

## MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 30, 1995

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

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

Absent: Council Members -None.

Upon motion unanimously adopted, Council recessed at 9:37 A.M. to a Closed Session in Room 600 to confer with Legal Counsel pursuant to Government Code Section 54956.9; under Subsection (a) to discuss existing litigation in the cases of (1) Tran v. City of San José; and (2) City of San José v. Mission Trail Waste System, Inc.; to discuss anticipated litigation pursuant to Subsection (b) of Government Code Section 54956.9, in two matters involving significant exposure to litigation and one matter regarding the initiation of litigation; and to confer with Labor Negotiator Pursuant to Government Code 54957.6: City Negotiator - City Manager designee Nona Tobin; Employee Organization - International Association of Firefighters.

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

Absent: Council Members -None.

By unanimous consent, Council reconvened from the Closed Session, recessed at 10:45 A.M. and reconvened at 1:42 P.M. in the Council Chambers.

### INVOCATION

The Lao Mien Dance Team and the Samoan Dancers from the Fischer Middle School performed dances from the Samoan and Laotian cultures under the direction of their teacher, Luciano Amutan. Performing the Samoan dance were Elaine Mata'u, Margaret Tuilagi, Simoa Manamea, Laura Sauao, Malinda Murrietta; and Farm Saetern, Mevy Saetern, Lai Saetern, Stacey Saelee and Fevy Saelee performed the Laotian dances.

## PLEDGE OF ALLEGIANCE

Mayor Hammer led the Pledge of Allegiance.

## ORDERS OF THE DAY

Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson, and unanimously carried, Item 6e(3) was deferred, and the Orders of the Day and the Amended Agenda were approved. Vote: 11-0-0-0.

## CEREMONIAL ITEMS

- 5a Presentation of commendation to Project P.E.A.C.E. (Pilipino Education and Community Experience), a gang intervention project developed by the Filipino Youth Coalition (F.Y.C.) with the mission of giving Filipino youth an opportunity to unite and strengthen the community. (Diaz) (Rules Committee referral 5/24/95)**

Documents filed: None.

Discussion/Action: Council Member Diaz joined Mayor Hammer at the podium to present a commendation to Project P.E.A.C.E. Director, Steve Arevalo, Executive Director of the Filipino Youth Coalition, who recognized Project P.E.A.C.E. members and Perla Aglipay, President of the Filipino Community Center of Santa Clara County.

## CONSENT CALENDAR

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

### Minutes for Approval

- 6a(1) Regular Meeting of April 18, 1995**

Documents filed: Minutes of April 18, 1995.

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

**6a(2) Regular Meeting of April 25, 1995**

Documents filed: Minutes of April 25, 1995.

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

**Ordinances for Final Adoption**

**6b(1) ORD. NO. 24900 - Requires Municipal elections to be held on the same date when the State of California holds its State-wide elections.**

Documents filed: Proof of publication of title of Ordinance No. 24900 submitted by the City Clerk.

Discussion/Action: William J. Garbett addressed the Council in opposition to the adoption of said ordinance. Ordinance No. 24900 was adopted. Vote: 11-0-0-0.

**6b(2) ORD. NO. 24903 - Recodifies the criteria for home occupations that was deleted by clerical error and clarifies that no use established during this period has obtained legal nonconforming status as a result of the clerical error.**

Documents filed: Proof of publication of title of Ordinance No. 24903 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24903 was adopted. Vote: 11-0-0-0.

**6b(3) ORD. NO. 24904 - Rezones certain real property situated on the north side of Hamilton Avenue 60 feet west of Norman Avenue.  
C 95-01-006**

Documents filed: Proof of publication of title of Ordinance No. 24904 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24904 was adopted. Vote: 11-0-0-0.

**6b(4) ORD. NO. 24905 - Rezones certain real property situated on the east side of Lupton Avenue, 260 feet south of Minnesota Avenue. PDC 94-12-052**

**6b(4) (Cont'd.)**

Documents filed: Proof of publication of title of Ordinance No. 24905 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24905 was adopted. Vote: 11-0-0-0.

**6b(5) ORD. NO. 24906 - Rezones certain real property situated on the southeast corner of Winfield Boulevard and Chynoweth Avenue. PDCSH 95-01-001**

Documents filed: Proof of publication of title of Ordinance No. 24906 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24906 was adopted. Vote: 11-0-0-0.

**6b(6) ORD. NO. 24907 - Rezones certain real property situated on the southeast corner of Alum Rock Avenue and King Road. PDCSH 95-03-016**

Documents filed: Proof of publication of title of Ordinance No. 24907 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24907 was adopted. Vote: 10-0-0-1. Disqualified: Dando, due to her absence at the public hearing.

**6b(7) ORD. NO. 24908 - Rezones certain real property situated on the south side of Chaboya Road, opposite Quartuccio Way. CC 95-04-025**

Documents filed: Proof of publication of title of Ordinance No. 24908 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24908 was adopted. Vote: 11-0-0-0.

**6b(8) ORD. NO. 24899 - Establishes the procedures and methodology for transportation analysis in the Evergreen Development Policy Area.  
[Deferred from 5/23/95 - Item 6b(27)]**

Documents filed: None.

Discussion/Action: This item was deferred to June 6, 1995.

## Public Hearings Set by Council

- 6c(1) Adoption of a resolution setting a public hearing on August 1, 1995 at 7:00 p.m. on the annual Sewer Service and Use Charge/Storm Drainage Service Charge Report of the Director of Finance, filed with the City Clerk, containing a description of each and every parcel of real property receiving sewer services and facilities pursuant to Chapter 15.12.550 and 15.16.1340 of the San José Municipal Code, and the amount of the sewer service and use charge for each parcel to be collected on the 1995-96 County Tax Roll. (Finance)**

Documents filed: Memorandum from Director of Finance, John V. Guthrie, dated May 12, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65932, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing on the Annual Sewer Service and Use Charge and Storm Drainage Service Use Charge Report of th Director of Finance Purusant to Part 3 of Section 15.12.550 of the the San Jose Municipal Code", was adopted. Vote: 11-0-0-0.

- 6c(2) Adoption of a resolution setting a Special Assessment public hearing on June 13, 1995 at 1:30 p.m. for unpaid Recycle Plus garbage bills. (Finance)**

Documents filed: (1) Memorandum from Director of Finance, John V. Guthrie, dated May 12, 1995, recommending Council adopt said resolution. (2) Affidavit of Mailing of Notice of Public Hearing, dated May 31, 1995, submitted by the Finance Director.

Discussion/Action: Resolution No. 65933, entitled: "A Resolution of the Council of the City of San José Setting a Special Assessment Public Hearing for Unpaid Recycle Plus Bills", was adopted. Vote: 11-0-0-0.

## Contracts/Agreements

- 6e(1) Report on bids and award of contract for the Hellyer Avenue Repair Phase II Project to the low bidder, Duran & Venables, Inc., in the amount of \$122,594.50. CEQA: Exempt. (Public Works)  
[Deferred from 4/25/95 and 5/16/95 - Item 6e(1)]**

**6e(1) (Cont'd.)**

Documents filed: None.

Discussion/Action: This item was deferred to June 20, 1995.

**6e(2) Approval of a Schedule Airline Operating Agreement and Terminal Building Lease with America West Airlines, Inc. for the operation of scheduled air carrier service for a five (5) year term, not to extend beyond October 31, 1999 with estimated annual revenue to the City of \$430,000. CEQA: Exempt. (Airport)**

Documents filed: Memorandum from Airport Director Ralph G. Tonseth, dated May 12, 1995, recommending Council approve said agreement and lease with America West Airlines, Inc.

Discussion/Action: The Schedule Airline Operating Agreement and Terminal Building Lease with America West Airlines, Inc., were approved and their execution authorized. Vote: 11-0-0-0.

**6e(3) Approval of a continuation grant agreement with Mount Pleasant School District to extend the term of the original grant agreement from January 1, 1995 to December 31, 1995 at no additional cost to the City. CEQA: Exempt. (City Manager's Office)**

Documents filed: None.

Discussion/Action: This item was deferred to June 6, 1995.

**6e(4) Approval of award of open purchase orders for supplies, materials, equipment and services for FY 1994-95 #23, and authorization for the Director of General Services to execute the purchase orders. (General Services)**

Documents filed: Memorandum from Acting Director of General Services, Ellis M. Jones, Jr. dated, May 12, 1995, recommending Council award said open purchase orders.

Discussion/Action: The award of open purchase orders list #23 was approved and execution of the purchase orders authorized. Vote: 11-0-0-0.

- 6e(5) Adoption of a resolution authorizing the Director of Housing to negotiate and execute grant agreements for the allocation of Fiscal Year 1995 McKinney Emergency Shelter Grant funds with the following agencies:**
- (a) InnVision in the amount of \$95,000.**
  - (b) Emergency Housing Consortium in the amount of \$46,120.**
  - (c) Santa Clara Valley MultiService Center in the amount of \$30,400.**
  - (d) County of Santa Clara in the amount of \$20,000.**
  - (e) Homeless Care Force in the amount of \$28,480.**
  - (f) Family Health Foundation of Alviso in the amount of \$15,000.**
  - (g) Concern for the Poor, Inc. in the amount of \$35,000.**
  - (h) Next Door, Solutions to Domestic Violence in the amount of \$35,000.**
  - (i) Sacred Heart Community Service in the amount of \$31,000.**
- (Housing)**

Documents filed: Memorandum from Director of Housing, Alex Sanchez, dated May 12, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65934, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Housing to Negotiate and Execute Grant Agreements for the Allocation of Fiscal Year 1995 McKinney Emergency Shelter Grant Funds with the Following Agencies: a) InnVision in the Amount of \$95,000; b) Emergency Housing Consortium in the Amount of \$46,120; c) Santa Clara Valley Multiservice Center in the Amount of \$30,400; d) County of Santa Clara in the Amount of \$20,000; e) Homeless Care Force in the Amount of \$28,480; f) Family Health Foundation of Alviso in the Amount of \$15,000; g) Concern for the Poor, Inc., in the Amount of \$35,000; h) Next Door, Solution to Domestic Violence in the Amount of \$35,000; i) Sacred Heart Community Service in the Amount of \$31,000" was adopted. Vote: 11-0-0-0.

- 6e(6) Approval of an agreement for architectural consultant services with Steinberg Group, Inc. for the Police Pre-Processing Center Project in the amount of \$230,000 and for additional services in the amount of \$15,000 for a total agreement amount of \$245,000. CEQA: Exempt. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 12, 1995, recommending Council approve said agreement.

Discussion/Action: The agreement with Steinberg Group, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(7) Approval of a second amendment to the agreement with Black and Veatch for additional construction and inspection services for the Technical Services Building at the San Jose/Santa Clara Water Pollution Control Plant, increasing the compensation by \$17,500, from \$940,000 to \$957,500. CEQA: ND. (Environmental Services)  
[Deferred from 5/23/95 - Item 6e(4)]**

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated May 5, 1995, recommending Council approve a second amendment to said agreement.

Discussion/Action: The second amendment to said agreement with Black and Veatch was approved and its execution authorized. Vote: 11-0-0-0.

### **Routine Legislation**

- 6f(1) Adoption of a resolution amending Resolution No. 65689 to set forth an amended Administrative Citation Schedule of fines for certain violations of the San Jose Municipal Code. (City Attorney's Office)**

Documents filed: None.

Discussion/Action: This item was deferred to June 6, 1995.

- 6f(2) Adoption of an appropriation ordinance amendment in the General Fund to provide \$5,000 to the World Forum of Silicon Valley for the International Visitors Program. (City Manager's Office)**

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated May 12, 1995, recommending Council adopt said appropriation ordinance amendment.

Discussion/Action: Ordinance No. 24913, entitled: "An Ordinance of the Council of the City of San Jose Amending Ordinance No. 24658 which Appropriates Moneys in the General Fund in the Amount of \$5,000 to the World Forum of Silicon Valley for the International Visitors Program; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 11-0-0-0.

**6f(3) Adoption of appropriation ordinance and revenue resolution amendments in the General Fund in the amount of \$55,200 in order to accept a grant from the United States Department of Commerce/Economic Development Administration (EDA) to implement BAYTRADE. (City Manager's Office)**

Documents filed: (1) Memorandum from Budget Director Larry D. Lisenbee, dated May 12, 1995, recommending Council adopt said appropriation ordinance and related revenue resolution amendments. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated May 26, 1995, amending the Staff report to increase the non-personal appropriation to the Office of Economic Development by \$25,200 from \$547,196 to \$572,396

Discussion/Action: Ordinance No. 24914, entitled: "An Ordinance of the Council of the City of San Jose Amending Ordinance No. 24658 which Appropriates Moneys in the General Fund in the Amount of \$55,200 to Accept a Grant From the U.S. Department of Commerce, Economic Development Administration to Implement Baytrade; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 65935, entitled: "A Resolution of the Council of the City of San Jose Amending Revenue Resolution No. 65348 for the Fiscal Year 1994-95 to Adjust Revenues in the General Fund", was adopted. Vote: 11-0-0-0.

**6f(4) Approval of ordinances amending Chapter 3.36 and Chapter 3.28 of the San José Municipal Code to provide an alternative method for disability retirees to report outside earnings. (Federated and Police & Fire Retirement Boards)**

Documents filed: Memorandum from Federated and Police & Fire Retirement Boards, dated May 12, 1995, recommending Council approve said ordinances.

Discussion/Action: Ordinance No. 24915, entitled: "An Ordinance of the City of San José Amending Chapter 3.36 of Title 3 of the San Jose Municipal Code by Adding Section 3.36.1035 and Amending Section 3.36.1040 to Permit Annual Filing of Certain Tax-Related Documents as Proof of Outside Earnings (Police and Fire Department Retirement Plan)"; and Ordinance No. 24916, entitled: "An Ordinance of the City of San José Amending Chapter 3.28 of Title 3 of the San Jose Municipal Code by Adding Section 3.28.1325 and Amending Section 3.28.1330 to Permit Annual Proof of Outside Earnings (Federated City Employees Retirement System)", were passed for publication. Vote: 11-0-0-0.

- 6f(5) Adoption of a resolution initiating proceedings and setting June 13, 1995 at 1:30 p.m. as the date for Council consideration for the reorganization of territory designated as Hamilton No. 56 which involves the annexation to the City of San José of one (1) acre of land located on the northwest corner of Meridian Avenue and Cherry Grove Avenue, and the detachment for the same from the Central Fire District. CEQA: ND. (Planning, Building and Code Enforcement)**

Documents filed: Memorandum from Director of Planning, Gary J. Schoennauer, dated May 12, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65936, entitled: “Resolution of the Council of the City of San José Initiating Reorganization Proceedings for Annexation and Detachment of Certain Uninhabited Territory Designated as Hamilton No. 56 and Described Herein, and Setting the Date and Place for Consideration of Such Reorganization”, was adopted. Vote: 11-0-0-0.

- 6f(6) Adoption of a resolution initiating proceedings and setting June 13, 1995 at 1:30 p.m. as the date for Council consideration for the reorganization of territory designated as Evergreen No. 180 which involves the annexation to the City of San José of 324± acres of land located southeast corner of Quimby Road and Ruby Avenue, the detachment for the same from the Central Fire District. CEQA: Resolution No. 63179. (Planning, Building and Code Enforcement)**

Documents filed: Memorandum from Director of Planning, Gary J. Schoennauer, dated May 12, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 65937, entitled: “Resolution of the Council of the City of San Jose Initiating Reorganization Proceedings for Annexation and Detachment of Certain Uninhabited Territory Designated As Evergreen No. 180 Described Herein, and Setting the Date and Place for Consideration of such Reorganization” was adopted. Vote: 11-0-0-0.

- 6f(7) Adoption of a resolution accepting an access easement from the Roman Catholic Bishop of San José and granting an access easement and a storm drain easement over City-owned property to the Roman Catholic Bishop of San José and directing the Director of Public Works, or designee, to execute the necessary documents. CEQA: ND. (Public Works)**

Documents filed: None.

Discussion/Action: This item was deferred to June 6, 1995.

## LAND USE AND DEVELOPMENT

### **8a Discussion of the Urban Growth Boundary/Greenline Initiative and direction to begin discussions with the County regarding implementation. (Mayor) (Deferred from 5/16/95 - Item 8a)**

Documents filed: (1) Memorandum from Council Members Dando, Diaz, Powers, and Shirakawa, Jr., recommending that the City Council: (a) Endorse the concept of an urban growth boundary and indicate its desire to work with the County on implementing the concept; (b) Before beginning discussions with the County, the City should adopt a framework for negotiations regarding implementation of a Greenline Strategy which takes into account the concepts identified therein and those of other Council Members, (c) Direction to the schedule a Committee of the Whole within 90 days to address issues related to the Greenline, and (d) Direct the City Attorney to meet with the County Counsel and begin discussions on revisions to the City of San José/County of Santa Clara Tax Allocation Agreement which would require all development proposals within the City Limits (including golf courses) to be annexed into the City and fall under City jurisdiction for planning approval. (2) Memorandum from Mayor Hammer, dated May 30, 1995, recommending amendments to the recommendations from Council Members Dando, Diaz, Powers, and Shirakawa, Jr. (3) Memorandum from City Attorney Gallo, dated May 25, 1995, providing legal analysis of the proposed Urban Growth Boundary and Greenline Initiative. (4) Memorandum from Council Member Fernandes, dated May 26, 1995, submitting articles from a recent issue of *Newsweek* regarding the "New Urbanism." (5) Supplemental memorandum from Director of Planning, Gary J. Schoennauer, dated May 26, 1995, transmitting the *Final Report of the Hillside and Greenbelt Task Force*, completed in November of 1986. (6) Correspondence from the San Jose Metropolitan Chamber of Commerce, dated May 25, 1995, requesting a delay of City Council action on this issue.

Discussion/Action: Mayor Hammer pointed out that her approach has always been one of public discourse and expressed regret if the memorandum she co-authored with Council Members Johnson and Fernandes dated May 16, 1995, left a contrary impression, and stated today's memorandum was written to dispel any misunderstanding about her position or the direction and scope of any further discussions. She reiterated her goal of achieving a permanent urban growth boundary as defined in the General Plan, stating how that is done and to what level is open to debate, and that while the Council will spend the next several weeks discussing those issues, what will not be on the table is a reexamination of the General Plan Greenline policies. She stated existing policies, which she thought were good, need strengthening to avoid problems like the recent Boulder Ridge controversy. Addressing a response to recommendations by Council Members Dando, Pandori and Powers from the Building Industry Association (BIA), she reiterated that reexamination of the General Plan Greenline

### **8a (Cont'd.)**

Strategy will not be part of these discussions, which will focus on implementation of a permanent urban growth boundary, to include how to proceed in negotiations with the County. Mayor Hammer called for public testimony, and Kristi Timmings, Sierra Club, Loma Prieta Chapter; Vicki Moore, Greenbelt Alliance, spoke in support of the Greenline Strategy. Mark Lazzarini, Executive Director, Building Industry Association, clarified that the intent of his memorandum was to request reevaluation of existing policies only in terms of how they may be deficient in accomplishing Council's goals for implementing the General Plan, in light of the City's economic and fiscal objectives. Steve Tedesco, San Jose Chamber of Commerce, addressed Council regarding the process for proceeding with this issue. Robert Hahn, Santa Clara County Greenbelt Coalition; Ann Starr; Camas Hubenthal, Committee for Green Foothills; John Fioretta; Virginia Holtz; and Nancy White spoke in support of the proposed initiative, and Nancy Richardson; Santa Clara County Farm Bureau; Gary Green, Property Owners Coalition; and Tiralisa Kaplow spoke in opposition. Council Member Diaz advised that he and the other authors of the memorandum were in support of the General Plan 2020, that he was personally involved in the Task Force and with land use issues for many years, and is supportive of growth management policies, in-fill, and the Greenline Strategy. He stated the purpose of the memo was to facilitate discussion and involve the community and reasserted his support for the concept of the Greenline Strategy. Responding to speaker comments, Vice Mayor Johnson advised it was never Council's intent to create another level of government, only to bring two governments into agreement; and regarding possible deficiencies in the General Plan, stated if there are deficiencies, they would be in the lack of implementation, something Council is attempting to correct, and stressed it is just as important to implement the open space and greenbelt strategy as it is to implement the development side. She stated the recommendation was for the small working group to prepare a Workplan which would provide opportunity for public dialogue. Addressing an agricultural issue raised by one speaker, she advised that by this initiative the City would not impede upon the County's permit or other regulatory measures, and that farmers would benefit by increased certitude of land use and zoning requirements. Council Member Powers advised she remains dedicated to the concept of eliminating urban sprawl, an issue on which she had campaigned. From observing the comprehensive deliberations on Greenline Strategy while serving on the San Jose 2020 General Plan update, she stated she would not want to set in motion anything that would upset that plan, and while supportive of the concept, she was concerned about the process. She stressed the distinction between setting a policy and deciding on the steps for achieving that goal, and recommended the process in her joint memorandum. Responding to questions about Coyote Valley, she stated she supports no change in the General Plan for Coyote Valley, and agreed that Item No. 5 on page 3 seemed inconsistent, but advised that Morgan Hill has been aggressively competing for jobs which San Jose seeks

**8a (Cont'd.)**

to place in Edenvale, and if San Jose loses those jobs and Morgan Hill does not increase their annual housing units allowance, the resultant pressure on San Jose to convert industrial land to housing, particularly in Edenvale, would be unacceptable. She stated the line has been established and should be honored because at issue is the quality of life for future generations, and expressed concern about increasing densities within the urban service areas without providing corresponding park and recreational facilities. Mayor Hammer noted that Morgan Hill may be considering establishing a Greenline and asked the Administration to explore this issue with the City of Morgan Hill. Clarifying the intent of the memorandum Council Member Dando co-authored, she reviewed the recommendations for the audience, stressed that the issue should return to a Committee of the Whole (COW) to allow public participation and Staff should work with community members who have particular interests for consideration, and stated the importance of making current policy work before establishment additional policies. Council Member Fiscalini supported continuing this debate in a COW meeting, stressed the need for thorough planning to ensure safety and a good quality of life for residents of San Jose, advised he would not accept a position that ties the hands of future Councils, which could have legal as well as social, economic, and political ramifications, and stressed that Council actions should take into consideration the property rights of the people. Council Member Fernandes stated support for continuing these discussions in a full Council meeting in an evening session since, in her opinion, the issue is not only one of process, but also of substance, i.e., undertaking a serious debate to determine a definite distinction between where the City of San Jose begins relative to the urban area of Santa Clara County. Council Member Pandori stated the main issue is one of how to proceed, and cautioned that to think there is such a certainty on the future of the greenbelt that there is no need for Council action would be misleading, that not only implementation but also recommitment is needed on the part of the Council, and reconfirmed his own commitment to the greenbelt concept. Mayor Hammer suggested referring all memoranda to Staff for analysis and recommendation to the Transportation, Development and Environment (TD&E) Committee for reporting out to Council, to be agendized separately for Council discussion, then go to a COW within 90 days. Council Members Dando and Fiscalini expressed a preference of having the issue go directly to a COW rather than have the TD&E Committee translate their studies to the Council. Mayor Hammer explained the process by which the Council Standing Committees review reports pertaining to issues within their purview and stated that at the end of 90 days Council should be able to state the desired goal, the process for attaining that goal, and how to proceed with discussions with the County. Council Mayor Hammer clarified that the memoranda would be referred to Staff for analysis, as well as whatever in the Planning Staff's professional judgment is necessary for Council to proceed, and the TD&E Committee will either support the Staff recommendation or forward the issue to Council without a recommendation, but in either case

**8a (Cont'd.)**

the Committee will not make changes in the material presented by Staff. She stated that one purpose of that process is to develop a workplan and provide structure for the COW, but stated if the Council does not want the issue to be referred to the TD&E Committee, some thought and structure is needed for the COW to be productive. Council Member Woody concurred with the issue going to a full COW. Mayor Hammer stated her office would work with the City Manager's Office and Department of Planning to establish the agenda and process for the COW. By consensus of the Council, all memoranda generated on this issue were referred to Staff for analysis and report back for Council discussion at a Committee of the Whole meeting to be held within 90 days. Vote: 11-0-0-0.

## **COMMISSION, COMMITTEE, AND STANDING REPORTS**

### **7b Report of the Rules Committee - May 17, 1995**

Documents filed: Rules Committee reports of May 17, 1995.

(1) Review of May 30 Council Agenda

The Committee approved the May 30, 1995, Council Agenda with one addition.

(2) Add new items to May 23 Council Agenda

The Committee recommended five additions to the May 23, 1995, amended Council Agenda.

(3) The Public Record. Attachment: (1) Memorandum from City Clerk Patricia L. O'Hearn, dated May 11, 1995, listing items transmitted to the Administration and filed for the public record for the period May 3-9, 1995. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated May 17, 1995, advising disposition of items filed for the public record for the period May 3-9, 1995.

The Committee recommended approval of the Public Record.

**7b Report of the Rules Committee - May 17, 1995 (Cont'd.)**

- (4) Approve Legislative Report 95-03

This item was reported out at the May 23, 1995 Council meeting.

- (5) Boards and Commissions. Attachments: (1) Memorandum from City Clerk Patricia L. O'Hearn, dated May 5, 1995, forwarding nine lists of qualified applicants, as submitted by the Project Diversity Screening Committee. (2) Memoranda from City Attorney Joan R. Gallo dated March 29, April 3, 4, 7, 11, 14, 1995, regarding potential conflicts of interest. (3) Memoranda from Council Member Woody, dated May 17, 1995, recommending Bich Ngoc Nguyen for the Tenant position on the Advisory Commission on Rents and requesting the Clerk readvertise for the Landlord position; and recommending appointment of Carmen Moore for the position of Senior Commissioner on the Senior Citizens Commission. (4) Memoranda from Council Member Powers, dated May 17, 1995, recommending Hernando Caampued, Kenneth Nolan Lynch and Sharon Sweeney for the Airport Commission; recommending reappointment of Tony Brown, Jr., Sandra Brunett and Randy Martinez and new appointments for Magda Madriz and Suzanne Roth Malone to the Airport Commission; and recommending reappointment of James Webb, Jr., and new appointments for Harry Martin and Linda Christenson for the Library Commission. (5) Memorandum from Council Member Shirakawa, Jr., dated May 15, 1995, submitting the list of qualified CDBG Steering Committee applicants for consideration. (6) Memorandum from Council Member Pandori, dated May 17, 1995, recommending Craig Tanaka for the Historic Landmarks Commission, and Dennis Ward for the Parking Advisory Commission. (7) Memorandum from Council Member Diaz, dated May 16, 1996, recommending Maria Luis Alaniz, Amor Santiago, Craig Mann, and Vaughn Beckman for the Human Rights Commission.

- (a) Advisory Commission on Rents.

The Committee recommended appointment of Bich Ngoc Nguyen to the tenant position for an unexpired term ending December 31, 1996, and directed the City Clerk to readvertise for the Landlord position.

- (b) Airport Commission.

The Committee recommended appointment of Hernando Caampued and Sharon Sweeney to terms ending June 30, 1999; and Kenneth Lynch to an unexpired term ending June 30, 1996. Noes: Woody.

**7b Report of the Rules Committee - May 17, 1995 (Cont'd.)**

(5) Boards and Commissions (Cont'd.)

(c) Arts Commission

The Committee recommended appointment of Troy Brown, Jr. (Incumbent), Sandra Brunett (Incumbent), Randy Martinez (Incumbent), and Magda Madriz to terms ending June 30, 1999; and Suzanne Malone to an unexpired term ending June 30, 1998.

(d) CDBG Steering Committee.

The Committee recommended appointment of Frank Jewett II (Incumbent), Madeleine Randal (Incumbent) and Rosine Real to terms ending June 30, 1999.

(e) Historic Landmarks Commission.

The Committee recommended appointment of Craig Tanaka to an unexpired term ending June 30, 1997.

(f) Human Rights Commission

The Committee recommended appointment of Craig Mann to an unexpired term ending December 31, 1995; Vaughn Beckman and Ameurpino Santiago to unexpired terms ending December 31, 1996; and Maria Alaniz to an unexpired term ending December 31, 1997.

(g) Library Commission

The Committee recommended appointment of Harry Martin and James Webb, Jr. (Incumbent) to terms ending June 30, 1999; and Linda Christenson to an unexpired term ending June 30, 1998.

(h) Parking Advisory Commission

The Committee recommended appointment of Dennis Ward to an unexpired term ending June 30, 1997.

(i) Senior Citizens Commission

The Committee recommended appointment of Carmen Moore for an unexpired term ending June 30, 1996.

**7b Report of the Rules Committee - May 17, 1995 (Cont'd.)**

- (6) Report back on Big Box Retail

The Committee deferred this item to next week's Rules Committee meeting.

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

There were none.

- (8) City Council and Rules Committee Meeting Schedules

There were none.

- (9) Oral Communications

None presented.

- (10) Adjournment

The meeting adjourned at 2:55 p.m.

**7b Report of the Rules Committee - Meeting of May 24, 1995**

Documents filed: Rules Committee Report of May 24, 1995 (Partial)

- (4) Approve Legislative Report 95-04

AB 318 (Katz) Cities: Water and Power: Rates  
*Recommended City Position* *OPPOSE*

AB 403 (Richter) Petroleum Underground Storage Tanks  
*Recommended City Position* *SUPPORT*

AB 1340 (Sweeney) Santa Clara County Joint Special Area Plans  
*See below for Committee action.*

AB 1424 (Isenberg) Redevelopment Agencies: Payments  
*This item removed from report pending analysis of amendments.*

AB 1488 (Caldera) EMS: Immunity from Liability  
*Recommended City Position* *SUPPORT/AMEND*

**7b Report of the Rules Committee - Meeting of May 24, 1995**

(4) Approve Legislative Report 95-04 (Cont'd.)

AB 1947 (Battin) Hazardous Materials: Local Regulations  
*Recommended City Position* *OPPOSE*

SB 372 (Wright) Medical Waste: Treatment  
*This item removed from report pending analysis of amendments.*

SB 602 (Wright) Local Use Tax: Leased Vehicles  
*Recommended City Position* *SUPPORT*

SB 926 (Calderon) Writings: Electronic Media  
*Recommended City Position* *OPPOSE*

SB 1059 (Peace) Public Records: Disclosure of Information  
*Recommended City Position* *SUPPORT*

The Committee removed AB 1340 (Sweeney) from consideration and directed Staff to work with the author to obtain language that is useful/not harmful to the City; and approved the Legislative Report and recommended City positions as listed.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini, and unanimously carried, the Rules Committee Reports and actions of May 17, 1995, and the report and actions on Item 7b(4) of May 24, 1995 were accepted. Vote: 11-0-0-0.

**GENERAL GOVERNMENT**

**9a Approval of award for a sole source purchase of engine component parts and technical services necessary to retrofit six (6) Cooper engines for the Environmental Services Department/Water Pollution Control Plant to Cooper Cameron Corporation at a total cost in Fiscal Year 1994-95 not to exceed \$837,358, including tax, and in Fiscal Year 1995-96 not to exceed \$1,534,001, including tax, bringing the total amount for all six (6) engines not to exceed \$2,371,359, including tax, contingent upon Council approval of the necessary funds, and authorization for the Director of General Services to execute the purchase orders. (General Services)  
(Deferred from 5/16/95 - Item 9e)**

**9a (Cont'd.)**

Documents filed: None.

Discussion/Action: This item was deferred to June 13, 1995.

**9b Adoption of a resolution increasing the Director of General Services' authorization for the purchase of Apple Computer hardware on a Citywide open purchase order with Computerland of Almaden, Inc., by \$500,000, from \$500,000 to \$1,000,000, for the current agreement period which ends November 30, 1995. (General Services)**

Documents filed: Memorandum from Acting Director of General Services, Ellis M. Jones, Jr. dated May 12, 1995, recommending Council adopt said resolution.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, Resolution No. 65938, entitled: "A Resolution of the Council of the City of San José Increasing the Authority of the Director of General Services Under an Agreement for the Purchase of Apple Computer Hardware and Peripherals on a City-wide Open Purchase Order with Computerland of Almaden, Inc., to an Amount Not to Exceed One Million Five Hundred Thousand Dollars (\$1,500,000) for the Period December 1, 1994 to November 30, 1995", was adopted. Vote: 11-0-0-0.

**9c Adoption of a resolution:**

- (1) Authorizing the Director of General Services to execute a Master Service Agreement with Rocky Mountain BankCard system for a Citywide credit card program for small dollar purchases.**
  - (2) Authorizing the Director of General Services to exercise two (2) one-year options to renew, contingent upon Council approval of the funds each year.**
- (General Services)**

Documents filed: None.

Discussion/Action: This item was deferred to June 6, 1995.

9d

**Adoption of a resolution:**

- (1) **Changing the funding source on a \$1.5 million fund reservation for a land acquisition and predevelopment loan for JSM Enterprises, Inc., or its assigns, for the Blossom Hill Senior Apartments, an 80-unit senior rental housing project affordable to low and very low-income households, on a 1.97 acre parcel located on the southeast corner of Blossom Hill and Waltrip from 20% Housing Funds to Federal HOME Funds;**
- (2) **Increasing the fund loan amount by \$310,000 of HOME Funds for a total loan of \$1,810,000 for land acquisition, predevelopment and construction;**
- (3) **Approving business terms for the acquisition, predevelopment and construction loan; and**
- (4) **Authorizing the Director of Housing to negotiate and execute all necessary documents on behalf of the City.**

**(Housing)**

Documents filed: Memorandum from Director of Housing, Alex Sanchez, dated May 12, 1995, recommending that Council adopt said resolution.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini, and unanimously carried, Resolution No. 65939, entitled: "A Resolution of the Council of the City of San José (i) Changing the Funding Source on a \$1,500,000 Fund Reservation for a Land Acquisition and Predevelopment Loan for JSM Enterprises, Inc., or its Assigns, for the Blossom Hill Senior Apartments, an 80-Unit Senior Rental Housing Project Affordable to Low and Very Low-Income Households, On a 1.97 Acre Parcel Located on the Southeast Corner of Blossom Hill and Waltrip from 20% Housing Funds to Federal Home Funds; (ii) Increasing the Fund Loan Amount by \$310,000 of Home Funds for a Total Loan of \$1,810,000 for Land Acquisition, Predevelopment and Construction; (iii) Approving Business Terms for the Acquisition, Predevelopment and Construction Loan; and (iv) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents on Behalf of the City", was adopted. Vote: 11-0-0-0.

9e

**Public Hearing and approval of a penalty assessment in the amount of \$9,192.48 for subcontractor listing violations by St. Francis Electric for the Traffic Signal Management Program 92/93 - Phase III Project, in accordance with Section 2-1.15G, "Violations of Subcontractor Requirements," of the City's Public Works Standard Specifications. CEQA: Exempt. (Public Works)**

9e (Cont'd.)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 12, 1995, recommending Council hold the public hearing and approve the penalty assessment for said subcontractors listing violations.

Discussion/Action: Mayor Hammer opened the public hearing. Director of Public Works, Ralph A. Qualls, Jr., advised this hearing has to do with the City's requirement that bidders identify subcontractors whose work accumulates to more than one-half of one percent of the total contract amount and forbids substitution or addition of a subcontractor not listed. In this instance, these requirements were violated by the contractor who substituted a subcontractor for electrical work for the one listed, and used a new contractor not listed. He stated the penalty for this kind of infraction is that the City may assess up to 10% of the work associated with the violation, that a 5% penalty is recommended for the undesignated subcontractor and a 10% penalty for the substitution. Tom Spinardi, St. Francis Electric, agreed with the 5% penalty for using Royal Seal, a subcontractor not listed, but requested the 10% penalty be reduced. He explained that he had proposed a new trenching method called directional bore, which the City approved, that he had ordered the directional bore machine and while awaiting its delivery, hired K-Trac to do the trenching in order to meet the deadline. He stated that upon notification by the City that K-Trac was not listed, he requested K-Trac be accepted and after waiting seven weeks for a response, the City accepted K-Trac as a subcontractor. Since the directional bore procedure was not part of the specifications, he stated subcontractors for that work could not be listed in the bid, and he requested his penalty be reduced. Director Qualls clarified that the City had approved a method but not a subcontractor, and when the contractor appeared on the job, that was the violation and 10% was assessed because it was a second violation; and noted that the subcontractor was subsequently approved and the penalty is for 10% of the work completed prior to that approval, not for any subsequent work. Council Member Diaz asked how this change impacted MBE/WBE goals. Director of Contract Compliance, Steven Wing, advised there is no requirement that an MBE/WBE subcontractor be replaced with another, and no review was conducted as a result of this change. City Attorney Gallo advised that where no subcontractor is identified the contractor would do the work themselves, that in this situation the change did not directly impact the MBE/WBE program, but the concern is that this regulation, if not enforced in a consistent manner, becomes a device for subverting the MBE/WBE program. In response to questions by Council Member Pandori, Deputy Public Works Director Carl Mosher advised that the use of K-Trac was discovered by City inspectors. He explained that after the City approved the directional bore method, Mr. Spinardi contracted with K-Trac to do that work while it was the Staff's understanding he would obtain equipment and do the work himself, that in August 1994 he ceased doing work

**9e (Cont'd.)**

with K-Trac as there was no need at that time to do that work, but came back later and stated he needed K-Trac to continue the work. Mr. Mosher explained that in December 1994, the City substituted K-Trac into the contract as a listed subcontractor, which lowered the MBE/WBE participation from the 15% attainment, but the contractor was still above the 10% goal for this job. He stated that the recommended penalty covers the time prior to August 1994 when he subcontracted with K-Trac, not from December forward when K-Trac was a part of the contract. Council Member Pandori stated that since the MBE/WBE goals had been met, and the contractor demonstrated good faith in seeking to change a method which was beneficial to the City, he preferred reducing the penalty entirely, or at least to 5%. Council Member Fiscalini asked what impact the delay in the City's response had on the amount of the penalty. Deputy Public Works Director Mosher explained the City's processes for substitution of a subcontractor, and stated that none of that time is included in the penalty portion. Mr. Mosher reported for the record that of the two subcontractors, neither were MBE/WBE subcontractors and the reason this contractor's attainment went down when K-Trac was substituted was because neither were MBE/WBE subcontractors and a portion of the work that an MBE/WBE subcontractor was going to do was reduced when the substitution was approved in December 1994. In response to questions from Council Member Fiscalini, City Attorney Gallo advised that the Council's action will set an important precedent and advised against sending a signal that the control which Council has over contracts might not be consistently enforced. Vice Mayor Johnson stated that two things which militate against reducing the penalty is the fact that he did not inform the City either before or after he hired the subcontractor. Upon motion by Vice Mayor Johnson, seconded by Council Member Diaz, and unanimously carried, the public hearing was closed, and the Staff recommendation for the assessment penalty was approved. Vote: 10-1-0-0. Noes: Pandori.

**9f Report on bids and award of contract for the Dry Creek Sanitary Sewer Rehabilitation Phase II Project to the low bidder, Gelco Services, Inc., in the amount of \$827,450. CEQA: Exempt. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 12, 1995, recommending Council approve said award of contract to the low bidder, Gelco Services, Inc.

**9f (Cont'd.)**

Discussion/Action: The award of said contract to the low bidder, Gelco Services, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

**9g Follow-up report and recommendations on reorganization of Parks and Recreation Services. (City Manager's Office)  
(Deferred from 5/23/95 - Item 9e)**

Documents filed: (1) Memorandum from City Manager Regina V.K. Williams, dated May 24, 1995, recommending Council approve (a) the reorganization of City services related to parks and recreation as described therein, and (b) approve suggested departmental name changes. (2) Memorandum from Council Member Pandori, dated May 26, 1995, suggesting departmental name changes.

Discussion/Action: City Manager Regina V.K. Williams introduced the recommendations in her memorandum dated May 24, 1995, and stated she would report back to the Council in a year with a progress report on the departmental reorganizations. Regarding departmental name changes, she stated she is open to suggestions. Council Member Shirakawa, Jr., suggested "Department of Streets and Traffic." Council Member Pandori suggested the names be kept short and requested that suggestions for the renaming the Convention, Cultural and Visitor Services (CCVS) Department be reviewed. Council Member Woody stated she had concerns about the reorganization, but since there would be a one-year review, she could support the recommendation. Council Member Shirakawa, Jr., moved approval of the recommendations in City Manager Williams' memorandum dated May 24, 1995, amended to rename the Department of Street and Parks the "Department of Streets and Traffic." Council Member Powers seconded the motion and requested the park maintenance issue be watched and the Administration present an evaluation to the Housing and Community Services Committee after one year. Council Member Shirakawa, Jr., amended his motion to change the name of the CCVS to the "Department of Conventions, Attractions and Culture," as recommended in Council Member Pandori's memorandum. Vice Mayor Johnson expressed opposition to the use of the word "culture" in the name of the CCVS. Council Member Pandori pointed out the cost ramifications involved in the ordering of new stationary supplies, and suggested renaming of the CCVS department be referred for Administrative review and report back to Council. Council Member Shirakawa amended his motion to include that referral. On a call for the question, the motion by Council Member Shirakawa, Jr., as amended, was approved, and the Council approved the recommendations for organizational restructuring as described in City Manager Williams' memorandum dated May 24, 1995, with a one-year review; approved departmental names of "Department of

**9g (Cont'd.)**

Parks, Recreation and Neighborhood Services”; “Department of Streets and Traffic”; and referred renaming of the Department of Convention, Cultural and Visitor Services to the City Manager for further review and report back to Council; and directed Staff to report to Housing & Community Services Committee on park maintenance after one year. Vote: 11-0-0-0.

**9h Final report and recommendations regarding Paramedic Services. (City Manager’s Office)  
(Deferred from 5/23/95 - Item 9o)**

Documents filed: None.

Discussion/Action: This item was deferred to June 6, 1995.

**FISCAL AFFAIRS**

**10a First PUBLIC HEARING on the report of the Director of Streets and Parks on the cost of sidewalk repairs (SW 6-95). (Streets and Parks)**

Documents filed: (1) Memorandum from Director of Streets and Parks, Wayne K. Tanda, dated May 24, 1995, recommending Council adopt a resolution amending and confirming the Report of the Director of Streets and Parks on the costs of Sidewalk Repairs, Confirming as Amended the Assessments contained in the Report, Directing the Recordation of liens and Setting the Lien Interest Rate at Eight Percent Annually. (2) Certificate of Mailing of Notice of Public Hearing dated May 8, 1995, submitted by the Department of Streets and Parks.

Discussion/Action: Mayor Hammer opened the first of two public hearings on the report of the Director of Streets and Parks on the costs of Sidewalk Repairs. Mary Murphy introduced her mother, Mary Sullivan, whose property at 1145 Keltner Avenue, APN 2991807, is scheduled for an assessment of \$790.50 property lien due upon sale or transfer of the property. Ms. Murphy stated her mother lives on a fixed income and does not have the funds in question, and requested that the City waive the interest charges on the assessment. Upon motion by Council Member Dando, seconded by Council Member Powers, the Council waived interest charges on the lien on Ms. Sullivan’s property, and continued the public hearing to June 6, 1995. Vote: 11-0-0-0.

## **CLOSED SESSION REPORT**

City Attorney Joan R. Gallo disclosed the following Closed Session actions of May 30, 1995 :

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

1. Case Name: City of San Jose v. Mission Trail Waste Systems, Inc.

Adverse party or parties: Mission Trail Waste Systems, Inc.

Substance of litigation: Action for injunction to prevent unauthorized hauler from collecting solid waste at San Jose State University.

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

Noes: None.

Absent: None.

Disqualified: None.

B. Authority to Enter a Litigation Case as Amicus Curiae:

1. Case Name: California Credit Union v. City of Anaheim

Adverse party or parties: California Credit Union

Substance of Litigation: This case involves the right of a city to impose a transient occupancy tax on hotel use by employees of a federal credit union when the hotel charges are paid by the federal credit union.

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

Noes: None.

Absent: None.

Disqualified: None.

## **ORAL COMMUNICATIONS**

Mr. Shakeri addressed Council regarding an assessment against his property.

**ADJOURNMENT**

The Council of the City of San Jose adjourned at 4:05 p.m.

**SUSAN HAMMER, MAYOR**

**ATTEST:**

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

**DC/5-30-95**