

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, FEBRUARY 27, 1996

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, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: Pandori.

Upon motion unanimously adopted, Council recessed to a Closed Session at 9:35 a.m. in Room 600 for the purpose of (A) conferring with Legal Counsel on three (3) matters on anticipated litigation regarding significant exposure to litigation pursuant to subdivision (b) of Section 54956.9 of the Government Code; and (B) pursuant to Government Code Section 54957.6, to confer with Labor Negotiator, City Negotiator City Manager designee Darrell Dearborn, on matters related to the San José Police Officers' Association and International Association of Firefighters Employee Organizations, and with City Negotiator, City Manager designee Mark Linder, on matters related to Operating Engineers, Local 3, Employee Organization.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:45 a.m. and reconvened at 1:35 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 Reverend Dave Sawkins, South Valley Christian Church, delivered the invocation. (District 2)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

ORDERS OF THE DAY

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

CEREMONIAL ITEMS

- 5a Presentation of commendation and award honoring the Outstanding Employee for February, 1996 to Tracy Williams, Typist Clerk II, Office of Economic Development. (City Manager's Office)
(Rules Committee referral 2/21/96)**

Documents Filed: None.

Discussion/Action: Joined by Mayor Hammer and the Director of Economic Development Leslie Parks, City Manager Regina Williams introduced the honoree and her daughter Leslie, her husband Steve, her sister Paula, and her parents Paul and Karen Bryant, and presented to Tracy the award and a plaque, which will be displayed in the lobby of City Hall. Mayor Hammer presented to Tracy the commendation which exemplifies the excellence and pride in her performance as an employee of the City of San José.

The City Council joined Council Member Fernandes in welcoming a delegation of nine economic specialists from throughout Europe—Bulgaria, France, Germany, Ireland, Italy, Slovak Republic, Turkey, Ukraine, and the United Kingdom—touring the United States to examine the impact of productivity, competitiveness and innovation on US economic growth, and participating in the World Forum of Silicon Valley, hosted by the Silicon Valley International Visitors Program. The delegation was asked to stand and be recognized.

Council Member Fiscalini left Council Chambers at this point in the meeting.

CONSENT CALENDAR

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

Minutes for Approval

- 6a(1) Regular Meeting of January 30, 1996**

Documents Filed: Minutes of January 30, 1996.

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

Ordinances for Final Adoption

6b(1) ORD. NO. 25042 - Grants a Commercial Solid Waste Collection Franchise to Fantastic Building Service. (Environmental Services)

Documents Filed: Proof of publication of the title of Ordinance No. 25042 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25042 adopted. Vote: 7-0-1-3. Absent: Fiscalini. Disqualified: Dando, Woody, Hammer, due to their absence at the February 13, 1996 public hearing.

Public Hearings Set by Council

6c(1) Adoption of a resolution setting a public hearing on April 2, 1996 at 7:00 p.m. to approve the National Affordable Housing Act Consolidated Plan. (Housing)

Documents Filed: Memorandum from Director of Housing, Alex Sanchez, dated February 9, 1996, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 66447, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing to Approve the City's National Affordable Housing Act Consolidated Plan", was adopted. Vote: 10-0-1-0. Absent: Fiscalini.

Contracts/Agreements

6e(1) Adoption of a resolution authorizing the Director of Aviation to execute an amendment to Avigation Easement 84-01 for property located at 2770-2800 De La Cruz Boulevard, Santa Clara, to correct the elevation restrictions recorded with the original easement. (Airport)

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated February 9, 1996, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed amendment. Resolution No. 66448, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Aviation to Execute An Amendment to Avigation Easement With ATP Associates, L.P., to Make a Technical Correction to the Description of the Easement", was adopted. Vote: 10-0-1-0. Absent: Fiscalini.

- 6e(2) Approval of a second amendment to the agreement with Will Gehr for technical services for yard trimmings market development, expanding the scope of work, extending the term of the agreement by nine (9) months from June 30, 1996 to March 31, 1997 and increasing the compensation by \$20,000, from \$39,239 to \$59,239.
(Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated February 7, 1996, recommending Council approve the amendment to said agreement.

Discussion/Action: The second amendment to the agreement with Will Gehr was approved and execution of the amendment authorized. Vote: 10-0-1-0. Absent: Fiscalini.

- 6e(3) Approval of first amendment to agreement with Callan Associates, Inc., extending the term to February 28, 1999, providing for a retainer fee of \$76,000 per year for ongoing consultant services including investment manager performance evaluation, manager search, and manager structure analysis services, and providing for additional consultant service on an as-needed basis.
(Federated Retirement Board)**

Documents Filed: None.

Discussion/Action: This item was deferred to March 19, 1996.

- 6e(4) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1995-96 #17, 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 February 9, 1996, recommending award of 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. 17 for FY 1994-95 was approved and execution of the purchase orders authorized. Vote: 10-0-1-0. Absent: Fiscalini.

- 6e(5) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the County of Santa Clara to provide a nutrition and services program for senior citizens for the period July 1, 1995 to June 30, 1996, resulting in reimbursement to the City for actual costs not to exceed \$520,872.**

(Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from the Director of Parks, Recreation and Neighborhood Services, Ellis E. Mitchell, dated February 12, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66449, entitled: "A Resolution of the Council of the City of San José Approving An Agreement With the County of Santa Clara for the Senior Nutrition Program to Reimburse the City for Its Costs in An Amount Not to Exceed \$520,872", was adopted. Vote: 10-0-1-0. Absent: Fiscalini.

- 6e(6) Approval of the first amended and restated Parkland Agreement for Tentative Map PT94-11-084, Tract Nos. 8742, 8743, 8744 and 8745 with Shea/Gibson Speno III to provide neighborhood park improvements to the site located at the northeasterly side of future Chelsea Crossing. CEQA: Resolution No. 65660. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 9, 1996, recommending Council approve the amended and restated Agreement.

Discussion/Action: The first amended and restated Parkland Agreement with Shea/Gibson Speno III was approved and execution of the amendment authorized. Vote: 10-0-1-0. Absent: Fiscalini.

- 6e(7) Approval of an agreement for consultant services for a strategic plan for the Civic Operations Master Plan Project for a term from date of execution to December 31, 1996 in an amount to be negotiated. (Public Works)**

Documents Filed: None.

Discussion/Action: This item was deferred to March 5, 1996.

- 6e(8) (a) Approval of an agreement with Southern Pacific Transportation Company for the construction of improvements on three (3) parcels owned by Southern Pacific Transportation Company (SPTC).**
(b) Authorization for the Director of Public Works to accept deeds from Southern Pacific for portions of Branham Lane, Bluefield Drive and Capitol Expressway.
CEQA: ND. (Planning, Building and Code Enforcement)
(Rules Committee referral 2/21/96)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated February 21, 1996, recommending Council approve said agreement and authorize the Director of Public Works to accept the deeds.

Discussion/Action: William J. Garbett spoke against the proposed action. The agreement with Southern Pacific Transportation Company was approved and execution of the agreement and acceptance of the deeds authorized. Vote: 10-0-1-0. Absent: Fiscalini.

Routine Legislation

6f(1) Adoption of appropriation ordinance amendments to shift funds from the Council General Non-Personal appropriation to various other appropriations for the Mayor and City Council. (City Manager's Office)

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated February 7, 1996, recommending Council approve the appropriation ordinance amendments in the General Fund to increase the appropriations for Personal Services in specified amounts.

Discussion/Action: Ordinance No. 25052, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 24945 to Transfer a Total Amount of \$225,437 From the Council's General Non-Personal Expenses Appropriation to Various Other Appropriations For the Mayor and the City Council; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 10-0-1-0. Absent: Fiscalini.

6f(2) Adoption of a resolution authorizing an adjustment to the Cycle V San José B.E.S.T. Allocation Plan. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from the Director of Parks, Recreation and Neighborhood Services, Ellis E. Mitchell, dated February 9, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66450, entitled: "A Resolution of the Council of the City of San José to Adjust the Spending Allocations in the San José B.E.S.T. Cycle V Allocation Plan", was adopted. Vote: 10-0-1-0. Absent: Fiscalini.

**6f(3) Approval of an ordinance providing a specified time period for Police and Fire Retirement Plan members to purchase prior Federated Retirement System service credit. (Police and Fire Retirement Board)
(Rules Committee referral 2/21/96)**

Documents Filed: None.

Discussion/Action: City Manager, Regina V.K. Williams stated the Administration would not recommend that the Council approve the request by the Police and Fire Retirement Board to amend the Municipal Code to permit certain members to buy back time they formerly accrued in the Federated Retirement Plan, and would recommend to refer the issue to current negotiations between the City and the Police and Fire Unions over a successor tripartite Memorandum Of Agreement for retirement benefits. She stated the current provisions in the Municipal Code would allow the employees to participate in the reciprocity; however, the individuals who met the requirement were given the opportunity to transfer funds within ninety (90) days of the date of membership in the Police and Fire Plan, and elected to not transfer their service. James J. Tomaino, President of San José Police Officers' Association, urged Council to accept the proposal and approve the amendment to the Municipal Code providing for the purchase of prior service time in the Federated System, thereby eliminating the need for any further negotiation on the issue. Representing the affected employees, Carm Grande stated the proposal is not subject to the meet and confer process, and urged Council to approve the request as submitted by the Board Council Member Pandori stated the proposed buy-back is a reasonable exception to the meet-and-confer process and should be considered by the City Council; and because of the number of employees affected and the minimal financial impact to the City, recommended approval of the recommendation from the Police and Fire Retirement Board. Mayor Hammer expressed opposition to the recommendation and stated the proposal should be referred to the ongoing negotiation of retirement issues. In response to Council Member Dando's inquiry regarding the financial implications to the City, should Council approve the proposed action, Retirement Administrator, Edward F. Overton, stated the estimated cost to the City in the form of increased contributions based on the members specified would be \$7,216 annually, or approximately \$159,000 over a 22-year amortization period. Upon motion by Council Member Pandori, seconded by Council Member Dando and carried, the recommendation to approve the request by the Police and Fire Retirement Board to amend the Municipal Code to permit certain members to buy back time previously served in the Federated Retirement System, failed. Vote: 5-5-1-0. Noes: Diaz, Fernandes, Johnson, Shirakawa, Jr.; Hammer. Absent: Fiscalini. Mayor Hammer advised the Council that the item would be tabled temporarily and considered upon Council Member Fiscalini's return to the Council meeting. (This item was tabled temporarily. See later entry for Council action.)

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b(1) Report of the Rules Committee - February 14, 1996

Documents Filed: Rules Committee report of February 14, 1996.

- (a) Review February 27 Council Agenda

The Committee recommended approval of the February 27, 1996 Council Agenda.

7b(1) Report of the Rules Committee - February 14, 1996 - (Cont'd.)

- (b) Add New Items to February 20 Amended Council Agenda

The Committee recommended three additions to the February 20, 1996 Amended Council Agenda.

- (c) The Public Record. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated February 8, 1996, listing the items transmitted to the Administration and those items filed for the Public Record for the period January 31 - February 6, 1996. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated February 13, 1996, summarizing the actions taken on those items transmitted to the Administration and those items filed for the Public Record during the period January 31 - February 6, 1996.

The Committee referred to the Housing and Community Services Committee the request from San José Acorn to Council for passage of a resolution opposing the issuance of any new liquor licenses at the intersection of King and Story Roads, and directed the City Clerk to notify the ACORN group when the issue will be heard, and recommended approval of the public record.

- (d) Approve use of Council General Funds for Council Members Dando and Powers to travel to National League of Cities meeting, March, 1996. Attachments: (1) Memorandum from Council Member Dando, submitting a request for authorization to use Council General Funds to attend the National League of Cities Congressional City Conference. (2) Memorandum from Council Member Powers, dated February 7, 1996, requesting authorization to travel to Washington, D.C. for the purpose of attending the National League of Cities Conference. (3) Memorandum from City Clerk, Patricia L. O'Hearn, dated February 14, 1996, submitting information in accordance with the provisions of City Council Policy 9-5 related to requests to use Council General Funds.

The Committee approved the use of Council General Funds by Council Members Powers and Dando to attend the National League of Cities Conference in Washington, D.C. in March, 1996.

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

- (1) Recommendation to update the City's Auto Wrecking Ordinance. Attachment: Memorandum from Council Member Shirakawa, Jr., dated January 29, 1996, recommending (a) that the Rules Committee direct the Administration and City Attorney to modernize the Auto Wrecking Ordinance in terms of current regulations and laws; (b) that auto repair shops and auto body and paint shops be studied in conjunction with the auto wrecking businesses; (c) that all building, fire, and environmental codes and laws pertaining to these businesses be examined in modernizing this ordinance; (d) that the City permit process be modified so proactive measures will assist these businesses in conforming to current regulations prior to the commencement of the business; and (e) that this modernized ordinance be retroactive to include all existing businesses in these categories.

The Committee referred Council Member Shirakawa, Jr.'s recommendation to the Administration and subsequently to the Transportation, Development and Environment Committee and directed the City Clerk to notify all parties when the issue is scheduled to be heard.

- (f) City Council and Rules Committee Meeting Schedules

None presented.

- (g) Oral Communications

None presented.

- (h) Adjournment

The meeting adjourned at 3:15 p.m.

Discussion/Action: Albert Drost addressed Council on Item 7b(1)(b). Upon motion by Council Member Fernandes, seconded by Council Member Diaz and unanimously carried, the Rules Committee report and actions of February 14, 1996 were accepted. Vote: 10-0-1-0. Absent: Fiscalini.

7b(2) Report of the Rules Committee - February 21, 1996 - (Partial)

Documents Filed: Rules Committee report of February 21, 1996 (Partial)

- (d) Approve recommended City positions for March ballot measures

- (1) Prop 192 Seismic Retrofit Bond Act of 1996
Recommended City Position: SUPPORT

- (8) Prop 199 Limits on Mobilehome Rent Control.
Low-Income Rental Assistance
Recommended City Position: OPPOSE
- (12) Prop 203 Bonds: Public Education Facilities
Recommended City Position: SUPPORT

The Committee approved the recommended City positions for the Statewide Ballot Propositions set for the March 26, 1996 Primary Election.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fernandes and unanimously carried, the partial Rules Committee report and actions of February 21, 1996 were accepted. Vote: 10-0-1-0. Absent: Fiscalini.

7d Report of the Finance Committee - February 14, 1996

Documents Filed: Finance Committee report of February 14, 1996.

- (1) Oral Petitions

Bill Chew requested that the Finance Committee review the City's posture and policies regarding the new telecommunications bill that was pending for signature.

- (2) Report on Changes in State Government Code Regulating Investments. Attachment: Memorandum from Director of Finance, John V. Guthrie, dated February 5, 1996, submitting for informational purposes only the changes in State Government Code Regulating Investments.

The Committee accepted the report.

- (3) Investment Committee Minutes for December 14, 1995. Attachment: Memorandum from Director of Finance, John V. Guthrie, dated January 24, 1996, transmitting the minutes of the Investment Committee meeting of December 14, 1995.

The Committee accepted the minutes.

- (4) Monthly Investment Report for December, 1995. Attachment: December 1995 Investment Report, prepared by Finance Department - Treasury Division.

The Committee accepted the report.

- (5) Police Department Staffing. Attachments: (1) Memorandum from Chief of Police, Louis A. Cobarruviaz, dated February 9, 1996, transmitting

replacement page #7 of the Staffing Report as a result of the meeting with the Police Officers Association (POA). (2) Memorandum from Chief of Police, Louis A. Cobarruviaz, dated January 29, 1996, recommending acceptance of the first Police Staffing Report related to the Sworn Recruitment and Training Program for the period July - December 1995. (3) Memorandum from City Manager, Regina V.K. Williams, dated January 30, 1996, providing Council with additional information and clarification on the status of the Police Department's fleet of marked vehicles (patrol cars). (4) Memorandum from City Manager, Regina V.K. Williams, dated January 25, 1996, responding to the recent recommendations made to the Finance Committee with respect to directing the Administration to determine the number of police vehicles needed to meet current and projected demand based on staffing levels and that the City create a vehicle maintenance reserve. (5) Memorandum from Council Members Dando and Pandori, dated January 23, 1996, recommending (a) that the Finance Committee direct the Administration to determine the number of police vehicles needed to meet the current and projected demand based on staffing levels; and (b) that the City create a vehicle maintenance reserve. (6) Memorandum from Council Members Dando and Pandori, dated February 6, 1996, recommending that the Finance direct City Administration (a) to immediately put 10 additional police patrol vehicles from the reserve fleet into regular services; (b) to order all the equipment necessary to equip another 46 cars and put an additional 20 patrol cars from the reserve fleet into regular service by April 30, 1996; (c) to return to Council in 30 days with a vehicle and equipment purchasing plan to meet the needs of an authorized police force of 1281 officers, and a reserve replacement fleet of at least 10% of the total patrol vehicle fleet; and (d) to have all 30 of the new patrol cars, due to arrive in June, equipped and put in regular service by July 31, 1996. (7) Memorandum from Assistant City Manager, Debra Figone, dated January 19, 1996, recommending the Police Staffing Report be deferred to the first Finance Committee meeting in February 1996, to allow adequate time for the Police Officers Association (POA) to review the final report.

The Committee accepted the report.

- (6) Status Report on Development Plan, Financing Options and RFP Process for Payroll/Human Resources Project. Attachment: Memorandum from Director of Finance John V. Guthrie, Acting Director of Information Systems Ellis M. Jones, Jr., and Director of Human Resources Nona Tobin, dated February 7, 1996, recommending Council (a) refer the first year's funding of \$2,564,000 to the budget process for the 1996-97 Fiscal Year Budget; (b) adopt a reimbursement resolution to allow the reimbursement of allowable project expenditures incurred prior to a bond sale; and (c) direct City Staff to proceed with a two-step Request For Proposal (RFP).

The Committee accepted the status report.

- (7) Committee Schedule

The next meeting is scheduled for Wednesday, February 28, 1996 at 9:30 a.m.

(8) Adjournment

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

Discussion/Action: Upon motion by Council Member Powers, seconded by Council Member Fernandes and unanimously carried, the Finance Committee report and actions of February 14, 1996 were accepted. Vote: 10-0-1-0. Absent: Fiscalini.

Council Member Fiscalini returned to the meeting during discussion of Item 9a.

GENERAL GOVERNMENT

- 9a**
- (1) Reaffirm the City's Retail Strategy to reduce sales tax leakage through facilitating the location of high-volume retailers in accordance with current land use policies and appropriate mitigation of adverse physical impacts.**
 - (2) Continue to provide and strengthen small business programs and services offered by the City and the Redevelopment Agency which better enable small businesses to succeed in a competitive retail market place.**
(Economic Development)
(Deferred from 2/13/96 - Item 9a)

Documents Filed: (1) Memorandum from Council Member Powers, dated February 26, 1996, recommending Council (a) defer action on Item 9a; (b) convene a Stakeholders Group consisting of Council Member Powers, Bob Brownstein, Leslie Parks, Joan Gallo, Amy Dean, John Neece, Ron Lind, a representative of the small business community and a representative of shopping center owners and managers; (c) direct the Stakeholders Group to study further [1] the impacts of big box stores on small businesses, [2] the impact of big box store on the wage and benefits standards at local retailers; and [3] ways cities throughout the region can work cooperatively to expand their sales tax base while mitigating negative impacts of big box retail; and (d) direct the Stakeholders Group to develop an amendment to the City's current Retail Strategy that balances the needs of the City with the needs of retail workers, small business owners, commercial property owners, and residents. (2) Memorandum from City Manager, Regina V.K. Williams, dated February 23, 1996, recommending Council defer any action on this matter at the meeting and allow staff time to convene a meeting of all stakeholders. (3) Memorandum from Director of Economic Development, Leslie Parks, dated January 26, 1996, recommending Council reaffirm the City's Retail Strategy to reduce sales tax leakage through facilitating the location of high-volume retailers in accordance with current land use policies and appropriate mitigation of adverse physical impacts, and continue to provide and strengthen small business programs and services offered by the City and the Redevelopment Agency which better

enable small businesses to succeed in a competitive retail market place. (4) Document entitled *Economic Analysis of the Impact of High Volume Retail of San José*, dated January 1996 and prepared by Sedway Kotin Mouchly Group. (5) Correspondence to Council Members from various City residents addressing the positive and negative aspects of “big box” operations in San José.

Discussion/Action: Director of Economic Development, Leslie Parks, summarized the report and reviewed implications of developing “Big Box” retail and the impact on San José businesses and the City’s General Fund. She stated City Staff reviewed the City’s policy for approving “Big Box” retail development and developed a report which described retail trends, assessed the amount of sales tax revenue leakage the City incurs, examined the impacts of high volume retail on traditional retailers, provided an overview of the legal issues concerning land use restrictions and incentives the City may provide, and provided recommendations for guidelines to be used in evaluating and approving these developments. She stated a study of the impact of high volume retail businesses was completed by three consultants, which determined that San José experiences substantial retail sales tax leakage ranging from approximately \$4.0 million to \$7.5 million in retail sales tax revenues annually—despite the strong contribution of retail sales tax to the General Fund. In reviewing the summary and analysis of findings of the study, she noted the importance of Sales Tax Revenues to the General Fund and commented on the general retail trends nationally and at the local level for the past decade. She stated Sales and Use Tax is San Jose’s largest source of General Fund revenues and represents approximately 20 percent of total revenues or more than \$80 million annually. She pointed out the negative impacts on small and traditional retailers as a result of high-volume retailers operating in adjacent cities or neighboring jurisdictions, and underscored the significance of retail sector jobs as an important component of the City’s quality of life. Regarding policy priorities, she stated the findings of the study indicate that San José should generally continue maximizing opportunities for the location of high-volume retailers in the City while minimizing as much as possible their potential impacts on existing retailers; however, the City must also pursue opportunities for general alternative sources of sales and use tax such as expanding business-to-business sales tax, given the scarcity of desirable and available sites for “Big Box” retailers. She reviewed each of the recommended actions in the report noting that the recommendations were formulated with the goal of providing Council with a balanced yet pro-active approach for sustaining retail sales tax for the City’s General Fund, as well as guidelines for evaluating the impacts and benefits of high-volume retailers. Noting Staff recommendation that Council reaffirm the City’s Retail Strategy to reduce sales tax leakage through facilitating the location of high-volume retailers in accordance with current land use policies and appropriate mitigation, she identified each element of the strategy and recommended that the City continue to provide and strengthen small business programs and services offered by the City and the Agency which better enable small businesses to succeed in a competitive retail market place. Regarding cost implications, she stated there are no costs associated with the recommendations of the Administration. She stated Staff recommends that Council defer action on these recommendations to allow time for a stakeholders’ meeting as requested by South Bay Labor Council and representatives from the retail and development community, and that the concerns of all stakeholders be reported back

to Council. City Manager Regina V.K. Williams, commented on the information contained in the February 23, 1996 supplemental memorandum referencing the Box Retail Study and the Labor Council recommendations (a) that no public tax breaks or subsidies be given for big-box or warehouse retail, (b) that prior to approval of any proposed big-box project that the City conduct an analysis of the projected economic effect and use that information to inform the City Council, and (c) that San José recruit retailers willing to pay prevailing wages in both construction and operation of the facility. She stated the Administration, in response to the Labor Council's concerns regarding criteria for tax breaks and recruitment of retailers, proposes to address those concerns by adopting a "Community Employment Standards Policy" which sets forth the expectation that employers pay fair wages and provide adequate benefits, grievance procedures, and have inclusionary employment practices, and that any retailer, including "Big Box" retailers would be required to submit a written "Economic Benefits Assessment" before the City considers granting financial assistance or subsidy for the project. She stated City Administration believes a firm commitment to not recruit certain businesses is not in the overall best interest of the City nor does the Administration consider an economic review during the land use process to be appropriate. She stated the report has been shared with the Labor Council which has not had sufficient time to react to the initial response but is in general agreement with the suggested next steps. Ron Lind, representing Unified Food and Commercial Workers Local 428 spoke in support of establishing a stakeholders group to review the Policy and to take a look at the impact on workers and existing businesses, since the current retail strategy and the consultant report fail to adequately address these areas; and suggested developing a regional strategy which could be utilized as a workable model for other cities. Tim K. Fitzgerald, representing The Green Pantry, addressed the shortfalls and fallacies embodied in the proposal. Toby Rogers, Program Director, Working Partnership of USA, urged Council to defer action on Item 9a, to allow for the formation of a working group to resolve outstanding concerns, to develop an amendment to the City's current retail strategy that balances the need of the City's General Fund with the interest of workers in the community, and to identify imaginative ways to enable San José to work with other cities throughout the region to develop uniform big box policies to reduce sales tax leakage and to improve workplace standards. Ed Foglia, member of Working Partnerships of USA, suggested the development of better ways to foster economic development for the City of San José, underscored the importance of using investments in a pragmatic manner to provide positive returns on all community services, and suggested that the City encourage true economic development by forming business partnerships with the community. Amy Dean, Business Manager/Chief Executive Officer, South Bay AFL-CIO Labor Council, concurred with Staff recommendation with the request that the Stakeholders Group should be chaired by an elected official, and that the Group report back to Council with an amendment to the Policy that would address a balanced approach in terms of mitigating the impact "Big Box" retail has on small business and area wage and benefit standards. Council Member Powers recommended that Council (a) defer action on Item 9a; (b) convene a Stakeholders Group consisting of Council Member Powers, Bob Brownstein, Leslie Parks, Joan Gallo, Amy Dean, John Neece, Ron Lind, a representative of the small business community and a representative of shopping center owners and managers; (c) direct the Stakeholders Group to study further [1] the impacts

of big box stores on small businesses, [2] the impact of big box stores on the wage and benefits standards at local retailers; and [3] ways in which cities throughout the region can work cooperatively to expand their sales tax base while mitigating negative impacts of big box retail; and (d) direct the Stakeholders Group to develop an amendment to the City's current Retail Strategy that balances the needs of the City with the needs of retail workers, small business owners, commercial property owners, and residents. Speaking in support of the recommendation, Mayor Hammer agreed to the existence of the group for only 60 to 90 days for the purpose of reviewing the concerns raised by the speakers, identifying mechanisms to balance the City's need to be competitive and to expand the tax base, to explore with other jurisdictions some consensus on a uniform big box policy, and to aggressively pursue the development of big box retail in San Jose. Council Member Fernandes emphasized the need for the City to focus on developing existing strip commercial space, vacant retail space, and vacant shopping centers throughout the City. Council Member Fiscalini supported the City Manager's recommendation and opposed the appointment of an elected official to serve as a member of the Stakeholders Group, since the membership should be broadly representative of the community. Council Member Dando requested that the Stakeholders Group include representation from the Chambers of Commerce. Council Member Woody expressed concern for the small businesses which will be negatively impacted by Big Box retailers and the communities adjacent to failed power centers. She reiterated direction to Staff to review the economic strategies for the City of San José, in light of current retail trends. Vice Mayor Johnson endorsed the concept of the "Community Employment Standards Policy" and as part of Council approval, and requested that the Administration be directed to proceed with development of the Policy and to forward the completed Policy to Council for consideration. She queried Staff on the City's plans to address the impact of internet and mail order shopping on retail businesses in San José, and suggested that Staff pursue legislation at the State and National level to address sales tax leakage from that segment of the economy. Council Member Pandori requested that the Stakeholders Group include representation from the Downtown Association. Noting competition with neighboring jurisdictions for sales tax revenues, he stated the broader and long-term issue is the future viability of the City's strip malls, neighborhood and larger shopping centers. He stated the City must have a strategy that is focused on maintaining the viability of these areas; otherwise, whatever revenues are attracted by power centers developed on the parameters of San José and Morgan Hill or Berryessa and the City of Milpitas will be consumed by the cost of rehabilitating neighborhood stripmalls throughout the City. He reiterated the need for an aggressive economic strategy which will provide direction to the City of San José for the next retail trend. Upon motion by Council Member Powers, seconded by Council Member Diaz and unanimously carried, the recommendations as contained in the February 26, 1996 memorandum were approved as amended to include representation from the Chambers of Commerce and the Downtown Association, with the Administration directed to work on the "Community Employment Standard" policy concept and report back to Council for consideration; and that the Stakeholders Group report back to Council within 60 to 90 days on the issues raised by the speakers and the Council Members, e.g., economic strategy and trend for the City of San José, economic partnerships, strip commercial development, and impact of internet and mail order shopping on retail businesses in San José. Vote: 11-0-0-0.

**6f(3) Approval of an ordinance providing a specified time period for Police and Fire Retirement Plan members to purchase prior Federated Retirement System service credit. (Police and Fire Retirement Board)
(Rules Committee referral 2/21/96)**

Discussion/Action: Mayor Hammer advised Council that prior Council action on this item resulted in less than a majority vote (5-5-1-0) to accept or reject the recommendation; therefore, this item, previously tabled, will be considered at this time. Council Member Fiscalini referenced the staff report and queried the Administration on the orientation process and whether the affected employees were adequately informed of their options regarding their service time in the Federated Plan. Noting the absence of Staff to answer the questions, Mayor Hammer suggested that the item should be tabled until later in the meeting. (This item was tabled temporarily. See later entry for Council action.)

**9b Discussion and consideration of Council action to either repeal Ordinance No. 25016 or to submit the Ordinance to the voters at the November Municipal Election or a Special Election. (City Attorney's Office/City Clerk)
[Deferred from 1/30/96 - Item 9d(2)]**

Documents Filed: None.

Discussion/Action: This item was deferred to April 23, 1996.

**9c (1) Approval of the proposed guidelines for the use of Workers' Compensation Fund reserves and the process to be used to identify and adopt priorities for expenditures of the liquidated reserves.
(2) Approval of a policy for the transfer of the Workers' Compensation Fund and the conversion to the "pay as you go" method to be implemented on July 1, 1996.
[Finance Committee referral 1/24/96 - Item 7d(6)]
(Deferred from 2/06/96 - Item 9c)**

Documents Filed: Memorandum from City Manager, Regina V.K. Williams, dated February 23, 1996, recommending Council adopt the guidelines and considerations for funding of one-time projects.

Discussion/Action: City Manager, Regina V.K. Williams, advised Council of the actions already taken regarding Workers Compensation and General Liability Funds, after which she focused her comments on the guidelines and funds available for transfer as of June 30, 1996. She stated the City's current practice is to pay claims for workers' compensation and general liability from special funds; which in fiscal year 1995-96,

\$10.1 million was budgeted for current year workers compensation claims payments, and approximately \$35 million held in reserve for future liabilities. She stated the slowdown in the State and local economies over the last several years has resulted in the reexamination of methods used to fund workers' compensation and general liability programs; therefore, the Administration recommends changing the current policy of funding current year and project liabilities to a "pay as you go" method to be implemented on July 1, 1996, and adopting priorities for expenditures of the liquidated reserves. She stated the proposed guidelines for use of Workers' Compensation Reserve were approved by the City Council on February 6, 1996 as Item 7d(6) in the Finance Committee report of January 24, 1996; that \$12 million of the current reserve was approved to establish a catastrophic loss reserve in the General Fund to provide for extraordinary Workers' Compensation and General Liability Program losses; and that to date the Administration has obtained quotes for Specific Excess Policy Insurance coverage from insurance carriers. She stated the Administration has identified six guidelines, four of which apply to both larger projects and projects under \$1 million, and the remaining two guidelines are more specific to larger projects; however, the use of these funds for hundreds of small but important projects would dilute the impact of the funds and provide less tangible results than funding a few larger projects. She stated the guidelines as presented to the Finance Committee recommend (1) setting a \$1 million minimum expenditure level to ensure funds are spent on projects for which funding might not otherwise be able to compete for General Fund resources; (2) consideration of projects such as deferred maintenance of City parks, community centers, and recreational facilities throughout the community; (3) funding for projects which either leverage private sector dollars or result in ongoing revenue sources to the City, and (4) the consideration of funds for employee programs which focus on accident prevention and employee safety and mitigate future claim costs and training opportunities which maximize the use of existing programs. She stated the estimated General Fund portion is \$37 million, less the \$12 million set-aside catastrophic reserve, \$2.2 million allocated towards smaller projects, \$23 million for major projects, resulting in the estimated net amount of \$25 million available for one-time projects. She suggested that Council Members submit their proposals to the City Manager's and Mayor's Budget Offices to accommodate adequate coordination and response. Council Member Fiscalini recommended approval of the recommendations; and speaking in support of the recommendation, Council Members Diaz and Fernandes recommended that Council ensure funding flexibility exists for the smaller projects, and to increase from 8% to 10% the net estimate available funds for transfer allocated towards smaller projects. Donald S. Macrae, representing San José Retired Employees Association, spoke in support of the transfer and urged Council to consider allocating some of the reserves to absorb some of the retirees' health care premiums. In response to comments of the speaker, Mayor Hammer stated the Administration proposes to use some of the "one time funds" to reduce the amount of the City's insolvent "health plan run-out". William J. Garbett and Albert Drost spoke in opposition to the proposed action. Upon motion by Council Member Fiscalini, seconded by Council Member Fernandes and unanimously carried, the proposed guidelines and considerations for the funding of one-time projects were approved with (a) the flexibility that 10% of the net estimate available funds for transfer to be allocated towards smaller projects; (b) the actual transfer of the Workers' Compensation and the conversion method to be implemented

on July 1, 1996; (c) and with Council Members to submit proposals to the City Manager's Budget Office and the Mayor's Budget Office. Vote: 11-0-0-0.

RECESS/RECONVENE

The Redevelopment Agency Board convened at 3:52 p.m. to consider the following item in a joint session.

- 11a Adoption of resolutions authorizing the Executive Director and City Manager to execute an amendment to the Affordability Restriction Housing Agreement for the Renaissance Housing Project in the Rincon De Los Esteros Redevelopment Project Area to modify the requirements with regard to the Restricted Units. (City Attorney)
(Rules Committee referral 2/21/96)**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated February 23, 1996, recommending the City Council and Agency Board approve an amendment to the Affordability Restriction Housing Agreement for the Renaissance Housing Project in Rincon de los Esteros Redevelopment Program Area.

Discussion/Action: Council Member Fernandes recommended the Council/Board accept the recommendation of the City Attorney with additional direction to work with the Housing and Planning Departments to come back to Council in one week with a final report detailing the terms by which the permits will be issued to implement Phase II. She suggested that if the final terms cannot be completed within one week, that the City Council/Agency Board delegate to the City Manager authority to negotiate and execute the terms of the contract. Upon motion by Council Member Fernandes, seconded by Council Member Powers and unanimously carried, the City Attorney's recommendation that the Council/Board approve the amendment to the Affordability Restriction Housing Agreement for the Renaissance Housing Project in the Rincon de los Esteros Redevelopment Project Area to modify the requirements with regard to the Restricted Units to allow the immediate construction of five units to be used as models, was approved; Resolution No. 66451, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute An Amendment to the Affordability Restriction Housing Agreement For the Renaissance Housing Project in the Rincon De Los Esteros Redevelopment Project Area", was adopted; Redevelopment Agency Board Resolution No. 4058 authorizing the Executive Director to execute an amendment to the Affordability Restriction Housing Agreement for the Renaissance Housing Project in the Rincon De Los Esteros Redevelopment Project Area to modify the requirements with regard to the Restricted Units, was adopted; and the City Attorney directed to work with the Departments of Housing and Planning to come back to Council on March 5, 1996 with a report detailing the terms by which the remaining permits will be issued to proceed with Phase II; and secondly, the City Manager authorized to negotiate and execute the final terms, if the final contract cannot be completed within one week. Vote: 11-0-0-0.

The Redevelopment Agency Board portion of the meeting was adjourned at 3:58 p.m.

9e Report on bids and award of contract for the Hedding Street Bridge Replacement and Extension over the Guadalupe River Project to the low bidder, RGW Construction, Inc., in the amount of \$4,549,366 and approval of a contingency in the amount of \$455,000. CEQA: ND. (Public Works)

Documents Filed: (1) Supplemental memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 22, 1996, recommending Council approve award of said contract to the low bidder, RGW Construction, Inc. (2) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 9, 1996, recommending Council approve award of said contract to the low bidder.

Discussion/Action: Director of Public Works, Ralph A. Qualls, Jr., stated the City Council approved the Public Works' recommendation to close Hedding Street during construction with direction to Staff to review various options to accelerate the construction schedule which included closure of the bridge and language in the contract documents to provide incentives for completing the project on schedule. He stated project specifications include strict requirements for both vehicular and pedestrian traffic detour during the closure of Hedding Street between Ruff Drive and Guadalupe Parkway, and will be limited to a period of four calendar months (120 days). To ensure reopening of the area to through traffic would occur no later than September 15, 1996, he pointed out that the Contractor will be subject to liquidated damages in the amount of \$10,000 per day if the requirements are not met. William J. Garbett spoke against the proposed action. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson and unanimously carried, the award of contract to the low bidder, RGW Construction, Inc. was approved and execution of the contract authorized.
Vote: 11-0-0-0.

Council Member Pandori left the meeting at this time.

**6f(3) Approval of an ordinance providing a specified time period for Police and Fire Retirement Plan members to purchase prior Federated Retirement System service credit. (Police and Fire Retirement Board)
(Rules Committee referral 2/21/96)**

Discussion/Action: This item, tabled earlier in the meeting, was heard at this time. Council Member Fiscalini reiterated his concerns regarding orientation of the five employees transferring from Federated service to positions in the Police or Fire Departments, and whether ample information was made available for them to make informed decisions to withdraw their funds. Retirement Administrator, Edward F. Overton, stated the process begins with the *Prior Service Credit Notification* which is given at orientation by Benefits Staff to all Police and Fire personnel who indicate that

they are transferring from the Federated to the Police and Fire Retirement Plan; when completed, the form is returned to the Retirement Office; staff initiates a letter, determines the amount needed to be repaid, and sends out the *Option for Retirement Makeup Form*, which is then added to the individual's personnel record. He stated that if the individual elects to buy back service time, then the form is forwarded to the Payroll Department. Council Member Fiscalini requested that the Police and Fire Retirement Board consider reimbursing the City for any costs attendant to the change. He stated the letter from the President of the San José Police Officers' Association should be sent to meet-and-confer process for further negotiation. Given unresolved concerns of the City Council, Mayor Hammer queried the Retirement Administrator on the next meeting of the Retirement Board and suggested that the subject matter be added to the Agenda of that meeting for discussion by the Board. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the consideration of the request to reimburse the City for any charges incurred by the City in the purchase of prior Federated Retirement System service credit for certain members, was referred to the March 7, 1996 meeting of the Police and Fire Retirement Board with direction to the Administration to report back to Council on March 26, 1996; the letter from James J. Tomaino, President of the San José Police Officers' Association referred to the meet and confer process; and this item was deferred to March 26, 1996. Vote: 10-0-1-0. Absent: Pandori.

9d PUBLIC HEARING and adoption of a resolution on the denial of South Bay Disposal's application for a Commercial Solid Waste Collection Franchise. (Environmental Services)

Documents Filed: (1) Memorandum from Council Member Shirakawa, Jr., dated February 25, 1996, recommending Council deny the application submitted by South Bay Disposal, and that the Administration prohibit the current operation of South Bay Disposal on this site. (2) Memorandum from Director of Environmental Services, Louis N. Garcia, dated February 9, 1996, recommending Council deny the application of South Bay Disposal for a Commercial Solid Waste Collection Franchise Agreement. (3) Notice of Public Hearing on the Commercial Solid Waste Collection Franchise for South Bay Disposal, dated February 5, 1996, and Proof of Publication of the Notice of Public Hearing submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the denial of South Bay Disposal's application for the Franchise. As an update, Council Member Shirakawa, Jr., stated City Staff, in December 1995, recommended that Council deny South Bay Disposal's application for a commercial solid waste franchise; and as an alternative, Staff indicated that Council might consider granting a one-year agreement, upon the company's payment of past due fees. He stated Staff was directed to work with South Bay to develop a payment schedule for past due AB 939 and Franchise fees, and to return to Council with a status report on the progress after the first six months of the franchise agreement. He pointed out that Staff developed the payment plan based on what the company claimed it could afford on a monthly basis; when asked to confirm the payment plan was acceptable, South Bay disputed the amount of fees owed

to the City for 1994 and requested time to prepare a revised total of gross revenues. He stated City Staff granted the extension; however, South Bay failed to meet the deadline, and on January 25, 1996, Staff received a Chapter 13 bankruptcy notification from South Bay Disposal. He stated South Bay Disposal does not qualify for a commercial solid waste collection franchise based on the company's noncompliance with franchise requirements and lack of financial responsibility, and recommended that Council approve Staff recommendation to deny the application. Business owner, Rosalio C. Vasquez addressed Council on various aspects of the subject matter. Upon motion by Council Member Shirakawa, Jr., seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed and Resolution No. 66452, entitled: "A Resolution of the Council of the City of San José Denying the Application of South Bay Disposal for a Commercial Solid Waste Collection Franchise", was adopted. Vote: 10-0-1-0. Absent: Pandori.

**9f Presentation of recommended changes to the City of San José campaign disclosure regulations by Mr. Alex Stuart, Chair, Campaign Finance Review and Ethics Board. (Campaign Finance Review and Ethics Board/City Clerk)
(Deferred from 2/20/96 - Item 9c)**

Documents Filed: None.

Discussion/Action: This item was deferred to March 19, 1996.

Council Member Diquisto left the meeting at 4:50 p.m.

**9g Overview and update on the Gang Prevention Task Force. (Mayor)
(Deferred from 2/20/96 - Item 9h)**

Documents Filed: Memorandum from Mayor Hammer, dated February 21, 1996, providing an update on the Gang Prevention Task Force activities during 1995, and transmitting a report on the San José B.E.S.T. Cycle V Allocation Plan for Fiscal Year 1995-96.

Discussion/Action: In providing Council with a comprehensive update on the activities, Gang Policy Manager, Dick De La Rosa, stated the Mayor's Gang Prevention Task Force developed an inter-agency model with representatives from city government, county government, law enforcement agencies, school districts, and community-based agencies, for the purpose of reducing the number of gang-related crimes and the level of gang membership and activity in the City of San José to mobilize the community into action to ensure that youth do not join gangs and to identify resources, developing strategies, and designing inter-agency programs that will improve services to youth and their families who are at-risk of gang involvement. He summarized the major milestones and noted accomplishments in each component in the Program; namely, the San José BEST Program, the Weed and Seed Program and the Weed and Seed

Highlights for Fiscal Year 1994-95, the Girls and Young Women's Task Force, the Village Project, Safe Alternatives and Violence Education Program (SAVE), the Campaign Clean Slate Program, the Anti-Graffiti Program, the Youth Protection Curfew Program, the Gang Diversion Programs at Parks, Recreation and Neighborhood Services (PRNS), pending decision on Gang Abatement, and the San José Vision 2000. He stated the government agencies, law enforcement agencies, school, and community-based organizations have demonstrated that the collaborative model designed by the Mayor's Gang Prevention Task force is a successful model, and that the services delivered have aided in the effort to keep San José safe. Task Force Members Cora Tomalinas, Father Mateo, and Gail Ortega spoke in favor of continuing gang prevention activities in the City of San José. Upon motion by Vice Mayor Johnson, seconded by Council Member Powers and unanimously carried, the 1995 Gang Prevention Task Force update was accepted with expressed thanks to the Gang Prevention Task Force Membership and the Administration for an outstanding job. Vote: 9-0-2-0. Absent: Diquisto, Pandori.

ADJOURNMENT

The Council of the City of San José was adjourned at 5:00 p.m. in memory of Edwin Normandy, Senior Analyst in Parks, Recreation and Neighborhood Services and Robert De La Fuente, brother of Sara De La Fuente, of the Office of Affirmative Action/Contract Compliance.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK