

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 7, 1996

The Council of the City of San José was scheduled to convene in Closed Session at 9:30 a.m., in Room 600. The Closed Session was cancelled and the City Council convened in regular session at 1:38 p.m., Council Chambers, City Hall.

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

Absent: Council Members: None.

INVOCATION

Father Angel Mariano, Holy Trinity Church, delivered the invocation. (District 5)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

ORDERS OF THE DAY

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

CEREMONIAL ITEMS

**5a Presentation of proclamation declaring May 1996 as "Older Americans' Month."
(San José Senior Citizens Commission)**

Documents Filed: None.

Discussion/Action: Joining Mayor Hammer at the Podium, Council Member Woody presented the proclamation to George Miskulin, Chairperson, San José Senior Citizens Commission; identified the Senior Centers & Programs—Alma, Almaden, Cypress,

5a (Cont'd.)

Eastside, Hank Lopez, Kirk, Northside, RSVP, St. James, Southside, Willows, Iola Williams, and John 23rd; introduced the Senior Citizens Commissioners—George Miskulin, Chair; John Vincent, Vice-Chair, and Frieda Forster, Carmen Moore, Betty Rinsler, Jane Schwartz, Donald Stack, and Elisa Lindley; introduced the Mayor's Aging Leadership Council—Seema Jaffee, Harryette Shuell, Mitsu Kumagai, Connie Corrales, Gloria Alvarez, Zuraida Peres, Marion Johnson, Eva Lee, Mary Charles, Yeva Melbardis, Lisa Kim; Terry Eberhardt, Deputy Director of Recreation & Community Services; Deb Bogart, Coordinator of the Aging Master Plan, and Cindy Felker, Staff to the Master Plan; and acknowledged Peter Favre, Manager/McDonald's Restaurant; Jim Norberg, Operations Manager/McDonalds Restaurant; and Kent Lewis, Consultant/ McDonalds Restaurants, who presented to the Mayor a replica of the San José Circle of Life poster. Council Member Woody identified major accomplishments achieved during the year through the Aging Leadership Council, its Executive Committee, Technical Committee and five Working Groups, the Senior Centers Focal Points Network and the San José Circle of Life Senior Endowment, and urged all citizens to give effective expression to the theme of this special month – Celebrating Long Life and Good Health.

Special welcome extended to the mother of Council Member Pandori, Susan Pandori who is a volunteer at the St. John Twenty-Third Multi-Service Center on E. San Fernando; she was asked to stand and be recognized. The City Council joined Council Members Powers and Woody in welcoming the 10th Grade World History Class from Oak Grove High School, East Side Union High School District, who was asked to stand and be recognized.

5c Presentation of commendation to YPC Carrier Tape America. (Fernandes)

Documents Filed: None.

Discussion/Action: Joining Mayor Hammer at the Podium, Council Member Fernandes presented a commendation to Mikki Tsuchida, Vice President of Yayoi Plastic Corporation (YPC Carrier Tape America), in recognition of the company's generous \$5,000.00 donation to eradicate graffiti at Vinci Park School.

**5d Presentation of plaque honoring the San José/Santa Clara Water Pollution Control Plant as winner of the U.S. EPA Region IX "Operations and Maintenance Excellence Award" for 1995. (Environmental Services)
(Rules Committee referral 5/1/96)**

Documents Filed: None.

5d (Cont'd.)

Discussion/Action: Mayor Hammer stated Felicia Marcus, Regional EPA Administrator, presented the award to the City of San José during the recent League of California Cities Conference. In recognition of going beyond the provisions of traditional wastewater treatment services to devise several innovative programs, Mayor Hammer presented the plaque to Ronald Garner, Plant Manager; Robert Berry, General Operations Supervisor; John Gibbs, Principal Sanitary Engineer; Dale Ihrke, Sr. Sanitary Engineer; Stephen Schrag, Maintenance Services Engineer; Ernesto Claudio, Plant Operator; Patrick Kwok, Manager of Technical Support; David Tucker, Lab Supervisor; Mary Ellen Dick, Manager of Environmental Enforcement; Daniel Bruninsma, Source Control Inspector; and Louis N. Garcia, Director of Environmental Services; and commended the employees for their excellent performance in operating the Water Pollution Control Plant .

5b Presentation of awards honoring San José Police Officers and citizens of San José. (Police)

Documents Filed: Memorandum from Chief of Police, Louis A. Cobarruviaz, dated April 19, 1996, submitting to Council the names of the individuals to be honored during the May 7, 1996 meeting of the City Council.

Discussion/Action: Joining Mayor Hammer at the Podium, Police Chief Cobarruviaz, in recognition of their bravery, composure, and skill, presented the Hazardous Duty Award to Officer Tim Porter, Officer Dave Hober, Officer Larry Esquivel, Sgt. Jeff Ricketts, and Sgt. David Yazzolino; for courage, patience and cleverness in handling a dangerous situation, the Hazardous Duty Award presented to Officer Phil Malvini; because of the efforts and energy and in recognition of their commitment to duty, the Outstanding Police Duty Award presented to Violent Crime Enforcement Team (VCET) members Sgt. Ron Helder, Sgt. Mike Ross, Sgt. Art Hilborn, Officer Nester Torres, Officer Dave Knopf, Officer Janna Munk, Officer Phil Malvini, Officer Brian Christian, Officer Larry Day, Officer Phil Craft, Officer Ramon Avalos, Officer Teresa Jeglum, and Officer Steve Payne; in recognition of his achievements in “Operation Hollywood”, the Richard Huerta Special Merit Award presented to Sgt. Paul Panighetti; in recognition of the talent and effort expended in making the curfew program a success, the Richard Huerta Special Merit Award presented to Sgt. Dale Morgan; for his initiative, hard work and commitment to community policing, San José Police Department honored Officer Carl Borbons with the Richard Huerta Special Merit Award; for his initiative, compassion, and commitment to community policing, the San José Police Department honored and Police Chief Cobarruviaz presented to Officer Jeff Rickel the Richard Huerta Special Merit Award; for his resourcefulness and initiative in the line of duty, Officer Dean Ackmann was presented the Richard Huerta Special

5b (Cont'd.)

Merit Award; Police Chief Cobarruviaz presented the William P. Poelle Lifesaving Award to Officer Mario Hernandez in recognition of his skill and actions in preventing a suicide; in recognition of her ability to utilize lifesaving measures during a major injury accident, Officer Karen Duncan was presented with the William P. Poelle Lifesaving Award; in recognition of their teamwork and quick action in preventing a suicide, Officer Gary Jungling, Officer Mike Sullivan, Officer James Roush, Officer Kirk Wilson, Officer William Miller, Officer Richard Lira, Officer Craig Johnson, Officer Pete Constant, and Sgt. Brian Kneis were presented with the William P. Poelle Lifesaving Award; Police Chief Cobarruviaz presented the Ross Donald Good Citizenship Award to Mr. Ismael Anguiana, Mr. Robert Tonkin, Mr. Phillip Graves, Mr. Nathan Cann, Mrs. Sherry Cann, Mr. Terrence Frank, Ms. Stacey Scott, and Ms. Laura Purcella in recognition and appreciation of their actions; for his courageous assistance in the arrest of juvenile gang members, 14-year old Michael Gaeta was awarded the Ross Donald Good Citizenship Award; and in recognition and appreciation of their acts of true heroism and concern, Mr. James E. Smith and Mr. Patrick Kelleher were presented the Simpson-Silva Citizen's Award.

Special acknowledgment of the 700 Beat Officers who are trained as "Gatekeepers" to identify through a referral process those seniors that may be in need of assistance.

9g Approval of the Annual Report on the Implementation of the San José Aging Services Master Plan. (Woody)

Documents Filed: Memorandum from Council Member Woody, dated April 26, 1996, recommending Council accept the report on the second year of progress of implementation of the San José Aging Services Master Plan.

Discussion/Action: As Chair of the Mayor's Aging Leadership Council and Council Liaison to the Master Plan implementation project, Council Member Woody highlighted the major accomplishments achieved during the year through the Aging Leadership Council, its Executive Committee, Technical Committee and five Working Groups, the Senior Centers Focal Points Network, and the San José Circle of Life Senior Endowment. She stated the San José Aging Master Plan - *Planning For the Age Wage*, was developed by the City's Department of Parks, Recreation and Neighborhood Services, through the Office On Aging, and approved by the City Council to prepare for the unprecedented growth of the City's older population. She stated the project's primary success continues to be its varied community involvement, with approximately one hundred individuals from different sectors throughout the community continuing to pledge their energy and enthusiasm to the Master Plan's

9g (Cont'd.)

objectives. She stated the Mayor's Aging Leadership Council is one of the Master Plan's recommendations, and that the Council on Aging of Santa Clara County, Inc., the designated Area Agency on Aging for the County, is an active and committed partner in the Plan's implementation. She expressed appreciation to City Staff for their support and recommended that the Mayor and City Council accept the annual report. Upon motion by Council Member Woody, seconded by Council Member Powers and unanimously carried, the Annual Report on the Implementation of the San José Aging Services Master Plan was accepted. Vote: 11-0-0-0.

CONSENT CALENDAR

Upon motion by Council Member Fiscalini, seconded by Council Member Powers 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 March 19, 1996

Documents Filed: Minutes of the regular meeting of March 19, 1996.

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

Public Hearings Set by Council

**6c(1) Adoption of a resolution initiating proceedings and setting a public hearing on June 4, 1996, at 7:00 p.m. for the reorganization of territory designated as Evergreen No. 181 which involves the annexation to the City of San José of 7.08 acres of land, located at the northwesterly side of Kettmann Road between Toy Lane and Orinda Drive and the detachment of the same from the Central Fire District. CEQA: ND.
(Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated April 19, 1996, recommending Council place on the Consent Calendar of the May 7, 1996 City Council Agenda the actions necessary for the reorganization of said territory.

6c(1) (Cont'd.)

Discussion/Action: Resolution No. 66586, entitled: "Resolution of the Council of the City of San José Initiating Reorganization Proceedings for Annexation and Detachment of Certain Uninhabited Territory Designated as Evergreen No. 181 and Described Herein, Giving Notice of Hearing on the Proposed Reorganization and Written Protests", was adopted. Vote: 11-0-0-0.

Plans and Specifications

- 6d(1) TRACT NO. 8823 - east side of San Felipe Road, south of Silver Creek Court - Ryland Homes - 97 single family detached residential lots. Adoption of resolutions approving the plans, final map, contract, water main extension agreement, and adjusting the sanitary sewer connection fees for Tract No. 8823 (Silver Creek Estates). CEQA: Resolution No. 64286. District 8. (Public Works) (Rules Committee referral 5/1/96)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 1, 1996, recommending Council adopt said resolutions.

Discussion/Action: Resolution No. 66587, entitled: "A Resolution of the Council of the City of San José Fixing Official Curb Grades and Position of Curbs, and Adopting Plans For Tract No. 8823"; Resolution No. 66588, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8823", Resolution No. 66589, entitled: "A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8823"; Resolution No. 66590, entitled: "A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Agreement For the Water Main Extension, Tract No. 8823"; and Resolution No. 66591, entitled: "A Resolution of the Council of the City of San José Adjusting Sanitary Sewer Connection Fees Applicable to the California Oak Creek Residential Development (Ryland Homes Development) and Making Certain Related Findings, Tract No. 8823", were adopted. Vote: 11-0-0-0.

Contracts/Agreements

- 6e(1) Approval of a first amendment to the consultant agreement with David J. Powers & Associates, Inc. for environmental analysis of Airport projects, increasing the compensation by \$30,000, from \$50,000 to \$80,000. (Airport)**

6e(1) (Cont'd.)

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated April 19, 1996, recommending Council approve the amendment to said agreement.

Discussion/Action: Cathy Brandhorst addressed Council on this item. The first amendment to the consultant agreement with David J. Powers & Associates, Inc. was approved and execution of the amendment authorized. Vote: 11-0-0-0.

6e(2) Report on bids and award of purchase of seventy (70) IBM compatible microcomputers for the Library Department to the low bidder, Advance Digital Solutions International, in the amount of \$119,096.08 including tax, and authorization for the Director of General Services to execute the purchase order. (General Services)

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated April 19, 1996, recommending Council approve said purchase and authorize the Director of General Services to execute the purchase order.

Discussion/Action: William J. Garbett spoke against the proposed action. The award of purchase to Advance Digital Solutions International was approved and execution of the purchase order authorized. Vote: 11-0-0-0.

6e(3) Report on bids and award of purchase of one hundred (100) sets of firefighter clothing (turnouts) to the low bidder, Halprin Supply Company, at a total cost of \$84,174.30, including tax and delivery, and authorization for the Director of General Services to exercise the option to purchase additional sets of turnouts at the same bid price for a period of one year at a cost not to exceed \$85,000 including tax and delivery. (General Services)

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated April 19, 1996, recommending Council approve said purchase and authorize the Director of General Services to exercise the option to purchase additional turnouts.

Discussion/Action: The award of purchase to Halprin Supply Company was approved and the Director of General Services authorized to exercise the option to purchase additional sets of turnouts. Vote: 11-0-0-0.

- 6e(4) Adoption of a resolution authorizing the Director of General Services to add Equipment Schedules to the Master Equipment Lease Agreement which do not exceed \$75,000 with Access Public Funding, Inc. (General Services)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated April 19, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66592, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute All Necessary Documents to Add Purchases of \$75,000 or Less to the Master Equipment Lease With Access Public Funding, Inc.", was adopted. Vote: 11-0-0-0.

- 6e(5) Approval of award of open purchase orders for supplies, materials, equipment and services for FY 1995-96 #26, 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 April 19, 1996, recommending Council award said open purchase orders list, and authorize the Director of General Services to execute the purchase orders

Discussion/Action: The award of open purchase orders List No. 26 for FY 1995-96 was approved and execution of the purchase orders authorized. Vote: 11-0-0-0.

- 6e(6) Approval of an agreement with Providence Associates, Inc. for consultant services related to the Library Master Plan for the period May 7, 1996 to December 31, 1996 in an amount not to exceed \$65,000. (Library)**

Documents Filed: Memorandum from City Librarian, James H. Fish, dated April 19, 1996, recommending Council approve said agreement.

Discussion/Action: William J. Garbett spoke against the proposed action. The consultant services agreement with Providence Associates, Inc. was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(7) Approval of grant agreements with East Side Union School District:**
- (a) To establish a High School Crime Stoppers reward fund in the amount of \$5,000.**
 - (b) For the Independence High School/Pegasus High School Jazz Dance Program for High Risk Youth in the amount of \$2,500.**
- (Police)**

6e(7) (Cont'd.)

Documents Filed: Memoranda from Chief of Police, Louis A. Cobarruviaz, both dated April 19, 1996, recommending Council approve said grant agreements.

Discussion/Action: Cathy Brandhorst addressed Council on this item. The grant agreements with East Side Union School District were approved and execution of the agreements authorized. Vote: 11-0-0-0.

6e(8) Approval of an agreement with PG&E for the purpose of giving the City permission to use property located at Sierra Meadow Drive between Sierra Monte Way and Muirfield Drive for Lo Bue Park. CEQA: Exempt. (Public Works)

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated April 16, 1996, recommending Council approve said agreement.

Discussion/Action: The agreement with PG&E was approved and its execution authorized. Vote: 11-0-0-0.

6e(9) Approval of a second amendment to the agreement with Montgomery Watson Americas, Inc. for consultant services for the 60-Inch RCP Interceptor Rehabilitation, Phase IIB, extending the term of the agreement for sixteen (16) months, from April 30, 1996 to October 30, 1997, at no additional cost to the City. CEQA: Resolution No. 60197. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 19, 1996, recommending Council approve the second amendment to said consultant services agreement, extending the term of the agreement at no additional cost to the City.

Discussion/Action: William J. Garbett spoke against the proposed action. The second amendment to the consultant services agreement with Montgomery Watson Americas, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

6e(10) Approval of a first amendment to the agreement with HMM, Inc. for consultant services for Fiscal Year 1994-95 through 1995-96 for Various Stages of Sanitary Sewer Rehabilitation Projects, extending the term of the agreement for one (1) year, from June 30, 1996 to June 30, 1997, at no additional cost to the City. (Public Works)

6e(10) (Cont'd.)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 19, 1996, recommending Council approve the first amendment to said consultant services agreement extending the terms at no additional cost to the City.

Discussion/Action: The first amendment to the consultant services agreement with HMM, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

6e(11) Adoption of a resolution authorizing the Director of Public Works to execute an agreement with Nicholas Frank De Rose, et al. for the donation of a parcel of land for trail purposes along Los Gatos Creek, and to authorize the Director of Public Works, or designee, to sign any other necessary documents to accept the donation. CEQA: Negative Declaration. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated, recommending Council approve said agreement and authorize the Director of Public Works, or designee, to execute the necessary documents to accept the donation.

Discussion/Action: Resolution No. 66593, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to Execute An Agreement Accepting the Donation of Real Property From the De Rose Family for Trail Purposes Along Los Gatos Creek, and Authorizing the Director of Public Works or His Designee to Execute Any Other Documents Required to Accept the Donation", was adopted. Vote: 11-0-0-0.

6e(12) Approval of an employment agreement with Gillian Amanda Clarke. (Woody)

Documents Filed: None.

Discussion/Action: The employment agreement with Gillian Amanda Clarke was approved and its execution authorized. Vote: 11-0-0-0.

**6e(13) Approval of a second amendment to the agreement with Investment Advisors, Inc. for investment management services for the Police and Fire Department Retirement Plan adding a microcap growth strategy and a fee of 125 basis points for that strategy. (Police and Fire Retirement Board)
(Rules Committee referral 5/1/96)**

6e(13) (Cont'd.)

Documents Filed: Memorandum from Police & Fire Retirement Boards of Administration, Retirement Administrator Edward F. Overton, dated May 2, 1996, recommending Council approve the second amendment to said agreement.

Discussion/Action: William J. Garbett spoke against the proposed action. The second amendment to the investment management services agreement with Investment Advisors, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

**6e(14) Presentation of application for Cable Television Franchise by Pacific Bell Video Services. (City Clerk)
(Orders of the Day Item 4a)
(Renumbered from Item 9h)**

Documents Filed: (1) Memorandum from City Attorney, Joan R. Gallo, dated May 7, 1996, clarifying for the Council that no action is required on this item at this time. (2) Memorandum from Director of Telecommunications, Pamela K. Stone, dated May 3, 1996, forwarding to Council the Pacific Bell Video Services Cable Franchise Application.

Discussion/Action: William J. Garbett spoke against the proposed action. Director of Telecommunications, Pamela K. Stone, stated the application is incomplete and is not accepted for filing until additional information is included; therefore, no Council action is required at this time. She stated City Staff will at a later date forward to the City Council a resolution giving notice of the application and setting a date for a public hearing on the application and the franchise agreement. By unanimous consent, the Council accepted the informational report but took no action, pending forthcoming resolution to set the public hearing. Vote: 11-0-0-0.

Routine Legislation

6f(1) Adoption of a resolution modifying the eligibility requirements to serve on the Deferred Compensation Advisory Committee. (Human Resources)

Documents Filed: Memorandum from Director of Human Resources, Nona Tobin, dated April 19, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66594, entitled: "Resolution of the Council of the City of San José Providing for the Selection of the Advisory Committee for the City of San José Deferred Compensation Plan", was adopted. Vote: 11-0-0-0.

- 6f(2) Adoption of a resolution to amend Resolution No. 51872:**
- (a) Exhibit 21, to create the classes of Records Operation Manager (1189) at a salary range of 61C and Latent Fingerprint Examiner Supervisor (2245) at a salary range of 60E.**
 - (b) Exhibit 99, to revise and retitle the class of Traffic Signal Systems Engineer (3881) to Senior Traffic Engineer (3881) at a salary range of 66C.**
- (Human Resources)**

Documents Filed: Memorandum from Director of Human Resources, Nona Tobin, dated April 19, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66595, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 51872 to (1) Amend Exhibit 21 to Create the Classes of Records Operations Manager (1189) and Latent Fingerprint Examiner Supervisor (2245), and (2) Amend Exhibit 99 to Revise and Retitle the Class of Traffic Signal Systems Engineer (3881) to Senior Traffic Engineer (3881), Effective May 5, 1996", was adopted. Vote: 11-0-0-0.

- 6f(3) Adoption of a resolution assessing a penalty in the amount of \$528 for violation of subcontractor requirements by Plan Construction Company, the General Contractor, for the Brigadoon Park Tot Lot Renovation Project, in accordance with Section 2-1, 15G, "Violations of Subcontractor Requirements," of the City's Public Works Standard Specifications. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated April 19, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66596, entitled: "A Resolution of the Council of the City of San José Approving the Assessment of a Penalty for Subcontractor Substitution Violations by Plan Construction Company for the Brigadoon Park Tot Lot Renovation Project", was adopted. Vote: 11-0-0-0.

- 6f(4) Adoption of a resolution approving the map and summarily vacating the five-foot wire clearance easement along the northerly lot line of Lot 14 of Tract No. 2276 at 7051 Bark Lane. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 19, 1996, recommending Council adopt said resolution.

6f(4) (Cont'd.)

Discussion/Action: Resolution No. 66597, entitled: "Resolution of the Council of the City of San José Approving a Map of and Summarily Vacating the Five Foot Wire Clearance Easement Across Lot 14 of Tract No. 2276 at 7051 Bark Lane", was adopted. Vote: 11-0-0-0.

**6f(5) Approval of an ordinance amending Chapter 3.36 and 3.32 of the San José Municipal Code changing certain references from the City Auditor to the Director of Finance, providing for contracting authority for the Retirement Board and revising certain provisions relating to investment of monies in the Police and Fire Department Retirement Plan.
(Police and Fire Retirement Board)
(Rules Committee referral 5/1/96)**

Documents Filed: Memorandum from Police & Fire Retirement Boards of Administration, Retirement Administrator, Edward F. Overton, dated May 2, 1996, recommending Council approve said ordinance.

Discussion/Action: William J. Garbett spoke against the proposed action. Ordinance No. 25084, entitled: "An Ordinance of the City of San José Amending Sections 3.32.060, 3.32.160, 3.32.300, 3.32.320, 3.32.325, and 3.32.400 of Chapter 3.32 of the San José Municipal Code and Amending Chapter 3.36 of Title 3 of the San José Municipal Code by Amending Part 4 and Sections 3.36.380, 3.36.385, and 3.36.1540 to: Change Certain References From the City Auditor to the Director of Finance, Provide for Contracting Authority of the Board of Administration, and Revise Certain Provisions Relating to Investment of Moneys in the Police and Fire Department Retirement Fund", was passed for publication. Vote: 11-0-0-0.

END OF CONSENT CALENDAR

Council Member Diquisto left the meeting at 2:45 p.m.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - April 24, 1996

Documents Filed: Rules Committee Report of April 24, 1996.

7b Report of the Rules Committee - April 24, 1996 - (Cont'd.)

- (1) Review May 7 Council Agenda

The Committee recommended approval of the May 7, 1996 Council Agenda.

- (2) Add New Items to April 30 Amended Council Agenda

The Committee recommended three additions to the April 30, 1996 Amended Council Agenda.

- (3) The Public Record. Attachments: (1) Memorandum from City Clerk, Patricia L. O'Hearn, dated April 18, 1996, listing the items filed for the Public Record. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated April 22, 1996, summarizing actions taken on those items transmitted to the Administration and the items filed for the Public Record.

The Committee noted and filed the Public Record for the period April 10-16, 1996.

- (4) Approve Legislative Report 96-06

AB 172 (Frusetta)	Criminal Street Gangs: Registration
AB 638 (Knight)	Concealed Firearm Licenses
AB 1352 (Knowles)	Community Care Facilities: Group Homes
AB 1982 (Knight)	Domestic Relationships
AB 2148 (Rainey)	Building Standards: Appeals
AB 2301 (Battin)	Peace Officers: Tactical Radio Channel
AB 2725 (Hawkins)	Housing Elements: Identification of Adequate Housing Sites
AB 3025 (Hawkins)	Redevelopment: Low and Moderate Income Dwelling Units
AB 3227 (Knight)	Marriage
SB 374 (Alquist)	Santa Clara County Traffic Authority: Termination
SB 1690 (Kopp)	Care Facilities: Overconcentration
SB 2113 (Haynes)	Local Agency Contracts: Eligibility, Debarment

This item was heard by Council on April 30, 1996.

7b Report of the Rules Committee - April 24, 1996 - (Cont'd.)

- (5) Approve City of San José comments on the Federal Aviation Administration's (FAA) Notice on Proposed Policy regarding Policy and Procedures Concerning the Use of Airport Revenue. Attachment: Memorandum from Director of Aviation, Ralph G. Tonseth, dated April 18, 1996, recommending the Rules Committee authorize the Director of Aviation to file, on behalf of the City of San José, comments on the proposed FAA policies and procedures on unlawful Revenue Diversion.

The Committee recommended authorization for the Director of Aviation to file, on behalf of the City of San José, comments on the proposed FAA policies and procedures on unlawful revenue diversion.

- (6) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee. Attachment: Memorandum from Vice Mayor Johnson, dated April 16, 1996, requesting the Rules Committee refer to the appropriate Council Committee the discussion of providing a warning notice prior to citation of a *For Sale* vehicle parked on a City street.

- (a) Refer discussion of providing a warning notice prior to citation of a *For Sale* vehicle parked on the City streets

The Committee recommended referring this item to the Administration and back to Rules Committee for possible referral to the appropriate standing committee.

- (7) City Council and Rules Committee Meeting Schedules

None presented.

- (8) Oral Communications

None presented.

- (9) Adjournment

The meeting was adjourned at 3:10 p.m.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fernandes and unanimously carried, the Rules Committee Report and actions of April 24, 1996 were accepted. Vote: 10-0-1-0. Absent: Diquisto.

Report of the Rules Committee - May 1, 1996 (Partial)

Documents Filed: Rules Committee Report of May 1, 1996.

- (4) Approve Legislative Report 96-07. Attachment: Memorandum from Director of Intergovernmental Relations, Georgiana Flaherty, dated April 26, 1996, submitting said Legislative Report and the recommended City positions for each bill, and requesting a one-week turnaround for full Council consideration of Rules Committee action.

The Committee recommended approval of the Legislative Report and the recommended City positions for the following Bills:

AB 243 (Battin)
Enterprise Zones
Recommended City Position: SUPPORT

AB 2576 (Lee)
Enterprise Zones: Expansion
Recommended City Position: SUPPORT

AB 2609 (Hawkins)
Housing: Nuisance Abatement
Recommended City Position: OPPOSE

AB 3014 (Caldera)
Neighborhood Parks and Recreational Facilities: Bond Act
Recommended City Position: SUPPORT

AB 3157 (Martinez)
Vehicles: Records: Parking Violations
Recommended City Position: SUPPORT

SB 1713 (Alquist)
Vehicles: Total Loss Salvage Vehicles: Dismantled Vehicles
Recommended City Position: SUPPORT

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fernandes and unanimously carried, the Rules Committee Report (partial) and actions of May 1, 1996 were accepted. Vote: 10-0-1-0. Absent: Diquisto.

GENERAL GOVERNMENT

9e PUBLIC HEARING on Mixed Recyclables Collection Franchise applications, approval of ordinances granting the franchises, and approval of Mixed Recyclables Collection Agreements, to be effective from July 1, 1996 to June 30, 1997, with:

- (1) Buona Terra, Inc., dba Stevens Creek Disposal and Recycling and dba Almaden Disposal and Recycling**
- (2) Butterick Enterprises, Inc., dba B & B Roll-Off Service**
- (3) Number "1" Disposal**
- (4) All Points Roll-Off, Inc.
(Environmental Services)**

Documents Filed: (1) Memorandum from Director of Environmental Services, Louis N. Garcia, dated April 19, 1996, recommending Council approve ordinances granting said franchises and approving said agreements. (2) Notice of Public Hearing on Mixed Recyclables Collection Franchises, dated April 11, 1996, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing to consider said franchises and agreements. 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 and Ordinance No. 25085, entitled: "An Ordinance of the City of San José Granting a Mixed Recyclables Collection Franchise to Buona Terra, Inc. DBA Stevens Creek Disposal & Recycling and DBA Almaden Disposal & Recycling"; Ordinance No. 25086, entitled: "An Ordinance of the City of San José Granting a Mixed Recyclables Collection Franchise to Butterick Enterprises DBA B&B Roll-Off Service"; Ordinance No. 25087, entitled: "An Ordinance of the City of San José Granting a Mixed Recyclables Collection Franchise to Number "1" Disposal"; and Ordinance No. 25088, entitled: "An Ordinance of the City of San José Granting a Mixed Recyclables Collection Franchise to All Points Roll-Off, Inc.", were passed for publication. Vote: 10-0-2-0. Absent: Diquisto.

9f Report on negotiated contract prices and award of contract for the installation of Electrical and Telephone Facilities for the Telemetered Wastewater Flow Monitoring System Project to G.A.B. Construction, Inc. in the amount of \$489,675, and approval of a contingency in the amount of \$50,000. CEQA: Exempt. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 19, 1996, recommending Council accept the report and award said contract.

9f (Cont'd.)

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fernandes and unanimously carried, the report on negotiated contract prices was accepted, award of contract to G.A.B. Construction, Inc. approved, and execution of the contract authorized. Vote: 10-0-1-0. Absent: Diquisto.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7d Report of the Finance Committee - April 24, 1996

Documents Filed: Finance Committee Report of April 24, 1996.

- (1) Oral Petitions

None presented.

- (2) Report on Fiber Optics Conduit System Project

This item was heard by Council on April 30, 1996.

- (3) Monthly Auditor's Report for March 1996. Attachments: (1) Memorandum from City Auditor, Gerald A. Silva, dated April 15, 1996, submitting the timeline for the audit of Housing rehabilitation activities. (2) Letter from City Auditor, Gerald A. Silva, dated April 17, 1996, submitting a written report of the Office of the City Auditor's activities for the month of March 1996.

The Committee accepted the report.

- (4) Quarterly Sales Tax Report for Period ended March 31, 1996. Attachment: Letter from City Auditor, Gerald A. Silva, dated April 16, 1996, transmitting the report on the Sales and Business Tax Audit Results for the quarter ended March 31, 1996.

The Committee accepted the report.

- (5) Report on Recycle Plus Hardship Rates. Attachments: (1) Memorandum from Council Member Fiscalini, dated April 23, 1996, recommending that the Finance Committee (a) amend the existing Recycle Plus Rate Resolution to add single-family residences deemed uninhabitable by fire or other natural disaster to the Hardship category; and (b) amend the current Hardship Rate to zero

7d Report of the Finance Committee - April 24, 1996 - (Cont'd.)

(5) Report on Recycle Plus Hardship Rates

charge for those families meeting the qualifications of the category. (2) Memo-randum from Council Members Dando and Diquisto, dated April 23, 1996, recommending the Council direct (a) City Staff to implement garbage service rate exemptions and reduced service rates, and (b) the City Attorney to draft ordinances amending the Municipal Code and Rate Resolution to implement the exemptions. (3) Memorandum from Director of Finance John V. Guthrie, and Director of Environmental Services Louis N. Garcia, dated April 17, 1996, recommending the Finance Committee approve the proposal to amend the existing Recycle Plus Rate Resolution by adding to the current Hardship Rate of \$7 monthly those single-family residences deemed temporarily uninhabitable due to fire or other natural disaster.

The Committee accepted the report and amended the existing Recycle Plus Rate Resolution by adding to the Hardship Rate those single-family residences deemed temporarily uninhabitable due to fire or other natural disasters and to amend the current Hardship Rate to Zero charge for those families meeting the qualifications of this category.

(6) Report on Airport Display Advertising Concession RFP Issuance. Attachment: Memorandum from Director of Aviation, Ralph G. Tonseth, dated March 21, 1996, recommending Council authorize the issuance of a Request for Proposals (RFP) for a display advertising concession contracts.

The Committee recommended acceptance of the report and Staff recommendations.

(7) Committee Schedule

None presented.

(8) Adjournment

The meeting was adjourned at 11:45 a.m.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Fiscalini and unanimously carried, the Finance Committee Report and actions of April 24, 1996 were accepted. Vote: 10-0-1-0. Absent: Diquisto.

FISCAL AFFAIRS

- 10a Adoption of a resolution setting the commercial solid waste collection franchise fee at \$1.64 per uncompacted cubic yard per collection and \$4.92 per compacted cubic yard per collection, with an exemption for the first 43,000 uncompacted cubic yards hauled, effective July 1, 1996. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated April 19, 1996, recommending Council adopt said resolution.

Discussion/Action: Upon motion by Council Member Fernandes, seconded by Council Member Powers and unanimously carried, Resolution No. 66598, entitled: "Resolution of the Council of the City of San José Setting Commercial Solid Waste Collection Franchise Fees for Services Performed on or After July 1, 1996", was adopted. Vote: 10-0-1-0. Absent: Diquisto.

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

Documents Filed: (1) Supplemental memorandum from Director of Finance, John V. Guthrie, dated May 3, 1996, summarizing the results of the Administrative Hearing conducted on May 1, 1996. (2) Memorandum from Director of Finance, John V. Guthrie, dated April 19, 1996, recommending Council adopt said resolution.

Discussion/Action: Mayor Hammer opened the public hearing to consider the report on unpaid Recycle Plus bills. San José property owner Betty Azar explained the circumstances surrounding the unpaid bills at her rental property, opposed the assessment, and requested the removal of the lien. William J. Garbett spoke against the proposed action. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, Resolution No. 66599, 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 APN 670 18 022, Acct# 19804, in the amount of \$32.90, temporarily deferred from the lien process to allow Utility Billing Services staff an opportunity to research the account. Vote: 10-0-1-0. Absent: Diquisto.

The Redevelopment Agency Board convened at 2:50 p.m. to consider Item 11a in a joint session with the City Council.

- 11a**
- (1) City Council and Agency actions regarding adjustments to the Adopted FY 1995-96 Capital Budget for the Rincon de los Esteros Redevelopment Project Area.**
 - (a) Adoption of a resolution by the Agency Board approving adjustments to the FY 1995-96 Capital Budget; and**
 - (b) Adoption of a resolution by the Agency Board amending the Agency appropriation resolution; and,**
 - (2) Adoption of resolutions by the City Council and Agency Board making required Redevelopment Law findings and authorizing the Executive Director to negotiate and execute an agreement between the Agency and the Santa Clara County Transportation Agency (SCCTA) providing for an Agency contribution of \$250,000 to the SCCTA for roadwork improvements related to the construction of a light rail stop at Champion Court. CEQA: SCCTA Resolution No. 95.12.30.**
- (Redevelopment Agency)**

Documents Filed: (1) Memorandum from Agency Executive Director, Frank M. Taylor, dated April 29, 1996, recommending the Agency Board adopt said resolutions. (2) Memorandum from Agency Executive Director, Frank M. Taylor, dated April 23, 1996, recommending the Agency Board and the City Council adopt said resolutions.

Discussion/Action: William J. Garbett spoke against the proposed action. Upon motion by Council Member Fiscalini, seconded by Council Member Fernandes and unanimously carried, Agency Board Resolution No. 4085 approving adjustments to the FY 1995-96 Capital Budget; and Agency Board Resolution No. 4086 amending the Agency appropriation resolution, were adopted; Resolution No. 66600, entitled: "Resolution of the Council of the City of San José Making Certain Determinations in Compliance With Health and Safety Code Section 33445 Regarding the Payment of Costs by the Redevelopment Agency of the City of San José for Certain Public Improvements in the Rincon De Los Esteros Redevelopment Project Area", was adopted; and Agency Board Resolution No. 4087 making required Redevelopment Law findings and authorizing the Executive Director to negotiate and execute an agreement between the Agency and the Santa Clara County Transportation Agency (SCCTA) providing for an Agency contribution of \$250,000 to the SCCTA for roadwork improvements related to the construction of a light rail stop at Champion Court, was adopted. Vote: 10-0-1-0. Absent: Diquisto.

The Redevelopment Agency Board portion of the meeting was adjourned at 2:51 p.m.

- 9d** (1) **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement for the purchase of land from the City of Oakland for the Salt Marsh Habitat Mitigation Program in the amount of \$460,000, an additional amount not to exceed \$22,000 to pay closing costs and related services in connection with the purchase, and authorization for the Director of Public Works, or designee, to sign the Certificate of Acceptance. CEQA: Exempt. (Public Works/Environmental Services)**
- (2) **Adoption of appropriation ordinance amendments in the San José/Santa Clara Treatment Plant Capital Fund to provide \$482,000 for the Salt Marsh Mitigation Project. (City Manager's Office)**
- (Deferred from 04/23/96 - Item 9i)**

Documents Filed: None.

Discussion/Action: This item was deferred to May 14, 1996.

- 9h** **Presentation of application for Cable Television Franchise by Pacific Bell Video Services. (City Clerk)**
(Orders of the Day Item 4a)
[Renumbered to Item 6e(14)]

Documents Filed: This item was renumbered to Item 6e(14). See Item 6e(14).

Discussion/Action: See Item 6e(14) for Council action taken.

ORAL COMMUNICATIONS

Dorothy Pickler requested that Council use available media to publicize the blocking of exits and closure of streets during festivals held in the Downtown area.

RECESS/RECONVENE

Following Oral Communications, the City Council recessed at 2:55 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: None.

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: 11-0-0-0.

PUBLIC HEARINGS

- 15a PUBLIC HEARING ON APPEAL OF THE PLANNING COMMISSION'S DECISION to deny a Conditional Use Permit for a project located at the east side of Chapman Street, approximately 100 feet northerly of McKendrie Street, on a 0.50 gross acre site in the R-1 Residence Zoning District, for expansion of church uses to add off-street parking and expand the festival area (St. Nicholas Greek Orthodox Church of San José, Owner; Michael Prokopakis, Developer). CEQA: ND. Staff recommends upholding Planning Commission's decision.
CP 95-03-018 - District 6
(Continued from 11/7/95 - Item 15b, and 2/06/96 - Item 15a)**

Documents Filed: None.

Discussion/Action: This item was continued to June 4, 1996.

- 15b PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the east side of Monterey Highway, approximately 500 feet southerly of Richmond Avenue, from R-1:B-1 to A(PD), to allow a recreational vehicle park on 3.0 gross acres (Ming Tree Realty, Inc., Owner; Henry Baba, Developer).
PDC 95-05-030 - District 2
(Continued from 2/6/96 - Item 15e, and 2/20/96 - Item 15d)**

Documents Filed: None.

Discussion/Action: This item was continued to June 4, 1996.

- 15c PUBLIC HEARING and adoption of an ordinance amending the L-R, IP-a, IP-b, IP-c, IP-d, I, M-1, and M-4 Industrial Zoning Districts of Title 20 of the San José Municipal Code to make certain Permitted Uses Conditional Uses, Add Permitted Uses and Conditional Uses, Delete Conditional Uses, and other changes to conform with the SJ2020 General Plan. (Planning, Building and Code Enforcement)**
(Continued from 02/20/96 - Item 15b, and 4/02/96 - Item 15a)

Documents Filed: None.

Discussion/Action: This item was continued to June 18, 1996.

- 15d PLANNED DEVELOPMENT REZONING of the property located on the north side of Los Esteros Road, 2,500 feet east of Grand Avenue from M-1 Manufacturing to A(PD) Planned Development Zoning District to allow a landfill and resource recovery facility on 52.5-gross-acres. (Zanker Road Resource Management, Ltd., Owner/Developer) CEQA: EIR Resolution to be adopted.**
PDC 90-04-047 - District 4

Documents Filed: None.

Discussion/Action: This item was continued to May 21, 1996.

GENERAL GOVERNMENT

- 9a Review and approval of the 1995 Year-End Report of the Independent Police Auditor. (Independent Police Auditor).**
(Deferred from 4/16/96 - Item 9g)

Documents Filed: (1) Memorandum from Chief of Police, Louis A. Cobarruviaz, dated April 3, 1996, submitting a list of procedural changes and updates on prior issues identified by the Independent Police Auditor Reports, and responding to the current review of the Independent Police Auditor Report, including the new issue involving off-duty pay jobs for Police Officers. (2) Letter from Independent Police Auditor, Teresa Guerrero Daley, dated March 29, 1996, transmitting to the Office of the City Clerk the 1995 Year End Report. (3) Memorandum from San José Downtown Association Nightclub Committee, dated May 7, 1996, recommending that the current system nightclubs use to provide security using off-duty San José police officers remain in effect.

9a (Cont'd.)

Discussion/Action: In presenting a summary of the report covering the period from January 1 to December 31, 1995, Independent Police Auditor, Teresa Guerrero Daley, stated the report incorporates the statistics for year 1995 and pending issues from the 1995 Midyear Report, contains one new issue and recommendations on the subject of police officer's off-duty employment, and contains the format which is most useful in meeting the reporting requirements. She stated one section that will be in future reports is an analysis of the audits from the investigations; however, that component is not ready for inclusion in this reporting period. In reviewing the new issue and recommendation, she stated off-duty employment practices should be reexamined, based on statistical and substantive information compiled and analyzed from citizen complaints filed against police officers working off-duty jobs. She stated policy and procedural changes should occur in the classification and intake of complaints as a result of the recent state law which changed the manner in which complaints are received. She presented an update on prior issues and recommendations regarding the length of time to complete investigations and the issues concerning Consent Searches and pointed out that the number of Unlawful Search allegations was the only category that increased in 1995, over 1993 and 1994. Regarding statistical data compiled from the total number of complaints received, she stated the analysis is only statistical and not interpretive, given the number of factors which conclusively deduce results from the data, and that any interpretive explanation is qualitative and is based on the Independent Police Auditor's knowledge and experience of reviewing in excess of 1,000 complaints. She stated the goals of the IPA for 1996 will focus on existing issues and on ways to improve the process currently used to address those issues, ways to automate the transfer of information from the PSCU to the Independent Police Auditor, and to identify and maintain distribution sources for the upcoming IPA newsletter. In response the IPA Report on the new issue, off-duty employment practices, Chief of Police, Louis A. Cobarruviaz, stated the Police Department shares the concerns of the Auditor and is reviewing the complex issues of the program. He disagreed with the Auditor's reporting by *Ethnicity of the Subject Officer*, as the Police Department deems that divisive and insulting and, having demonstrated that the complaints are comparable to the Officer ratio of the Department, the reporting is unnecessary. He suggested that if the Independent Police Auditor has concerns with regard to a particular group, those issues should be addressed privately to maintain confidentiality. The following citizens spoke in support of the 1995 Year End Report: Craig Mann, Chair, San José Human Rights Commission; Fil Maresca, President San José Downtown Association; Steven Hoey, San José Downtown Association/Toons/Chair, Nightclub Committee; Roy Stevens; Victor Garza; and Ernest A. Glave. Speaking against the Auditor's Report were Sandy Perry, Pascual Mendivil and Gary L. Wood, representing, Human Rights Defense Committee. Council Member Pandori stated the Report reflects a misuse of statistics and that the matter of police ethnicity is irrelevant and should remain an administrative matter between the Department and the Chief of Police. Reflecting the consensus of the

9a (Cont'd.)

City Council on reporting ethnicity of Police Officers of complaints received, Council Member Powers suggested the Independent Police Auditor work with the Chief of Police to refine the reporting area and the manner in which the data is interpreted, and determine the relevancy of continuing to track the occurrences by ethnicity of the officers involved; consequently, the final decision to compile and report the information is that of the Independent Police Auditor. Upon motion by Vice Mayor Johnson, seconded by Council Member Powers and carried, the 1995 Year-End Report of the Independent Police Auditor, was accepted with discussions to continue on effective statistical reporting by ethnicity of subject officers referred to the Chief of Police and the Independent Police Auditor. Vote: 10-1-0-0. Noes: Pandori.

9b Adoption of a resolution to oppose the California Civil Rights Initiative (CCRI). (Diaz) (Deferred from 4/16/96 - item 9I)

Documents Filed: (1) Memorandum from City Attorney, Joan R. Gallo, dated May 1, 1996, providing an analysis of the proposed CCRI measure and the effect on City programs, if the initiative measure were to be approved by Voters. (2) Memorandum from Council Members Diaz and Shirakawa, Jr., dated April 1, 1996, recommending Council adopt said resolution.

Discussion/Action: Council Member Diaz stated the *California Civil Rights Initiative* would prohibit the State of California or any of its political subdivisions from using race, sex, color, ethnicity or national origin as a criterion for either discriminating against or granting preferential treatment to any individual or group in the operation of the State's system of public contracting; this would have the effect of dismantling the affirmative action programs which the City Council and City Administration have supported to achieve diversity in employment; opposing the Initiative is consistent with the Council's commitment to Affirmative Action which was reaffirmed by the adoption of Resolution No. 65976 on June 13, 1995. The following citizens spoke in support of the proposed action: Craig Mann, Chair, San José Human Rights Commission; Tim K. Fitzgerald; Tony Alexander, President, San José Branch of the NAACP; Richard Konda, Asian Law Alliance; Paul Guerrero, UMBE; Linda LeZotte, Santa Clara County Democratic Center Committee; Sandy Spaulding, San José Chapter, National Organization for Women; Ron McPherson, President, Santa Clara County Black Chamber of Commerce; Kansen Chu, Organization of Chinese Association; Lucia Augilar-Navarro, Hispanic Chamber of Commerce; and representing South Bay Coalition For Affirmative Action, Joe Bass, Billie Wachter, Elizabeth Treat, Gayle

9b (Cont'd.)

Tiller, Al Tracegott, and John Britton. Upon motion by Council Member Diaz, seconded by Vice Mayor Johnson and unanimously carried, Resolution No. 66601, entitled: "A Resolution of the Council of the City of San José Opposing the California Civil Rights Initiative", was adopted. Vote: 11-0-0-0.

- 9c**
- (1) Accept the report entitled, "City of San José Disparity Study - Professional Services and Procurement" submitted by Mason Tillman Associates, Ltd. and find that a basis exists for the adoption of the proposed Minority Business Enterprise and Women Business Enterprise (MBE/WBE) Program for Consultant and Purchasing Contracts.**
 - (2) Adoption of a resolution enacting the City's MBE/WBE Program for Consultant and Purchasing Contracts as described in the attachments entitled: "MBE/WBE Program for Non-Construction Consultants," "MBE/WBE Program for Construction Consultants," "MBE/WBE Program for Procurement of Goods," and "MBE/WBE Program for General Services & Maintenance Contracts."**
 - (3) Referral of staffing and resource recommendations to implement the new MBE/WBE Program for Consultant and Purchasing contracts to the 1996-97 Budget process.**
 - (4) Authorization to the City Manager to negotiate with Mason Tillman Associates, Ltd. to obtain more specific utilization and availability information for City consultant and purchasing contracts at a cost not to exceed \$15,000.**
 - (5) Approval of expanding the City's definition of minority to include persons of Portuguese and Spanish origin.**
 - (6) Authorization to the City Manager to negotiate with Mason Tillman Associates, Ltd. to add a review of Portuguese and Spanish businesses to the City's existing Disparity Study at a cost not to exceed \$10,000.**

[Finance Committee referral 4/10/96 - Item 7d(7)]

(Deferred from 4/23/96 - Item

Documents Filed: (1) Memorandum from Director of Affirmative Action and Contract Compliance, Steven T. Wing, dated May 2, 1996, providing additional information and justification for certain items contained therein, and clarification of certain definitions and revisions to the City's MBE/WBE policies and programs. (2) Memorandum from Director of Affirmative Action and Contract Compliance, Steven T. Wing, dated April 3, 1996, submitting the proposed MBE/WBE program for consultant and purchasing contracts. (3) Memorandum from Santa Clara County Black Chamber of Commerce, dated May 2, 1996, submitting additional input from the Chamber and UMBE regarding the proposed MBE/WBE programs.

Discussion/Action: Beginning with the 1982 adoption of a policy to increase participation of minority and women-owned businesses in City contracts, Director of Affirmative Action and Contract Compliance, Steven T. Wing, presented background information and a comprehensive historical account of the City's MBE/WBE program with mandatory requirements and goals for public works construction contracts. He stated the City retained Mason Tillman Associates to do the analysis required by the *Croson* Court and related federal court decisions, and in 1991, after completion of Phase I of the Disparity Study and developing program improvements, the MBE/WBE Construction Program was approved by the City Council. He stated the second phase of the Disparity Study examined the City's consultant and purchasing contract practices and was completed and delivered to the City in May of 1995. He stated the working group formulated to review the Study's findings and to develop recommendations examined three years of professional consultant and purchasing contracting between the years of 1990 and 1993 and produced statistical data indicating the City has significantly underutilized MBE/WBEs in both consultant and purchasing contracting, e.g., only 14% of purchasing contracts in excess of \$20,000 and only 3% of professional consultant contracts above \$5,000 went to MBE/WBEs. Even though the disparity is significant enough to justify adoption of the Program as proposed by City Staff, he stated the City needs more industry specific utilization and availability data before the City can utilize methods of affirmative action to consider race and gender in the evaluation of bids and proposals. He stated Staff is, therefore, recommending appropriation of funds to formalize requirements into the City's contracting processes for consultant and purchasing contracts to improve opportunities for minority and women-owned businesses to compete for City contracts. Regarding staffing and resource requirements to implement the MBE/WBE Program, he stated the primary need is for certification of businesses as minority and women-owned businesses to insure the beneficiaries of the Program are entitled to its benefits, to process an estimated 1,000 new certification applications received in the first year of the Program, and to re-certify existing minority and women-owned businesses; therefore, the tasks justify the addition of another full-time equivalent position. He acknowledged the input received from the community and City Departments regarding the program's administrative procedures, but pointed out that the proposed pilot program is a combination of comprehensive and complicated requirements which will be closely monitored by the Office of Affirmative Action and Contract Compliance during the first year for the purpose of streamlining and improving the program as it is implemented. Council Member Diaz requested that the Administration involve the Redevelopment Agency in the Program process. The following citizens spoke in favor of the Disparity Study: Jacqueline C. Simon, Chair, Committee on Minority, Women and Disadvantaged

9c (Cont'd.)

Business Development; Joshua Manuel Dionisio; Tony Alexander, President, San José Branch NAACP; Al Dutra, Portuguese Chamber of Commerce; Paul Guerrero, UMBE; Ron McPherson, President, Santa Clara County Black Chamber of Commerce; Filipe Luna, President, Board of Directors of the Hispanic Chamber of Commerce of Santa Clara Valley; Bill Kumagai, Micro Business Entity; Donna Timmerman, National Association of Women-Owned Businesses; Carol Kassab; Gayle Tiller, South Bay Coalition For Affirmative Action; Thuan H. Nguyen, President, Vietnamese-American Chamber of Commerce; Ralph Valderrama, Val's Concrete, Inc.; Batista S. Vierra; Hilbert Morales, El Observador; and Maria Smith, Portuguese Chamber of Commerce. Council Member Powers recommended that Council refer to the Administration the concerns contained in the May 2, 1996 letter from the Santa Clara County Black Chamber of Commerce for a report back to Council within six months. Mayor Hammer expressed appreciation to Council Member Diaz as Liaison to the Committee on Minority, Women and Disadvantaged Business Development, City Administration, and all the participants for their coordinated effort in producing the proposed Program. Upon motion by Council Member Diaz, seconded by Vice Mayor Johnson and unanimously carried, the report entitled, "City of San José Disparity Study - Professional Services and Procurement", was accepted with Staff directed to report back to the MBE/WBE Committee after six months for administrative or compliance review of the program; Resolution No. 66602, entitled: "A Resolution of the Council of the City of San José Approving the Minority Business Enterprise/Women Business Enterprise (MBE/WBE) Program for Consultant and Purchasing Contracts", was adopted; the staffing and resource recommendations to implement the new MBE/WBE Program for Consultant and Purchasing contracts referred to the 1996-97 Budget process; the City Manager authorized to negotiate with Mason Tillman Associates, Ltd. to obtain more specific utilization and availability information for City consultant and purchasing contracts; expanding of the City's definition of minority to include persons of Portuguese and Spanish origin, was approved; and the City Manager authorized to negotiate with Mason Tillman Associates, Ltd. to add a review of Portuguese and Spanish businesses to the City's existing Disparity Study. Vote: 11-0-0-0.

ORAL COMMUNICATIONS

Amenah Jahi opposed the California Civil Rights Initiative and spoke on the testing of five Black Firefighters.

ADJOURNMENT

The Council of the City of San José adjourned at 10:45 p.m.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK

RT