

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MARCH 19, 1996

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

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

Absent: Council Members: Dando (excused), Pandori (excused).

Upon motion unanimously adopted, Council recessed to a Closed Session at 9:35 a.m. in Room 600 to (A) confer with Legal Counsel pertaining to existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider the cases of the *City of San José v. All Persons Interested*; and *Montoto v. City of San José, et al.*; (B) to confer with Legal Counsel regarding anticipated litigation and to discuss two matters pertaining to the initiation of litigation pursuant to subdivision (c) of Section 54956.9 of the Government Code; and (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6 related to the following: City Negotiator–City Manager designee Lynn Borland, International Brotherhood of Electrical Workers Employee Organization; City Negotiator–City Manager designee Mark Linder, Operating Engineers, Local 3, Employee Organization; City Negotiator–City Manager designee Darrell Dearborn, San José Police Officers’ Association and International Association of Firefighters Employee Organizations; and City Negotiator–City Manager designee Nona Tobin, Confidential Employees Organization.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:55 a.m. and reconvened at 1:40 p.m. in Council Chambers, City Hall.

Present: Council Members: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori (arrived at 2:00 p.m.), Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: None.

INVOCATION

Marie Huang, Junior at Leland High School, member of Student Advisory Committee for “Kids Voting Silicon Valley”, made a presentation on the challenges confronting youth in the 20th century”. (District 3)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Dando, seconded by Vice Mayor Johnson and unanimously carried, the Orders of the Day, deferring Council action on Item 9d to a date to be determined, and the Amended Agenda were approved. Vote: 10-0-1-0. Absent: Pandori.

CEREMONIAL ITEMS

5a Presentation of a plaque to James R. Daniels for two years and eight months service on the Arts Commission. (Mayor)

Documents Filed: None.

Discussion/Action: The plaque for Jim Daniels will be mailed, as he was unable to attend the ceremony.

5b Presentation of a commendation to Leland High School Decathlon team and San José Unified School District for winning every event in the 1996 Santa Clara County Academic Decathlon competition. (Dando)

Documents Filed: None.

Discussion/Action: Joining Mayor Hammer at the podium, Council Member Dando presented the commendation to Brian Kane—Teacher/Coach, and congratulated Team Members Saurabh Prakash, Rahul Iyer, Rollin Hu, Josh Dammeier, David Perry, Ryan Sit, Lydia Hernandez, Jocelyn Hsu, and John Harnagel on winning all 10 events of the 1996 competition.

Council Member Pandori arrived at this point in the meeting.

CONSENT CALENDAR

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

Minutes for Approval

6a(1) Regular Meeting of February 13, 1996

Documents Filed: Minutes of February 13, 1996.

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

6a(2) Joint City Council/Redevelopment Agency Meeting of February 15, 1996

Documents Filed: Minutes of the joint meeting of February 15, 1996.

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

6a(3) Adjourned regular meeting of February 15, 1996

Documents Filed: Minutes of the regular meeting of February 15, 1996.

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

Ordinances for Final Adoption

6b(1) ORD. NO. 25054 - Amends Ordinance No. 20822 as amended, allowing Air Products and Chemicals, Inc. and/or any wholly-owned subsidiary thereof to increase the size of nitrogen gas pipelines allowed under the nonexclusive franchise for conveyance of nitrogen gas through pipelines under, along and across public streets in the City of San José, as the same now or may hereafter exist, and adjusting the franchise fees for the increased size of pipes.

Documents Filed: Proof of publication of the title of Ordinance No. 25054 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25054 was adopted. Vote: 11-0-0-0.

Contracts/Agreements

6e(1) 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)

[Deferred from 2/27/96 - Item 6e(3)]

Documents Filed: None.

Discussion/Action: This item was deferred to April 2, 1996.

- 6e(2) (a) **Adoption of a resolution consenting to the assignment of Trindel America Corporation's obligation under the Airport Parking Administration and Revenue Control System (PARCS) agreement to Elsydel, Inc.**
- (b) **Approval of a seventh amendment to the PARCS agreement with Elsydel, Inc. to provide for an upgrade of the central processing unit and certain software modifications at a cost not to exceed \$64,635.**

CEQA: Exempt. (Airport)

Documents Filed: Memorandum from Director of General Services Ellis M. Jones, Jr., and Director of Aviation Ralph G. Tonseth, dated March 1, 1996, recommending Council adopt said resolution and approve said amendment to the PARCS agreement.

Discussion/Action: Resolution No. 66471, entitled: "A Resolution of the Council of the City of San José Consenting to the Assignment to Elsydel, Inc., of Trindel America Corporation's Obligations Under the Parking Administration and Revenue Control System Agreement, Inc. and Authorizing the City Clerk to Execute Documents Necessary to Evidence City's Consent", was adopted. Vote: 11-0-0-0.

- 6e(3) **Adoption of a resolution authorizing the City Manager to negotiate and execute a grant agreement with Vida Nueva, Inc. in the amount of \$3,000 to be used for San José youths to participate in the Fifth Annual Barrio Alcohol/Drugs Conference to be held on April 25, 1996 at the Elmwood Correctional Facility. (City Manager's Office)**

Documents Filed: Memorandum from Assistant to the City Manager, Nina S. Grayson, dated March 1, 1996, recommending Council approve said grant agreement.

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

Discussion/Action: Resolution No. 66472, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute a Grant Agreement With Vida Nueva, Inc., for the Barrio Alcohol/Drugs Conference", was adopted. Vote: 11-0-0-0.

- 6e(4) **Approval of agreements for design artwork for the Tech Museum of Innovation Public Art Project with:**

- (a) **Brad J. Goldberg, Inc. in the amount of \$61,000.**
- (b) **Beliz Brother in the amount of \$30,000.**
- (c) **Joseph McShane in the amount of \$30,000.**
- (Conventions, Arts and Entertainment)**

Documents Filed: Memorandum from Director of Conventions, Arts and Entertainment, Ellen Oppenheim, dated March 1, 1996, recommending Council approve said agreements.

Discussion/Action: The agreements with Brad Goldberg, Inc., Beliz Brother, and Joseph McShane were approved and execution of the agreements authorized. Vote: 11-0-0-0.

6e(5) Approval of an amendment to the agreement with Dennis Church for consultant services, and increasing the compensation by \$30,000, from \$45,000 to \$75,000. (Environmental Services)

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated March 8, 1996, recommending Council approve said amendment to the agreement with Dennis Church.

Discussion/Action: In response to Council Member Diquisto's request to defer this item, City Manager Williams pointed out that a consultant services agreement exists between the City of San José and Dennis Church, and that deferring this item would result in a lapse in service. She stated the scope of services, compensation, and terms and conditions contained in the current agreement have been fulfilled by the consultant; however, the need for additional analyses has resulted in the proposed amendment to the contract. Director of Environmental Services, Louis N. Garcia, stated the study of the potential sale of the Municipal Water System is scheduled for completion in late April 1996; regardless of the outcome of the sale study, a Business Plan is required and that consultant services are required in the preparation of that Business Plan to bring closure to the sale feasibility study. He summarized background information regarding the sale of the Municipal Water System, and requested approval of the amendment to the agreement increasing the compensation by \$30,000. The amendment to the consultant services agreement with Dennis Church, increasing compensation by \$30,000, from \$45,000 to \$75,000, was approved and execution of the amendment authorized. Vote: 10-1-0-0. Noes: Diquisto.

6e(6) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1995-96 #19, and authorization for the Director of General Services to execute the purchase orders. (General Services)

Documents Filed: (1) Memorandum from Director of General Services, Ellis M. Jones Jr., dated March 1, 1996, recommending Council award said open purchase orders list, and authorize the Director of General Services to execute the purchase orders. (2) Mem-orandum from the Treatment Plant Advisory Committee, dated March 15, 1996, recommending approval of the award of open purchase orders.

Discussion/Action: The award of open purchase orders List No. 19 for FY 1995-96 was approved and execution of the purchase orders authorized. Vote: 11-0-0-0.

- 6e (7) Adoption of a resolution authorizing the City Manager to negotiate and execute a grant agreement in the amount of \$91,075 from the Housing and Homeless Fund to InnVision. (Housing)**

Documents Filed: None.

Discussion/Action: This item was deferred to March 26, 1996.

- 6e(8) Report on bids and award of contract for the Fruitdale Avenue Improvement Project from Race Street to Delbert Way to the low bidder, O’Grady Paving, Inc., in the amount of \$87,361.20. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 1, 1996, recommending Council award said contract to the low bidder.

Discussion/Action: The award of contract to O’Grady Paving, Inc., was approved and execution of the contract authorized. Vote: 11-0-0-0.

- 6e(9) Adoption of a resolution authorizing the City Manager to execute a first amendment to the office space lease with Donald and Lone Carr, dba Civic Center Tower, for 6,700 square feet of office space on the fourth floor of 675 North First Street, at a rental rate of \$10,355 per month for the first year. (Public Works/Human Resources)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 1, 1996, recommending Council approve the first amendment to said office space lease.

Discussion/Action: Resolution No. 66473, entitled: “A Resolution of the Council of the City of San José Authorizing the City Manager to Execute An Amendment to the Office Space Lease With Donald and Lone Carr, dba Civic Center Tower for 1,200 Additional Square Feet of Office Space, for a Total of 6,700 Square Feet, On the Fourth Floor at 675 North First Street, at a Total Rental Rate of \$10,355 Per Month for the First Year”, was adopted. Vote: 11-0-0-0.

- 6e(10) Approval of an employment agreement with Vincent Cantore. (Fernandes)**

Documents Filed: None.

Discussion/Action: The employment agreement with Vincent Cantore was approved and execution of the agreement authorized. Vote: 11-0-0-0.

Routine Legislation

- 6f(1) Approval of an ordinance amending Chapter 1.15 of Title 1 of the San José Municipal Code to clarify the applicability of the Administrative Citations Process and to provide for review of Hearing Officer decisions by the Municipal Court. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated March 4, 1996, recommending Council approve said ordinance.

Discussion/Action: Ordinance No. 25055, entitled: "An Ordinance of the City of San José Amending Chapter 1.15 of Title 1 of the San José Municipal Code by Amending Section 1.15.010 to Clarify the Applicability of the Administrative Citations Process and By Adding Section 1.15.125 to Set Forth a Review Procedure by Municipal Court of Administrative Decisions of a Hearing Officer", was passed for publication. Vote: 11-0-0-0.

- 6f(2) Adoption of appropriation ordinance and revenue resolution amendments in the City-side Redevelopment Capital Fund in the amount of \$152,930. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated March 1, 1996, recommending Council approve said appropriation ordinance and revenue resolution amendments in the City-Side Redevelopment Capital Fund.

Discussion/Action: Ordinance No. 25056, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 24945 Which Appropriates Moneys in the Services for Redevelopment Capital Projects Fund in the Total Amount of \$152,930, to Establish Appropriations for the Repertory Theatre Code Compliance Project in the Amount of \$7,500, and for The Alameda Sidewalk Improvements Project in the Amount of \$145,430; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted and Resolution No. 66474, 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 Services for Redevelopment Capital Projects Fund", was adopted. Vote: 11-0-0-0.

- 6f(3) Adoption of a resolution certifying for purposes of the Economic Development Administration that:**

- (a) City of San José's Revolving Loan Fund (RLF) Plan is consistent with and supportive of the area's current economic adjustment strategy.**
- (b) RLF is being operated in accordance with the policies and procedures contained in the RLF Plan, and the loan portfolio meets the standards contained therein.**

(Economic Development)

Documents Filed: Memorandum from Director of Economic Development, Leslie Parks, dated March 1, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66475, entitled: "A Resolution of the Council of the City of San José Certifying That the City's Revolving Loan Fund is Consistent With and Supportive of the Area's Current Economic Adjustment Strategy and That the Revolving Loan Fund is Being Operated in Accordance With Certain Policies and Procedure", was adopted. Vote: 11-0-0-0.

6f(4) Adoption of a resolution amending the records retention schedules for City records maintained by the Department of Human Resources. (Human Resources)

Documents Filed: Memorandum from Director of Human Resources, Nona Tobin, dated February 28, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66476, entitled: "A Resolution of the Council of the City of San José Setting Retention Schedules for City Records in the Human Resources Department and Approving the Destruction of Such Records Upon the Expiration of Periods in the Retention Schedule", was adopted. Vote: 11-0-0-0.

6f(5) Adoption of a resolution authorizing the City Manager to submit a grant application to the Lila Wallace-Reader's Digest Fund for a three (3) year Adult Literacy Program Grant in the amount of \$250,000, to accept the grant if awarded and to execute all related documents. (Library)

Documents Filed: Memorandum from City Librarian, James H. Fish, dated March 1, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66477, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit An Application to the Lila Wallace-Reader's Digest Fund for a Three-Year Adult Literacy Program Grant in An Amount Not to Exceed \$250,000, to Accept the Grant If Awarded, and to Execute All Related Documents", was adopted. Vote: 11-0-0-0.

6f(6) Approval of a Deferred Annexation Agreement (Lands of Matos) for a 0.37 gross acre zoned R1-8 in the County (APN 612-26-008) located on the northerly side of Nob Hill Drive approximately 400 feet easterly of Fleming Avenue, and authorization for the City Clerk to forward the agreement to County staff for recordation. (Planning, Building and Code Enforcement)

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated March 1, 1996, recommending Council

authorize the City Clerk to execute and forward said agreement to the County of Santa Clara for recordation.

Discussion/Action: The Deferred Annexation Agreement for the Lands of Matos was approved and execution and recordation of the agreement authorized. Vote: 11-0-0-0.

- 6f(7) Adoption of a resolution accepting the irrevocable commitment of private funding for the full construction of a fire station and other fire station improvements within the Evergreen area as required by the Fire and Housing Incentive Zone. CEQA: Resolution No. 63179. (Public Works) (Rules Committee referral 3/13/96)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 8, 1996, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 66478, entitled: "A Resolution of the Council of the City of San José Accepting the Irrevocable Commitment of Private Funding for the Full Construction of a Fire Station and Other Fire Station Improvements Within the Evergreen Area", was adopted. Vote: 11-0-0-0.

END OF CONSENT CALENDAR

GENERAL GOVERNMENT

- 9a (1) Presentation of recommended changes to the City of San José Campaign Contribution Ordinance by Alex Stuart, Chair, Campaign Finance Review and Ethics Board. (Campaign Finance Review and Ethics Board/City Clerk) (Deferred from 2/20/96 and 2/27/96 - Item 9f)**
- (2) The Mayor's Biennial Review of the City's Code of Ethics. (Mayor)**

Documents Filed: (1) Memorandum from Mayor Hammer and Council Member Diaz, dated March 18, 1996, indicating their position on two of the campaign reform proposals which have been reviewed by the Ethics Board and discussed in its report to the City Council. (2) Memorandum from Council Member Fernandes, dated March 13, 1996, requesting approval of the recommendations regarding campaign financing for future Mayor and Council elections. (3) Memorandum from Council Members Dando and Pandori, dated March 13, 1996, requesting approval of the recommendations to strengthen and improve the campaign ethics and finance codes that govern City elections. (4) Memorandum from City Clerk and Secretary to the Board, Patricia L. O'Hearn, dated February 9, 1996, attaching the Campaign Finance Review and Ethics

Board's Report to Council recommending certain changes to the City's campaign finance disclosure regulations. (5) Memorandum from City Attorney, Joan R. Gallo, dated February 14, 1996, indicating the status of the recommendations from a legal perspective. (6) Memorandum from City Attorney, Joan R. Gallo, dated March 12, 1996, responding to the Ethics Board's recommendation that *campaign contributions by businesses should be eliminated*. (7) Memorandum from Mayor Hammer, dated March 14, 1996, reviewing the status of the recommendations issued in November 1993 report on the review of the City's Code of Ethics.

Discussion/Action: Alex Stuart, Chair of the Campaign Finance Review and Ethics Board, presented a comprehensive overview of the various campaign contribution issues and recommendations reviewed by the Board during the past two years, and commented on the issues in the order of importance as determined by the Board. Regarding *Debt Retirement*, he stated the City's Campaign Contribution Ordinance currently establishes debt retirement and the fundraising deadline at 30 days after an election; however, Council requested an extension to 60-day deadline. He stated the Board investigated various laws governing debt retirement and found that the County of Santa Clara has a 17-day deadline prior to an election; therefore, the Board recommends the deadline for contributions to a City campaign should be set at 11 days before an election, not 14 as stipulated in the Report, and that Council appropriate funds to study campaign contribution reporting methods such as the use of computer disks for campaign contribution reports. He stated the Board spent substantial time reviewing allegations concerning contributions by businesses which share a common address, and concluded that elimination of contributions by businesses similar to the limitations established under Federal election procedures would minimize allegations of illegal contributions in the future and simplify the monitoring of the campaign contribution process. Related to *Disclosure of Campaign Contributors* requirements, he stated the current campaign contribution forms "request" specific information such as name, address, occupation, and employer, and when omitted from the disclosure statement, full disclosure is not accomplished. He stated candidates or their agents should make good faith efforts to obtain all required information and that incentives to provide information as requested on a statement may result in more complete disclosure of sources of contributions; therefore, the Board recommends that campaign contributions should not be deposited into a candidate's campaign account until the candidate has been provided with all the information required on the campaign disclosure statements. He stated the recommendation that *pre-election fund raising period should be reduced to six months prior to the primary election* has met with opposition; therefore, the Board requests Council direction. As justification for the recommendation that *there should be no changes to the current fund-raising rules for Run-Off Elections*, he stated the Board had difficulty discerning the rationale for establishing six months for primary elections and five months for run-off elections and whether the interim period between the 1996 March election and the July 1 fundraising date would benefit incumbents over challengers. He stated the Board, during its deliberations of *voluntary spending limits*, reviewed the City of Oakland's campaign ordinance which provides for voluntary spending limits, and concluded that before voluntary spending limits are considered for the City of San José, that the Ethic Board recommendations, if approved, should be implemented first to determine if there is a

future need for *voluntary spending limits*. He stated the Board concluded that with shorter fundraising periods and shortened debt retirement deadlines before an election and elimination of contributions by businesses, *voluntary spending limits* may not be necessary; therefore, *voluntary spending limits* in City election campaigns should not be considered at this time. He stated the Campaign Review and Ethics Board suggests that the City Attorney review any legal issues related to the recommendations and their implementation, if approved by the City Council, and that Council implement the recommendations and provide further guidance to the Board on unresolved issues. He qualified Board Member Professor Roy Young's opposition to Board recommendations for the *debt retirement* and *eliminating campaign contributions by businesses*. The following citizens spoke in support of the Campaign Reform proposals: Chuck Reed; Steve Preminger, representing Santa Clara County Democratic Party; Bill Chew; Regina Mayor, representing California Public Administration Consulting (CalPac); and Scott Mathieson. Mayor Hammer advised Council that each component of the Campaign Review and Ethics Board recommendation will be considered separately. Referencing the March 18, 1996 memorandum co-authored by Mayor Hammer, Council Member Diaz disagreed with the Board's recommended proposal to limit to six months the period of pre-election fundraising. He stated the recommendation conflicts with the critical goals of maintaining an open and competitive political process and or providing a "level field" between incumbents and challengers. He stated six months is not adequate time to conduct a campaign, and endorsed 12 months with voluntary spending limits. Council Member Pandori endorsed shorter pre-election fundraising periods for all candidates, which, in his opinion, will benefit grass roots candidates and will stop the stifling effect of early fundraising by incumbents. In summarizing Council discussion on the proposed time period for pre-election fundraising, Council Member Diaz recommended that the period of pre-election fundraising for mayoral candidates should be limited to 12 months and to 6 months for candidates to the City Council. Upon motion by Council Member Diaz, seconded by Council Member Fernandes and carried, the pre-election fund raising period was set at one (1) year for Mayoral candidates and six (6) months prior to the Primary Election for City Council candidates. Vote: 6-5-0-0. Noes: Dando, Fernandes, Johnson, Pandori, Shirakawa, Jr. Regarding the *Fund Raising For Run-Off Elections*, the consensus of the Ethics Board to retain the current fund-raising rules and regulations was endorsed by the City Council without discussion. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Campaign Finance Review and Ethics Board recommendation that no change be made to current fund-raising rules for run-off elections, was approved. Vote: 11-0-0-0. Mayor Hammer reiterated the suggestion made by Chuck Reed that the City should set the deadline at 17 days before an election for receipt of contributions to a City campaign, which is consistent with State law. City Attorney Joan R. Gallo advised Council to refer to the Office of the City Attorney the concept of the debt retirement deadline with recommendations submitted to Council. She stated the collection of campaign funds may be the date of receipt but that the actual filing must allow for completion of the reporting forms. Council Member Pandori stated the *date of receipt* should be equated to the *date of deposit* into bank accounts; and since the issue is a First Amendment restriction or infringement upon what the Supreme Court has defined as a person's individual rights, then the compelling interest must be the disclosure of campaign contributors and that the

legislation enacted by Council must be narrowly tailored to that interest. He concurred with the suggestion to establish the City's pre-election fundraising cutoff consistent with that of the County's. Upon motion by Council Member Pandori, seconded by Vice Mayor Johnson and unanimously carried, the recommended deadline for pre-election fund-raising for a City campaign to be set between 11 and 17 days before an election was referred to the City Attorney with direction to prepare a draft of applicable changes to the ordinance for Council consideration. Vote: 11-0-0-0. Speaking in support of *Voluntary Spending Limits*, Council Member Fernandes suggested that the City Attorney analyze a plan that would set expenditures in future Mayor and Council races at realistic amounts to be determined by the Ethics Board. She stated the restrictions on contribution limits and fundraising time would be strong incentives for candidates to agree on a spending cap, and suggested retention of the current spending limits with consideration to decrease spending limits in the future. She proposed that Council give conceptual approval to the City Attorney to work with the Ethics Board on establishing the voluntary spending limits. In summary, Council Member Pandori stated the consensus of Council is to direct the City Attorney to work with the Ethics Board in drafting an ordinance that would include voluntary spending caps based on Council direction, and to report back to Council with recommendations on the range of penalties to enforce voluntary spending limits as well as methods to discourage personally financed campaigns. Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and unanimously carried, the City Attorney was directed to submit to the Ethics Board (1) guidelines for the establishment of a voluntary spending cap program for future elections in an amount to be determined by the Ethics Board, (2) proposals to require full disclosure of campaign contributions, (3) a proposal to discourage candidate-financed campaigns, and (4) appropriate penalties for violations of campaign disclosure regulations. Vote: 11-0-0-0. Addressing item #5, *Indexing System*, Vice Mayor Johnson stated the number of registered voters within San José varies greatly throughout the 10 Council Districts; therefore, Council Districts with smaller numbers of registered voters would have difficulty operating under the same cap as those with greater numbers of registered households. When considering the use of a cap, she suggested the Board establish it on the basis of the number of households or registered voters to be contacted in each Council District, that the Board explore a variety of indexing factors that would include the number of registered voters per District, which process would apply only if voluntary spending limits are enacted, and that the Board incorporate an inflation index as part of the ordinance. Upon motion by Vice Mayor Johnson, seconded by Council Member Fernandes and carried, the Ethics Board was directed to look at a variety of indexing factors which could include the number of registered voters or households per District, and to build in an inflation index as part of the ordinance. Vote: 8-3-0-0. Noes: Diaz, Pandori, Shirakawa, Jr. Regarding *Disclosure of Campaign Contributors*, Council approved the Ethics Board recommendation. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson and unanimously carried, the recommendation that campaign contributions should not be deposited into a candidate's campaign account until the candidate has been provided with all the information required on the campaign disclosure statements, was approved. Vote: 11-0-0-0. In clarifying Chuck Reed's suggestion regarding *Business Contributions*, City Attorney, Joan R. Gallo, stated that in addition to the disclosure, considering the City's Ordinance prohibits individuals who own more than

50% of a business from making dual contributions, the new Ordinance would stipulate that if an individual serves in the capacity of *corporate director, officer, or partner*, then the candidate could not allow both the firm and the individual to make contributions. Council Member Fernandes stated campaign contributions from individuals only should be allowed. Supporting the Ethics Board recommendation, Council Member Pandori stated the reporting of business contributions and the application of current rules to ascertain whether the contributions can be accepted, is complicated; that the elimination of campaign contributions by businesses should affect equally all businesses, whether sole proprietorships, joint ventures, limited partnerships, general partnerships, or corporations, and for the public, identifies each contributor. Upon motion by Council Member Pandori, seconded by Council Member Dando and carried, the recommendation to approve the Ethics Board recommendation to eliminate campaign contributions by businesses, failed. 3-8-0-0. Noes: Diaz, Diquisto, Fiscalini, Johnson, Powers, Shirakawa, Jr., Woody; Hammer. Vice Mayor Johnson urged Council to support the request made by Chuck Reed, which is to continue to allow a business or corporation to make direct contributions with the limitation that if an individual principal has made a contribution and is an officer, director, or general partner, of that business, then the business cannot make a contribution; or if the business has made a contribution, then individual principals cannot make a campaign contribution. She stated this provision would eliminate the potential of both the business and a primary principal making a contribution. Council Member Pandori stated that one of the issues of concern pertained to two or more business entities having overlapping directorships, partnerships, or officers, and whether the proposed recommendation would apply. The consensus of the City Council was to direct the City Attorney to incorporate in the report to Council via the Ethics Board the response to Council Member Pandori's concern and to draft an ordinance with discussion and input by the Ethics Board. Upon motion by Vice Mayor Johnson, seconded by Council Member Diaz and carried, the recommendation to retain the City's current Ordinance which allows a business or corporation to make direct contributions to candidates within established campaign contribution limits, was approved with specific clarification that the City Attorney work with the Ethics Board on a proposal to ban business contributions to political campaigns if an officer, director, or general partner of that business has contributed to the candidate. Vote: 9-2-0-0. Noes: Dando, Fernandes. Related to *Other Recommendations*, Mayor Hammer stated the Ethics Board expressed concern with the area of contributions which are given through intermediaries; however, the current disclosure forms do require candidates to disclose whether a particular contribution was given through an intermediary. Although the Board did not formulate a recommendation with regard to intermediaries at this time, she suggested that the subject should be reviewed in the future, and suggested Council refer that issue back to the Ethics Board for discussion. Regarding Ethics Board discussion of potential criminal penalties for violations of the Campaign Contribution Ordinance to be clearly specified in the enforcement provisions of the Ordinance, City Attorney Gallo indicated the *Administrative Citation* is used to enforce the penalties in a non-criminal context; however, Council should refer the issue to the Ethics Board to work with the City Attorney on what might be subject to an *Administrative Citation* versus a *Misdemeanor*. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson and unanimously carried, the referral to the

Ethics Board of the recommendation regarding disclosure of intermediaries, was approved, and that the Ethics Board work with the City Attorney regarding what might appropriately be subject to an *Administrative Citation* rather than a *Misdemeanor* relative to penalties for violations of the Campaign Contribution Ordinance, was approved. Vote: 11-0-0-0. Upon motion by Council Member Pandori, seconded by Vice Mayor Johnson and unanimously carried, consideration of a system in the Office of the City Clerk to enable candidates to file campaign disclosure statements electronically, was approved in concept and referred to the Budget Process. Vote: 11-0-0-0. Regarding additional recommendations from the City Council, Council Member Fernandes agreed to the Board recommendations regarding changes to the City's Campaign Contribution Ordinance that shorten fundraising periods for future Mayor and Council campaigns. She stated the exception to San Jose's campaign reporting rules that allow for non-reporting of contributions under \$100.00 should be changed by amending the Code to require full reporting of all contributions, both cash and in-kind under \$100.00. She stated high-profile campaigns for public office that are almost entirely funded by the candidate's personal wealth should be discouraged; therefore, she requested that the City Attorney develop and report back to Council on campaign finance provisions and methods that discourage personally financed campaigns. Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and unanimously carried, the recommendations as contained in Council Member Fernandes' memorandum of March 13, 1996 to refer to the City Attorney (a) the proposal to close disclosure loopholes by amending the Code to require full reporting of all contributions, including those under \$100.00; and (b) the proposal to discourage candidate-financed campaigns for a report to Council on methods to discourage personally financed campaigns, were approved. Vote: 11-0-0-0. Regarding additional recommendations from the City Council, Council Member Pandori asked Council to consider the recommendations as proposed in the March 13, 1996 memorandum co-authored by Council Member Dando, to strengthen and improve the campaign ethics and finance codes that govern City elections, and to refer to the Ethics Board for discussion prohibition of officeholder fundraising, and reduction in contribution limits for Council/Mayor elections to \$100.00 and to require full disclosure of all contributions. Mayor Hammer and Council Members expressed support for the referral to the Ethics Board, but opposed the concept and deemed the idea as unreasonable. Council Member Diquisto expressed opposition to the referral. Upon motion by Council Member Pandori, seconded by Council Member Dando and carried, the referral to the Ethics Board and the City Attorney, as contained in the March 13, 1996 memorandum, failed. Vote: 4-7-0-0. Noes: Diaz, Diquisto, Johnson, Powers, Shirakawa, Jr., Woody; Hammer. Regarding officeholder accounts, Vice Mayor Johnson stated the definition of appropriate uses for officeholder accounts could be investigated by the Ethics Board and reported back to Council. Upon motion by Vice Mayor Johnson, seconded by Council Member Powers and carried, the referral to the Campaign Finance Review and Ethics Board consideration of appropriate uses for officeholder funds, was approved. Vote: Noes: Diquisto. Regarding the Mayor's Biennial Ethics Review, Mayor Hammer stated the City Charter requires the Mayor to conduct a review of the City's Code of Ethics and to make recommendations; in November of 1993 the first such report was issued, and today's review of the status of those recommendations include the *Revolving Door Ordinance*, *Employment*

Negotiations, Censure Procedure, Officeholder Funds, and the Municipal Code. She recommended approval of the report. Upon motion by Council Member Fernandes, seconded by Vice Mayor Johnson and unanimously carried, the Mayor's Biennial Review of the City's Code of Ethics was accepted. Vote: 11-0-0-0.

- 9f
- (a) **Adoption of a resolution authorizing the Director of General Services to execute a three (3) year agreement to provide City-generated towing services for a three (3) year period beginning April 1, 1996 and including four (4) one-year options to renew with:**
 - (1) **Matos Auto Center (Zone One).**
 - (2) **City Towing and Body Shop (Zone Two).**
 - (3) **Motor Body Company (Zone Four).**
 - (4) **Courtesy Tow Service (Zone Five).**
 - (b) **Adoption of a resolution authorizing the Director of General Services to negotiate with all four (4) operators; to execute a one-year agreement with one or more of them for Zones Three and Six for a one-year contract; selection criteria to include response time, storage capacity and quality of service; and subcontracting with other qualified and permitted operators would be considered subject to City approval.**
 - (c) **Direction to the Administration to bring a recommendation to Council in six (6) months either to reconfigure zones or to conduct an RFP process for service in Zones Three and Six to begin April 1, 1997.**
- (General Services)**

Documents Filed: (1) Memorandum from Council Member Shirakawa, Jr., dated March 19, 1996, supporting approval of contract awards to service Zones One, Two, Four and Five, and deferral to March 26, 1996 Items 9f(b) and 9f(c). (2) Supplemental memorandum from Director of General Services, Ellis M. Jones Jr., dated March 15, 1996, providing the results of a RFP for City-generated towing in numerical Zone order together with the company name that submitted the proposal. (3) Memorandum from Director of General Services, Ellis M. Jones Jr., dated March 14, 1996, recommending Council adopt said resolutions. (4) Letter from the Law Offices of Robert J. Logan, dated March 18, 1996, requesting Council grant a 90-day contract to Century Tow per staff report, and delay Council action on Zone 3 for one week. (5) Undated document titled *Century Tow - Compliance Action Plan (Preliminary)* submitted by Anthony W. Cresap of the Law Offices of Robert Logan.

Discussion/Action: Council Member Shirakawa, Jr., requested Council approval to defer for one week two of the recommended actions, Item 9f (b) and (c), to allow Century Body Shop and Consolidated Towing, Inc. an opportunity to respond to the Staff report of March 14, 1996. City Manager Williams stated the Administration is amenable to the deferral with the understanding that an agreement for Zones Three and Six is approved by Council on March 26, 1996. Upon motion by Council Member Shirakawa, Jr., seconded by Council Member Diaz and unanimously carried, Items 9f(b) and (c) were deferred to March 26, 1996, to be heard time certain 2:00 p.m. Vote: 11-0-0-0. Director of General Services, Ellis M. Jones, Jr., presented background

information on the Towing Agreements and proposals submitted by contractors for City-generated towing needs in Zones One, Two, Four and Five, and provided information in numerical Zone order on the company that submitted the proposal. He commented on the evaluation criteria and the number of possible points available for each category and the final points awarded and that Staff recommendation to Council includes Zone One–Matos Auto Center with 115 points available and 84.9 final points awarded; Zone Two–City Towing and Body Shop with 115 points available and 83.8 final points awarded; Zone Three–Century Tow with 115 points available and 64.7 final points awarded; Zone Three–Silva with 115 points available and 46 final points awarded; Zone Four–Motor Body Company with 115 points available and 109.7 final points awarded; Zone Five–Courtesy Tow Service with 115 points available and 93 final points awarded; and Zone Six–Consolidated Towing with 115 points available and 62.3 final points awarded. Rudy Gonzales spoke to various issues regarding City-generated tow services; William J. Garbett spoke against the proposed action; and representing Century Tow, Tony Cresap of the Law Offices of Robert Logan, requested deferral of Council action on the tow contracts. As a point of clarification, Ellis Jones stated the evaluation panel and process have provided Council with qualified tow contractors to assist employees in the Police, Planning, Building and Code Enforcement, and Streets and Traffic Departments in the towing and storage of motor vehicles needing to be removed from public and private property, and have documented the violations, substandard business practices and operational problems of the two companies which are not recommended. He stated City Staff met with those operators not recommended for award of contracts and provided the companies with evaluation results; and in meeting with the four qualifying contractors, discussed options for providing service coverage in Zones Three and Six. He reiterated the need to take action by March 26, 1996, as the amended contracts will expire March 31, 1996 with no options for renewal or extension. Council Member Pandori stated the lack of competition is the reason for his opposition to the proposal. Upon motion by Council Member Powers, seconded by Council Member Shirakawa, Jr., and carried, Resolution No. 66479, “A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute Agreements For Tow Operations”, was adopted. Vote: 10-1-0-0. Noes: Pandori.

9g Adoption of a resolution expressing opposition to the changes in the Prevailing Wage Regulations proposed by the California Department of Industrial Relations. (Mayor)
[Rules Committee Referral 3/13/96 - Item 7b(2)]

Documents Filed: Memorandum from Mayor Hammer, dated March 13, 1996, recommending Council adopt said resolution.

9g (Cont'd.)

Discussion/Action: Mayor Hammer stated the State Department of Industrial Relations has proposed legislation to change the basis for determining the prevailing wage rate, and other changes creating difficulty to adjust prevailing wages levels in response to

data from new collective bargaining agreements. She stated the City Council of San José should go on record as strongly opposing the proposed changes to the prevailing wage standards and urge that the current system be continued without change. She suggested that the City Clerk transmit a copy of the adopted resolution to the Governor of California, the Director of the California Department of Industrial Relations, and the City's legislative representatives. Bill Nack, representing Santa Clara Building Trades Council, expressed the organization's appreciation for Council support of the proposed action. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson and unanimously carried, Resolution No. 66480, entitled: "A Resolution of the Council of the City of San José Expressing Strong Opposition to the Changes in the Prevailing Wages Proposed by the Department of Industrial Relations", was adopted.
Vote: 11-0-0-0.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7a Report of the Committee of the Whole - February 15, 1996

Documents Filed: Committee of the Whole report of February 15, 1996.

- (1) FY 1995-96 Mid-Year Capital and Operating Budget Review. Attachments: (1) Memorandum from Mayor Hammer and Council Member Fiscalini, dated December 7, 1995, recommending the Council designate specific projects as City priorities for the Mid-Year Budget Review Process. (2) Letter from Sally Ravel, Chairperson, San José Senior Citizens Commission, dated June 19, 1996, urging Council to continue funding for the City's Office on Aging, for community-based non-profit agencies, and funding for aging services. (3) Letter from George Miskulin, Chairperson, San José Senior Citizens Commission, dated January 30, 1996, restating the Commission's support for the Budget Augmentation proposal to implement the City's Aging Services Master Plan. (4) Memorandum from Council Member Fernandes, dated February 14, 1996, recommending Council direct the Administration to coordinate with the Redevelopment Agency on preliminary design work of a storm water pump station and associated storm drains adjacent to Montague Expressway. (5) Memorandum from Budget Director, Larry D. Lisenbee, dated February 14, 1996, certifying the availability of funds in Fiscal Year 1995-96 monies in excess of those heretofore appropriated there from. (6) Memorandum from City Manager, Regina V.K. Williams, dated February 14, 1996, (a) providing information on the status of Police Department fleet of "marked" vehicles; (b) clarifying the current service level as a result of the marked fleet; and (c) recommending to Council an immediate and long-term approach for increasing the current marked vehicle fleet. (7) Spiral bound volumes of the 1995-96 Mid-Year Operating and Capital Budget Reviews, February 1996, submitted by the Office of the City Manager. (8) Copies of transparencies used in Staff presentation on the Mid-Year Capital and Operating Budget Reviews.

The Committee accepted Staff report on the FY 1995-96 mid-year Capital and Operating budgets.

Discussion/Action: See Item 9h for Council action taken.

7b (1) Report of the Rules Committee - February 28, 1996

Documents Filed: Rules Committee report of February 28, 1996

- (a) Review March 12 Council Agenda

This item was dropped from the Agenda, as the meeting was cancelled.

- (b) Add new items to March 5 Amended Council Agenda

The Committee recommended three additions to March 5, 1996 Amended Council Agenda.

- (c) The Public Record. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated February 22, 1996, listing those items filed for the Public Record for the period February 14-20, 1996, and reporting that no items were transmitted to the Administration.

The Committee recommended approval of the Public Record for the period February 14-20, 1996.

- (d) Recommend adoption of an undated version of the Rules Resolution. Attachment: Memorandum from City Attorney, Joan R. Gallo, dated February 5, 1996, submitting an updated version of the Rules Resolution.

The Committee recommended adoption of an updated version of the Rules Resolution.

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

None presented.

- (f) City Council and Rules Committee Meeting Schedules

None presented.

- (g) Oral Communications

None presented.

(h) Adjournment

The meeting was adjourned at 2:40 p.m.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini and unanimously carried, the Rules Committee report and actions of February 28, 1996 were accepted. Vote: 11-0-0-0.

(2) Report of the Rules Committee - March 6, 1996

Documents Filed: Rules Committee report of March 6, 1996.

(a) Review March 19 Council Agenda

The Committee recommended approval of the March 19, 1996 Council Agenda with two changes.

(b) Add New Items to March 12 Amended Council Agenda

This item was dropped from the Agenda, as the meeting was cancelled.

(c) The Public Record - February 21-27, 1996. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated February 29, 1996, listing the items transmitted to the Administration and those items filed for the Public Record. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated March 6, 1996, summarizing actions taken on those items transmitted to the Administration and those items filed for the Public Record.

The Committee noted and filed the Public Record.

(d) Report on Emergency Housing Consortium Audit. Attachment: Letter from City Auditor, Gerald A. Silva, dated March 5, 1996, transmitting to Rules Committee the report entitled *A Financial Evaluation Of The Emergency Housing Consortium*, March 1996.

The Committee recommended forwarding to the City Council the City Auditor's report entitled "A Financial Evaluation of the Emergency Housing Consortium".

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

None presented.

(f) City Council and Rules Committee Meeting Schedules

None presented.

(g) Oral Communications

William Chew asked whether the City was auditing the Second Harvest Food Bank.

(h) Adjournment

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

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Diaz and unanimously carried, the Rules Committee Report and actions of March 6, 1996 were accepted. Vote: 11-0-0-0.

7b (3) Report of the Rules Committee - March 13, 1996 - (Partial)

Documents Filed: Rules Committee report of March 13, 1996.

- (d) Approve composition and appointment of members to the Advisory Committee to further study High Volume Retail. Attachment: Memorandum from City Manager, Regina V.K. Williams, dated March 11, 1996, recommending approval of the composition and appointment of members of a *Focus Group to Further Study High Volume Retail*.

The Committee recommended (1) a name change from Focus Group to Further Study High Volume Retail to Focus Group of Stakeholders to Further Study High Volume Retail, (2) the appointment of a representative from Working Partnerships USA; and (3) approved the composition and appointment of members as listed in City Manager Williams' memorandum of March 11, 1996.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Powers and unanimously carried, the Rules Committee Report and actions of March 13, 1996, partial, were accepted. Vote: 11-0-0-0.

7c Report of the Housing and Community Services Committee - March 4, 1996

Documents Filed: Housing and Community Services Committee report of March 4, 1996.

- (1) Approve 1995 Aquatics Report and 1996 fees. Attachment: Memorandum from the Director of Parks, Recreation and Neighborhood Services, Ellis E. Mitchell, dated February 22, 1996, recommending the Housing and

Community Services Committee approve the 1995 Summer Aquatics program report and approve the proposed fee adjustments.

The Committee approved the report.

Discussion/Action: See Item 9b for Council action taken.

- (2) Approve the redesign of the Youth Employment Program

This item was continued to March 18, 1996 at 9:30 a.m.

- (3) Approve First-Time Homebuyers and Employer-Assisted Housing Programs. Attachment: Memorandum from Director of Housing, Alex Sanchez, dated February 26, 1996, recommending Council adopt a resolution (a) approving a First-Time Homebuyers Program; (b) approving an Employer-Assisted Housing Program; (c) authorizing the Director of Housing to negotiate and execute an agreement with the California Housing Loan Insurance Fund (CaHLIF); (d) authorizing the director of Finance to negotiate and execute an agreement with a lending institution for the deposit of the City's \$2 million pledge for the CaHLIF 97% Pledge Pool Program; and (e) authorizing the Director of Housing to publish an RFP seeking qualified nonprofit sponsors to implement a Downtown Frame Area Infill Construction program for the development of up to 80 units.

The Committee recommended that Council (a) approve a First-Time Homebuyers Program except for the Downtown Frame Area Infill Construction Program; (b) approve an Employer-Assisted Housing Program; (c) authorize the Director of Housing to negotiate and execute an agreement with the California Housing Loan Insurance Fund (CalHLIF) under its 97% Pledge Pool Program, using up to \$2 million of 20% Housing Funds to secure up to \$100 million of mortgage insurance; (d) authorize the Director of Finance to negotiate and execute an agreement with a lending institution for the deposit of the City's \$2 million pledge for the CalHLIF 97% Pledge Pool Program; and (e) defer approval of the Downtown Frame Area Infill Construction Program for the development of up to 80 units to the April 1, 1996 Committee meeting.

Discussion/Action: See item 9c for Council action taken.

- (4) Happy Hollow Park & Zoo RFP/RFQ Analysis. Attachment: Memorandum from Director of Conventions, Arts and Entertainment, Ellen Oppenheim, dated February 22, 1996, recommending the Housing and Community Services Committee approve the Department's report on the positive and negative aspects of issuing an RFP/RFQ for the private operation of the amusement park portion of Happy Hollow; and approve the recommended alternative to refine City operation of Happy Hollow Park & Zoo with

modifications in its operation to reach a direct cost-recovery rate of 100% over a multi-year period.

- (a) Approve the Department's report on the positive and negative aspects of issuing an RFP/RFQ for the private operation of the amusement park portion of Happy Hollow
- (4) Happy Hollow Park & Zoo RFP/RFQ Analysis. (Cont'd.)
- (b) Approve the Recommended Alternative to redefine City operation of Happy Hollow Park & Zoo with modifications in its operation to reach a direct cost

The Committee (1) approved refining City operations of Happy Hollow Park & Zoo with modifications in its operation to reach a direct cost-recovery rate of 100% over a multi-year period; and (2) approved bringing a consultant on board to develop an RFI to provide the information on private groups that could operate Happy Hollow requested by the Committee. Vote: 3-1-0-0. Noes: Powers

Discussion/Action: Council deferred discussion of this item until after the item has been heard again by the Housing and Community Services Committee. See Item 9d for Council action taken.

- (5) Status of relocation of Biblioteca Latino Americana. Attachment: Memorandum from City Librarian, James H. Fish, dated February 21, 1996, recommending Council submitting a status of the relocation of Biblioteca Latinoamericana.

The Committee accepted the status report and requested that Staff return to the Committee in May 1996 with an update.

- (6) Adopt revised Workplan for January-June, 1996. Attachment: Housing and Community Services Committee Workplan for the period January - June 1996.

The Committee accepted the revised workplan.

- (7) Adjournment

The meeting was adjourned at 4:00 p.m.

Discussion/Action: Upon motion by Council Member Powers, seconded by Council Member Diaz and unanimously carried, the Housing and Community Services Committee Report and actions of March 4, 1996 were accepted with Item 7c(1) acted upon at Item 9b, Item 7c(3) acted upon at Item 9c, and Item 7c(4) acted upon at Item 9d. Vote: 11-0-0-0.

Council Members Diquisto and Pandori left Council Chambers at this point in the meeting.

7d Report of the Finance Committee - February 28, 1996

Documents Filed: Finance Committee report of February 28, 1996.

- (1) Oral Petitions

None presented.

- (2) Monthly Auditor's Report for January 1996. Attachment: Letter from City Auditor, Gerald A. Silva, dated February 20, 1996, transmitting a written report of the Office of the City Auditor's activities for the month of January 1996.

The Committee accepted the report with direction to the City Auditor and the Director of Housing to come back to Committee on April 10, 1996 with the timeline of the Housing Rehabilitation Audit.

- (3) Quarterly Report (October-December 1995) on Repair and Maintenance of Fire Fleet. Attachment: Memorandum from Director of General Services, Ellis M. Jones Jr., dated February 14, 1996, providing the second quarterly condition status report on the Fire Fleet and related preventive maintenance efforts for FY 1995-96.

The Committee accepted the report with the recommendation that future reports to the Committee should be submitted on a semi-annual basis rather than quarterly.

- (4) Presentation of the City's FY 1994-95 Single Audit Report. Attachment: Memorandum from Director of Finance, John V. Guthrie, dated February 20, 1996, transmitting the Report containing the audited Schedule of Federal Financial Assistance and Schedule of Finding, Questioned Costs and Corrective Action Plan for fiscal year ended June 30, 1995.

The Committee accepted the report.

- (5) Committee Schedule

The March 27, 1996 meeting was cancelled.

- (6) Adjournment

The meeting was adjourned at 10:35 a.m.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Shirakawa, Jr. and unanimously carried, the Finance Committee Report and actions of February 28, 1996 were accepted. Vote: 9-0-2-0. Absent: Diquisto, Pandori.

GENERAL GOVERNMENT

- 9b Adoption of a resolution setting fees for participation in recreational swimming at City-sponsored swim programs and repealing Resolution No. 65082.**
[Housing and Community Services Committee referral 3/4/96 - Item 7c(1)]

Documents Filed: See Housing and Community Services Committee report of March 4, 1996, Item 7c(1).

Discussion/Action: Upon motion by Council Member Powers, seconded by Vice Mayor Johnson and unanimously carried, Resolution No. 66481, entitled: "A Resolution of the Council of the City of San José Setting Fees For Participation in Recreational Swimming at City Sponsored Swim Programs and Repealing Resolution No. 65082", was adopted. Vote: 9-0-2-0. Absent: Diquisto, Pandori.

- 9c Adoption of a resolution:**
- (1) Approving a First-Time Homebuyers Program.**
 - (2) Approving an Employer-Assisted Housing Program.**
 - (3) Authorizing the Director of Housing to negotiate and execute an agreement with the California Housing Loan Insurance Fund (CaHLIF) under its 97% Pledge Pool Program, using up to \$2,000,000 of 20% Housing Funds to secure up to \$1,000,000 of mortgage insurance.**
 - (4) Authorizing the Director of Finance to negotiate and execute an agreement with a lending institution for the deposit of the City's \$2,000,000 pledge for the CaHLIF 97% Pledge Pool Program.**
- [Housing and Community Services Committee referral 3/4/96 - Item 7c(3)]**

Documents Filed: None.

Discussion/Action: This item was deferred to March 26, 1996.

- 9d**
- (1) Approval of the Department of Conventions, Arts and Entertainment report on the positive and negative aspects of issuing a Request for Proposal/Request for Qualifications (RFP/RFQ) for the private operation of the amusement park portion of Happy Hollow.**
 - (2) Approval of the recommended alternative to refine City operation of Happy Hollow Park and Zoo with modifications in its operation to reach a direct cost recovery rate of 100% over a multi-year period.**
- [Housing and Community Services Committee referral 3/4/96-Item 7c(4)(a) &(b)]**

Documents Filed: Memorandum from Mayor Hammer and Council Member Powers, dated March 18, 1996, recommending Council refer back to Housing and Community Services Committee the *Happy Hollow Park & Zoo RFP/RFQ Analysis* for further clarification and discussion, and defer Council discussion of Housing and Community Services Committee March 4, 1996 report on *Happy Hollow Park & Zoo RFP/RFQ Analysis* until after the item has been heard again by the Committee.

Discussion/Action: Upon motion by Council Member Dando, seconded by Vice Mayor Johnson and unanimously carried, the Housing and Community Services Committee recommendation to refer this back to Housing and Community Services Committee for further clarification and discussion, was approved. Vote: 9-0-2-0. Absent: Diquisto, Pandori.

Council Member Diquisto returned to the meeting at this time.

- 9e Approval of the purchase/installation of portable seating for the San José Arena and Arena staff training from StageRight at a cost not to exceed \$350,000 as a sole source purchase, and authorization for the Director of General Services to issue the purchase order. (General Services)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated March 6, 1996, recommending approval of said purchase/installation as a sole source purchase pursuant to San José Municipal Code 4.12.020.D, and authorize the Director of General Services to issue the purchase order.

Discussion/Action: William J. Garbett spoke against the proposed action. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the purchase/installation was approved and execution of the purchase order authorized. Vote: 10-0-1-0. Absent: Pandori.

Council Member Pandori returned to the meeting at this time.

- 9h Approval of the Mayor's FY 1996-97 Budget Direction Message. (Mayor) (Committee of the Whole referral 3/7/96)**

Documents Filed: See Committee of the Whole report of March 7, 1996.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the Committee of the Whole Report and actions of March 7, 1996 and the Mayor's FY 1996-97 Budget Direction Message were approved. Vote: 11-0-0-0.

FISCAL AFFAIRS

10a 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 March 15, 1996, stating the Administrative Hearing was conducted and the account of property owner Kimberly Hamilton was deferred from the lien process. (2) Memorandum from Director of Finance, John V. Guthrie, dated March 1, 1996, recommending Council adopt said resolution. (3) Affidavit of Mailing of a notice of delinquency and public hearing, dated March 8, 1996, submitted by the Director of Finance.

Discussion/Action: Mayor Hammer opened the public hearing. William J. Garbett spoke against the proposed action. Director of Finance, John V. Guthrie, pointed out the removal of one account and deferral from the lien process—APN670-13-018, in the name of Kimberly Hamilton. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the public hearing was closed and Resolution No. 66482, 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 with APN670-13-018, Account No. 60698 deferred from the lien process to allow Staff an opportunity to research the account. Vote: 11-0-0-0.

ORAL COMMUNICATIONS

Cathy S. Brandhorst addressed Council on various societal issues confronting homeless citizens in San José.

RECESS/RECONVENE

Following Oral Communications, Council recessed at 5:05 p.m. and reconvened at 7:05 p.m., Council Chambers, City Hall.

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

Absent: Council Members: Pandori.

City Clerk, Patricia L. O’Hearn, read the requests for continuances of applications and other actions as recommended. Upon motion by Council Member Fiscalini, seconded

by Council Member Powers and unanimously carried, the below noted continuances and other actions were granted. Vote: 10-0-1-0. Absent: Pandori.

- 15c** **PLANNED DEVELOPMENT REZONING** of the property located on the north side of Pine Avenue, 80 feet westerly of Lupton Avenue, from R-1 Residence Zoning District to A(PD) Planned Development Zoning District, to allow a flag lot development for one existing single-family detached residence and one new single-family detached residence on .73 gross acre (Mike Scianna, Owner/Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).
PDC 95-11-053 - District 6
(Continued from 3/05/96 - Item 15d)

Documents Filed: None.

Discussion/Action: This item was continued to April 2, 1996.

- 15d** **CONFORMING REZONING** of the property located on the west side of Kettmann Road, 100 feet north of Dashman Avenue from A-Agricultural Zoning District to R-1:B-8 Residential Zoning District to allow up to 3 single-family detached residences on .67-gross-acres. (Sophia A. Hill, Owner/Developer). CEQA: Negative Declaration.
C 96-01-001 - District 8

Documents Filed: None.

Discussion/Action: This item was continued to April 2, 1996.

PUBLIC HEARINGS

- 15a** **PLANNED DEVELOPMENT REZONING** of the property located on the east side of Guadalupe Mines Road, 150 feet southerly of Puerto Vallarta Drive, from L-R/R-1:B-3 Residence Zoning District to A(PD) Planned Development Zoning District, to allow up to 198 single-family detached residential units on 135 gross acres (International Business Machines, Owner; The Riding Co., Developer). Planning Director recommends approval. Planning Commission recommends approval with conditions to increase setbacks for units abutting existing houses on Puerto Vallarta Drive and decrease the size of these units (4-1-2). CEQA: Resolution to be adopted.
PDC 95-02-009 - District 10
(Continued from 3/05/96 - Item 15b)

Documents Filed: (1) Memorandum from Council Member Dando, dated March 18, 1996, recommending Council approve the Planned Development Rezoning for said

project with direction to the Director of Planning to include certain conditions in the PD Permit. (2) Memorandum from the Planning Commission, dated March 1, 1996, recommending Council adopt an ordinance approving the subject rezoning with the condition that the Developer work with Staff to explore options regarding setbacks. (3) Notice of Public Hearing to consider a change in Zoning for PDC 95-02-009, dated January 16, 1996, and the Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing. Vice Mayor Johnson disqualified herself from the discussion and decision on this item, as her husband is employed by IBM. Charles Davidson, representing the applicant, spoke in favor of the project. Council Member Dando recommended that Council approve the Planned Development Rezoning for the IBM/Guadalupe Mines Road housing project with direction to the Director of Planning to include the following conditions in the PD Permit: (1) For all of the lots adjacent to existing homes on the northern property line of the new development, the rear setbacks will be no less than 35 feet; that the side setbacks of 5 feet, and front setbacks of 18 feet to the garage and 10 feet to the first floor element, garage-side or porch will be allowed. (2) A statement in the Conditions, Covenants and Restrictions that fully discloses to all subsequent purchasers the close proximity of the Guadalupe Landfill to this development include the information: (a) that the Guadalupe Landfill is located within 1/2 mile of the development and the only entrance to the landfill is along Guadalupe Mines Road; (b) that the Guadalupe Landfill will continue to operate for at least thirty (30) more years with no fixed closure date; (c) that the Guadalupe Landfill operates a yard waste processing and composting facility on site; and (d) that inherent impacts associated with the operation of a landfill, including noise, traffic, dust, litter, and odors exist. The following citizens spoke in opposition to the proposed development: Donald Macnab, IBM/Guadalupe Neighborhood Committee; Joyce Graham; Miles Cook; Jerry Pearson; Connie Pearson; Barbara Lane; and Deanna Dupler. Upon motion by Council Member Dando, seconded by Council Member Fiscalini and carried, the public hearing was closed, the Planning Commission recommendation with conditions, was approved, and Ordinance No. 25057, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Guadalupe Mines Road, 150 Feet Southerly of Puerto Vallarta Drive", was passed for publication; and Resolution No. 66483, entitled: "Resolution of the City Council of the City of San Jose Making Certain Findings Required by the California Environmental Quality Act in Connection With the IBM-Guadalupe Property Residential Project (PDC95-02-009) and For Which An Environmental Impact Report Has Been Prepared", was adopted. Vote: 9-0-1-1. Absent: Pandori. Disqualified: Johnson, family member employed by IBM.

15b PLANNED DEVELOPMENT REZONING of the property located on the southwest corner of Meridian Avenue and Douglas Street, from A(PD) Planned Development to A(PD) Planned Development Zoning District, to allow commercial uses in an existing building on .28 gross acre (Steve Carauddo, Owner; Dr. Kevin Calvert, D.D.S., Developer). CEQA: Exempt. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).

PDC 95-12-054 - District 6
(Continued from 3/05/96 - Item 15c)

Documents Filed: (1) Memorandum from the Planning Commission, dated February 15, 1996, recommending Council approve the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC 95-12-054, dated January 16, 1996, 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 Fiscalini, seconded by Council Member Powers and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25058, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southwest Corner of Meridian Avenue and Douglas Street", was passed for publication. Vote: 10-0-1-0. Absent: Pandori.

15e **CONFORMING REZONING of the property located on the east side of O'Toole Avenue, 500 feet southerly of Rincon Circle from M-4 Manufacturing Zoning District to I-Industrial Zoning District to allow industrial uses on 2.3-gross-acres. (Delbert & Mildred Wilkinson, Owner/Developer). CEQA: Exempt. Director of Planning recommends approval. No Planning Commission action required.**
C 96-01-003 - District 4

Documents Filed: (1) Department of Planning, Building and Code Enforcement Staff Report, approved on March 1, 1996 for C 96-01-003, recommending approval of the proposed Conforming Rezoning. (2) Public Hearing Notice to consider a change in Zoning for C96-01-003, dated February 20, 1996, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the Conforming Rezoning. There was no discussion from the Floor. Upon motion by Council Member Fernandes, seconded by Council Member Powers and unanimously carried, Ordinance No. 25059, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of O'Toole Avenue, 500 Feet Southerly of Rincon Circle", was passed for publication. Vote: 10-0-1-0. Absent: Pandori.

ORAL COMMUNICATIONS

- (1) The following citizens addressed Council on the Operating Engineers, Local #3, contract negotiations: Tim Callahan, Jon Max Reger, and Ernie Claudio.
- (2) David S. Wall addressed Council on the Laboratory Business Plan and the Restrictions on Fund 513.

CLOSED SESSION REPORT

Disclosure of Closed Session Actions of March 19, 1996 submitted by City Attorney, Joan R. Gallo:

A. Authority to Initiate Litigation:

Authority to initiate litigation was given in one matter. The name of the action and the defendants as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action is formally commenced.

CLOSED SESSION REPORT

Disclosure of Closed Session Actions of March 19, 1996 submitted by City Attorney, Joan R. Gallo:

A. Authority to Initiate Litigation: (Cont'd.)

Council Vote: Ayes: Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr., Woody; Hammer.
Noes: None.
Absent: Dando, Diaz, Pandori.
Disqualified: None.

B. Authority to Enter A Litigation Case As Amicus Curiae:

1. Case Name: *Souza v. City of Antioch*
Adverse Party or Parties: Souza
Substance of Litigation: Appellate case which will consider the discretionary immunity in the police hostage negotiation context.

Council Vote: Ayes: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr., Woody; Hammer.
Noes: None.
Absent: Dando, Pandori.
Disqualified: None.

ADJOURNMENT

The Council of the City of San José adjourned at 8:00 p.m. in memory of Faith Davies, Philanthropist and FMC heiress, and in memory of Helen Mineta, retired high school teacher and sister of former Congressman Norm Mineta.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK