

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, DECEMBER 5, 1995

The Council of the City of San Jose convened in regular session at 9:30 a.m.

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 to a Closed Session at 9:35 a.m. in Room 600 to (A) confer with Legal Counsel regarding anticipated litigation of four matters pertaining to significant exposure to litigation pursuant to subdivision (b) Section 54956.9 of the Government Code; and to consider one matter pertaining to initiation of litigation pursuant to subdivision (c) of Section 54956.9 of the Government Code; and (B) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator City Manager designee Mark Linder, pertaining to Operating Engineers, Local 3, Employee Organization.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:00 a.m. and reconvened at 1:40 p.m. in Council Chambers, City Hall.

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

Absent: Council Members: None.

INVOCATION

The cast of "La Posada Magica" of the San Jose Repertory Theatre, played and sang a medley of Christmas carols, accompanied by the Artistic Director and the Assistant Artistic Director of the holiday show. (Mayor)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

ORDERS OF THE DAY

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

CONSENT CALENDAR

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

Ordinances for Final Adoption

- 6b(1) ORD. NO. 25007 - Rezones certain real property situated on the south side of Kentwood Avenue, 430 feet westerly of Saratoga-Sunnyvale Road. PDC 95-10-048**

Documents Filed: Proof of publication of the title of Ordinance No. 25007 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25007 was adopted. Vote: 11-0-0-0.

Plans and Specifications

- 6d(1) TRACT NO. 8743 - Southerly terminus of Piercy Road, 1,000 feet easterly of US 101 - Shea/Gibson Speno III, a California Limited Partnership - construction of a portion of the public improvements associated with Tract No. 8743 before the final map is presented for approval to the City Council. Adoption of resolutions approving the plans, contract and bonds for Tract No. 8743. CEQA: Resolution No. 65660. District 2. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 28, 1995, recommending Council adopt said resolutions.

Discussion/Action: Council Member Pandori stated he opposed the General Plan Zoning change, and would not support the proposal. Resolution Nos. 66304, entitled: "A Resolution of the Council of the City of San José Fixing Official Curb Grades and Position of Curbs, and Adopting Plans for Tract No. 8743 - Contract No. 1; Basking Ridge Avenue, Schoolhouse Road and Cantora Drive"; Resolution No. 66305, entitled: "A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8743 - Contract No. 1; Basking Ridge Avenue, Schoolhouse Road and Cantora Drive", were adopted. Vote: 10-1-0-0. Noes: Pandori.

- 6d(2) TRACT NO. 8777 - North side of Murphy Avenue, west of Lundy Avenue - Pacific Rim Garden Villa, Inc., a California Corporation - 84 single family attached residential units. Adoption of a resolution approving the final map for Tract No. 8777. CEQA: ND. District 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 27, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66306, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8777", was adopted. Vote: 11-0-0.

- 6d(3) TRACT NO. 8801 - Southwest corner of Capitol Avenue and Orangestone Way - Braddock & Logan Group, a California Limited Partnership - 67 single family detached units. Adoption of resolutions approving the plans, final map, contract, and bonds for Tract No. 8801. CEQA: ND. District 4. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 28, 1995, recommending Council adopt said resolutions.

Discussion/Action: Resolution Nos. 66307, entitled: "A Resolution of the Council of the City of San José Fixing Official Curb Grades and Position of Curbs, and Adopting Plans for Tract No. 8801"; Resolution No. 66308, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8801", and Resolution No. 66309, entitled: "A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8801", were adopted. Vote: 11-0-0.

Contracts/Agreements

- 6e(1) (a) Approval of a fourth amendment to the consultant agreement with Martin O'Connell Associates for economic impact analysis on the San José International Airport/Master Plan Update Project, extending the term by one (1) year, from December 31, 1995 to December 31, 1996, and increasing the compensation by \$15,000, from \$106,800 to \$121,800.**
- (b) Approval of a fifth amendment to the consultant agreement with TRA Architecture Engineering Planning Interiors Ltd. for analytical services on the San José International Airport/Master Plan Update Project, extending the term by one (1) year, from December 31, 1995 to December 31, 1996, and increasing the compensation by \$95,000, from \$1,107,282 to \$1,202,282. (Airport)**

Documents Filed: Memoranda from Director of Aviation, Ralph G. Tonseth, each dated November 17, 1995, recommending Council approve the amendments to said consultant agreements.

Discussion/Action: The fourth amendment to the consultant agreement with Martin O'Connell Associates and the fifth amendment to the consultant agreement with TRA Architecture Engineering Planning Interiors LTD, were approved and execution of the amendments authorized. Vote: 11-0-0-0.

6e(2) Approval of an agreement with the Prusch Park Farm and Cultural Arts Foundation for the support of Emma Prusch Memorial Park. (Conventions, Arts and Entertainment)

Documents Filed: Memorandum from Director of Conventions, Arts and Entertainment, Ellen Oppenheim, dated November 17, 1995, recommending Council approve said agreement.

Discussion/Action: The agreement with the Prusch Park Farm and Cultural Arts Foundation was approved and execution of the agreement authorized. Vote: 11-0-0-0.

6e(3) Approval of a grant agreement with the Bay Area Economic Forum for the City's cash match required to receive funds from the U.S. Economic Development Administration for the BAYTRADE Project, in the amount of \$50,000, and authorization for the City Manager to execute the grant agreement. (Economic Development)

Documents Filed: Memorandum from Director of Economic Development, Leslie Parks, dated November 17, 1995, recommending Council adopt a resolution authorizing the City Manager to negotiate and execute a grant agreement with the Bay Area Economic Forum.

Discussion/Action: The grant agreement with the Bay Area Economic Forum was approved and execution of the grant agreement authorized. Vote: 11-0-0-0.

6e(4) Approval of an amendment to the Municipal Solid Waste Disposal Agreement with International Disposal Corporation of California, Inc., (IDC) including:

- (a) Extending the term of the agreement to December 31, 2020.**
- (b) Specifying conditions for an additional term extension.**
- (c) Selling back excess disposal capacity for the period July 1993 to June 1995.**
- (d) Eliminating the requirement to pay for a fixed amount of disposal.**
- (e) Reducing the annual adjustment to the Unit Price.**
- (f) Reconciling the Base Rate calculation through June 30, 1995, and reconciling compensation calculations for FY 1991-92 through FY 1994-95.**
- (g) Reducing the Base Rate by ten (10) cents per ton.**

- (h) Making other changes regarding City Wastes, rate adjustments, compensation schedule, reporting requirements, responsibility of the Contractor. CEQA: Exempt. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated November 21, 1995, recommending Council approve said amendment.

Discussion/Action: The amendment to the Municipal Solid Waste Disposal Agreement with International Disposal Corporation of California, Inc., (IDC), was approved and execution of the amendment authorized. Vote: 11-0-0-0.

- 6e(5) Approval of an agreement with Ross-Campbell, Inc., for consultant services for outreach on used motor oil recycling for the period December 15, 1995 to August 31, 1996, in an amount not to exceed \$130,220. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated November 17, 1995, recommending Council approve said agreement.

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

- 6e(6) Approval of non-profit recycling and reuse grant agreements with:**
- (a) Goodwill Industries of Santa Clara County, in the amount of \$140,100.**
 - (b) The Salvation Army, in the amount of \$66,100.**
 - (c) St. Vincent de Paul Society, in the amount of \$8,800.**

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated November 17, 1995, recommending Council approve said agreements.

Discussion/Action: The non-profit recycling and reuse grant agreements with Goodwill Industries of Santa Clara County, the Salvation Army, and St. Vincent de Paul Society were approved and execution of the agreements authorized. Vote: 11-0-0-0.

- 6e(7) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1995-96 #11, 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 November 17, 1995, recommending Council award said open purchase orders list, and authorize the Director of General Services to execute the purchase orders.

Discussion/Action: The award of open purchase orders List No. 11 for FY 1995-96 was approved and execution of the purchase orders authorized. Vote: 11-0-0-0.

- 6e(8) Adoption of a resolution authorizing the Director of General Services to:**
- (a) Execute a one (1) year agreement for janitorial services at the Water Pollution Control Plant with Service by Medallion, for a total cost not to exceed \$110,892 and approval of a contingency for supplemental work of \$15,000.**
 - (b) Exercise four (4) one-year options for renewal with an adjusted rate of compensation based on the Consumer Price Index not to exceed 7% per year and approval contingent upon Council approval of the funds each year.**

(General Services)

Documents Filed: (1) Supplemental memorandum from Acting Director of General Services, Ellis M. Jones Jr., dated December 1, 1995, transmitting copies of the actual RFP documents submitted on the janitorial services at the Water Pollution Control Plant. (2) Supplemental memorandum from Acting Director of General Services, Ellis M. Jones Jr., dated November 30, 1995, providing additional information on the recommendation for janitorial services at the Water Pollution Control Plant. (3) Supplemental memorandum from Acting Director of General Services, Ellis M. Jones Jr., dated November 17, 1995, recommending Council adopt said resolution. (4) Supplemental letter from the Treatment Plant Advisory Committee, dated November 10, 1995, recommending Council adopt said resolution.

Discussion/Action: Antonio Abarca, representing Local 1877, S.E.I.U., spoke in favor of the agreement with Service by Medallion for janitorial services. Resolution No. 66310, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute an Agreement With Service By Medallion for Janitorial Services for the Water Pollution Control Plant for One Year; and Authorizing the Director of General Services to Exercise Four (4) One-Year Options to Renew the Agreement Contingent Upon Council Appropriation of Funds Each Year", was adopted. Vote: 11-0-0-0.

- 6e(9) Adoption of a resolution authorizing the City Manager to:**
- (a) Negotiate and execute an agreement with Pathway Society, Inc. to provide a Truancy Abatement and Burglary Suppression (TABS) Counseling Services program for the period January 1, 1996 to June 30, 1996, in an amount not to exceed \$29,847.50.**
 - (b) Exercise three (3) one-year options for an annual rate not to exceed \$59,695 contingent upon Council approval of funds.**

(Police)

Documents Filed: Memorandum from Chief of Police, Louis A. Cobarruviaz, dated November 17, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66311, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute an Agreement With Pathway Society, Inc. to Provide a Truancy Abatement and Burglary Suppression Counseling Services Program in an Amount Not to Exceed \$29,847.50; and Authorizing the City Manager to Exercise Three (3) One-Year Options for an Annual Rate Not to Exceed \$59,695 Contingent Upon Council Approval of Funds", was adopted. Vote: 11-0-0-0.

6e(10) Adoption of a resolution authorizing the City Manager to:

- (a) Negotiate and execute an agreement with Bill Wilson Center to provide emergency shelter, supervision and counseling for the Youth Protection Program for the period January 1, 1996 to June 30, 1996, in an amount not to exceed \$36,500.**
- (b) Exercise three (3) one-year options for an annual rate not to exceed \$73,000 and contingent upon Council approval of funds.**

(Police)

Documents Filed: Memorandum from Chief of Police, Louis A. Cobarruviaz, dated November 17, 1995, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66312, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute an Agreement With the Bill Wilson Center to Provide Emergency Shelter, Supervision and Counseling for the Youth Protection Program in an Amount Not to Exceed \$36,500; and Authorizing the City Manager to Exercise Three (3) One Year Options for an Annual Rate Not to Exceed \$73,000 Contingent Upon Council Approval of Fund", was adopted. Vote: 11-0-0-0.

6e(11) Adoption of a resolution authorizing the City Manager to negotiate and execute a five-year lease agreement with Sarofim Investors Realty Fund for 4,162 usable square feet of office space located on the second floor at 1190 Bascom Avenue, at a cost of not more than \$5,813 per month during the first year, for a total amount not to exceed \$69,755 in the first year. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 21, 1995, recommending Council adopt said resolution.

Discussion/Action: Director of Public Works, Ralph A. Qualls, Jr., stated some liability issues of the agreement remain unresolved; therefore, Staff is requesting that Council adopt the resolution which authorizes the City Manager to execute the lease with Sarofim, and in the alternative to authorize the City Manager to negotiate and execute a lease for an alternate site at the rental rate not to exceed \$75,000 annually. Resolution No. 66313, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute a Five Year Lease Agreement With Sarofim Investors Realty Fund for Office Space at 1190 Bascom Avenue and if

Negotiations Fail With Sarofim Investors Realty Fund to Negotiate and Execute a Five Year Lease for an Alternate Site for a Total Annual Rent Not to Exceed \$75,000”, was adopted. Vote: 11-0-0-0.

- 6e(12) 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)
[Deferred from 11/14/95 - Item 6e(7)(a)]**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated November 17, 1995, recommending Council approve said contract with a time extension of 38 calendar days.

Discussion/Action: Director of Public Works, Ralph A. Qualls, Jr., stated the proposed change order relates to the removal, transportation and disposal of contaminated soil at the job site; however, to resolve minor outstanding issues, Staff is requesting Council approval to negotiate and execute the Contract Change Order for a total amount not to exceed \$275,000 and a time extension of 45 calendar days. William J. Garbett spoke against the proposed action. Contract Change Order No. 2 with Granite Construction Company was approved with Staff authorized to negotiate and execute the Contract Change Order including a time extension of 45 calendar days for a total time of 240 calendar days. Vote: 11-0-0-0.

Routine Legislation

- 6f(1) Adoption of appropriation ordinance and revenue resolution amendments in the General Fund necessary to implement 1994-95 Annual Report recommendations. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated November 17, 1995, recommending Council approve said appropriation ordinance and revenue resolution amendments in the General Fund.

Discussion/Action: Ordinance No. 25010, entitled: “An Ordinance of the Council of the City of San José Amending Ordinance No. 24954 Which Appropriates Moneys in the General Fund in the Amount of \$4,642,404, for Implementation of the 1994-95 Annual Report Recommendations; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, and Resolution No. 66314, entitled: “A Resolution of the Council of the City of San José Amending Revenue Resolution No. 66026 for the Fiscal Year 1995-96 to Adjust Revenues in the General Fund”, were adopted.

Vote: 11-0-0-0.

- 6f(2) Adoption of appropriation ordinance amendment to transfer \$35,000 from the City Auditor's Office General Fund Personal services appropriation for a consultant agreement with O'Rourke and Company regarding the potential sale of the Municipal Water System. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated November 17, 1995, recommending Council approve said appropriation ordinance amendments in the General Fund.

Discussion/Action: Ordinance No. 25011, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 24945 to Transfer \$35,000 from the City Auditor's General Fund Personal Services Appropriation to the Auditor's General Fund Non-Personal Services Appropriation for a Consultant Agreement in Connection With the Potential Sale of the Municipal Water System; 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 to establish an appropriation in the Integrated Waste Management Fund for Integrated Waste Management Grants in order to accept \$393,672 in grant funds. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated November 17, 1995, recommending Council approve said appropriation ordinance amendments in the Integrated Waste Management Fund.

Discussion/Action: Ordinance No. 25012, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 24945 Which Appropriates Moneys in the Integrated Waste Management Fund to Establish an Appropriation for Integrated Waste Management (IWM) Grants in the Environmental Services Department in the Amount of \$393,672; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 66315, entitled: "A Resolution of the Council of the City of San José Amending Revenue Resolution No. 66026 for the Fiscal Year 1995-96 to Adjust Revenues in the Integrated Waste Management Fund", were adopted. Vote: 11-0-0-0.

- 6f(4) Approval of an ordinance amending Chapters 4.46 and 4.54 of Title 4 of the San José Municipal Code to extend the suspension of the collection of certain taxes imposed for construction within the Edenvale Incentive Zone and amending Chapter 15.16 of Title 15 of the San José Municipal Code to continue the availability of an installment payment plan for treatment plant connection fees imposed on new construction within the Edenvale Incentive Zone, effective January 1, 1996 to January 1, 2000. (Office of Economic Development)**

Documents Filed: Memorandum from Director of Economic Development, Leslie Parks, dated November 21, 1995, recommending Council approve said ordinance.

Discussion/Action: William J. Garbett spoke in opposition to the proposed action. Ordinance No. 25013, entitled: “An Ordinance of the City of San José Amending Section 4.46.039 of Chapter 4.46 and Section 4.54.037 of Chapter 4.54 of Title 4 of the San José Municipal Code to Extend the Time Period for Suspension of Collection of Taxes Imposed Under Such Chapters for Certain Construction in the Edenvale Incentive Zone; and Amending Chapter 15.16 of Title 15 of the San José Municipal Code to Extend the Time Period for the Installment Payment Plan for Treatment Plant Connection Fees Imposed on New Construction Within the Edenvale Incentive Zone”, was passed for publication. Vote: 11-0-0-0.

**6f(5) Approval of an ordinance amending Chapter 17.72 of Title 17 of the San José Municipal Code by adding a new Part 3 to restrict parking of vehicles on unpaved surfaces in front yards or corner side yards of residential properties.
(Planning, Building and Code Enforcement)
(Rules Committee referral 11/29/95)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated November 30, 1995, recommending Council approve said ordinance.

Discussion/Action: Council Member Shirakawa, Jr., asked Staff to explain the circumstances under which a permit is required to pave over front yards of residences in San Jose. Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, stated front yards of most single-family homes can be paved without City approvals or permits; therefore, the proposed ordinance will not require a permit to pave front yards. He stated some single family homes subject to an existing Planned Development Permit would require a permit adjustment to allow paving. He stated on any property, including single family homes, where grading work is needed, a grading permit or a notice of exemption from a grading permit would be required. He noted Staff will informally monitor for the next six months to one year the resulting impacts from implementation of the proposed Ordinance to evaluate whether this ordinance encourages excessive paving of residential front yards. City Attorney, Joan R. Gallo, stated the proposed ordinance relates to single family homes; multi-family dwellings, as part of a Site Development Permit, will need a permit. Duane R. Darr and William J. Garbett spoke against the proposed action. Ordinance No. 25014, entitled: “An Ordinance of the City of San José Amending Chapter 17.72 of Title 17 of the San José Municipal Code by Adding a New Part 3 to Restrict Parking of Vehicles on Unpaved Surfaces in Front Yards or Corner Side Yards of Residential Properties”, was passed for publication and Staff directed that at the PD Permit stage the elements of the agreement be implemented as negotiated by the parties. Vote: 11-0-0-0.

- 6f(6) Approval of an ordinance amending Chapter 17.10 of Title 17 of the San José Municipal Code by adding Section 17.10.250 to define Subregional Study Area and by adding Sections 17.10.300, 17.10.415, 17.10.420, and 17.10.600 to allow the alteration or construction of certain single-family residences on existing lots.
(City Attorney's Office)
(Rules Committee referral 11/29/95)**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated December 1, 1995, recommending Council approve said ordinance.

Discussion/Action: Ordinance No. 25015, entitled: "An Ordinance of the City of San José Amending Chapter 17.10 of Title 17 of the San José Municipal Code by Adding Section 17.10.250 to Define Subregional Study Area and by Adding Section 17.10.420 and Amending Sections 17.10.300, and 17.10.415 to Follow the Alteration or Construction of Certain Single Family Residences on Existing Lots", was passed for publication. Vote: 11-0-0-0.

- 6f(7) Approval of an ordinance rezoning certain real property situated on the westerly side of Senter Road, 500 feet southerly of Phelan Avenue. PDC 94-11-048.
(Planning, Building and Code Enforcement)
(Council referral 11/21/95 - Item 15a)**

Documents Filed: (1) Memorandum from the Planning Commission, dated November 30, 1995, summarizing the direction to the project developer regarding revisions to the General Development and Land Use plans. (2) Attorney Robert J. Logan, representing Sierra Lumber, Inc., dated December 4, 1995, requesting reconsideration of the Planned Development Rezoning to allow Pick-Your-Part to develop and operate an automobile dismantling and recycling facility.

Discussion/Action: Attorney Robert J. Logan, representing Sierra Lumber Company; and Roger Burch, owner of Sierra Lumber Company, requested a delay in Council adoption of the ordinance to allow for completion of the required improvements. Council Member Shirakawa, Jr., stated a delay in the project is unnecessary, as his Office will continue to work with all parties involved in the development of the facility to ensure compliance. Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, assured Council that the final Environmental Impact Report for the project was certified September 27, 1995 by the Planning Commission, that no appeals to the EIR have been received by the City, and that all mitigations in the EIR have been incorporated in the project document, including those requested by the City Council based upon recommendations by City Planning Staff and the Planning Commission. He stated City Staff has determined with regard to the environmental clearance that no new issues have been presented which would warrant reconsideration of the Report. He pointed out that all parties involved with the project can monitor the Planned Development Permit processing by the Planning Director for compliance and to insure their concerns are addressed and recommended elements implemented. Ordinance No. 25016, entitled: "Ordinance of the City of San José Rezoning Certain Real Property

Situated on the Westerly Side of Senter Road, 500 Feet Southerly of Phelan Avenue”, was passed for publication. Vote: 11-0-0-0.

END OF CONSENT CALENDAR

9b Interviews and appointment to fill Civil Service vacancy for one unexpired term ending December 1, 1997. (City Clerk)

Documents Filed: (1) Memorandum from City Clerk, Patricia L. O’Hearn, dated November 28, 1995, complying with requirements of the City Charter regarding nominations. (2) Supplemental memoranda from City Clerk, Patricia L. O’Hearn, dated December 1, 1995 and November 28, 1995, clarifying one applicant’s intent to participate in the Civil Service Commission interviews. (3) Memorandum from City Clerk, Patricia L. O’Hearn, dated November 22, 1995, submitting to Council a list of the names of the applicants selected to be interviewed for the vacancy on the Civil Service Commission. (4) Memorandum from City Attorney, Joan R. Gallo, dated November 28, 1995, highlighting major areas of known potential conflict which are disclosed by the applications submitted for the vacancy on the Civil Service Commission.

Discussion/Action: The City Council interviewed Michelle Man Thi Bui–District 10, Sharon Hightower–District 10, Elma Rosas Martinez–District 10, Gloria Meeks–District 3, and C. Jo Williams–District 2, and on the first ballot, appointed Sharon Hightower to fill the vacancy on the Civil Service Commission. Vote: 11-0-0-0.

- 9j (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 and 11/28/95 - Item 9f)

Documents Filed: (1) Memorandum from City Manager, Regina V.K. Williams, dated December 1, 1995, advising Council of the delay in distributing the Staff report because of negotiations continuing between the City and Netcom. (2) Memorandum from Director of Economic Development, Leslie Parks, dated November 29, 1995, recommending Council adopt said resolution and approve said referral.

Discussion/Action: With the use of transparencies, Director of Economic Development, Leslie Parks, presented the Staff recommendation for Council approval to provide for a long-term parking agreement with Netcom On Line Communications Services, Inc. In summarizing background information related to the parking agreement, she stated the new owners of the Horizon Center Office Complex contacted the City on October 10, 1995 requesting a long-term parking agreement for parking spaces in the City-owned Third Street Garage, for a prospective tenant, Netcom, and with expressed interest in purchasing the garage. She emphasized the benefits of Netcom's relocation to downtown San José from west San José, and that the company is one of the nation's largest and fastest growing providers of access to the Internet, and as a result of the rapid growth, needs to locate larger corporate headquarters. She stated the company has negotiated a lease for space in the Horizon Center, and that execution of that lease is pending Council approval of the parking agreement, which agreement should be concurrent with the length of the building lease between Netcom and the Horizon Center but not to exceed ten years. Director of Streets and Traffic, Wayne K. Tanda, described the allocation of parking spaces to meet Netcom's parking requirements, noted the monthly rate per space, and commented on the options available at the Third Street Garage. He pointed out the significant impact on the City employees who are located at the Horizon Center—340 City employees/City vehicles must be relocated to the Market Street/San Pedro Square Garage starting February 1, 1996—and stated the involvement of City employees stationed at the Horizon Center was solicited in the assessment process, and that during the process City employees raised operational concerns that will be fully considered by the Administration. He stated long-range solutions that address future parking needs in the downtown were pursued by the Administration and include the promotion of alternatives to single occupancy automobiles, the promotion of modified work schedules that would reduce the amount of travel required, and the development of additional parking facilities. He stated City Staff recommends the adoption of a resolution authorizing the City Manager to negotiate and execute a long-term parking agreement with Netcom for a total of 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 for a term not to exceed ten years. He recommended Council refer to the on-going Three Year Parking Plan process consideration of the sale of public parking assets. The City Council joined Mayor Hammer in acknowledging the efforts of the Departments of Streets and Traffic, and General Services, the Offices of the City Manager and the City Attorney, and the participation of the Independent Police Auditor, the Redevelopment Agency, the Parking Advisory Commission, the Santa Clara County Transportation Agency, the Municipal Employee Federation, and the Downtown Association. The City Council thanked Anita Alston, Director of Corporate Real Estate for Netcom On Line Communication Services, Inc., Robert Tomasi, Vice President of Corporate Operations, and those individuals working to fulfill the commitment to the downtown. In response to Council Member Pandori's comments on the demand and capacity of the major parking garages in the downtown area and the disposition of reserves in the Parking Fund, Wayne Tanda advised Council that the City provides approximately 1/3 of the parking spaces in the downtown; however, in terms of monthly parking spaces, the number of available spaces is diminishing. He stated the Third Street Garage, within the year, will be at capacity and approaching capacity at the Market Street/San Pedro

Square Garage; however, adequate space is available for short-term parking needs at those facilities. He stated the Parking Program Fund reserves total approximately \$2.5 million, and that the proposed fiscal plan as well as other financing mechanisms will identify funds allocated in the construction of new public parking facilities. Council Member Pandori queried the Administration on the disposition of the Consolidation Study and requested that Staff expedite distribution of the Request For Proposal (RFP) for that Study; and by fiscal year end to provide Council with a report on the fiscal issues during Budget deliberations. Council Member Fiscalini requested that the Staff report indicate whether the income from the parking can be secured by bonds. William J. Garbett spoke against the proposed action. In response to the speaker's comments, Mayor Hammer requested that the City Clerk reflect in the public record that the City of San José does not have a lease with the San José Arena for the same parking spaces. Resolution No. 66316, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute a Long-Term Parking Agreement With Netcom On-Line Communications Services, Inc. (Netcom) for Up to 450 Parking Spaces at the Third Street Garage and Up to 350 Parking Spaces at the Market Street/San Pedro Square Garage for a Term to Begin No Sooner Than February 1, 1996", was adopted with the recommendation for consideration of the sale of existing public parking assets referred to the ongoing Three-Year Parking Plan process, approved, and the development of a policy regarding monthly parking spaces referred to the Administration. Vote: 11-0-0-0.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - November 22, 1995 [Partial]

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

(1) Review of December 5 Council Agenda

The Committee recommended approval of the December 5, 1995 Council Agenda with one change.

(2) Add New Items to November 28 Amended Council Agenda

The Committee recommended nine additions to the November 28, 1995 Amended Council Agenda.

(3) The Public Record. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated November 16, 1995, summarizing the items transmitted to the Administration and those items filed with the Public Record for the period 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
 - (d) CDBG Steering Committee

7b Report of the Rules Committee - November 22, 1995 [Partial] - (Cont'd.)

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

This item was heard by Council on November 28, 1995.

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

None presented.

- (6) City Council and Rules Committee meeting schedules

None presented.

- (7) Oral communications

William Chew asked whether the categories of Redevelopment Agency funds were defined by statute or Council policy.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Powers and unanimously carried, the Rules Committee report and actions of November 22, 1995 were accepted. Vote: 11-0-0-0.

GENERAL GOVERNMENT

- 9a (1) Approval of an ordinance amending the Mobilehome Rent Ordinance to allow for the amortization of certain types of legal fees in the calculation of Net Operating Income; and**
 - (2) Adoption of a resolution approving amendments to the Mobilehome Rules and Regulations to implement the change.**
- (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated November 16, 1995, recommending Council approve said ordinance amending the Mobilehome Rent Ordinance and adopt said resolution approving those amendments to implement the change.

Discussion/Action: Jorj Tilson–Manufactured Housing Educational Trust of Santa Clara, and Christopher Rose, Chair of the Mobilehome Advisory Commission, spoke in support of the proposed action. William J. Garrett spoke in opposition to the item. Upon motion by Council Member Powers, seconded by Vice Mayor Johnson and unanimously carried, Ordinance No. 25017, entitled: “An Ordinance of the City of San José Amending Section 17.22.540 of Chapter 17.22 of Title 17 of the San José Municipal Code to Provide for the Amortization of Legal Fees as Expenses in Net Operating Income Hearings”, was passed for publication; and Resolution No. 66317, entitled: “Resolution of the Council of the City of San José Amending the Mobilehome Rent Rules and Regulations”, was adopted. Vote: 11-0-0-0.

9c PUBLIC HEARING on the denial of South Bay Disposal’s application for a Commercial Solid Waste Collection Franchise. (Environmental Services)

Documents Filed: (1) Memorandum from Director of Environmental Services, Louis N. Garcia, dated November 17, 1995, recommending Council deny the application of South Bay Disposal for a Commercial Solid Waste Collection Franchise Agreement. (2) Notice of Public Hearing on the Commercial Solid Waste Collection Franchise, dated November 20, 1995, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the denial of the application for the subject Franchise. Director of Environmental Services, Louis N. Garcia, stated South Bay Disposal has from January 1994 to June 1995 failed to comply with the reporting requirements of their Rubbish Collection Franchise Agreement for submittal of a monthly Tonnage Activity Report and a monthly Fee Remittance Report. He stated South Bay Disposal has failed to respond to numerous City Staff requests for compliance; consequently, in November 1995 Environmental Services Department completed a financial audit and determined that South Bay Disposal owes the City \$54,840 in outstanding franchise and AB939 fees, plus late charges and interest. He advised Council that since July 1, 1995 the company has collected commercial solid waste without a valid Commercial Solid Waste Franchise, has failed to respond to repeated notification of the expiration of the Rubbish Franchise, and have not applied for a new franchise agreement. In pointing out the alternatives, he stated Council may consider the option of granting South Bay Disposal a Commercial Solid Waste Franchise for one year contingent upon their agreement to adhere to a payment schedule determined and agreed upon by South Bay Disposal and Environmental Services Department, with an evaluation of the Company’s performance at the end of the one year franchise; or based upon Staff evaluation, Staff will return to Council with a recommendation to either approve or deny a standard two-year Commercial Solid Waste Franchise for South Bay Disposal. Rosalio Vasquez, one of

the owners of the business, asked Council to reconsider South Bay's application and grant the franchise. Council Member Fiscalini recommended Council grant the permit for one year, direct Staff to work with the Franchisee in determining the steps necessary to render current South Bay's account, and that Staff return to Council with a payment schedule and provisions for extending the agreement with the City. Mayor Hammer concurred with the recommendation with the modification that Staff conduct a compliance hearing in six months and report to Council the findings, and discuss with the owners of South Bay Disposal their responsibilities in complying with the terms and conditions of the Franchise Agreement. Expressing his concern for the success of South Bay Disposal, Council Member Diaz encouraged the owners to take advantage of available resources to develop an overall operating plan for the business, e.g., the Office of Economic Development for Small Businesses, the Entrepreneurship Program at the San José Development Corporation for technical assistance. Upon motion by Council Member Fiscalini, seconded by Council Member Diaz and unanimously carried, the alternate Staff recommendation to grant South Bay Disposal a Commercial Solid Waste Franchise for one year, was approved with direction to Staff to evaluate the company's performance and conduct a compliance hearing at the end of six months, with a status report to Council on the findings; and (2) that Staff develop and submit to Council on December 12, 1995 conditions on extending the agreement, including recommendations of a payment schedule. Vote: 11-0-0-0.

9d Adoption of a resolution authorizing the City Manager to negotiate an agreement with the San José Conservation Corps to administer and implement the Water Conservation Community Partnership Program for the City of San José, in an amount not to exceed \$1,800,000. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated November 17, 1995, recommending Council adopt said resolution.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and unanimously carried, Resolution No. 66318, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate an Agreement With the San José Conservation Corps to Administer and Implement the Water Conservation Community Partnership Program for the City of San José in an Amount Not to Exceed One Million Eight Hundred Thousand Dollars (\$1,800,000.00)", was adopted. Vote: 11-0-0-0.

Items 9e through 9i were heard together.

9e Adoption of a resolution:

- (1) Approving a conditional fund reservation of up to \$5,040,000 to Parkside Glen Limited Partnership for the acquisition and development of a 180-unit apartment housing project affordable to low- and very low-income families, on a 7.56 net acre site located on the south side of Hillsdale Avenue, between Pearl Avenue and Narvaez Drive.**

- (2) **Authorizing the Director of Housing to negotiate and execute all necessary documents on behalf of the City.**
- (3) **Finding that the use of 20% Housing Funds for the subject property is a benefit to the Redevelopment Project Areas in San José.**

(Housing)

Documents Filed: Memorandum from Director of Housing, Alex Sanchez, dated November 17, 1995, recommending Council adopt said resolution.

Discussion/Action: Director of Housing, Alex Sanchez, advised Council that Items 9e through 9i are conditional fund reservations for the acquisition and development of housing projects affordable to low- and very-low income households. He stated the Housing Department will be returning to Council for approval of business terms for each of the projects; however, today's approval is necessary to meet the December 11, 1995 deadline for filing the NOFA Application with the California Tax Credit Allocation Committee for Low Income Housing Tax Credits. William J. Garbett spoke against the proposed actions in Items 9e through 9i. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, Resolution No. 66319, entitled: "A Resolution of the Council of the City of San José (i) Approving a Conditional Fund Reservation of Up to \$5,040,000 to Parkside Glen Limited Partnership, for the Acquisition and Development of a 180-Unit Apartment Housing Project Affordable to Low- and Very Low-Income Families, on a 7.56 Net Acre Site Located on the South Side of Hillsdale Avenue, Between Pearl Avenue and Narvaez Drive; (ii) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents on Behalf of the City, and (iii) Finding That the Use of 20% Housing Funds for the Subject Property is a Benefit to the Redevelopment Project Areas in San José", was adopted. Vote: 11-0-0-0.

9f Adoption of a resolution:

- (1) **Approving a conditional fund reservation of up to \$3,360,000 for a permanent loan to Stonegate Apartment Housing Investors, L.P. or its assignees, for the development of an affordable 120-unit family rental housing project on a 5.37 acre site located on Renaissance Drive north of Tasman Drive.**
- (2) **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 November 17, 1995, recommending Council adopt said resolution.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, Resolution No. 66320, entitled: "A Resolution of the Council of the City of San José (i) Approving a Conditional Fund Reservation of Up to \$3.36 Million to Stonegate Apartment Housing Investors, Limited Partnership, for the Permanent Financing of a 120-Unit Apartment Housing Project

Affordable to Very Low-Income Families, at Renaissance and Tasman Drive; and (ii) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents on Behalf of the City”, was adopted. Vote: 11-0-0-0.

9g

Adoption of a resolution:

- (1) Approving a conditional fund reservation for up to \$3,600,000 for a permanent loan to Villa Savannah Housing Investors, L.P., or its assignees, for a 132-unit multi-family rental housing project, affordable to very-low income households, on 5.38 acres located at the northwest corner of Renaissance Drive and Tasman Drive.**
- (2) Authorizing the Director of Housing to negotiate and execute all necessary documents on behalf of the City.**

(Housing)

Documents Filed: (1) Supplemental memorandum from Director of Housing, Alex Sanchez, dated November 30, 1995, advising Council of the intent of the borrowing entity to substitute the name “Villa Pacifica Housing Investors, L.P.”, with “Villa Savannah Housing Investors, L.P.”. (2) Memorandum from Director of Housing, Alex Sanchez, dated November 17, 1995, recommending Council adopt said resolution.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, Resolution No. 66321, entitled: “A Resolution of the Council of the City of San José (I) Approving a Conditional Fund Reservation of Up to \$3.6 Million to Villa Savannah Housing Investors, Limited Partnership, for the Permanent Financing of a 132-Unit Apartment Housing Project Affordable to Very Low-Income Families, at Renaissance and Tasman Drive; and (ii) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents on Behalf of the City”, was adopted. Vote: 11-0-0-0.

9h

Adoption of a resolution:

- (1) Approving an additional fund reservation up to \$1,700,000, for a total development loan amount of up to \$11,598,000, to Midtown Housing Partners or its designated partnership for the Midtown Family and Midtown Senior affordable housing projects located on the north side of Auzerais Avenue, between Meridian Avenue and Race Street.**
- (2) 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 November 21, 1995, recommending Council adopt said resolution.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, Resolution No. 66322, entitled: “A Resolution of the Council of the City of San José (i) Approving an Additional Fund

Reservation of Up to \$1.7 Million, for a Total Development Loan Amount of Up to \$11.598 Million, to Midtown Housing Partners, or Its Designated Partnership, for the Midtown Family and Midtown Senior Affordable Housing Projects Located on the North Side of Auzerais Avenue, Between Meridian Avenue and Race Street and (ii) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents on Behalf of the City”, was adopted. Vote: 11-0-0-0.

9i Adoption of a resolution:

(1) Approving a conditional fund reservation of up to \$809,000 for CORE Development, or its designated partnership, for a 66-unit senior rental housing project, affordable to low and very-low income households, on a 1.3 acre site located at the southeast corner of Lick Avenue and Humboldt Street.

(2) Authorizing the Director of Housing to negotiate and execute all necessary documents on behalf of the City.

(Housing)

Documents Filed: (1) Supplemental memorandum from Director of Housing, Alex Sanchez, dated December 1, 1995, recommending Council approve an increase in the City’s fund reservation up to \$809,000 for the construction phase of the project with the condition that only up to \$576,000 remain available for permanent financing. (2) Memorandum from Director of Housing, Alex Sanchez, dated November 22, 1995, recommending adoption of said resolution.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, Resolution No. 66323, entitled: “A Resolution of the Council of the City of San José (I) Approving a Conditional Fund Reservation of Up to \$809,000 for Core Development, or Its Designated Partnership, for the Development of a 66-Unit Senior Rental Housing Project Affordable to Low- and Very-Low Income Households, on a 1.3 Acre Site Located at the Southeast Corner of Lick Avenue and Humboldt Street and (ii) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents on Behalf of the City”, was adopted. Vote: 11-0-0-0.

9k (1) Approval of a fifteen (15) month pilot project to establish a local sobering station at a total cost not to exceed \$827,181, for the period December 1, 1995 to February 28, 1997.

(2) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the County of Santa Clara/Department of Corrections for the operation of a local sobering station facility.

CEQA: Exempt. (City Manager's Office)

(Rules Committee referral 11/29/95)

Documents Filed: Memorandum from Assistant to the City Manager, Cynthia Bojorquez-Serda, dated November 22, 1995, recommending Council approve said pilot project and adopt said resolution.

Discussion/Action: William J. Garbett spoke in opposition to the proposal. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson and unanimously carried, the fifteen-month pilot project to establish a local sobering station, was approved, and Resolution No. 66324, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute an Agreement With the County of Santa Clara for the Operation of a Local Sobering Station Facility in a Total Amount Not to Exceed \$827,181.00, for the Period of December 1, 1995 to February 28, 1997", was adopted. Vote: 11-0-0-0.

FISCAL AFFAIRS

10b PUBLIC HEARING and adoption of a resolution confirming the Report of Unpaid Recycle Plus Bills and direction to place a Special Assessment against the property secured by a lien with the County Recorder. (Finance)

Documents Filed: (1) Supplemental memorandum from Director of Finance, John V. Guthrie, dated November 29, 1995, summarizing actions taken on two accounts during Administrative Hearings conducted to review issues related to the Notice of Intent to Lien. (2) Memorandum from Director of Finance, John V. Guthrie, dated November 17, 1995, recommending Council adopt said resolution. (3) Affidavit of Mailing of a notice of delinquency and public hearing, according to Section 9.10.1200 of the San José Municipal Code, dated November 29, 1995. (4) Notice of Intent to Lien, dated November 17, 1995, mailed to each lien candidate by the Finance Department, Utility Billing Services.

Discussion/Action: Mayor Hammer opened the public hearing to consider the subject report. William J. Garbett requested an exemption from the lien and collection process. Upon motion by Council Member Woody, seconded by Council Member Shirakawa, Jr., and unanimously carried, the public hearing was closed, no exemptions were granted, and Resolution No. 66325, entitled: "A Resolution of the Council of the City of San José Confirming the Report of Unpaid Recycle Plus Bills and Direction to Place a Special Assessment Lien Against Property", was adopted. Vote: 11-0-0-0.

ORAL COMMUNICATIONS

- (1) Phillip M. Wren suggested Council allow the exhibition of messages in lights on the roof of City Hall in keeping with the holiday season.
- (2) Cathy S. Brandhorst spoke on allegations of harassment at the National Guard Armory.

RECESS/RECONVENE

Following Oral Communications, Council recessed at 4:20 p.m. and reconvened at 7:10 p.m., Council Chambers, City Hall.

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

Absent: Council Members: Fiscalini.

City Clerk, Patricia L. O'Hearn, read the request for continuance of the application. Upon motion by Council Member Fernandes, seconded by Council Member Powers and unanimously carried, the below noted continuance was granted. Vote: 10-0-1-0. Absent: Fiscalini.

- 15b PUBLIC HEARING ON CONVENTIONAL REZONING of the property located on the northeasterly corner of Monterey Road and Rancho Drive, from C-2 Commercial to C-3 Commercial, to allow the commercial uses on 2.16 gross acres (El Rancho Properties, Owner; The L. G. Group, Developer). CEQA: ND. Director of Planning recommends denial. Planning Commission recommends denial (7-0-0).**

C 94-12-053 - District 7

(Continued from 11/21/95 - Item 15b)

Documents Filed: Letter from Gerry De Young, President of Ruth and Going, Inc., dated November 28, 1995, requesting a continuance of the subject rezoning to February 6, 1996 to allow the applicant to meet with community representatives opposed to the proposed rezoning.

Discussion/Action: This item was continued to February 6, 1996.

CEREMONIAL ITEMS

- 5a Swearing in of Vanessa Ortega is City-wide representative to the Youth Commission. (Mayor)**
(Deferred from 11/21/95 - Item 5b)

Documents Filed: Memorandum from City Clerk, Patricia L. O'Hearn, dated November 28, 1995, submitting the name of the Youth Commissioner to be sworn in during the evening session of the December 5th Council meeting.

Discussion/Action: City Clerk, Patricia L. O'Hearn, administered the Oath of Office to Vanessa Ortega, City-wide representative to the Youth Commission, who was appointed to fill the unexpired term ending October 31, 1996.

**5b Presentation of commendation to members of the Pop Warner Oak Grove Football/Cheer on winning the Pacific Northwest Regionals. (Powers)
(Rules Committee referral 11/29/95)**

Documents Filed: None.

Discussion/Action: Mayor Hammer joined Council Member Powers in recognizing the accomplishments of the members of the Pop Warner Oak Grove Football and Cheerleader Teams, in congratulating the youth participating in the regional competitions at the Pop Warner National Championships scheduled in Orlando, Florida, and in presenting commendations to team representatives from Santa Teresa Bulldog Junior Midgets; Rams Junior PeeWee Cheerleaders; Rough Rider Midget Cheerleaders; and the Renegade Junior Midget Football Team.

FISCAL AFFAIRS

**10a PUBLIC HEARING on the Report of Seasonal and Recurrent Weeds and Refuse and adoption of a resolution confirming the report and directing the abatement of nuisances resulting from the weeds and refuse. CEQA: Exempt.
(Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated November 28, 1995, recommending Council conduct a public hearing to hear and rule on any objections to the Report of Seasonal and Recurrent Weeds and Refuse and the Weed Abatement Master List.

Discussion/Action: Mayor Hammer opened the public hearing to consider the Report. There was no discussion from the Floor. Upon motion by Council Member Powers, seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed and Resolution No. 66326, entitled: "A Resolution of the Council of the City of San José Overruling Objections to the Abatement of Nuisances Consisting of Seasonal and Recurrent Weeds and Refuse, and Ordering the Santa Clara County Fire Marshal to Abate Said Nuisances", was adopted. Vote: 10-0-1-0. Absent: Fiscalini.

PUBLIC HEARINGS

15a PUBLIC HEARING ON APPEAL OF THE PLANNING COMMISSION'S DECISION to approve a Conditional Use Permit for a project located at the southeast corner of Berryessa Road and Interstate 680 Freeway on a 0.57 gross acre site in the C-1 Commercial Zoning District, for the renewal of a previously

approved permit to allow a 35-foot tall monopole for cellular telephone transmission (Imwalle Stigner, Owner; GTE Mobilenet, Inc., Developer). CEQA: Exempt. Staff recommends upholding Planning Commission's decision.
CP 95-08-051 - District 4

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated November 17, 1995, recommending Council uphold the appeal of the Planning Commission decision and approve the Conditional Use Permit with the modified condition. (2) Declaration of Mailing of the Notice of Public Hearing to project applicants and owners of parcels of land within 300' of the subject property, dated September 12, 1995. (3) Public Hearing Notice to consider said appeal, and Proof of Publication of the Public Hearing Notice submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the appeal of the Planning Commission's decision to approve a Conditional Use Permit for said project. Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, stated the applicant is appealing the Planning Commission's addition of conditions which require the applicant to submit an analysis prior to renewal of the Permit that assesses potential alternate sites and any changes in technology that would eliminate the need for the facility, reduce its height or otherwise achieve the objectives of the Council Policy on Monopoles and Cellular Telephone Facilities. He stated the Planning Staff is recommending approval of the Permit with the original conditions that require an analysis of changes in technology that may reduce the height of the monopole prior to renewal of the Permit, but that does not require a reassessment of alternative site. Derek Empey of Matthews Land Company, representing GTE Mobilnet, Inc., property developer, objected to any condition that would require an existing development facility, approved by the City, to undergo additional alternative site analysis and possible relocation, as such a requirement would place an undue burden on the applicant. He requested that Council consider the appeal with respect to the original intent of the provisions of Council Policy 6-20, and concur with Staff recommendations to modify the condition to eliminate the requirement for future site alternative analysis. As a result of the speaker's comments, Planning Director Schoennauer advised Council that the Planning Commission has scheduled a series of study sessions on the issue of monopoles and cellular telephone facilities, and has solicited participation by the industry. Council Member Fernandes expressed support for the condition to install smaller and less unobtrusive monopoles, but objected to the requirement for alternate sites to be studied. She recommended Council approve the Permit with the condition that, at the time of renewal, changes in technology be considered toward improving the monopoles. Upon motion by Council Member Fernandes, seconded by Council Member Shirakawa, Jr., and unanimously carried, the public hearing was closed, the appeal of the Planning Commission's decision was upheld, and Resolution No. 66327, entitled: "Resolution of the City Council of the City of San José Granting a Conditional Use Permit, Subject to Conditions, to Use Certain Real Property Described Herein for the Purpose of Renewing a Previously Approved Permit to Allow a 35-Foot Tall

Monopole For Cellular Telephone Transmission”, was adopted. Vote: 10-0-1-0. Absent: Fiscalini.

- 15c PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southwesterly corner of Zanker Road and Bering Drive, from A(PD) to A(PD), to allow expansion of an existing hotel on 3.64 gross acres (San José Summerfield Associates, L.P., Owner/Developer). CEQA: Resolution No. 60197. Director of Planning recommends approval. Planning Commission recommends approval (7-0-0).
PDC 95-09-045 - District 4**

Documents Filed: (1) Memorandum from the Planning Commission, dated November 17, 1995, recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC 95-09-045, dated October 23, 1995, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the Planned Development Rezoning of the subject property. There was no discussion from the Floor. Upon motion by Council Member Fernandes, seconded by Council Member Diaz and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25018, entitled: “Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southwest Corner of Zanker Road and Bering Drive”, was passed for publication. Vote: 10-0-1-0. Absent: Fiscalini.

- 15d PUBLIC HEARING ON CONFORMING REZONING of the property located on the east side of South First Street, approximately 175 feet northerly of East Virginia Street, from M-1 Manufacturing Zoning District to C-2 Commercial Zoning District, to allow general commercial uses on 0.29 gross acres (The Hoang & Thinh Thi Le, Owner/Developer). CEQA: ND. Director of Planning recommends approval. No Planning Commission action required.
C 95-08-042 - District 3**

Documents Filed: (1) Department of Planning, Building and Code Enforcement Staff Report for C-95-08-042, approved for recommendation November 16, 1995, recommending approval of the proposed Conforming Rezoning. (2) Public Hearing Notice to consider a change in Zoning for C95-08-042, dated November 14, 1995, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the Conforming Rezoning of the subject property. There was no discussion from the Floor. Upon motion by Council Member Pandori, seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed, and Ordinance No. 25019, entitled: “Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of South First Street, 175 Feet Northerly of East Virginia Street”, was passed for publication. Vote: 10-0-1-0. Absent: Fiscalini.

- 15e **PUBLIC HEARING ON CONFORMING REZONING of the property located on Forest Avenue, at DiSalvo Avenue, from A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District, to allow an increase of the maximum height for buildings in Area D of the O'Connor Hospital site, from 40' to 45', on a 21.87 acre site (O'Connor Hospital, Owner/Developer). CEQA: Resolution No. 65039. Director of Planning recommends approval. No Planning Commission action required.**
PDC 95-11-050 - District 6

Documents Filed: (1) Department of Planning, Building and Code Enforcement Staff Report for PDC95-11-050, approved for recommendation November 20, 1995, recommending approval of the proposed rezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC95-11-050, dated November 14, 1995, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the Conforming Rezoning of the subject property. Cary Fox, representing O'Connor Hospital, spoke in favor of the proposed rezoning. Upon motion by Vice Mayor Johnson, seconded by Council Member Dando and unanimously carried, the public hearing was closed and Ordinance No. 25020, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on Forest Avenue at DiSalvo Avenue", was passed for publication. Vote: 10-0-1-0. Absent: Fiscali.

RECESS/RECONVENE

The City Council adjourned to the General Plan Hearings at 7:25 p.m. and reconvened at 9:50 p.m. to consider the following Oral Communications.

ORAL COMMUNICATIONS

- (1) Approximately 18 individuals, including the following, addressed Council on issues related to San José Firefighters: John Crane, Santa Clara County Black Firefighters Association; James Sweet; Tony Alexander, President, San José Branch of NAACP; Aminah Jahi, Member, Executive Committee of NAACP; Walter Wilson, First Vice President, San José Branch of NAACP; Gail Ortega; Hewitt Joyner, Jr., representing African American Municipal Employees Association; Millard Hampton, Exodus News; Gayle Tiller, representing South Bay Coalition for Affirmative Action; John Combs, Santa Clara County Black Firefighters Association; Thressa Walker; Ron McPherson; Jacqueline C. Simon, JCS Business Development Consultant Group; and Billie Wachter.

ORAL COMMUNICATIONS

- (2) David S. Wall addressed Council on and distributed information pertaining to questionable management issues.

ADJOURNMENT

The Council of the City of San José adjourned at 10:55 p.m. to meet again in Joint Session with the Redevelopment Agency Board on Thursday, December 7, 1995, 1:30 p.m., Council Chambers, and then to convene in Closed Session immediately following the Redevelopment Agency Board meeting for the purpose of discussing potential litigation. The meeting was adjourned in memory of Laverne Johnson, father of Nancy Johnson, Deputy Director of Public Works; in memory of Mary Aguilar, grandmother of Mary Jo Rosales, City Manager's Office; and in memory of Theresa (Guerra) Riolo and Ann Guerra, long-time residents of San José.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK