

## **MINUTES OF THE CITY COUNCIL**

**SAN JOSE, CALIFORNIA**

**TUESDAY, NOVEMBER 28, 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, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members -Pandori (excused).

Upon motion unanimously adopted, Council recessed at 9:35 A.M. to a Closed Session in Room 600 to confer with Legal Counsel pursuant to Government Code Section 54956.9; under Subsection (a) to discuss existing litigation in the cases of Francois & Muldrow v. City of San José, et al; to discuss anticipated litigation pursuant to Subsection (b) of Government Code Section 54956.9, in one matter involving initiation of litigation; and to confer with Labor Negotiator Pursuant to Government Code 54957.6, City Negotiator: City Manager designee Mark Linder; Employee Organization: Operating Engineers, Local 3.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:10 A.M. and reconvened at 1:42 P.M. in the Council Chambers.

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

Absent: Council Members -None.

### **INVOCATION**

Reverend Peter Wilkes, South Hills Community Church, delivered the Invocation. (District 10)

## **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, the Orders of the Day and the Amended Agenda were approved. Vote: 11-0-0-0.

Mayor Hammer introduced Nancy Rivera, who will be working in the Public Information Office as Legislative Correspondent.

## **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) Closed Session of October 22, 1995**

Documents filed: Minutes of October 22, 1995.

Discussion/Action: The minutes of October 22, 1995 were approved as amended to reflect that Council Member Pandori left the meeting at 10:20 a.m. Vote: 11-0-0-0.

#### **6a(2) Closed Session of October 23, 1995**

Documents filed: Minutes of October 23, 1995.

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

#### **6a(3) Regular Meeting of October 31, 1995**

Documents filed: Minutes of October 31, 1995.

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

## Ordinances for Final Adoption

- 6b(1) **ORD. NO. 24999** - Amends Sections 2.08.320, 2.08.330, and 2.08.340 of Chapter 2.08 of Title 2 of the San José Municipal Code to revise the definition of the member of the Federated Retirement Board who is required to be an officer of a financial institution.

Documents filed: Proof of publication of title of Ordinance No. 24999 submitted by the City Clerk.

Discussion/Action: Ordinance No. 24999 was adopted. Vote: 11-0-0-0.

- 6b(2) **ORD. NO. 25000** - Amends Chapter 3.36 of Title 3 of the San José Municipal Code by adding Section 3.36.735 to implement compensation limits in accordance with Internal Revenue Code Section 401(a)(17).

Documents filed: Proof of publication of title of Ordinance No. 25000 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25000 was adopted. Vote: 11-0-0-0.

- 6b(3) **ORD. NO. 25001** - Amends Chapter 3.28 of Title 3 of the San José Municipal Code by adding Section 3.28.990 to implement compensation limits in accordance with Internal Revenue Code Section 401(a)(17).

Documents filed: Proof of publication of title of Ordinance No. 25001 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25001 was adopted. Vote: 11-0-0-0.

- 6b(4) **ORD. NO. 25003** - Amends Chapter 11.48 of Title 11 of the San José Municipal Code to add a Civic Center Residential Permit Parking Program, to make the existing permit parking programs consistent, to make further technical changes to clarify the chapter and to renumber Chapter 11.46 to make it part of Chapter 11.48.

Documents filed: Proof of publication of title of Ordinance No. 25003 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25003 was adopted. Vote: 11-0-0-0.

- 6b(5) **ORD. NO. 25004 - Amends Section 6.22.040 of Chapter 6.22 of Title 6 of the San José Municipal Code to set a maximum potential card table limit.**

Documents filed: Proof of publication of title of Ordinance No. 25004 submitted by the City Clerk.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Ordinance No. 25004 was adopted. Noes: Dando, Diaz, Fernandes, Johnson, Pandori.

- 6b(6) **ORD. NO. 25005 - Amends Chapter 17.12 of the San José Municipal Code to adopt the 1995 California Fire Code, with certain amendments, to codify existing policies and practices with respect to fire prevention and storage, use, and handling of hazardous materials, including toxic gases, and repealing Chapter 17.16.**

Documents filed: Proof of publication and corrected Proof of publication of title of Ordinance No. 25005 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25005 was adopted. Vote: 11-0-0-0.

## **Plans and Specifications**

- 6d(1) **TRACT NO. 8713 - Southeast corner of Trowbridge Way and Capilano Drive - Shea Homes Limited Partnership, a California Limited Partnership, D.B.A. as Shea Homes - 38 single family residential units. Adoption of resolutions approving the plans, final map, contract and water main extension for Tract No. 8713. CEQA: Resolution No. 61784. District 8. (Public Works)**

Discussion/Action: Resolution No. 66295, entitled: “A Resolution of the Council of the City of San Jose Fixing Official Curb Grades and Position of Curbs, and Adopting Plans for Tract No. 8713 Silver Creek Valley Country Club Neighborhood 16-Unit 1 & Neighborhood 18-Unit 1”; Resolution No. 66296, entitled: “A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8713”; Resolution No. 66297, entitled: “A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8713 Silver Creek Valley Country Club Neighborhood 16-Unit 1 & Neighborhood 18-Unit 1”, and Resolution No. 66298, entitled: “A

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

Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Agreement for the Water Main Extension, Tract No. 8713 Silver Creek Valley Country Club Neighborhood 16-Unit 1 & Neighborhood 18-Unit 1", were adopted. Vote: 11-0-0-0.

**Contracts/Agreements**

**6e(1) Approval of a fourth amendment to the concession agreement with CA One Services, Inc., to extend the agreement by eighteen (18) months, December 31, 1995 to June 30, 1997, with annual estimated revenue to the City of \$492,000. CEQA: Exempt. (Airport)**

Documents filed: Memorandum from Airport Director Ralph G. Tonseth, dated November 9, 1995, recommending approval of the amendment to said agreement.

Discussion/Action: The fourth amendment to said agreement with CA One Services, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

**6e(2) Approval of a fifth amendment to the scheduled airline operating agreement and terminal building lease with Delta Air Lines, Inc., to delete Holdroom C-11 from space used on a preferential basis in Terminal C. CEQA: Exempt. (Airport)**

Documents filed: Memorandum from Airport Director Ralph G. Tonseth, dated November 9, 1995, recommending approval of the amendment to said agreement.

Discussion/Action: The fifth amendment to said agreement with Delta Air Lines, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

**6e(3) Adoption of a resolution authorizing the City Manager to negotiate and execute agreements with Elizabeth Diller, Ricardo Scofidio, and 50 West San Fernando Associates for the fabrication and installation of a public artwork for the United Artist Cineplex Project in an amount not to exceed \$177,600. (Arts Commission/Conventions, Arts and Entertainment)**

Documents filed: Memorandum from Director of Convention, Arts and Entertainment, Ellen Oppenheim, dated November 9, 1995, recommending adoption of said resolution.

**6e(3) (Cont'd.)**

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Resolution No. 66299, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Elizabeth Diller, Ricardo Scofidio for the Commission of a Work of Art and an Agreement with 50 West San Fernando Associates to Maintain the Work of Art Once Installed", was adopted. Vote: 11-0-0-0.

**6e(4) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1995-96 #10, and authorization for the Director of General Services to execute the purchase orders. (General Services)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated November 9, 1995, recommending award of open purchase orders for List No. 10.

Discussion/Action: The award of open purchase orders for supplies, materials, equipment, and services for FY 1995-96 No. 10 was approved and issuance of the purchase orders authorized. Vote: 11-0-0-0.

**6e(5) Approval of the substitution of a subcontractor, Signal Electric Construction, Inc., with G.A.B. Construction, Inc., for the Traffic Signal Management Program (T.S.M.P.) Communications and System Sensor Construction (C.B.D.) 1993/94 Phase 4 Project. CEQA: Exempt. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 9, 1995, recommending approval of said subcontractor substitution.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. The substitution of subcontractor, Signal Electric Construction, for said project was approved and its execution authorized. Vote: 11-0-0-0.

**6e(6) Adoption of a resolution declaring a parcel of City-owned land, which is a portion of vacated O'Connor Drive between Forest Avenue and Emory Street, surplus to the needs of the City, approving the agreement for sale of surplus City-owned real property to O'Connor Hospital in the amount of \$55,500 and directing the City Clerk to execute the necessary documents. CEQA: Exempt. (Public Works)**

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

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 9, 1995, recommending adoption of said resolution.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Resolution No. 66300, entitled: "A Resolution of the Council of the City of San José Declaring Certain City-Owned Property Surplus to the Needs of the City, Approving an Agreement for the Sale of Surplus City-Owned Real Property to O'Connor Hospital, and Directing the City Clerk to Execute All Necessary Documents for the Sale of Such Property", was adopted. Vote: 11-0-0-0.

- 6e(7) (a) Approval of Contract Change Order No. 2 for the Century Center Parking Lot Project with Granite Construction Company, in an amount not to exceed \$275,000 for a total contract amount of \$918,966 and a time extension of 38 calendar days for a total contract time of 233 calendar days. CEQA: Resolution No. 64173. (Public Works)**
- (b) Approval of a first amendment to the agreement with Rust Environment & Infrastructure, Inc. for environmental services for the Century Center Parking Lot Project in the amount of \$17,000 for a total agreement of \$57,000 and for additional services in the amount of \$10,000 for a total additional services amount of \$15,000 for a total amount of \$72,000. CEQA: Resolution No. 64273. (Public Works) (Rules Committee referral 11/22/95)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 16, 1995, recommending approval of a first amendment to said agreement with Rust Environment & Infrastructure, Inc.

Discussion/Action: The Contract Change Order No. 2 for the Century Center Parking Lot Project with Granite Construction Company was deferred to December 5, 1995, and a first amendment to the agreement with Rust Environment & Infrastructure, Inc. for environmental services for the Century Center Parking Lot Project was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(8) Approval of an employment agreement with Nancy Rivera. (Mayor) (Rules Committee referral 11/22/95)**

Documents filed: None.

**6e(8) (Cont'd.)**

Discussion/Action: The employment agreement with Nancy Rivera was approved and their execution authorized. Vote: 11-0-0-0.

**6e(9) Approval of an employment agreement with Esther E. Rosas. (Shirakawa, Jr.)  
(Rules Committee referral 11/22/95)**

Documents filed: None.

Discussion/Action: The employment agreement with Esther E. Rosas was approved and its execution authorized. Vote: 11-0-0-0.

**6e(10) Approval of employment agreements with Brian Bennert, Rich Bongiovanni,  
Chris Hemingway, and Dawn Wright for six months starting January 1996.  
(Diquisto)  
(Rules Committee referral 11/22/95)**

Documents filed: None.

Discussion/Action: The employment agreements with Brian Bennert, Rich Bongiovanni, Chris Hemingway, and Dawn Wright were approved and its execution authorized. Vote: 11-0-0-0.

**Routine Legislation**

**6f(1) Adoption of a resolution initiating proceedings and setting December 12, 1995 at 1:30 p.m. as the date for Council consideration of the reorganization of territory designated as Hamilton No. 57, which involves the annexation to the City of San José of 0.85 acre of land, located at the west side of Meridian Avenue, 114 feet southerly of Blackford Lane, and the detachment of the same from the Central Fire District and County Lighting Service District. CEQA: Exempt. (Planning, Building and Code Enforcement)**

Documents filed: Memorandum from Director of Planning, Gary J. Schoennauer, dated November 9, 1995, requesting adoption of said resolution.

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

Discussion/Action: Resolution No. 66301, entitled: "Resolution of the Council of the City of San Jose Initiating Reorganization Proceedings for Annexation and Detachment of Certain Uninhabited Territory Designated As Hamilton No. 57 and Described Herein, and Setting the Date and Place for Consideration of such Reorganization", was adopted. Vote: 11-0-0-0.

**6f(2) Approval of four (4) City Event dates for use at the San José Arena, as provided in the San José Arena Management Agreement:**

- (a) San José Unified Educational Foundation.**
  - (b) Kids Voting San José.**
  - (c) Police Amateur Athletic Foundation.**
  - (d) Viet-American Forum.**
- (San José Arena Authority)**

Documents filed: Memorandum from Chris Morrisey, Acting Executive Director, San José Sports Authority, dated November 8, 1995, recommending approval of said dates for City Event usage of the San José Arena.

Discussion/Action: The City Event dates for use at the San José Arena were approved. Vote: 11-0-0-0.

**6f(3) Adoption of appropriation ordinance amendment to create a rate stabilization reserve of \$2,000,000 within the Sewer Services and Use Charge Fund. (City Manager's Office)  
(Rules Committee referral 11/22/95)**

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated November 17, 1995, recommending approval of said appropriation ordinance amendment.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Ordinance No. 25008, entitled: "An Ordinance of the Council of the City of San Jose Amending Ordinance No. 24945 which Appropriates Moneys in the Sewer Service and Use Charge Fund, for the Creation of a Rate Stabilization Reserve in the Amount of \$2,000,000; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 11-0-0-0.

- 6f(4) Approval of an ordinance authorizing the Director of the Department of Streets and Traffic to appoint employees within the Department to enforce speeding laws for the limited purpose of implementing a photoradar program. (Streets and Traffic)  
(Rules Committee referral 11/22/95)**

Documents filed: Memorandum from City Attorney Joan R. Gallo, dated November 22, 1995, recommending approval of said ordinance.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Ordinance No. 25009, entitled: "An Ordinance of the City of San José Amending Section 11.12.020 of the San José Municipal Code to Authorize the Department of Streets and Traffic to Enforce the Speeding Laws on City Streets Under Limited Circumstances", was passed for publication. Vote: 11-0-0-0.

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

### **7b Report of the Rules Committee - Meeting of November 15, 1995**

Documents filed: Rules Committee report of November 15, 1995.

- (1) Review November 28 Council Agenda

The Committee recommended approval of the November 28, 1995, Council agenda with two changes.

- (2) Add New Items to November 21 Amended Council Agenda

The Committee recommended seven additions and two changes to the November 21, 1995 Council agenda.

- (3) The Public Record. Attachment: (1) Memorandum from City Clerk Patricia L. O'Hearn dated November 16, 1995, listing items transmitted to the Administration and items filed for the Public Record for November 8-14, 1995.

The Committee recommended approval of the Public Record.

- (4) Boards and Commissions
- (a) Advisory Commission on Rents
  - (b) Child Care Commission
  - (c) Committee on Minority, Women & Disadvantaged Business Development

**7b Report of the Rules Committee - Meeting of November 15, 1995 (Cont'd.)**

- (4) Boards and Commissions. (Cont'd.)
  - (d) CDBG Steering Committee
  - (e) Disability Advisory Commission
  - (f) Housing Advisory Commission
  - (g) Human Rights Commission
  - (h) Mobile Home Advisory Commission
  - (i) San Jose Appeals Hearing Board

The Committee deferred this item to November 22, 1995.

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

There were none.

- (6) City Council and Rules Committee meeting schedules

There were none.

- (7) Oral communications

None presented.

- (8) Adjournment

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

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini, and unanimously carried, the Rules Committee report and actions of November 15, 1995 accepted. Vote: 11-0-0.

**7b Report of the Rules Committee - Meeting of November 22, 1995**

Documents filed: Rules Committee report of November 22, 1995 (Partial).

- (4) Boards and Commissions. Attachments: (1) Memoranda from City Clerk, Patricia L. O'Hearn, dated November 9, 1995, submitting listings of qualified candidates submitted by the Project Diversity Screening Committee to the City Council Liaison for each Commission. (2) Memorandum from City Attorney

**7b Report of the Rules Committee - Meeting of November 22, 1995**

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

Joan R. Gallo, dated September 22 to October 4, 1995, reviewing applications for areas of potential conflicts of interests.

- (a) Advisory Commission on Rents. Attachment: Memorandum from Council Member Woody dated November 20, 1995, recommending Jose Hernandez for the Tenant Position, Robert Bailey, Jr., for the Neutral Position, and Ms. Virginia L. Thomas for the Landlord Position.

The Committee recommended appointment of Jose Hernandez for the Tenant position, Robert Bailey, Jr., for the Neutral position and Virginia Thomas for the Landlord position for terms ending December 31, 1999 and directed the Office of the City Clerk to readvertise for the vacant Landlord position.

- (b) Child Care Commission. Attachment: Memorandum from Council Member Dando dated November 20, 1995, recommending Louis "Bud" Towner and Toni Ann Sindelar for vacant positions.

The Committee recommended appointment of Louis "Bud" Towner to an unexpired term ending June 30, 1997 and Toni Ann Sindelar to an unexpired term ending June 30, 1998.

- (c) Committee on Minority, Women & Disadvantaged Business Development. Attachment: Memorandum from Council Member Diaz, dated November 17, 1995, recommending appointments of Elvira De La Vega, Wendell LeRoy, and Monica Lopez to vacant terms.

The Committee recommended appointment of Elvira De La Vega and Wendell LeRoy to unexpired terms ending December 31, 1996; and Monica Lopez to an unexpired term ending December 31, 1998.

- (d) CDBG Steering Committee

The Committee recommended appointment of Ernest Guzman to an unexpired term ending June 30, 1996 and the following four-year term ending June 30, 2000 representing District 3; Harley Roth to an unexpired term ending June 30, 1996 and the following four-year term ending June 30, 2000 representing District 5; and directed the Office of the City Clerk to readvertise the City-wide position.

**7b Report of the Rules Committee - Meeting of November 22, 1995 (Cont'd.)**

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

- (e) Disability Advisory Commission. Attachment: Memorandum from Council Member Diquisto dated November 20, 1995, recommending Barbara Rhodes and Gary McCutcheon for vacant positions.

The Committee recommended appointment of Gary McCutcheon to an unexpired term ending June 30, 1996 and the following four-year term ending June 30, 2000; and Barbara Rhodes to an unexpired term ending June 30, 1998.

- (f) Housing Advisory Commission

The Committee directed the Office of the City Clerk to readvertise the vacant positions on the Housing Advisory Commission.

- (g) Human Rights Commission. Attachment: Memoranda from Council Member Diaz dated November 17 and 21, 1995, recommending Merylee Rucker, Susan Page, Craig Mann, Warren Nguyen and Rebekah Salgado for vacant positions.

The Committee recommended reappointment of Craig Mann and new appointments for Warren Nguyen, Susan Page and Merylee Shelton to terms ending December 31, 1999; and Rebekah Salgado to an unexpired term ending December 31, 1997.

- (h) Mobile Home Advisory Commission

The Committee directed the Office of the City Clerk to fill the Neutral position on the Mobile Home Advisory Commission as soon as possible.

- (i) San Jose Appeals Hearing Board. Attachment: Memorandum from Vice Mayor Johnson, dated November 21, 1995, recommending Robert Varich and William Wilson for vacant positions.

The Committee recommended reappointment of Robert Varich and a new appointment for William Wilson to terms ending December 31, 1999.

**7b Report of the Rules Committee - Meeting of November 22, 1995 (Cont'd.)**

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini, and unanimously carried, the Rules Committee report and actions on Item 7b(2)(d) on November 22, 1995, were accepted. Vote: 11-0-0-0.

**GENERAL GOVERNMENT**

- 9a (1) Appointments to:**
- (a) Federated Retirement Board - 1 employee vacancy for term ending November 30, 2000**
  - (b) Police & Fire Retirement Board - 1 Fire vacancy for term ending November 30, 2000**
  - (c) Suggestion Award Commission - 2 vacancies for terms ending November 30, 1998**
- (2) Set the December 5, 1995 Council meeting to interview candidates for Civil Service Commission and appoint one candidate to a term ending at noon on December 1, 2001.**
- (City Clerk)**

Documents filed: (1) Memoranda from City Clerk Patricia L. O'Hearn, dated November 13 and 17, 1995, reporting on results of the employee election and recommending appointment of qualified candidates to specified terms of office as described therein. (2) Memorandum from City Attorney Joan R. Gallo, dated November 22, 1995, advising of the Council's discretionary privilege in making the referenced appointments.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, Council approved the candidate receiving the highest number of votes in each employee election, i.e., the appointments of Tony Cokely to the Federated Retirement Board for a term ending November 30, 2000; Richard P. Santos to the Police & Fire Retirement Board for a term ending November 30, 2000; Kenney Wright to the Suggestion Award Commission for a term ending November 30, 1998; and Bill Brill to the Civil Service Commission for a term ending at noon on December 1, 2001, were approved, and the December 5, 1995, meeting set to interview candidates for an additional Civil Service Position. Vote: 11-0-0-0.

- 9b Adoption of a resolution authorizing the Director of General Services to exercise the first option under the agreement for Apple Computer hardware and peripherals with Computerland of Almaden, Inc., for one (1) additional year at a total cost not to exceed \$1,000,000, and authorization for the Director of General Services to amend the purchase agreement for the period December 1, 1995 to November 30, 1996. (General Services)**

Documents filed: Memorandum from Acting Director of General Services, Ellis M. Jones, Jr., dated November 9, 1995, recommending adoption of said resolution.

Discussion/Action: Resolution No. 66302, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Exercise an Option to Extend an Agreement for the Purchase of Apple Computer Hardware and Peripherals on a City-Wide Open Purchase Order with Computerland of Almaden, Inc. in an Amount Not to Exceed One Million Dollars (\$1,000,000) for the Period December 1, 1995 to November 30, 1996", were adopted. Vote: 11-0-0-0.

- 9c Report on bids and award of contract for the Downtown Supplement Phase IIB Storm Drain Project to the low bidder, Stacy and Witbeck/Ramirez, a joint venture, in the amount of \$1,426,317, and approval of a contingency in the amount of \$145,000. CEQA: Exempt. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 9, 1995, recommending award of said contract to the low bidder, Stacy and Witbeck/Ramirez, a joint venture.

Discussion/Action: The award of contract to Stacy and Witbeck/Ramirez was approved and its execution authorized. Vote: 11-0-0-0.

- 9e Report on Christmas in the Park concession operations. (Referred from 11/14/95 - Oral Communications)**

Documents filed: Memorandum from Director of Convention, Arts and Entertainment, Ellen Oppenheim, dated November 20, 1995, responding to questions raised at the City Council meeting of November 14, 1995, regarding concession operations at Christmas in the Park.

9e (Cont'd.)

Discussion/Action: Council heard testimony from Mr. Teferi who expressed dissatisfaction with his space assignment and the amount of the insurance which Christmas in the Park requires vendors carry, which he stated would cost him an additional \$1500 for the thirty days of the festival. Director Oppenheim introduced Joe Cardinalli, Parks Manager for the Department of Convention, Arts and Entertainment. Mr. Cardinalli advised the Council that the spaces were allotted to vendors on a first-come/first-serve basis and seven of the eleven qualified vendors returned their applications within seven days and when Mr. Teferi applied thirty-one days after the notification, the best assignments were taken. As a result of Booth Nos. 1 and 10 being moved due to fire regulations, Booth No. 3 opened up and a lottery was held between Mr. Teferi and another vendor for that booth and the other vendor drew the booth. Mr. Cardinalli advised that booth allocations were conducted fairly and Mr. Teferi had the same opportunity as the other vendors. In response to Council questions about supplemental insurance coverage rates, Director Oppenheim advised that \$1,000,000 is a standard requirement for most festivals and that Staff could check on rates other vendors are paying. Council Member Powers reported that the Task Force had considered the issue of insurance requirements and supported the requirement as necessary. Following Council discussion about different means of allocating spaces, Mayor Hammer stated it was too late to address the space issue for this year and that Council's main concern was that vendors be treated equitably, and requested the Staff to review with Mr. Teferi the issue of supplemental insurance costs. By unanimous consent, the report was accepted and the issue referred to the Administration. Vote: 11-0-0-0.

- 9d
- (1) **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the Community Foundation of Santa Clara County to establish the San José Circle of Life Senior Endowment to benefit City of San José programs that promote wellness and independent living for older adults.**
  - (2) **Refer to the midyear budget process the allocation of \$50,000 in City funds to be used as matching funds for corporate and community contributions for the endowment.**  
(Woody/Mayor)

Documents filed: (1) Memorandum from Mayor Susan Hammer and Council Member Woody, recommending authorizing the negotiation and execution of said agreement and referral of the \$50,000 allocation for matching funds to the midyear budget process. (2) Annual Report 1995 for the Community Foundation of Santa Clara County.

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

Discussion/Action: Director of Intergovernmental Relations, Georgiana Flaherty, stated that the Circle of Life Endowment was recommended in the Aging Master Plan approved by the Council and which will be implemented by the Mayor's Aging Task Force, Chaired by Council Member Woody, and stated the Office on Aging was pleased to present this matter to the Council. Council Member Woody introduced from the Mayor's Aging Leadership Council: Seema and Bob Jaffe and Georgia Vacil; from the Senior Citizen Commission: Chair George Miskulin, Joseph O'Kane and Carmen Moore, and from the Office on Aging: Nadine Felix, Terry Eberhardt and Deborah Bogart and thanked each for their support. Upon motion by Council Member Woody, seconded by Council Member Powers, and unanimously carried, Resolution No. 66303, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the Community Foundation of Santa Clara County for the Establishment of an Endowment Fund", was adopted, and the allocation of \$50,000 in City funds to be used as matching funds for corporate and community contributions for the endowment, was referred to the midyear budget process. Vote: 11-0-0-0.

- 9f**
- (1) Adoption of a resolution authorizing the City Manager to negotiate and execute a long-term parking agreement with Netcom On-Line Communications Services, Inc. (Netcom) for 450 parking spaces at the Third Street Garage, and 350 parking spaces at the Market Street/San Pedro Square Garage to begin no sooner than February 1, 1996. The agreement should be concurrent with the length of the building lease between Netcom and the Horizon Center, but not to exceed ten (10) years.**
  - (2) Refer to the on-going Three-Year Downtown Parking Plan process, consideration of the sale of public parking assets and the development of a policy regarding monthly parking spaces.**

**(Streets and Traffic)**

**(Deferred from 11/21/95 - Item 9c)**

Documents filed: None.

Discussion/Action: This item was deferred to December 5, 1995.

## CLOSED SESSION REPORT

City Attorney Joan R. Gallo disclosed the following Closed Session actions of November 28, 1995:

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

1. Case Name: Bickel v. City of Piedmont

Adverse party or parties: Bickel

Substance of litigation: An applicant for a land use permit alleges the permit must be approved because it was not acted on within the time limits of the Permit Streamlining Act. The primary issue is whether the time limits of the Act can be waived.

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

Noes: None.

Absent: Pandori.

Abstain: None.

B. Authority to Seek Appellate Review of Further Appellate Review in a Litigation Case:

1. Case Name: Francois & Muldrow v. City of San José, et al.

Adverse party or parties: Paul Francois and Mark Muldrow

Substance of litigation: An action for damages allegedly resulting from a press conference held by the Chief of Police.

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

Noes: None.

Absent: Pandori, Powers.

Abstain: None.

2. Case Name: Tomaino v. City of San José, et al.

Adverse party or parties: James Tomaino

Substance of litigation: An action challenging a provision of the Police Department Duty Manual and the department action taken for an alleged violation of that section.

**CLOSED SESSION REPORT**

B. Authority to Seek Appellate Review of Further Appellate Review in a Litigation Case: (Cont'd.)

2. Case Name: Tomaino v. City of San José, et al. (Cont'd.)

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

Noes: None.

Absent: Pandori.

Abstain: None.

**ORAL COMMUNICATIONS**

- (1) Cathy Brandhorst addressed Council regarding the early hours at which homeless people staying in the Armory must leave. Council directed the Staff to check the hours the Armory is open to homeless people.
- (2) William Garbett addressed Council about issues relating to the Fire Department.
- (3) Ross Signorino commended Council on the success of the Tattoo-Removal program.
- (4) Regina Mayor spoke on issues of civic responsibility.

**ADJOURNMENT**

The Council of the City of San José adjourned at 2:37 p.m. in memory of Dr. Fauneil J. Rinn, retired SJSU professor and member of the San Jose Charter Review Committee; and in memory of retired Deputy Fire Chief Donald Wisinski.

**SUSAN HAMMER, MAYOR**

**ATTEST:**

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

**DC/11-28-95**