

There was no report.
 - (2) Federal

There was no report.

**3.2 Report of the Rules in Lieu Committee – August 6, 2003 (Cont'd.)
Vice Mayor Dando, Chair**

(d) Meeting Schedules

There were none.

(e) The Public Record

There was no Public Record.

(f) Boards, Commissions and Committees

There were none.

(g) Council Referrals for Assignment to Administration or Council Appointee

There were none.

(h) Administrative Reviews and Approval

There were none.

(i) Oral communications

None were presented.

(j) Adjournment

The meeting was adjourned at 11:15 a.m.

(f) Boards, Commissions and Committees

- (1) Suggestion Award Commission. Attachment: Memorandum from Manager, Employee Suggestion Program Brooke Myhre, dated July 25, 2003, recommending appoint of Mark Danaj to the Suggestion Award Commission.

The Committee recommended appointment of Mark Danaj, Director of Employee Services, to the Suggestion Award Commission for an unexpired term ending November 30, 2003 and the subsequent two-year term ending November 30, 2005.

Discussion/Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Rules In Lieu Committee Meeting Report and actions of August 6, and August 13, 2003, were accepted. Vote: 11-0-0-0.

**3.4 Report on analysis of the cost for the City to take over management of the Hayes Conference Center, including any additional management options that would achieve fiscal stability, including financial actuals showing the fiscal condition of the facility with projection. CEQA: Not a project. (City Manager's Office/Finance/Economic Development)
(Council referral 6/24/03 – Item 3.5)**

Documents Filed: Memorandum from Deputy City Manager Kay Winer, Director of Finance Scott P. Johnson, and Economic Development Director Paul Krutko, dated August 7, 2003, recommending approval of the report on the analysis of the cost of the City of San José taking over management of the Hayes Mansion Conference Center.

Discussion/Action: Deputy City Manager Kay Winer reported in June Council asked Staff to come back with a specific response to the question about whether or not the City could assume the management of the Hayes Conference Center. She stated additionally there were questions about providing financial data included in the Staff report, and a potential management firm was identified to the facility on an interim basis. She pointed out that Staff believes the best option to obtain fiscal stability will be found in the Request For Proposals (RFP) that will be reviewed and returned to Council by October 14, 2003, with recommendations of arrangements to provide the maximum flexibility for developing this operation into a fiscally sound condition and maintain the same quality service with the Hayes Mansion Conference Center. Council Member Cortese questioned at what point does the City have a problem in not resolving this either by way of RFP or some other restructured agreement. Deputy City Manager Winer replied the City of San José has a responsibility for debt payments, and does have a sufficient amount of funding to support that through the calendar year. She stated the letter of credit that Staff provided in terms of economic relief to the Hayes Mansion Conference Center has been expended, there are insufficient funds to make their payroll and payables, and Staff is reviewing options of restructuring the debt. She clarified Staff is attempting to locate alternatives in order to provide the support the operators will need, as it is not in the City's best interest to degrade the quality of the facility while transitioning to a different type of arrangement.

Director of Finance Scott P. Johnson reported Staff is currently reviewing options of how the City handles cash flow issues relative to the Hayes Mansion Conference Center, and have been working closely with the current operator in regard to their projections for 2003 through 2005, and Staff has an independent hospitality consultant reviewing that information. He declared that the Hayes Mansion Conference Center has drawn down the full \$3 million, and Staff has spoken to the operators, and reduced some staffing. He stated it is very important to keep the Hayes Mansion Conference Center open, and Staff is considering one option in regard to discussions with Comerica and the line of credit the Hayes Mansion Conference Center operators currently have with Comerica. He stated Staff had preliminary discussions with Comerica, and plan to return to Council within a couple weeks with a transition plan that may include a potential line of credit that the City of San José would enter into with Comerica, where the repayment of the line of credit would be structured in such a way that it would be contingent upon the revenues

3.4 (Cont'd.)

generated from the Hayes Mansion Conference Center. Council Member Cortese inquired if the Comerica relationship is currently a debt owed by HRLP, the current operator at the Hayes Mansion Conference Center. Director Johnson replied that is correct, the City's debt is subordinated by the Comerica loan, and in addition there are certain assets at the Hayes Mansion Conference Center that are secured by the line of credit. Council Member Cortese pointed out in the staff report, it is suggested the City, at some point, make a transition that does not default the current operators, and assume the Comerica debt, and asked if the liability belongs to the individuals who are operating under it, why would the City do that. Director Johnson explained that Staff is reviewing this project as the total operations of the asset, and in obtaining some preliminary transition proposals from the existing operators, Staff will return to Council with a complete package of recommendations.

Council Member Cortese inquired how does Staff make an analysis that it is worth \$500,000 a month of burdened cost to the City, especially in these economic times, for the Hayes Mansion Conference Center to continue to remain open. Director Johnson clarified Staff analyzed this facility as stand alone business, which is how it has been operating in the past. He stated before last year, it has not needed any additional support from the City, and that is how the City accumulated the reserves for the Hayes Trust Fund. He stated Staff is reviewing the long term viability of the facility, the trends of the revenues that were generated in the facility, and before the recession, it was generating in excess of \$15 million per year. He stated that due to the present economy and based on the marketing structure of the current operator, the City is looking at about \$8.4 million in revenue, however, as the economy reverts, there is opportunity for growth in those revenues over the long term, and if there is an operating agreement it would be beneficial to the City. He commented Staff has received interest from the hospitality industry operators and managers that have national experience, and a wealth of marketing opportunity.

Vice Mayor Dando commented when the City of San José makes an investment like the Hayes Mansion, that is for a long term investment, and it is important to remember, up until just a year or two ago, they were doing very well, and that is why the City has the reserve. She declared it is interesting with the fall of local economics, sales and property tax, the City is scrambling to come up with creative ways in order to maintain City programs, and certainly the private sector is no different. She stated they may not have quite as much flexibility as the City does, to tap into the public's money, but that should be kept in mind in terms of maintaining this relationship, with the operation at Hayes Mansion Conference Center, and there are many community members and businesses that have been booking arrangements over the next several months. She expressed concern about shutting down the operation at the Hayes Mansion, that would be a very serious mistake, not only the message it sends to the business community in general, and the bond counsel, but just the fact that the local community is depending on the business. She stated that through the RFP process the City will hopefully find some means of addressing this current situation. She inquired if the \$34,000 paid to the Hayes Mansion

3.4 (Cont'd.)

Conference Center in June was for management fees. Deputy City Manager Kay Winer replied she understood it was not \$34,000, but actually \$17,000 as half of it is accrued. Vice Mayor Dando replied it is important to be clear that the actual management fee is not 5%, but 2-1/2%.

Council Member Reed declared the City should not let the operator off the obligation with Comerica Bank, as the \$2 million is partially secured on City property, and allow Comerica to obtain what they have secured it on. He expressed concern that Staff plans to restructure the debt in order to allow the operator to meet payroll, and if the City will be paying the payroll, the City should take control. He stated the debt service is \$130,000 a month, and asked if the bonds are candidates for refunding at lower interest rates to bring the debt service down. Director Johnson replied the City has a very favorable rate, because most of the bonds that are outstanding are at variable short term rate, and that is one of the reasons why, based on the rents that the Hayes operator pays, the City basically has a rate stabilization fund. Council Member Williams pointed out that closing the Hayes Mansion is not an option, and the best situation for the City is to continue to the end of the year as originally targeted, and transition in new operators as soon as possible. Council Member Williams moved approval of the Staff recommendation. Vice Mayor Dando seconded the motion.

Council Member Chavez stated when the City originally reviewed this situation with Hayes Mansion, there had some concern raised by the Council about the type of the financial relationship the City had engaged in, everything from how the debt would be shared, to the expectation of the limited partnership, and what assets were actually there. She clarified that information in all those areas where the City could have improved should be incorporated in the new structure of the RFP, and then structured into the final agreement. Deputy City Manager Kay Winer stated Staff did take those concerns in mind, and structured the RFP with flexibility, so it does not presuppose or assume any particular model for submitting a proposal to the City, and that it could be a straightforward management agreement with an acceleration of an incentive for the operator. She stated it could be a lease arrangement like the current operators or a franchise operation is a possibility. Council Member Chavez stated there are some factors to the relationship and partnership within the limited partnership that have not worked, and expressed concern about what will be incorporated into a new agreement, that the City does not make those same mistakes again, as it relates financially and in terms of how a partner is chosen. She declared her concern is coupled with a second issue, and that is in respect to the Convention Center and an opportunity to look at the same kind of scenario as it relates to whether the operation stays in house or not. She stated Staff should make sure the agreement has a governance mechanism that allows the City to better collaborate with all of those assets. Deputy City Manager Winer stated at the time the Hayes Mansion Conference Center was developed, the downtown Convention Center had recently opened, some of the hotels had come online, and the Hayes Mansion Conference Center was considered a separate very unique facility, however Staff does not think that is the case any longer and will review other opportunities there may be to bring those together.

3.4 (Cont'd.)

Mayor Gonzales called for public testimony. William Garbett spoke on the issue. Upon motion by Council Member Williams, seconded by Vice Mayor Dando, and unanimously carried, and the analysis cost report for the City to take over management of the Hayes Conference Center was approved. Vote: 11-0-0-0.

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

- 4.3 Discussion of and approval of an ordinance amending Title 23, the Sign Code, of the San José Municipal Code as it pertains to signage on residential parcels in all residential, agriculture, and open space zoning districts. CEQA: Exempt, PP02-09-260. (Planning, Building and Code Enforcement)**
[Driving a Strong Economy Committee referral 4/28/03 – Item 4.2(a)]
(Deferred from 5/13/03 – Item 4.4 and 5/20/03 – Item 4.6)

Documents Filed: (1) Supplemental memorandum from City Manager Assistant Deanna Santana, dated May 7, 2003, transmitting a presentation from Director of Planning, Building and Code Enforcement Stephen M. Haase, dated April 11, 2003, recommending adoption of the proposed ordinance amending Title 23. (2) Sixty One letters from the public regarding the issue of amending Title 23.

Discussion/Action: Item 4.3 was dropped.

RECREATION & CULTURAL SERVICES

- 5.2 Approval of the Floyd and Locust Streets Park Master Plan and direction to staff to complete preparation of construction documents. CEQA: Exempt, PP03-05-186. Council District 3. SNI: Washington. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara L. Hensley, dated July 30, 2003, recommending approval of the Floyd and Locust Streets Park Master Plan, and direction to Staff to complete preparation of construction documents.

Discussion/Action: Upon motion by Council Member Chavez, seconded by Council Member Reed, and carried unanimously, the Floyd and Locust Streets Master Plan was approved with direction to Staff to complete preparation of construction documents. Vote: 11-0-0-0.

5.3 Approval of the Almaden Community Center, Branch Library, and Parma Park Master Plan. CEQA: Mitigated Negative Declaration, PP02-10-309. Council District 10. (Parks, Recreation and Neighborhood Services/Library)

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara L. Hensley, and Library Director Jane Light, dated July 30, 2003, recommending approval of Almaden Community Center, Branch Library, and Parma Park Master Plan.

Discussion/Action: Referring to Page 14 of the Proposed Master Plan, Council Member LeZotte remarked in regard to the LEED certification of this building, it states that it could achieve a potential for silver or gold certification, and asked if Staff will be accomplishing that as part of the budget to get the certification. Library Department Deputy Director Richard Desmond stated this will be a green building but not LEED certified. Vice Mayor Dando expressed excitement about this project in District 10, and stated this is the first joint project, having a community center and a library together, it will be very interesting for the City to follow and see how the implementation of it works. She stated the community center itself is about 38,000 square feet, and the library is about 18,000 square feet, and the fact that this will be a green building has to do with Council Member LeZotte's input and influence. Vice Mayor Dando moved approval Staff's recommendation of approval of the Almaden Community Center Branch Library and Parma Park Master Plan. Council Member LeZotte seconded the motion. Vice Mayor Dando stated she spoke with City Manager Del Borgsdorf offline, that as the City is beginning to close down community centers and libraries, Staff will determine how to provide services for the community while they are closed. She stated Staff will coordinate with her office, and will set up a model that can be used for other communities as their libraries and community centers are closed down. On a call for the question, the motion carried unanimously, and the Almaden Community Center, Branch Library, and Parma Park Master Plan, were approved. Vote: 11-0-0-0.

TRANSPORTATION SERVICES

**6.1 Report of the Building Better Transportation Committee – August 4, 2003
Council Member Cortese, Chair**

Documents Filed: The Report of the Building Better Transportation Committee dated August 4, 2003.

- (a) Expansion and Improvement of Transit and Transportation Systems

There were no items.

**6.1 Report of the Building Better Transportation Committee – August 4, 2003 (Cont'd.)
Council Member Cortese, Chair**

(b) Traffic Relief/Safe Streets

- (1) Report on Construction Impact Mitigation Plan Outreach. Attachment: Memorandum from City Manager Del Borgsdorf, dated July 25, 2003, recommending acceptance of the report on Outreach for the Construction Impact Mitigation Policy and Ordinance.

The Committee accepted the report.

(c) Supporting Smart Growth

- (1) Presentation and Recommendation on Transportation Level of Service Policy. Attachment: Memorandum from Director of Transportation James R. Helmer, dated July 23, 2003, transmitting the summary of the proposed framework for a new “transportation impact policy”.

The Committee accepted the report.

(d) Regional Relationships/Funding/Policy

- (1) State, Federal, and Local Legislative Update. Attachment: Memorandum from Director of Transportation James R. Helmer, and Director Intergovernmental Relations Betsy Shotwell, dated July 18, 2003, recommending acceptance of the Legislative Report.

The Committee accepted the report.

(e) Oral petitions

Michael Talia, Manager for the San Francisco and Santa Clara Districts of the Associated General Contractors (AGC) of California spoke on item (b)(1), Construction Impact Mitigation Plan.

(f) Adjournment The Committee adjourned at 3:10 p.m.

Discussion/Action: Upon motion by Council Member Cortese, seconded by Council Member LeZotte, and carried unanimously, the Building Better Transportation Committee Report and actions of August 4, 2003, were accepted. Vote: 11-0-0-0.

ENVIRONMENTAL & UTILITY SERVICES

- 7.1 PUBLIC HEARING on approval of an ordinance amending Title 20 of the San José Municipal Code to modify and add provisions related to Storm Water Runoff Management and Post-Construction Storm Water Quality Control. CEQA: Addendum to San José 2020 General Plan Environmental Impact Report Resolution No. 65459, PP03-07-224. (Planning, Building, and Code Enforcement)**

Documents Filed: None.

Discussion/Action: Item 7.1 was continued to September 23, 2003.

- 7.2 PUBLIC HEARING on proposed revisions to the City Council Policy on Post-Construction Urban Runoff Management in order to:**
- (1) Maintain consistency with the requirements of the National Pollutant Discharge Elimination System Municipal Separate Storm Sewer System (NPDES MS4 Permit) issued to the City of San José and the other permittees that constitute the Santa Clara Valley Urban Runoff Pollution Prevention Program (SCVURPPP); and**
 - (2) Establish a waiver program that will allow project proponents to request a waiver from the requirement to install treatment Best Management Practices (BMPS) for a given project, upon an appropriate showing of impracticability, and with provision to treat an equivalent pollutant loading or quantity of stormwater runoff, or provide other equivalent water quality benefit. CEQA: Addendum to San José 2020 General Plan Environmental Impact Report Resolution No. 65459, PP03-07-225. (Planning, Building, and Code Enforcement)**

Documents Filed: None.

Discussion/Action: Item 7.2 was continued to September 23, 2003.

- 7.3 Adoption of a resolution authorizing the Director of Environmental Services to:**
- (a) Include industrial and dual plumb uses of recycled water (including cooling towers) in the previously authorized South Bay Water Recycling (SBWR) mid size group bid retrofit program, so long as the amount of each retrofit does not exceed \$2,000 per acre-foot of estimated annual water usage, and a total of \$200,000 per site; and,**
 - (b) Negotiate and execute agreements with property owners to allow the retrofit construction to be done at City and Tributary Agency expense, provided that the property owner(s) agrees to assume full responsibility for operation and maintenance of improvements once constructed, and to continue to use recycled water for a period of at least five (5) years.**
- CEQA: Resolution No. 64667, PP03-05-150. (Environmental Services)
(Deferred from 8/12/03 – Item 7.3)**

7.3 (Cont'd.

Documents Filed: (1) Memorandum from Director of Environmental Services Carl W. Mosher, dated July 23, 2003, recommending adoption of said resolution. (2) Letter from the Treatment Plant Advisory Committee, dated August 14, 2003, stating concurrence with the Staff recommendation.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition of the issue. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, Resolution No. 71709, entitled: "A Resolution of the Council of the City of San José Amending the South Bay Water Recycling Mid-Size Group Bid Retrofit Program to Include Industrial and Dual Plumb Uses" was adopted. Vote: 11-0-0-0.

CLOSED SESSION REPORT

Documents Filed: None.

Discussion/Action: City Attorney Doyle reported in regard to the case of the California Department of Industrial Relations versus the City of Long Beach, the City Council has unanimously decided not to join in an *Amicus* brief before the Supreme Court. Upon motion by Council Member Campos, seconded by Council Member Cortese, and carried unanimously, Resolution No. 71703.1 entitled: "A Resolution of the Council of the City of San José in Support of the Goals of the California Prevailing Wage Law", was adopted in Closed Session. Vote: 11-0-0-0.

OPEN FORUM

Speaking on Redevelopment Agency issues were:

- (1) Loraine Wallace Rowe
- (2) Peter Campbell
- (3) Mary Anne Foley
- (4) Daniel Chavez
- (5) Walter Phillips
- (6) Doug McNea
- (7) Danielle Chavez
- (8) Ross Signorino

STRATEGIC SUPPORT SERVICES

**3.5 Interview applicants to the Campaign Finance Review and Ethics Board for two four-year terms ending March 1, 2007. (City Clerk)
(Continued from 5/27/03 – Item 3.4 and 8/12/03 – Item 3.4)**

Documents Filed: None.

Discussion/Action: Vice Mayor Dando stated this is an item that has been recommended for deferral in order to conduct interviews for the Campaign Finance Review and Ethics Board on two different days. She requested that this item come back to the Rules Committee for discussion first, and expressed concern in regard to setting a precedent for conducting interviews over a two-day period. She stated the City has always tried to accomplish the interviews in one day as it provides a level playing field for all concerned. Mayor Gonzales replied the interviews were scheduled on two separate days to accommodate the schedules of all five applicants. Item 3.5 was directed to return to Rules Committee to schedule interviews on September 2, and September 9, 2003.

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>
9495	Northrup Avenue 200’ north of Paula St.	6	Blackwell Brothers	14 units	MFA	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:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9494	w/s Boynton Ave., s/o Stevens Creek Blvd.	1	Advanced Development	7 lots/6 units	SFA
9492	sw/c Lewis and Wall St.	7	Roem Development	17 lots/16 units	SFA
9523	n/s Quimby Road, 1000’ w/s White Road	8	Braddock Logan	& 25 units	SFD
9425	n/e Alum Rock Ave. and Jose Figures Ave.	5	MACSA	1 lot/66 units	Condo
9353	n/s Hillsdale Ave. e/o Narvaez Ave.	7	KB Homes South Bay	6 lots	Condo
9514	s/s Curtner Ave. e/o Highway 87	7	Summerhill Homes	168 lots/147 units	SFD/SFA

ADJOURNMENT

The Council of the City of San José convened to the Joint City Council/Redevelopment Agency Board/Financing Authority Meeting at 3:09 p.m. in the Council Chambers, City Hall.

RECESS/RECONVENE

The City Council recessed at 3:40 p.m. from the Joint City Council/Redevelopment Agency Board/Financing Authority Meeting, and reconvened at 7:02 p.m. in the Council Chambers, City Hall.

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

Absent: Council Members - None.

CEREMONIAL ITEMS

- 1.1 Presentation of commendations to the Vietnamese organizations of San José for helping organize, participation in, and supporting the Community Resource Fair 2003 to educate our Vietnamese community about all the services available from the City of San José and County of Santa Clara. (Cortese, Gregory, Reed, Williams)**
(Orders of the Day)

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Council Members Cortese, Gregory, Reed, and Williams to present commendations to the Vietnamese organizations of San José, who structured, and supported the second annual Community Resource Fair 2003 held in Kelley Park in order to educate the Vietnamese community about the many resources available. The Vietnamese media group consisted of Nguyen Khoi, Que Huong Radio 1120 AM, Tri Dang, KVVN 1430 AM, Phuong Thu, Vien Thao Media, and Binh Vo, TNT. The founding sponsors of two years were Jésus Orosco, RFC, David Crosson & Lesli David, History San José, Henry Lee, Lee's Sandwiches, Victor Duong, California Waste Solutions, Susan Ho, Lynh's Flower & Balloon, Kent Robertson, Calpine, and Lisa Vargas, Blue Cross of California. The Vietnamese organizations included My-Linh Pham, VIVO, Son H. Pham, The Vietnamese American Community of Northern California, Megan Bui, Southeast Asian Community Center, Thuan Nguyen, Vietnamese American Chamber of Commerce, Douglas Nguyen, Federation Vietnamese American, Northern California, The-Vu Nguyen, Vietnamese American Center, David Mac, Vietnamese American Republican Council, Catholic Charities, Vietnamese Alumni Association of the Bay Area, Santa Clara University Vietnamese Student Association, and the San José State University Vietnamese Student Association.

**1.3 Presentation of a commendation to Tony Ninh who has been instrumental in volunteering his free time to organize the Vietnamese and American Youth Soccer Federation. (Dando)
(Orders of the Day)**

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Vice Mayor Dando who presented a commendation to Mr. Tony Ninh, recognizing his leadership and generosity in organizing the Vietnamese and American Youth Soccer Federation Team.

**1.4 Presentation of a commendation to The Vietnamese and American Youth Soccer Federation for supporting the importance of sports in the lives of youths. (Dando)
(Orders of the Day)**

Mayor Gonzales was joined at the podium by Vice Mayor Dando who presented a commendation to the Mien Tay-Le Goi Tien Le Soccer Team. The team members include Chinh Huynh, Loc Huynh, Tuan Pham, Tai Lam, Chrix Xa, Dung Ngo, Tung “Beckham” Nguyen, Trung Diep, Duc Luu, Huy Nguyen, Trang Pham, Minh Tran, Sung Huynh, Chuong Nguyen, Quan Nguyen, Vuong Hua, Dzuyen Ha, Miguel Gomez, Vu Le, Beto Camacha, Lam Nguyen, Thanh Luu, Juan, and Duy Nguyen. Also recognized were Coach Tuu Le, Linh Nguyen, Advisor, Le Goi Tien Le, Sponsor, and Son Vo, Manager.

**4.4 Approval of guidelines as detailed in “Your Old House: Guide for Preserving San José Homes.” CEQA: Exempt, PP03-07-245. (Planning, Building and Code Enforcement/Redevelopment Agency/Housing)
(Rules Committee referral 8/13/03)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement Stephen M. Haase, Redevelopment Agency Deputy Executive Director John Weis, and Director of Housing Leslye Corsiglia, dated July 30, 2003, recommending approval of the publication, “Your Old House: Guide for Preserving San José Homes.”

Discussion/Action: Mayor Gonzales called for public testimony. Mary Tucker and William Garbett spoke on the issue. Council Member Chavez moved approval of the Staff recommendation to approve the publication, “Your Old House: Guide for Preserving San José Homes.” Vice Mayor Dando seconded the motion. Council Member Chavez expressed her thanks to Historic Preservation Officer Courtney Damkroger of Planning Building and Code Enforcement, and asked if the final draft of the publication is on the web. Historic Preservation Officer Damkroger replied it is available on the Planning Department’s web site, and can also be purchased at the Planning counter. On a call for the question, the motion carried unanimously, and the publication “Your Old House; Guide for Preserving San José Homes”, was approved. Vote: 11-0-0-0.

5.4 Recommendation of the Parks and Recreation Commission to name the new City-owned youth center located at 137 North White Road the “Alum Rock Youth Center.” Council District 5. CEQA: Not a Project. (Parks and Recreation Commission/City Clerk)

Documents Filed: (1) Memorandum from Council Member Campos, dated August 19, 2003, recommending “Alum Rock Youth Center” as the name for the new facility. (2) Three hundred seventy nine (379) nominations forms from the Community.

Discussion/Action: Mayor Gonzales called for public testimony. Mary Ann Andrade spoke in support of the new name of the youth center. Council Member Campos remarked that this was actually an educational experience for her, since she had been working with the Alum Rock community on the youth center prior to becoming a Council Member. She stated from the 379 requests of names, 94 suggested Alum Rock Youth Center, and recommended that her colleagues accept Alum Rock Youth Center as the new name for the youth center that will be opening up in October 2003 on the east side. Upon motion by Council Member Campos, seconded by Council Member Chavez, and carried unanimously, the name “Alum Rock Youth Center” was approved for the name as the new City owned youth center located at 137 North White Road. Vote: 11-0-0-0.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened at 7:32 p.m. to consider Item 10.1 in a joint session.

10.1 Review and acceptance of the proposed Diridon/Arena Strategic Development Plan. (Redevelopment Agency/City Manager's Office)

Documents Filed: (1) Memorandum from City Manager Del Borgsdorf, and Redevelopment Agency Executive Director Susan Shick, dated August 19, 2003, recommending acceptance of the proposed Diridon/Arena Strategic Development Plan. (2) “Diridon/Arena Strategic Development Plan”, by BMS Design Group, Skidmore, Owings & Merrill, Arup, dated April 2003.

Discussion/Action: Director of Downtown Management Leslie Little gave a short overview presentation of the Diridon/Arena Strategic Development Plan. Kathy Sutherland, President of Delmas Park and Neighborhood Association gave a presentation on the Diridon Arena Strategic Development Plan that was created over a 9-month period with a 20 member advisory committee. Don Gralnek, Executive Vice President and General Counsel of the San José Sharks, gave a short overview and a slide presentation of the process that including many public meetings and discussion.

10.1 (Cont'd.)

Council Member Chavez moved acceptance of the Diridon/Arena Strategic Development with direction to Staff: (1) To seek financial partners for the development of an implementation plan which includes funding strategies for the specific plan development, changes and related environmental review, and development of the Autumn Street extension, open space development and other livability improvements outlined in the plan; (2) Move forward with the development of a specific plan and/or pursue amendments to the Midtown's specific plan, as necessary, to achieve the goals outlined in the plan; (3) Integrate the goals and improvements outlined in this plan into the ongoing planning around development and expansion of the Diridon Station with VTA, Caltrain, and the City of San José; and (4) That continued discussions on short term, mid term and long term parking opportunities be evaluated. Council Member Yeager seconded the motion.

Council Member Chavez declared what makes this project so impressive is that there are so many different land uses in this area, and one of the City of San José's next best opportunities for the health and vitality of the downtown is to start work in the Diridon area. She expressed appreciation of boldness of the property owners, and the residents who live in this area, and pointed out that Delmas Park and other neighborhoods sat around the table and marked out the places for high density, housing, residential and office, literally within walking distance of their homes, and that is extremely visionary and bold. Council Member Yeager remarked that he attended many of the community meetings with Council Member Chavez, and felt very positive about the direction the project was taking. He stated what makes this area so unique is not only the pedestrian walk ability and livability, but also the recreational uses. On a call for the question, the motion carried unanimously. Vote: 11-0-0-0.

Redevelopment Agency Board portion of the meeting was adjourned at 7:55 p.m.

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 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)

Documents Filed: None.

Discussion/Action: Item 11.1 was continued to September 30, 2003.

11.2 PUBLIC HEARING ON APPEAL of the Planning Commission's decision to deny a Conditional Use Permit and ABC Exception for a project located on the east side of North Capitol Avenue, approximately 1,200 feet northerly of McKee Road, on a 8.39 gross acre site in the CG Commercial Zoning District. The proposed project is the off-sale of alcohol at an existing Target Retail Store. (Target Corporation, Owner/Developer). CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends overturning the decision of the Planning Commission to deny.

CP 03-002 & ABC 03-002 - District 5
(Continued from 6/17/03 – Item 11.2)

Documents Filed: None.

Discussion/Action: Item 11.2 was continued to October 21, 2003.

11.3 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)

Documents Filed: None.

Discussion/Action: Item 11.3 was continued to September 2, 2003.

11.12 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the southside of Trade Zone Boulevard, approximately 840 feet westerly of North Capitol Avenue (2440 Trade Zone Boulevard), from IP Industrial Park District to A(PD) Planned Development Zoning District, to allow up to 18 single-family detached residences on a 1.84 gross acre site. (Moghaddam Reza AKA Ray Mogadam, Owner). CEQA: Mitigated Negative Declaration.

PDC 03-025 - District 4

Documents Filed: None.

Discussion/Action: Item 11.12 was continued to September 2, 2003.

- 11.14 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the northwest corner of Lick Avenue and West Alma Avenue (1303 Lick Ave.), from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District, to allow up to 260 multi-family attached residential uses on a 3.18 gross acre site. (Dwad Properties and Sal Lobue Trust, Owner; Barry Swenson Builder Marianne Bacigalupi, Developer). CEQA: Mitigated Negative Declaration. SNI: Washington.
PDC 02-072 - District 3**

Documents Filed: None.

Discussion/Action: Item 11.14 was continued to September 16, 2003.

- 11.4 PUBLIC HEARING ON STREET NAMING of a private street “Thomas Foon Chew Way” at the northeast corner of Zanker Road and Highway 237. (CalPine Corporation, Owner/Developer). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).
ST 03-003 - District 4
(Continued from 8/5/03 – Item 11.1)**

Documents Filed: (1) Memorandum from Secretary of Planning Commission Stephen M. Haase, dated July 30, 2003, transmitting the Planning Commission recommendation for approval of the naming of the subject private street. (2) Proof of Publication of Notice of Public Hearing, executed on June 11, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the street naming of the subject property, and there was no discussion from the floor. Upon motion by Council Member Reed, seconded by Council Member Cortese, and carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and the Planning Director was approved, and Resolution No. 71712, entitled: “A Resolution of the Council of the City of San José Renaming a Private Street Within a Previously Approved Industrial Park Project Located at the Northeast Corner of Zanker Road and Highway 237, to Thomas Foon Chew Way”, was adopted. Vote: 11-0-0-0.

- 11.5 PUBLIC HEARING ON STREET NAMING for a private street immediately south of Technology Drive between Skyport Drive and Sonora Avenue, to also be named Technology Drive (1550 Technology Drive). (SSR Western Multi-Family Derek Helgeson, Owner; Bayrock Residential Inc. LLC, Stuart Gruendl, Developer). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1).
ST 03-004 - District 3
(Continued from 8/5/03 – Item 11.2)**

Documents Filed: (1) Memorandum from Secretary of Planning Commission Stephen M. Haase, dated July 30, 2003, recommending approval of the naming of the subject private street. (2) Proof of Publication of Notice of Public Hearing, executed on June 13, 2003, submitted by the City Clerk.

11.5 (Cont'd.)

Discussion/Action: Mayor Gonzales opened the public hearing on the subject street renaming, and there was no discussion from the floor. Upon motion by Council Member Chavez, seconded by Council Member LeZotte, and carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and the Planning Director was approved, and Resolution No. 71713, entitled: “A Resolution of the City Council, City of San José Renaming a Portion of the Previously Abandoned Portion of Technology Drive, between Skyport Drive and Sonora Avenue, Back to Technology Drive (Private Street)”, adopted. Vote: 11-0-0-0.

11.6 PUBLIC HEARING ON SINGLE FAMILY HOUSE PERMIT to convert 482 square feet of attic to living space and 1902 square feet of basement into living space in an existing single family residence on a 0.14 gross acre site, located at the east side of South 6th Street, approximately 120 feet north of East San Fernando Street (80 S. 6th Street). (Marvin Williams, Owner). SNI: 13th Street. CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). **SF 03-007 - District 3**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building, and Code Enforcement on Project File No. SF-03-007, dated August 5, 2003, recommending approval of the subject Single-Family House Permit. (2) Memoranda from Secretary of Planning Commission Stephen M. Haase, dated August 7, and 14, 2003, transmitting the Planning Commission recommendation for approval of the subject Single-Family House Permit as proposed by the applicant. (3) Proof of Publication of Notice of Public Hearing, executed on August 1, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the subject Single-Family House Permit, 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, the recommendation of the Planning Commission and the Planning Director was approved, and Resolution No. 71714, entitled: “A Resolution of the City Council of the City of San José Granting a Single-Family House Permit, Subject to Conditions, To Use Certain Real Property Described Herein for the Purpose of Allowing Conversion of 482 Square Feet of Existing Attic to Living Space and Conversion of 1902 Square Feet of Existing Basement into Living Space in an Existing Single-Family Residence on a 0.14 Gross Acre Site”, was adopted with direction to Staff to review FAR Guidelines as it pertains to new development and recommend future strategies for the challenges based on how surrounding properties with parking or allowable living space impacts the community. Vote: 11-0-0-0.

- 11.7 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the southeast corner of South Winchester Boulevard and Neal Avenue (890 S. Winchester Blvd.), from CN Neighborhood Commercial District to A(PD) Planned Development Zoning District, to allow single-family attached residential uses (21 townhomes) on a 1.1 gross acre site. (Delta I LLC, Owner/Developer). CEQA: Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-1). PDC 02-071- District 6 (Continued from 1/21/03 – Item 11.2 et al., and 8/5/03 – Item 11.3)**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building, and Code Enforcement on Project File No. PDC-02-071, dated December 11, 2002, recommending approval of the subject Planning Development Rezoning. (2) Memorandum from Secretary of Planning Commission Stephen M. Haase, dated December 18, 2002, transmitting the Planning Commission recommendation for approval of the Planned Development Rezoning of the subject property. (3) Proof of Publication of Notice of Public Hearing, executed on November 29, 2002, submitted by the City Clerk.

Discussion/Action: Item 11.7 was dropped.

- 11.13 PUBLIC HEARING ON CONFORMING PREZONING of the property located on the east side of North Bascom Avenue, approximately 160 feet southerly of Forest Avenue (172 N. Bascom Ave.), from County of Santa Clara to CP Commercial Pedestrian Zoning District, for commercial uses on a 0.11 gross acre site. (Nguyut T. Nakamoto, Owner). SNI: Burbank/Del Monte. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). C 03-051 - District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C-03-051, dated July 17, 2003, recommending approval of the Conforming Prezoning of the subject property. (2) Memorandum from Secretary of Planning Commission Stephen M. Haase, dated July 30, 2003, transmitting the Planning Commission recommendation for approval of the Conforming Prezoning of the subject property. (3) Proof of Publication of Notice of Public Hearing, executed on July 9, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Conforming Prezoning of the subject property, and there was no discussion from the floor. Upon motion by Council Member Yeager, seconded by Council Member Chavez, and carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 26955, entitled: “An Ordinance of the City of San José Prezoning Certain Real Property Situated on the East Side of North Bascom Avenue, Approximately 160 Feet Southerly of Forest Avenue to CP Pedestrian Commercial Zoning District”, was passed for publication. Vote: 11-0-0-0.

- 11.16 PUBLIC HEARING ON CONFORMING REZONING of the property located at the northwest corner of Meridian Avenue and West San Carlos Street (1401 W. San Carlos Street), from LI Light Industrial Zoning District to CP Pedestrian Commercial Zoning District, to allow commercial use on a 0.39 gross acre site. (Susan Camarlinghi et al., Owner/Developer). SNI: Burbank/Del Monte. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C 03-052 - District 6**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C-03-052, dated July 29, 2003, recommending approval of the Conforming Rezoning of the subject property. (2) Proof of Publication of Notice of Public Hearing, executed on August 8, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Conforming Rezoning of the subject property, and there was no discussion from the floor. Upon motion by Council Member Yeager, seconded by Council Member LeZotte, and carried unanimously, the public hearing was closed, the recommendation the Planning Director was approved, Ordinance No. 26956, “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwest Corner of Meridian Avenue and West San Carlos Street to CP Commercial Pedestrian Zoning District”, was passed for publication. Vote: 11-0-0-0.

- 11.17 PUBLIC HEARING ON CONFORMING CONVENTIONAL REZONING of the property located at the west side of Camden Avenue at the westerly terminus of Kooser Road (5425 Camden Ave.), from CP Pedestrian Commercial Zoning District to CN Neighborhood Commercial Zoning District, to allow commercial uses on a 3.1 gross acre site. (Mirassou Aldine F. and Rodolphe A. Trustee, Mirassou Clovis T. and Ann R. Trustee et al., David Bider, Owner). SNI: None. CEQA: Exempt. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C 02-092 - District 9**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C-02-092, dated August 19, 2003, recommending approval of the Conforming Rezoning of the subject property. (2) Proof of Publication of Notice of Public Hearing, executed on August 8, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Conforming Conventional Rezoning of the subject property, and there was no discussion from the floor. Upon motion by Council Member Chirco, seconded by Vice Mayor Dando, and carried unanimously, the public hearing was closed, the recommendation the Planning Director was approved, and Ordinance No. 26957, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated West Side of Camden Avenue at the Westerly Terminus of Kooser Road to CN Commercial Neighborhood”, was passed for publication. Vote: 11-0-0-0.

- 11.8 PUBLIC HEARING on modification to the North San José Area Development Policy boundary to exclude an area bounded by the Union Pacific Railroad tracks, Interstate 880, the Norman Y. Mineta San José International Airport, and the common boundary between San José and Santa Clara. CEQA: Resolution No. 65459 and Addendum thereto, File No. PP 03-07-237. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (4-1-2). (Planning, Building, and Code Enforcement)
District 3. Heard concurrently with Item 11.9**

Documents Filed: (1) Memorandum from Council Member Chavez, dated August 18, 2003, recommending approval of the Staff and Planning Commission recommendation with general direction to staff to consider: (a) Pedestrian connections throughout the site; (b) Auto circulation through the entire site, including linkages to the existing Newhall Street residential and commercial properties; (c) Convenient connections with future BART station and the existing Newhall Neighborhood located to the west; (d) Adequate open space. (2) Memorandum from Secretary of Planning Commission Stephen M. Haase, dated July 30, 2003, transmitting the recommendations of the Planning Commission.

Discussion/Action: NOTE: See Item 11.9 for the discussion. Mayor Gonzales opened the public hearing on the Modification of the Boundaries of the Area subject to the North San José Area Development Policy. Andy Faber, representing FMC the applicant, and William Garbett spoke on the issue. Council Member Chavez moved approval of the Planning Commission and Planning Director recommendations. Vice Mayor Dando seconded the motion. On a call for the question, the motion carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and the Planning Director was approved, and Resolution No. 71715, entitled: "A Resolution of the Council of the City of San José Modifying the Boundaries of the Area to be Subject to the North San José Area Development Policy", was adopted. Vote: 11-0-0-0.

- 11.9 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING - Master Plan of the property located at the west side of Coleman Avenue between Newhall Street and Brokaw Road (1115 Coleman Ave.), to allow development of up to 3 million square feet of Office R & D development or alternative industrial/commercial development with equivalent traffic generation, on the 91.92 gross acre FMC/Mozart site. (FMC Corp. and Arcadia Development, Developer/Owner). CEQA: Resolution to be adopted. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (4-1-2).
PDC 98-104 - District 3. Heard concurrently with Item 11.8**

11.9 (Cont'd.)

Documents Filed: (1) Memorandum from Council Member Chavez, dated August 18, 2003, recommending approval of the Staff and Planning Commission recommendation with general direction to staff to consider: (a) Pedestrian connections throughout the site; (b) Auto circulation through the entire site, including linkages to the existing Newhall Street residential and commercial properties; (c) Convenient connections with future BART station and the existing Newhall Neighborhood located to the west; (d) Adequate open space. (2) Memorandum from Secretary of Planning Commission Stephen M. Haase, dated July 30, 2003, transmitting the recommendations of the Planning Commission. (3) Proof of Publication of Notice of Public Hearing, executed on July 9, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing on the Planned Development Rezoning. Council Member LeZotte stated on the preservation of identified mature trees, the developer should maintain the five live, large coast live oaks currently located on either side at their existing location or if the trees cannot be preserved perhaps they may be transplanted to other locations. Referring to Page 3, Item 3 under the EIR, Council Member LeZotte stated it says it would be possible to replace the 7 acres of lost habitat at another location on the project but this measure has not been included in the project, and the City Attorney's memorandum on Overriding Considerations mentions that it is infeasible, and asked what will Staff ask the developer to do in order to mitigate this loss. Director of Planning, Building and Code Enforcement Stephen M. Haase stated in the EIR, a Statement of Overriding Considerations is based upon an impact that is not being mitigated, and with respect to the specific proposal to provide on site habitat, that was not something that could be accomplished, and still meet the goals on this project. Council Member LeZotte asked why couldn't the City ask them to add to the fund to buy burrowing owl habitat somewhere else. Director Haase replied Staff could research other options to reduce the impact, and have discussions with the developer. Andy Faber, representing the developer, stated there are only about 8 acres of the present site that is not paved, and the EIR notes that there is approximately 7 acres of low quality burrowing owl habitat around the test tract. He stated his company looks for owls every year, and no owls were seen in 2002 or 2003, with the last owl spotted in 2000. He stated it is deemed to be very low quality habitat, mitigation was not deemed to be feasible particularly in the context of this sort high density urban development. On the other hand, he clarified, if any owls are found, surveys have to be done, and clearly if there are owls when construction begins, the owls would have to be taken care of, moved or whatever the appropriate mitigation would be.

Council Member LeZotte declared the argument of whether or not there are owls on the property speaks to the question of whether or not this habitat has degraded too much that there will never be owls there. She declared the fact there are Overriding Considerations leads her to believe that no one has made the determination this land will never be owl habitat. She requested Staff to add as a condition, that the developer has to give to the fund for purchasing owl habitat because she is not comfortable doing the Overriding Considerations unless there is mitigation attached. Andy Faber stated he would discuss

11.9 (Cont'd.)

and collaborate with Staff on that issue. David Powers, the author of the EIR, stated the issue of how long is a piece of habitat not occupied by owls, no longer considered owl habitat, per the Department of Fish and Game the protocol is 3 years, and this project is on the cusp of the 3 years. Council Member LeZotte requested if possible, set aside money for purchase of owl land somewhere else, as this land could be owl habitat. City Attorney Richard Doyle stated this item requires the Statement of Override, and would take the request as a direction to Staff to work with the developer to try to accomplish Council Member LeZotte's goal.

Director of Planning, Building and Code Enforcement Stephen M. Haase explained what is before the Council today is defining the uses of the land and in this particular project, there has been flexibility provided on those uses rather than specifying on a parcel by parcel basis, and a use by use basis. He stated Staff looked at total development and used the traffic that this development could generate as a constraining factor. He stated the developer ultimately has some flexibility in what uses end up on the property but what will control the ultimate development are the trips that are generated by the various mix of uses. He stated Staff knows the range of uses but not the specific uses, and when projects come in through the site development process, Staff looks at the actual project, it is noticed to the public, and the public is able to participate in that process. He stated the decision maker is either the Planning Director through the Planning Director hearing or the Planning Commission, should there be an appeal.

Council Member Yeager asked how does Staff determine if a project is accomplished in stages, and how does Staff judge when the area is ready for a certain amount of usage. Director Haase replied some of the mitigation that would be determined from a traffic standpoint controls that phasing plan, such as the improvements that are currently underway with respect to the interchange, and then future improvements as well. He stated when those improvements are under construction there are triggers allowing additional development to progress, and in some cases the improvement has to be completed before those triggers are enabled. He stated through that phasing plan, Staff controls the development based upon the total number of trips, and then the actual improvements that allow those trips to be put onto the street, including the physical improvements. Council Member Yeager noted the report states when BART, and the Automated People Mover come to the Airport, how will Staff plan for that knowing that it is going to come one day but is just not here yet, does Staff assume that BART and the Automated People Mover will be in-place and allow them to go at a certain density given the reduction in the trips and those types of considerations. Director Haase explained one way to accomplish that is through the phasing plan, and in many cases, the benefit is that Staff is able to reduce parking, reducing impacts to the environment from the standpoint of the amount of surface that is required for the parking, and also that helps the City in another way to control the trips on a site. He stated parking is another way the City can influence the trip generation and enforce what trips have been analyzed, and in this particular case, there is a cap on the parking. Council Member Yeager remarked in the report it states zoning would allow for reduction of up to 25% from the City's standard

11.9 (Cont'd.)

parking requirements. Director Haase replied basically the simple way to look at that is instead of allowing 4 parking spaces per 1,000 square feet of development; it is 3 parking spaces per 1,000 square feet of development. Council Member Yeager inquired how does the City deal with public safety issues surrounding these types of development. Director Haase replied that is considered in the environmental document, in the section for this project on the availability of public services. Staff reviews the primary issues, i.e. response times, the number of incidents of response and how that would create an extra burden on the system, and for this particular project, both fire and police service is reviewed. He stated the environmental document identifies moderately in excess of the City's standards at this point but that no additional personnel or equipment is expected to be necessary for the site. William Garbett spoke on the issues of 11.8 and 11.9.

Council Member Chavez clarified in regard to burrowing owl habitat, about 3 or 4 years ago there was a lot of interest in the FMC property, and every time there was a new interest, there was a new plan that came forward and a new idea for a General Plan. She stated the Mayor's office and she decided to come up with a plan, so the City would not have to repeatedly respond to whoever gets excited about that location. She stated the City required quite a bit of money to refurbish the interchange at Coleman Avenue and Interstate 880, part of the broader economic development strategy to obtain some of this unused land with tax producing businesses on it and create more opportunities for people to work in City of San José. She stated all the partners at that time were asked to sit down with the City and come up with a broad plan, and the closest neighborhoods in the area were asked if they were interested in participating. She stated she attended the discussions on behalf of the community, and negotiated this plan, and as part of these discussions and negotiations, the property owners, FMC and Eli Reinhart at the time, worked out an agreement to donate some of the land for the 880/Coleman Interchange, and as part of that, the owl habitat was discussed. She stated given all the other things that were being negotiated, her concern was whether or not the burrowing owl habitat was actually being used by burrowing owls, and that was the benchmark used to assess whether or not to draw mitigations from the property owners. She stated there were concerns at the time about transit ingress and egress in order to figure out how to make this easy for someone to buy this property and add tax dollars to the City. She declared there is a Fire and Police Master and Strategic Plan, and expressed concern about how densities are added as to not impact arrival times on site, stating there might be a way the businesses that become a part of this project can contribute to fire and police stations. Council Member Chavez acknowledged the feedback from Council Members LeZotte and Yeager. She stated support of the Planning Commission and Staff recommendations, and incorporated general direction in her motion, adding that further discussions will be resolved at the Site Development Permit level regarding the burrowing owl habitat, assuming there are no owls, however if there are owls, she does not want to intervene in the mitigations that were already going to be required by the EIR.

11.9 (Cont'd.)

Council Member Chavez moved approval of her memorandum dated August 18, 2003, and the Planning Commission and Planning Director recommendation, with the Statement of Overriding Considerations, "The FEIR covering this project identified regional traffic impacts to the freeway segments and regional air quality impacts as well as the possible loss of burrowing owl habitat, and the accumulative impacts to freeway segments, regional air quality and the loss of burrowing owl habitat, all as significant and unavoidable. However, the implementation of this project will significantly improve the visual character of this area and create a major employment center for the City with as many as 10,000 to 15,000 jobs created at full build-out, and significant construction jobs for several years. This is consistent with the City's economic development strategy and will revitalize this key site that currently houses obsolete, partly vacant industrial and office buildings. The project will directly contribute to the tax base of the City of San José and support the economic growth of the City through increases in the assessed value of the property, increases in property tax revenues, and through sales and transient occupancy tax revenues. The project will support the vitality of our airport through development of uses such as the airport parking, car rental facilities, as well as supporting uses such as hotels, and retail commercial establishments. The project will support transit use through its location along the major transit corridor, and its proximity to Caltrain and planned future Bart facilities. These numerous benefits outweigh the significant and unavoidable impacts identified for this project." Vice Mayor Dando seconded the motion.

Council Member Chavez expressed excitement about this project and acknowledged that the developer of this property went out numerous times to meet with the community, particularly to allay concern regarding another property in the area. On a call for the question, and carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and the Planning Director was approved, the memorandum from Council Member Chavez, dated August 18, 2003 was approved, Ordinance No. 26958, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of Coleman Avenue Between Newhall Street and Brokaw Road to A (PD) Planned Development District", was passed for publication, and CEQA Resolution No. 71716, "A Resolution of the City Council of the City of San José Making Certain Findings Concerning Mitigation Measures, Adopting a Mitigation Monitoring and Reporting Program, Making Certain Findings Concerning Alternatives, and Adopting a Statement of Overriding Considerations in Accordance with the California Environmental Quality Act for the FMC/Coleman Avenue Planned Development Rezoning for Which a Final Environmental Impact Report has been Prepared", was adopted. Vote: 11-0-0-0.

**11.10 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the northwest corner of North 1st Street and Gish Road (1433 N. 1st Street), from R-2 Residential District to A(PD) Planned Development Zoning District, to allow up to 26 multi-family attached residences on a 0.67 gross acre site. (Bellagio Garden, LLC, Jerry C. Chen, Owner). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).
PDC 01-103 - District 3**

Documents Filed: (1) Memorandum from Council Member Chavez recommending approval consistent with the Planning Commission and Staff recommendations with direction to staff to develop a construction mitigation plan that ensures materials and worker parking is contained on site and does not spill into the adjacent community. (2) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC 01-103, dated July 2, 2003, recommending approval of the Planned Development Rezoning of the subject property. (3) Memorandum from Secretary of Planning Commission Stephen M. Haase, dated July 30, 2003, transmitting the Planning Commission recommendation for approval of the Conforming Prezoning of the subject property. (4) Proofs of Publication of Notices of Public Hearings, executed on June 24, 2003, and July 8, 2003, submitted by the City Clerk.

Discussion/Action: Mayor Gonzales opened the public hearing. William Garbett and Tom Armstrong, representing the applicant, spoke on the issue. Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the public hearing was closed, the recommendation of the Planning Commission and the Planning Director was approved, and Ordinance No. 26959, entitled: “An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northwest Corner of North First Street and Gish Road to a (PD) Planned Development Rezoning District”, was passed for publication, with direction to Staff to develop a Construction Mitigation plan that ensures materials and worker parking is contained on site, and *not* incorporated into the adjacent community. Vote: 11-0-0-0.

**11.11 PUBLIC HEARING ON CONFORMING CONVENTIONAL PREZONING of the property located at the southeast corner of Garden Avenue and Southside Drive (3100 Garden Ave.), from County to R-1-8 Residence District, to allow residential uses on a 0.256 gross acre site. (Doan Khanh & Tran Thao, Owner). CEQA: Resolution No. 65459, C02-108. Director of Planning, Building and Code Enforcement recommends approval. No Planning Commission action required.
C 02-108 - District 7**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. C-02-108, dated July 3, 2003, recommending approval of the Conforming Conventional Prezoning of the subject property. (2) Proof of Publication of Notice of Public Hearing, executed on August 8, 2003, submitted by the City Clerk.

11.11 (Cont'd.)

Discussion/Action: Mayor Gonzales opened the public hearing. Paul Consigny spoke in opposition of the rezoning. Council Member Gregory moved approval of the Planning Director recommendation. Council Member LeZotte seconded the motion. Council Member Gregory responded to Mr. Consigny and assured him that this property is zoned for 8 units to the acre, and because it is a quarter of an acre, it means that no more than 2 homes may be built on this property. On a call for the question, the motion carried unanimously, the public hearing was closed, the recommendation of the Planning Director was approved, and Ordinance No. 26960, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeastern Corner of Garden Avenue and Southside Drive to R-1-8 Residence District", was passed for publication. Vote: 11-0-0-0.

11.15 PUBLIC HEARING ON CONFORMING PLANNED DEVELOPMENT REZONING of the property located at the westerly side of Gold Street, approximately 150 feet southerly of the Guadalupe River, from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District, to allow 32,022 square feet of Research and Development uses on a 2.248 gross acre site. (Makai Graphics, Owner; Mr. Tom Jodry, Developer). PDC 03-007 - District 4

Documents Filed: Proof of Publication of Notice of Public Hearing, executed on August 8, 2003, submitted by the City Clerk.

Discussion/Action: Item 11.15 was dropped.

OPEN FORUM

Speaking on the shooting death of Tran Thi Bich, were:

- (1) Dang Quang Bui
- (2) Pham Huu Son
- (3) Thomas Nguyen
- (4) James Chanin
- (5) Lan Hang
- (6) Sam Ho-Kim Sanh
- (7) Ninh K. Nguyen
- (8) The-Vu Nguyen
- (9) Tuyet Nguyen
- (10) Mai Le Ho

ADJOURNMENT

The Council of the City of San José adjourned at 9:04 p.m.

RON GONZALES, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK

smd/08/19/03