

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MAY 28, 1996

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

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

Absent: Council Members: Fernandes (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. W.F. Corroon*; and *City of San José v. Leo Center*; (B) to confer with Legal Counsel regarding anticipated litigation and to discuss four 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 Darrell Dearborn, San José Police Officers' Association and International Association of Firefighters Employee Organizations.

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

Present: Council Members: Dando, Diaz, Diquisto, Fernandes (arrived at 1:55 p.m.), Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: None.

INVOCATION

Gloria Gibeaux, Executive Director, Campfire Boys and Girls, representing the youth participating in "Adventuring with Leadership" Program, read several essays written by boys and girls striving to succeed in their educational and professional endeavors. (District 5)

PLEDGE OF ALLEGIANCE

Juan Garcia, Trace Student Body President, led in the Pledge of Allegiance.

The City Council joined Council Member Diaz in welcoming the Student Council of Trace Meritt Elementary School, San José Unified School District, comprised of third, fourth and fifth grade students from the classes of Mrs. Acly, Mrs. Porter, Mrs. White, and Mr. Leonard, and accompanied by Beverly Hopper and Rosie Garcia. The guests were asked to stand and be recognized. Gloria Gibeaux, Executive Director, Campfire Boys and Girls, presented a plaque to Council Member Diaz in recognition of his support of and encouragement to the youth in District 5.

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: 10-0-1-0. Absent: Fernandes.

CEREMONIAL ITEMS

5a Presentation by City Year San José to the City Council. (Mayor)

Documents Filed: None.

Discussion/Action: Mayor Hammer welcomed eight members of City Year San José Corps, an AmeriCorps program; and Team Leader Yen Nguyen introduced the Team and Jason Ross who led the youth group in a spirited demonstration of their physical training calisthenics and yells enjoyed by team members and friends, every day at 8:00 a.m., at Caesar Chavez Park. Team members introduced themselves and described the Corps' accomplishments during the year.

Council Member Fernandes entered the Council Chambers at this point in the meeting.

Council Member Diaz left the meeting during discussion of Consent Calendar items.

CONSENT CALENDAR

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

Minutes for Approval

6a(1) Regular Meeting of April 2, 1996

Documents Filed: Minutes of the regular meeting of April 2, 1996.

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

Ordinances for Final Adoption

- 6b(1) ORD. NO. 25091 - Amends Chapter 9.10 of Title 9 of the San José Municipal Code by amending Sections 9.10.1090, 9.10.1435, 9.10.1630, 9.10.1640, 9.10.1670, and 9.10.1720 and adding Section 9.10.1960 to revise procedures related to collection of commercial solid waste generator fees, to revise the reporting requirements for commercial solid waste collection franchisees and to make technical corrections, and amends Section 9.10.1835 relating to collection of unauthorized mixed recyclables.**

Documents Filed: Proof of publication of the title of Ordinance No. 25091 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25091 was adopted. Vote: 10-0-1-0. Absent: Diaz.

- 6b(2) ORD. NO. 25092 - Amends section 3.24.320, 3.24.330, 3.24.350, 3.24.360, 3.24.370, and 3.24.380 of Chapter 3.24 of Title 3 of the San José Municipal Code to provide for contracting authority of the Board of Administration and revise certain provisions relating to the investment of moneys in the Federated City Employees Retirement System and the fiduciary duties of the Board.**

Documents Filed: Proof of publication of the title of Ordinance No. 25092 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25092 was adopted. Vote: 10-0-1-0. Absent: Diaz.

- 6b(3) ORD. NO. 25096 - Amends Chapter 6.55 of Title 6 and Chapters 13.16, 13.22 and 13.44 of Title 13 of the San José Municipal Code to add Sections 6.55.100, 13.16.100, 13.22.240 and 13.44.260 to prohibit interference with a special event held on public property for which a permit has been issued; and amends Section 6.55.010 to expand the definition of special events zones; and adds Section 13.16.015 and amends Sections 13.16.020 and 13.16.070 in order to expand the area permitted to be closed pursuant to a street closure permit.**

Documents Filed: Proof of publication of the title of Ordinance No. 25096 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25096 was adopted. Vote: 10-0-1-0. Absent: Diaz.

Public Hearings Set by Council

- 6c(1) **Adoption of a resolution setting a public hearing on August 6, 1996 at 1:30 p.m. on the Annual Sewer Service and Use Charge/Storm Drainage Service Charge Report of the Director of Finance, filed with the City Clerk, containing a description of each and every parcel of real property receiving sewer services and facilities pursuant to Chapter 15.12.550 and 15.16.1340 of the San José Municipal Code, and the amount of the sewer service and use charge and storm drainage service charge for each parcel to be collected on the FY 1996-97 County Tax Roll. (Finance)**

Documents Filed: Memorandum from Director of Finance, John V. Guthrie, dated May 10, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66641, entitled: "A Resolution of the Council of the City of San José Setting a Public Hearing on the Annual Sewer Service and Use Charge and Storm Drainage Service Use Charge Report of the Director of Finance Pursuant to Part 3 of Section 15.12.550 of the San José Municipal Code and Section 15.16.1340 of the San José Municipal Code", was adopted. Vote: 10-0-1-0. Absent: Diaz.

- 6c(2) **Adoption of a resolution giving notice of a cable television franchise application filed by Pacific Bell Video Services and setting a public hearing on June 18, 1996 at 7:00 p.m. on the application and the cable television franchise with Pacific Bell Video Services. (City Manager's Office)
(Rules Committee referral 5/22/96)**

Documents Filed: Memorandum from Director of Telecommunications, Pamela K. Stone, dated May 23, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66642, entitled: "A Resolution of the Council of the City of San José Giving Notice of Receipt of An Application for a Cable System Franchise From Pacific Bell Video Services, Setting a Public Hearing on the Franchise Application for June 18, 1996 at 7:00 p.m., and Directing the City Clerk to Publish This Resolution Pursuant to the Provisions of Chapter 15.28", was adopted. Vote: 10-0-1-0. Absent: Diaz.

Plans and Specifications

- 6d(1) **TRACT NO. 8780 - North of Aborn Road, west of Ruby Avenue - Standard Pacific of Northern California, a division of Standard Pacific Corporation, a Delaware Corporation (Developer) - 58 single family detached residential lots. Adoption of resolutions approving the plans, final map, contract, water main extension agreement, and approval of the parkland agreement for Tract No. 8780. CEQA: Resolution No. 63179. District 8. (Public Works)**

(Rules Committee referral 5/22/96)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 16, 1996, recommending Council adopt said resolutions.

Discussion/Action: Resolution No. 66643, 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. 8780"; Resolution No. 66644, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8780", Resolution No. 66645, 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. 8780"; and Resolution No. 66646, entitled: "A Resolution of the Council of the City of San José Approving and Authorizing the Execution of Agree-ment for the Water Main Extension, Tract No. 8780", were adopted. Vote: 10-0-1-0. Absent: Diaz.

Contracts/Agreements

- 6e(1) Approval of a second amendment to the agreement with Western Waste Industries for Integrated Waste Management Services, extending the term of the agreement by three (3) years, from June 30, 1999 to June 30, 2002, and to revise the incentive payment structure beginning July 1, 1999. CEQA: ND. (Environmental Services)
[Deferred from 05/14/96 - Item 6e(2)]**

Documents Filed: None.

Discussion/Action: This item was deferred to June 11, 1996.

- 6e(2) Approval of a second amendment to the concession agreement with Smarte Carte, Inc. for a self-service luggage cart rental system at the San José International Airport on a month-to-month basis, not to extend beyond June 30, 1997, with an estimated annual gross revenue to the City of approximately \$15,000. CEQA: Exempt. (Airport)**

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated May 10, 1996, recommending Council approve the second amendment to said agreement.

Discussion/Action: The second amendment to the concession agreement with Smarte Carte, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Diaz.

- 6e(3) Approval of a first amendment to the office space lease with International Total Services, Inc. to extend the term for three (3) years, from June 30, 1996 to June 30, 1999 and update certain provisions of the lease. CEQA: Exempt. (Airport)**

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated May 10, 1996, recommending Council approve the first amendment to said office space lease.

Discussion/Action: The first amendment to the office space lease with International Total Services, Inc. was approved and its execution authorized. Vote: 10-0-1-0. Absent: Diaz.

- 6e(4) Approval of a third amendment to the space lease with the USO of Northern California, Inc. to make its facility available as a rest area for passengers experiencing distress or traveling under difficult circumstances, as a service to the Airport and in consideration for rent of \$1 per year. CEQA: Exempt. (Airport)**

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated May 10, 1996, recommending Council approve the third amendment to said space lease.

Discussion/Action: Council Member Powers thanked City Staff for working with the organization to procure this service for passengers requiring assistance. The third amendment to the space lease with the USO of Northern California, Inc. was approved and its execution authorized. Vote: 10-0-1-0. Absent: Diaz.

- 6e(5) Approval of a second amendment to the license agreement with Mobilemedia, Inc. to extend the term on a month-to-month basis not to extend beyond June 30, 1997, with expected annual revenue to the City of at least \$14,400. CEQA: Exempt. (Airport)**

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated May 10, 1996, recommending Council approve the second amendment to said license agreement.

Discussion/Action: The second amendment to the license agreement with Mobilemedia, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Diaz.

- 6e(6) Approval of a first amendment to the concession agreement with Amlock Travel Services, Inc. for a self-service coin-operated mechanical luggage locker rental system at the San José International Airport on a month-to-month basis, not to**

extend beyond June 30, 1997, with estimated annual revenue to the City of approximately \$1,800. CEQA: Exempt. (Airport)

Documents Filed: Memorandum from Director of Aviation, Ralph G. Tonseth, dated May 10, 1996, recommending Council approve the first amendment to said concession agreement.

Discussion/Action: The first amendment to the concession agreement with Amlock Travel Services, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Diaz.

6e(7) Approval of award of open purchase orders for supplies, materials, equipment and services for FY 1995-96 #29, 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 May 10, 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. 29 for FY 1995-96 was approved and execution of the purchase orders authorized. Vote: 10-0-1-0. Absent: Diaz.

6e(8) Adoption of a resolution authorizing the Director of General Services to execute all documents necessary for the sale of six (6) surplus Police vehicles for a total amount of \$12,000 and approving the partial donation of surplus property with an estimated value of \$3,000 to the City of Tecate, Mexico. (General Services)

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated May 10, 1996, recommending Council adopt said resolution.

Discussion/Action: Noting the City's fiscal responsibility to get the maximum amount from the sale of surplus equipment, Council Member Pandori objected to the sale of the vehicles at less than market value, and suggested that Council defer its decision on this issue until Staff has developed a policy on the disposition of surplus property. Director of General Services Ellis Jones noted that City Staff deems a vehicle as surplus only when it has served its useful life and is no longer economically feasible to repair, and that the San José Municipal Code governs the sale of surplus property; however, other governmental agencies can submit bids for vehicles before they are auctioned and that under the Code those bids can be awarded to the proposal which is most advantageous to the City. He stated City Staff recommends that the six surplus vehicles be sold to the City of Tecate for \$12,000. Resolution No. 66647, entitled: "A Resolution of the Council of the City of San José Approving the Sale and Partial Donation of Six (6) Surplus Police Vehicles to the City of Tecate, Mexico", was adopted. Vote: 9-1-1-0. Noes: Pandori. Absent: Diaz.

- 6e(9) Approval of a change order in an amount not to exceed \$12,300 and modification of terms regarding the purchase, removal of old carpet, and installation of new carpet at the San José International Airport/Terminal A from Monroe Schneider Associates for a total price of \$95,280. (General Services)**

Documents Filed: Memorandum from Director of General Services, Ellis M. Jones Jr., dated May 10, 1996, recommending Council approve said change order.

- 6e(9) (Cont'd.)**

Discussion/Action: The change order and modifications of the terms of the agreement with Monroe Schneider Associates, were approved. Vote: 10-0-1-0. Absent: Diaz.

- 6e(10) Report on bids and award of contract for the Shasta Hanchett Sanitary Sewer Rehabilitation Project to the low bidder, D.W. Young Construction Company, Inc., in the amount of \$261,920, and approval of a contingency in the amount of \$30,000. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council award said contract to the low bidder.

Discussion/Action: The award of contract to D.W. Young Construction Company, Inc., was approved and execution of the contract authorized. Vote: 10-0-1-0. Absent: Diaz.

- 6e(11) Adoption of a resolution approving the first amendment to the agreement with Charles W. Davidson Company for engineering services in connection with Improvement District No. 93-213SJ (Capitol-Copperfield) increasing compensation by \$23,296, from \$420,000 to \$443,296. CEQA: Resolution No. 64433. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 66648, entitled: "A Resolution of the Council of the City of San José Approving a First Amendment to the Agreement With Charles W. Davidson Company for Engineering Services in Connection With Improvement District No. 93-213SJ (Capitol-Copperfield) Increasing the Compensation to \$443,296", was adopted. Vote: 10-0-1-0. Absent: Diaz.

- 6e(12) Approval of Contract Change Order No. 3 for the Fire Station Privacy Improvements Phase III Project with A & A Construction, Inc., in the amount of**

\$72,875, for a total contract amount of \$310,495, and a 60 calendar-day time extension, for a total contract time of 236 calendar days. CEQA: Exempt. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council approve said contract change order.

6e(12) (Cont'd.)

Discussion/Action: Contract Change Order No. 3 with A & A Construction, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Diaz.

- 6e(13) (a) Report on bids and award of contract for the Japanese Friendship Garden Sewer Pump Station Replacement Project to the low bidder, Plan Construction Company, in the amount of \$128,447 and approval of a contingency in the amount of \$13,000. CEQA: Exempt. (Public Works)**
- (b) Adoption of appropriation ordinance amending the City-wide Construction and Conveyance Tax Fund to provide an additional \$35,000 for the Japanese Friendship Garden Sewer Pump Replacement Project. (City Manager's Office)**

Documents Filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council approve award of said contract to the low bidder. (2) Memorandum from Budget Director, Larry D. Lisenbee, dated May 10, 1996, recommending Council approve said appropriation ordinance amendments in the City-Wide Construction and Conveyance Tax Fund.

Discussion/Action: City Attorney, Joan R. Gallo, advised Council of the necessity to modify the recommended action to remove *adoption of a revenue resolution* and to proceed only with adoption of an appropriation ordinance to effect the amendment to the fund. The award of contract to Plan Construction Company, was approved and execution of the contract authorized; and Ordinance No. 25097, entitled: "An Ordinance of the Council of the City of San José Amending Ordinance No. 24945 Which Appropriates Moneys in the Construction and Conveyance Tax Fund, City-Wide Parks, in the Amount of \$35,000, for the Japanese Friendship Garden Sewer Pump Replacement Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 10-0-1-0. Absent: Diaz.

- 6e(14) Report on bids and award of contract for the De Anza Park and Scottsdale Park Improvements Project to the low bidder, Lone Star Landscape, Inc., to include the base bid only in the amount of \$89,871. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council award said contract to the low bidder.

Discussion/Action: The award of contract to Lone Star Landscape, Inc., was approved and execution of the contract authorized. Vote: 10-0-1-0. Absent: Diaz.

- 6e(15) Report on bids and award of contract for the Alum Rock Park Restroom Upgrade Project to the sole bidder, Lowery Engineering Construction, Inc., for the Base Bid and Add Alternate in the amount of \$134,506, and approval of a contingency in the amount of \$14,000. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council award said contract to the sole bidder, pursuant to Section 4.12.020 of the San José Municipal Code.

Discussion/Action: The award of contract to Lowery Engineering Construction, Inc., the sole bidder, was approved and execution of the contract authorized. Vote: 10-0-1-0. Absent: Diaz.

Routine Legislation

- 6f(1) Adoption of appropriation ordinance and revenue resolution amendments in the City-side Redevelopment Capital Fund to provide \$133,230 for the Atmel Signal Light, the Museum of Art Historic Wing Interior, and the Mexican Cultural Heritage Gardens Projects. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated May 14, 1996, recommending Council approve said appropriation ordinance and revenue resolution amendments in the City-Side Redevelopment Capital Fund.

Discussion/Action: Ordinance No. 25098, 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 Amount of \$133,230, for the Atmel Signal Light, the Museum of Art Historic Wing Interior, and the Mexican Cultural Heritage Gardens Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted; and Resolution No. 66649, 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: 10-0-1-0. Absent: Diaz.

- 6f(2) Approval of the appointments to the San José Beautiful Steering Committee of Paulette Johnson, Linda Kincaid, Kristen Sulpizio and Peggy Thomas to a two (2) year term effective July, 1996. (Parks, Recreation and Neighborhood Services)**

Documents Filed: Memorandum from Director of Parks, Recreation and Neighborhood Services, Ellis E. Mitchell, dated May 10, 1996, recommending Council approve the appointments to the Steering Committee.

6f(2) (Cont'd.)

Discussion/Action: The appointments to the San José Beautiful Steering Committee were approved. Vote: 10-0-1-0. Absent: Diaz.

**6f(3) Adoption of a resolution designating the Department of Planning, Building and Code Enforcement as the Local Enforcement Agency (LEA) for solid waste facilities and disposal sites located in the City of San José.
(Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated May 10, 1996, recommending Council adopt said resolution.

Discussion/Action: William J. Garbett spoke against the proposed action. Resolution No. 66650, entitled: "A Resolution of the Council of the City of San José Designating the Department of Planning, Building and Code Enforcement as the Local Enforcement Agency for Solid Waste Facilities and Disposal Sites Located in the City of San José", was adopted. Vote: 10-0-1-0. Absent: Diaz.

**6f(4) Adoption of a resolution summarily vacating the public service easement and emergency right-of-way easement lying within the Paseo de San Antonio between Second Street and Third Street. CEQA: Resolution 56434.
(Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66651, entitled: "Resolution of the Council of the City of San José Summarily Vacating the Public Service Easement and Right of Way Easement Lying Within the Paseo de San Antonio Between Second Street and Third Street", was adopted. Vote: 10-0-1-0. Absent: Diaz.

6f(5) (a) Adoption of resolutions approving the map and summarily vacating the northeasterly 15 feet of that portion of North Eighth Street, and temporary closure of the southwesterly 65 feet of that portion of North Eighth Street between vacated Warren Way and vacated East Mission Street to vehicular and pedestrian traffic.

6f(5) (Cont'd.)

- (b) **Adoption of a resolution authorizing the City Manager to negotiate and execute those documents necessary to effectuate the transfer of the underlying fee in a portion of North Eighth Street and lease back of the property, and authorizing the Director of Public Works to issue a revocable encroachment permit to the underlying fee owner for the exclusive use of the public right of way pending abandonment and lease back.**

(Public Works)

Documents Filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council adopt said resolutions. (2) Memorandum from City Attorney, Joan R. Gallo, dated May 28, 1996, recommending Council adopt said resolution for street conveyance of fee and lease.

Discussion/Action: Resolution No. 66652, entitled: "Resolution of the Council of the City of San José Approving a Map of and Summarily Vacating the Northeasterly Fifteen Feet of North Eighth Street Between Vacated Warren Way and Vacated Mission Street"; Resolution No. 66653, entitled: "A Resolution of the Council of the City of San José Temporarily Closing to Vehicular and Pedestrian Traffic the Southwesterly 65 Feet of North Eighth Street Between Vacated Mission Street and Vacated Warren Way"; and Resolution No. 66654, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Those Documents Necessary to Effectuate the Transfer of the Underlying Fee in a Portion of North Eighth Street and Leaseback of the Property and Authorizing the Director of Public Works to Issue a Revocable Encroachment Permit to the Underlying Fee Owner for the Exclusive Use of the Public Right of Way Pending Abandonment and Lease Back", were adopted. Vote: 10-0-1-0. Absent: Diaz.

- 6f(6) Adoption of a resolution authorizing the Director of Finance to execute documents related to redeeming the outstanding City of Alviso Water Bonds. (Finance)
(Rules Committee referral 5/22/96)**

Documents Filed: Memorandum from Director of Finance John V. Guthrie, and Director of Environmental Services Louis N. Garcia, dated May 22, 1996, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 66655, entitled: "A Resolution of the Council of the City of San José Approving the Redemption of All Outstanding 1964 City of Alviso Water Revenue Bonds and Authorizing the Director of Finance to Execute Documents Related Thereto", was adopted. Vote: 10-0-1-0. Absent: Diaz.

- 6f(7) Appointment of Vice Mayor Trixie Johnson as the City of San José representative and Council Member Manny Diaz as the City of San José alter-nate to the Santa Clara County Local Agency Formation Commission. (Mayor)
(Rules Committee Referral 05/22/96)**

Documents Filed: None.

Discussion/Action: The appointment of Vice Mayor Johnson and Council Member Diaz to serve as alternates to the Santa Clara County Local Agency Formation Commission (LAFCO), was approved. Vote: 10-0-1-0. Absent: Diaz.

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - May 15, 1996

Documents Filed: Rules Committee Report of the meeting on May 15, 1996.

- (1) Review May 28 Council Agenda

The Committee recommended approval of the May 28, 1996 Council Agenda with two additions and one change.

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

The Committee recommended eight additions and two changes to the May 21, 1996 Amended Council Agenda.

- (3) The Public Record. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated May 9, 1996, listing the items filed for the Public Record for the period May 1-7, 1996.

The Committee noted and filed the Public Record for the period May 1-7, 1996.

7b Report of the Rules Committee - May 15, 1996 - (Cont'd.)

- (4) Council Referrals for assignment to appropriate Committee, Administration, or Council Appointee

- (a) Proposed Sidewalk Ordinance. Attachment: Memorandum from City Attorney, Joan R. Gallo, dated May 17, 1996, advising Council on the Sidewalk Ordinance proposal from Council Member Pandori.

The Committee referred Council Member Pandori's item regarding a proposed sidewalk ordinance to the May 28, 1996 Council Agenda.

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

(5) City Council and Rules Committee Meeting Schedules

None presented.

(6) Oral Communications

None presented.

(7) Adjournment

The meeting was adjourned at 3:00 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 May 15, 1996 were accepted with Item 7b(4)(a) acted upon at Item 9b. Vote: 10-0-1-0. Absent: Diaz.

GENERAL GOVERNMENT

9a Adoption of a resolution expressing strong opposition to the Jarvis Initiative, which is the proposed constitutional amendment on voter approval for local government taxes and limitations on fees, assessments, and charges. (Mayor)

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated May 20, 1996, recommending Council adopt said resolution.

9a (Cont'd.)

Discussion/Action: City Attorney, Joan R. Gallo, stated the proposed Jarvis Initiative is misleading, undemocratic, and is a far-reaching draconian attempt to undermine the ability of local government to function, in that it deals not just with taxes, but with assessments, fees and charges; its expressed intent is to limit the methods by which local governments exact revenue from taxpayers without their consent. She stated the Initiative should be vigorously opposed. Vice Mayor Johnson requested that the City Attorney work with the Mayor's Office in developing the necessary fact sheet for extensive distribution and dissemination to the public at large. Upon motion by Council Member Dando, seconded by Vice Mayor Johnson and unanimously carried, Resolution No. 66656, entitled: "A Resolution of the Council of the City of San José Expressing Strong Opposition to the Initiative Proposing a Constitutional Amendment Which Would Require Voter Approval for Local Government Taxes and Would Limit the City's Ability to Impose Fees, Assessments, and Charges", was adopted. Vote: 10-0-1-0. Absent: Diaz.

Council Member Diaz returned to the meeting.

Council Member Shirakawa, Jr., left the meeting during discussion of Item 9b.

9b Discussion and direction regarding a sidewalk ordinance that would prohibit sitting and lying down on public sidewalks in commercial zones during business hours. (Pandori)
[Rules Committee referral 5/15/96 - Item 7b4(a)]

Documents Filed: (1) Memorandum from Council Member Pandori, dated April 23, 1996, recommending Council direct the City Attorney to draft said sidewalk ordinance. (2) Memorandum from City Attorney, Joan R. Gallo, dated May 17, 1996, advising Council on the Sidewalk Ordinance proposal from Council Member Pandori.

Discussion/Action: City Attorney, Joan R. Gallo, commented on the court case in Seattle regarding their Sidewalk Ordinance which has been challenged as being a facially unconstitutional abridgment of the First Amendment right to freedom of speech. She stated the San José ordinance will require adequate documentation on the violation—specific geographic location, specific times of occurrence, negative impacts created for businesses, pedestrian traffic and property values—and that consideration must be given to other ways of solving the problem which create less of an infringement. She stated the Attorney’s Office will keep the Council informed of any further developments in the Seattle case or related litigation occurring in other courts that would affect the proposed sidewalk ordinance. Richard Zlatunich and Fil Maresca, representing the San

9b (Cont’d.)

José Downtown Association, spoke in support of the proposed ordinance. William J. Garbett spoke against the proposed action. Upon motion by Council Member Pandori, seconded by Council Member Fiscalini and unanimously carried, the City Attorney, the Redevelopment Agency, and the Police Department were directed to draft a Sidewalk Ordinance that would prohibit sitting and lying down on City sidewalks, and to work with businesses and property owners in the Downtown and the Neighborhood Business Districts to determine the appropriate time and place restrictions and the exceptions to the ordinance. Vote: 10-0-1-0. Absent: Shirakawa, Jr.

- 9f (1) Approval of the Programming Report for the Central Service Yard Project Phase I.**
(2) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Sugimura & Associates, Architects for the Central Service Yard Project, in an amount not to exceed \$400,000.
(Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council approve said report and authorize the City Manager to negotiate and execute said amendment to the agreement with Sugimura & Associates, Architects.

Discussion/Action: Beginning with background information on the Master Plan and the first phase of development for the Central Service Yard, Director of Public Works, Ralph A. Qualls, Jr., presented a comprehensive overview of the Project. With the use of overhead transparencies, he reviewed the scope of work for Phase I and program recommendations for Buildings A through F and the parking site, general site work and occupants, the preliminary construction cost estimate and schedule for completion of Phase I improvements at the Yard, which meet the requirements of the November 1993 bond financing program. With Council approval of the Central Service Yard, Phase I Programming Report, he stated the City will negotiate and award an amendment to the agreement with Sugimura & Associates, Architects, for design development, construction documents, and construction administration phase professional services. Gerry De Young, representing the San José Historical Museum Association, and Jim Zetterquist, Vice Chair of the San José Landmarks Commission, spoke in support of the proposal. Upon motion by Council Member Powers, seconded by Council Member Fernandes and unanimously carried, the Programming Report for the Central Service Yard Project Phase I was approved, and Resolution No. 66657, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute an Agreement With Sugimura & Associates, Architects for the Central Service Yard Project, Phase I, in an Amount Not to Exceed \$400,000", was adopted. Vote: 10-0-1-0. Absent: Shirakawa, Jr.

Item 9c was considered in conjunction with Item 9i.

- 9i PUBLIC HEARING ON AN ORDINANCE amending Title 20 of the San José Municipal Code by adding Sections 20.04.467 and Section 20.04.585 to Chapter 20.04, adding a new Part 15 to Chapter 20.08 and amending Part 6 of Chapter 20.52 to define utility structure and provider and to establish an administrative permit process for the placement of utility structures on private property. (Planning, Building and Code Enforcement) Director of Planning recommend approval. Planning Commission recommends approval (6-0-1). CEQA: Exempt. (Continued from 05/21/96 - Item 15c)**

Documents Filed: (1) Memorandum from the Planning Commission, dated May 23, 1996, recommending Council adopt the ordinance revisions and establish an Administrative Permit process for the placement of utility structure on private property. (2) Notice of Public Hearing on an Ordinance to Amend the Zoning Code of the City of San José, Citywide, dated May 6, 1996, and the Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the process for the placement of utility structures on private property. William J. Garbett spoke against the

proposed action. Upon motion by Council Member Fernandes, seconded by Council Member Diquisto and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25100, entitled: "An Ordinance of the City of San José Amending Title 20 of the San José Municipal Code by Adding Sections 20.04.467 and Section 20.04.585 to Chapter 20.04, Adding a New Part 15 to Chapter 20.08 and Amending Part 6 of Chapter 20.52 to Define Utility Structure and Provider and to Establish An Administrative Permit Process for the Placement of Utility Structure on Private Property", was passed for publication. Vote: 10-0-1-0. Absent: Shirakawa, Jr.

- 9c Approval of an ordinance amending Title 15 of the San José Municipal Code by repealing Sections 15.16.330 and 15.16.340 of Chapter 15.16 and adding a new Chapter 15.50 to establish a new process for the issuance of excavation/encroachment permits in the public right-of-way. (City Attorney's Office)**

Documents Filed: (1) Memorandum from City Attorney, Joan R. Gallo, dated May 24, 1996, recommending Council approve said ordinance. (2) Letter from Suzanne Salata, Public Affairs Director, Pacific Telesis Group, dated May 22, 1996, supporting the proposed ordinance.

- 9c (Cont'd.)**

Discussion/Action: William J. Garbett spoke against the proposed action. Upon motion by Council Member Fernandes, seconded by Council Member Diquisto and unanimously carried, Ordinance No. 25099, entitled: "An Ordinance of the City of San José Amending Title 15 of the San José Municipal Code by Repealing Sections 15.16.330 and 15.16.340 of Chapter 15.16 and Adding a New Chapter 15.50 to Establish a New Process for the Issuance of Excavation/Encroachment Permits in the Public Right-of-Way", was passed for publication. Vote: 10-0-1-0. Absent: Shirakawa, Jr.

- 9d Report on bids and award of contract for the San Antonio Sanitary Sewer Rehabilitation Phase IIA Project to the low bidder, Spiniello Construction Company, in the amount of \$834,937, and approval of a contingency in the amount of \$84,000. CEQA: Exempt. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council award said contract to the low bidder.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Dando and unanimously carried, the award of contract to Spiniello Construction Company, the low bidder, was approved and execution of the contract authorized. Vote: 10-0-1-0. Absent: Shirakawa, Jr.

- 9e Report on bids and award of contract for Improvement District No. 93-213SJ (Capitol-Copperfield) Contract No. 2: Capitol Expressway and Vistapark Drive Project to the low bidder, Wattis Construction Company, Inc., in the amount of \$755,212.57, and approval of a contingency in the amount of \$76,000. CEQA: Resolution No. 64433. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated May 10, 1996, recommending Council award said contract to the low bidder.

Discussion/Action: William J. Garbett spoke against the proposed action. Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini and unanimously carried, the award of contract to Wattis Construction Company, Inc., the low bidder, was approved and execution of the contract authorized. Vote: 10-0-1-0. Absent: Shirakawa, Jr.

- 9g**
- (1) Approval of award of the Terminal A Taxicab Services Concession to Yellow Checker Cab Company, Inc. (Yellow Cab).**
 - (2) Approval of the award of the Terminal C Taxicab Services Concession to USA Shuttle Service Inc., dba Express Cab USA (Express Cab).**
 - (3) Adoption of a resolution authorizing the City Manager to negotiate and execute taxicab concession agreements with Yellow Cab and USA Shuttle Service, Inc., dba Express Cab USA.**
 - (4) Adoption of a resolution revising the Airport Starter Fee to equal \$1.50 per pickup, to be paid by the passenger, and repealing Resolution No. 65334.**
 - (5) Direction to the Airport Department to terminate the existing Taxicab Services agreements with Santa Clara County Taxicab Association (SCCTA) for Terminal A and Yellow Checker Cab Company, Inc. for Terminal C to coincide with the effective date of the new Taxicab Services Concession Agreements.**
 - (6) Direction to the Airport Department to terminate the agreement for Taxicab Starter Services with APCOA, Inc. to coincide with the expiration of the current agreement at 1:59 a.m. on August 1, 1996.**

**CEQA: Exempt
(Airport)
(Deferred from 05/21/96 - Item 9c)**

Documents Filed: None.

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

- 9h PUBLIC HEARING ON AN ORDINANCE amending Chapter 20.52 of Title 20 of the San José Municipal Code to update the procedures for the issuance of Sidewalk Cafe Permits and to allow the service of alcoholic beverages in sidewalk cafes. (Planning, Building and Code Enforcement) Director of Planning**

**recommend approval. Planning Commission recommends approval (5-0-2).
CEQA: Exempt.
(Continued from 05/21/96 - Item 15b)**

Documents Filed: (1) Memorandum from the Planning Commission, dated May 23, 1996, recommending Council adopt the ordinance revisions to allow alcohol service at sidewalk cafes. (2) Notice of Public Hearing on the Ordinance to Amend the Zoning of the City of San José, dated May 8, 1996, and the Proof of Publication submitted by the City Clerk.

9h (Cont'd.)

Discussion/Action: Mayor Hammer opened the public hearing on matters related to Sidewalk Cafés. William J. Garbett spoke against the proposed action. Chuck Hammers, representing Pizza A-Go-Go, spoke in support of the proposed action. Upon motion by Council Member Diquisto, seconded by Vice Mayor Johnson and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25101, entitled: "An Ordinance of the City of San José Amending Section 10.12.010 of Chapter 10.12 of Title 10 of the San José Municipal Code to Modify the Prohibition Against Consuming Intoxicating Beverages on Streets and Amending Part 8 of Chapter 20.52 of Title 20 of the San José Municipal Code to Update the Sidewalk Cafe Permit Procedures and to Allow the Service of Alcohol in Sidewalk Cafés", was passed for publication. Vote: 10-0-1-0. Absent: Shirakawa, Jr.

**9j PUBLIC HEARING ON AN ORDINANCE amending Title 20 of the San José Municipal Code by adding Chapter 20.38 to establish special zoning provisions for the Downtown. (City Attorney's Office)
(Continued from 05/21/96 - Item 15d)**

Documents Filed: Memorandum from the Planning Commission, dated May 23, 1996, requesting deferral to June 18, 1996.

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

CLOSED SESSION REPORT

Disclosure of Closed Session Action of May 28, 1996 submitted by City Attorney, Joan R. Gallo:

A. Authority to Initiate Litigation:

Authority to initiate litigation was given in one (1) 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.

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

CLOSED SESSION REPORT

Disclosure of Closed Session Action of May 28, 1996 submitted by City Attorney, Joan R. Gallo:

B. Authority to Enter Litigation Cases As Amicus Curiae:

1. Case Name: Nunez v. City of San Diego

Adverse Party or Parties: Nunez

Substance of Litigation: This is a lawsuit which challenges San Diego's curfew ordinance alleging constitutional violations.

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

2. Case Name: Coleman, et al. v. Santa Clara County Open Space Authority

Adverse Party or Parties: Robert Coleman, et al.

Substance of Litigation: This lawsuit challenges the Open Space Assessment District established by the Santa Clara County Open Space Authority.

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

ADJOURNMENT

The Council of the City of San José adjourned at 3:05 p.m.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK