

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, AUGUST 13, 1996

The Council of the City of San Jose convened in regular session at 9:30 A.M. in City Council Chambers at City Hall.

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

Absent: Council Members -Dando.

Upon motion unanimously adopted, Council recessed at 9:35 A.M. to a Closed Session in Room 600 to confer with Legal Counsel pursuant to Government Code Section 54956.9; under Subsection (a) to discuss existing litigation in the cases of De La Torre v. City of San José, et al.; City of San José, et al. v. El Rancho Properties, et al.; to discuss anticipated litigation pursuant to Subsection (b) of Government Code Section 54956.9, in three matters involving significant exposure to litigation and one matter regarding the initiation of litigation.

By unanimous consent, Council reconvened from the Closed Session and recessed at 10:55 A.M. and reconvened at 1:38 P.M. in the Council Chambers.

Present: Council Members -Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori (arrived at 1:50 p.m.), Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members -Dando.

INVOCATION

Cindy Pelayo, Pegasus High School, read an essay written for the Cesar Chavez Writing Contest, entitled: "A Life Worth Living".
(District 7)

PLEDGE OF ALLEGIANCE

Mayor Hammer led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Powers, seconded by Vice Mayor Johnson, and unanimously carried, the Orders of the Day and the Amended Agenda were approved. Vote: 10-0-1-0. Absent: Dando.

CEREMONIAL ITEMS

- 5a Presentation of plaques to David Benjamin for 4 years service, and to Dian Syverson for 6 years 5 months service on the Housing Advisory Commission; to Abi Maghamfar for 3 years 7 months service on the Parking Advisory Commission; to Gerardo Amador for 4 years 6 months service, to Gail Fisher for 4 years 6 months service, to Phil Frausto for 4 years 6 months service, and to Bonnie Sublett for 3 years 11 months service on the Parks and Recreation Commission; to Emma Madrid for 6 years 7 months service, and to David Tanner for 4 years service on the Planning Commission; to Sally Ravel for 5 years 4 months service on the Senior Citizens Commission; and to Dagmar Poffenroth for 4 years service on the Traffic Appeals Commission. (Mayor)**

Documents filed: None.

Discussion/Action: Mayor Hammer presented plaques to Dian Syverson for 6 years 5 months service on the Housing Advisory Commission, to Abi Maghamfar for 3 years 7 months service on the Parking Advisory Commission, to Phil Frausto for 4 years 6 months service on the Parks and Recreation Commission, and to Emma Madrid for 6 years 7 months service on the Planning Commission. Plaques will be sent to the honorees who were unable to be present.

- 5b Presentation of commendations to James P. Simmons and Vanessa Schlueter for being honored as 1996 Presidential Scholars. (Mayor)**

Documents filed: None.

Discussion/Action: Mayor Hammer was joined at the podium by Vice Mayor Johnson and Council Member Fiscalini for presentation of commendations to James P. Simmons, a Pepperdine College Preparatory graduate who will be going to Princeton, and to Vanessa Schlueter, a graduate of Cupertino High School who will go to Harvard, in recognition of their selection as the two recipients from the State of California.

Mayor Hammer introduced Maura Keany, the Mayor's new Administrative Assistant.

CONSENT CALENDAR

William Garbett addressed the Council in opposition to Items 6e(8), 6f(1) and 6f(2). Upon motion by Council Member Powers, seconded by Council Member Fiscalini, and

unanimously carried, the Consent Calendar was approved and the below listed items taken as indicated. Vote: 10-0-1-0. Absent: Dando.

Minutes for Approval

6a(1) Regular Meeting of May 21, 1996

Documents filed: Minutes of May 21, 1996.

Discussion/Action: The minutes were approved. Vote: 10-0-1-0. Absent: Dando.

6a(2) Adjourned Regular Meeting of May 23, 1996

Documents filed: Minutes of May 23, 1996.

Discussion/Action: The minutes were approved. Vote: 10-0-1-0. Absent: Dando.

6a(3) Regular Meeting of May 28, 1996

Documents filed: Minutes of May 28, 1996.

Discussion/Action: The minutes were approved. Vote: 10-0-1-0. Absent: Dando.

Contracts/Agreements

6e(1) Adoption of a resolution:

- (a) Approving business terms for a \$294,000 acquisition and development loan to Catholic Charities Housing Development Corporation, or its designee, for a 12-unit Casa de Palma Single Room Occupancy (SRO) Housing Project, affordable to very-low income persons, at 25 South Fifth Street.**
- (b) Authorizing the Director of Housing to negotiate and execute all necessary documents on behalf of the City.**

(Housing)

Documents filed: Memorandum from Director of Housing, Alex Sanchez, dated July 26, 1996, recommending the adoption of said resolution.

Discussion/Action: Resolution No. 66837, entitled: "A Resolution of the Council of the City of San José (i) Approving Business Terms for an Acquisition and Development Loan up to \$294,000 to Charities Housing Development Corporation, or its Designee, for a 12-Unit Group Housing/SRO Project, Affordable to Very-Low Income Persons, Located at 25 South Fifth Street; (ii) Authorizing the Director of

Housing to Negotiate and Execute All Necessary Documents on Behalf of the City”, was adopted. Vote: 10-0-1-0. Absent: Dando.

6e(2) Adoption of a resolution:

- (a) Approving a grant to Poco Way Associates to underground the overhead utilities for the Poco Way Family Housing Project, in an amount not to exceed \$237,300.**
- (b) Authorizing the Director of Housing to negotiate and execute all necessary documents to implement the grant.**

(Housing)

Documents filed: Memorandum from Director of Housing, Alex Sanchez, dated July 26, 1996, recommending the adoption of said resolution.

Discussion/Action: Resolution No. 66838, entitled: “A Resolution of the Council of the City of San José Approving a Grant to Poco Way Associates to Underground the Overhead Utilities for the Poco Way Housing Project and Authorizing the Director of Housing to Negotiate and Execute the Agreement and All Necessary Documents”, were adopted. Vote: 10-0-1-0. Absent: Dando.

6e(3) Approval of Contract Change Order No. 6 with San José Signal Electric Construction, Inc., for the Installation of Traffic Signal Unit 94A Project in the amount of \$5,580, for a total contract amount of \$421,562. CEQA: Exempt. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated July 26, 1996, recommending approval of Contract Change Order No. 6 with San José Signal Electric Corporation, Inc.

Discussion/Action: Contract Change Order No. 6 with San José Signal Electric Construction, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Dando.

- 6e(4)**
- (a) Report on bids and award of contract for the Warwick Road Storm Drain Project to the low bidder, MCH General Engineering Contractors, Inc., in the amount of \$121,214, and approval of a contingency in the amount of \$20,000. CEQA: Exempt.**
 - (b) Approval of an agreement with David G. Buttress for the purchase of real property rights for the Warwick Storm Drain Project in an amount not to exceed \$850, and authorization for the Director of Public Works, or designee, to execute the necessary documents. CEQA: Exempt.**
- (Public Works)**

Documents filed: Memoranda from Director of Public Works, Ralph A. Qualls, Jr.,

dated July 26, 1996, recommending award of said contract for the Warwick Road Storm Drain Project to the low bidder, MCH General Engineering Contractors, Inc.; and approval of said agreement with David G. Buttress for the purchase of real property rights for the Warwick Storm Drain Project.

Discussion/Action: The contract with the low bidder, MCH General Engineering Contractors, Inc. in the amount of \$121,214, with a contingency in the amount of \$20,000; and an agreement with David G. Buttress for the purchase of said real property rights for the Warwick Storm Drain Project; was approved and its execution authorized. Vote: 10-0-1-0. Absent: Dando.

6e(5) Approval of the substitution of a subcontractor, Rivera Heating and Air Conditioning Company, with W.R. Allen Heating and Air Conditioning for the San José International Airport Terminal C Reroof Project at no additional cost to the City. CEQA: Exempt. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated July 26, 1996, recommending the approval of said subcontractor substitution.

Discussion/Action: The substitution of subcontractor Rivera Heating and Air Conditioning Company, with W.R. Allen Heating and Air Conditioning, was approved. Vote: 10-0-1-0. Absent: Dando.

6e(6) Report on bids and award of contract for the Capitol Avenue Median Island Landscaping Project to the low bidder, Collishaw Construction, Inc., to include the base bid and Add Alternate Nos. 1 and 2 in the amount of \$143,040, 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 July 26, 1996, recommending award of contract to the low bidder, Collishaw Construction, Inc.

Discussion/Action: The award of contract to the low bidder, Collishaw Construction, Inc., and said contingency, were approved. Vote: 10-0-1-0. Absent: Dando.

6e(7) Adoption of a resolution authorizing the Director of Public Works to execute an agreement with E.H. Renzel, Jr. and Merle Withycombe as Trustees for the donation of land for the King/Las Plumas Street Improvement Project, and authorization for the Director of Public Works, or designee, to sign the necessary documents to accept the donation. CEQA: ND. (Public Works)

Documents filed: None.

Discussion/Action: This item was deferred to August 20, 1996.

- 6e(8)**
- (a) Report on bids and award of contract for the San José Arena Guardrail Modifications Project to the low bidder, Jim Duffy Construction, for the base bid in the amount of \$197,610. CEQA: Exempt. (Public Works)**
 - (b) Adoption of appropriation ordinance and revenue resolution amendments in the City-side Redevelopment Capital Fund to rebudget \$318,248 for the San José Arena Basketball Improvements Project. (City Manager's Office) (Orders of the Day 4a)**

Documents filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated August 9, 1996, recommending award of said contract. (2) Memorandum from Budget Director Larry D. Lisenbee, dated August 9, 1996, recommending adoption of said appropriation ordinance and related revenue resolution amendments.

Discussion/Action: The award of contract to the low bidder, Jim Duffy Construction, was approved and its execution authorized, and Ordinance No. 25148, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 which Appropriates Moneys In the Services for Redevelopment Capital Projects Fund in the Amount of \$318,248 for the San José Arena Basketball Improvements Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 66839, entitled: "A Resolution of the Council of the City of San Jose Amending Revenue Resolution No. 66717 Setting Forth the Estimated Sources of Funds for the Fiscal Year 1996-97 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund", were adopted. Vote: 10-0-1-0. Absent: Dando.

Routine Legislation

- 6f(1) Adoption of appropriation ordinance amendments in the Consolidated Water Facility Fund in the amount of \$295,000 for the Hetch-Hetchy Service Connection Project. (City Manager's Office)**

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated July 26, 1996, recommending adoption of said appropriation ordinance amendments.

Discussion/Action: Ordinance No. 25149, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 which Appropriates Moneys in the Water Utility Fund in the Amount of \$295,000 for the Hetch-Hetchy Service Connection Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 10-0-1-0. Absent: Dando.

- 6f(2) Adoption of a resolution determining that public interest and necessity require the acquisition of certain property owned by Richard T. Peery, Trustee and John Arrillaga, Trustee, and directing the filing of a suit in eminent domain. CEQA:**

Resolution No. 64667. (Public Works/Environmental Services)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., and Louis N. Garcia, Director of Environmental Services, dated July 26, 1996, recommending the adoption of said resolution. (2) Letter from the Treatment Plant Advisory Committee dated August 9, 1996, recommending adoption of said resolution.

Discussion/Action: Resolution No. 66840, "Resolution of Necessity of the Council of the City of San Jose Making Certain Findings and Determinations Relating to the Exercise of the Power of Eminent Domain Pursuant to Article 2, Chapter 4, Title 7 of Part 3 of the California Code of Civil Procedure for the Following Project: South Bay Water Recycling; Authorizing and Empowering the City Attorney to Bring an Action in Eminent Domain to Acquire Certain Real Property for Said Project and to Apply for an Order of Possession Before Judgment and to Prosecute said Action to Final Judgment; and Authorizing and Empowering the Deposit of Money in Court for Possession of Said Real Property from the Funds Lawfully Available Therefore", was adopted. Vote: 10-0-1-0. Absent: Dando.

6f(3) Adoption of a resolution closing Wool Creek Drive east of Will Wool Drive. CEQA: Exempt. (Streets and Traffic)

Documents filed: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated July 26, 1996, recommending the adoption of said resolution.

Discussion/Action: Resolution No. 66841, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Streets and Traffic to Temporarily Close Wool Creek Drive East of Will Wool Drive", was adopted. Vote: 10-0-1-0. Absent: Dando.

**6f(4) Approval of an ordinance amending Section 17.10.325 of Chapter 17.10 of Title 17 of the San José Municipal Code to correct a clerical error, amending Section 17.10.420 of Chapter 17.10 of Title 17 to modify the criteria for the alteration or construction of single family residences on existing lots, and amending Section 17.10.310 and Part 6 of Chapter 17.10 of Title 17 to establish procedures for the performance of additional regional studies within the special geologic hazard study area. (Public Works)
[Deferred from 8/6/96 - Item 6e(9)]**

Documents filed: None.

Discussion/Action: This item was deferred to August 20, 1996.

6f(5) Adoption of an urgency ordinance amending Chapter 6.54 of Title 6 of the San José Municipal Code to add a new Section 6.54.205 regarding hours of business

**for peddlers and stating the reasons for the urgency. CEQA: Exempt. (City Attorney's Office)
(Rules Committee referral 8/7/96)**

Documents filed: Memorandum from City Attorney Joan R. Gallo, dated August 8, 1996, recommending the adoption of said urgency ordinance and stating the reasons for the urgency.

Discussion/Action: Ordinance No. 25150, entitled: "An Urgency Ordinance of the City of San José Amending Chapter 6.54 of Title 6 of the San José Municipal Code to Add a New Section 6.54.205 Regarding Hours of Business for Peddlers and Stating the Reasons for the Urgency", was adopted. Vote: 10-0-1-0. Absent: Dando.

**6f(6) Appointment of Diane Jantzen to the Child Care Commission to an unexpired term ending June 30, 1997. (Mayor)
(Rules Committee referral 8/7/96)**

Documents filed: None.

Discussion/Action: The appointment of Diane Jantzen to the Child Care Commission was approved. Vote: 10-0-1-0. Absent: Dando.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7a Report of the Committee of the Whole

Documents filed: Committee of the Whole reports for the meetings of May 30, June 5, and June 17, 1996.

- (1) Meeting of May 30, 1996
 - (a) Proposed 1996-97 Capital and Operating Budgets. Attachments: (1) Proposed 1996-97 Capital and Operating Budget and FY 1997-2001 Capital Improvement Program (CIP) document dated April 1, 1996. (2) Redevelopment Agency's Proposed FY 1996-97 Capital Budget, FY 1997-2001 CIP and FY 1996-97 Proposed Operating Budget document dated May 1996. (3) Memorandum from Mayor Hammer, dated May 10, 1996, regarding FY 1996-97 Capital Budget Message. (4) Hard copy of transparencies pertaining to Proposed Workers Compensation and General Liability Project Proposals, and (5) Hard copy of transparencies pertaining to Proposed FY 1996-97 Capital Budget and FY 1997-2001 CIP presentation.
 - (a) Proposed 1996-97 Capital and Operating Budgets (Cont'd.).

The Committee accepted Mayor Hammer's FY 1996-97 Capital Budget Message and directed Staff to review issues related to a "pay-on-foot" parking system, Guadalupe River Park restoration, LoBue Park, Los Gatos and Los Alamitos Creek Trails, and overhead costs.

(2) Meeting of June 5, 1996

- (a) Review of Proposed 1996-97 Budget for Traffic CIP Budget Revisions, Purchase of Fire Apparatus, and Increased C&C Tax Revenue Estimates. Attachments: Memorandum from Council Member Fernandes, dated June 4, 1996, regarding late arrival to the Committee of the Whole meeting of June 5, 1996. (2) Hard copy of transparencies regarding additional revenue projections for the Traffic Capital Program. (3) Documents referred to as Manager's Budget Addenduma and Budget Documents were filed with the June 25, 1996 City Council minutes.

The Committee accepted the reports.

(3) Meeting of June 17, 1996

- (a) Mayor's Final Budget Modifications for FY 1996-97. Attachments: (1) Mayor Hammer's Final FY 1996-97 Budget Modifications memorandum, dated June 12, 1996. (2) Memorandum from Mayor Hammer, dated June 17, 1996, adding a one-time augmentation of \$20,000 for the Hispanic Chamber of Commerce, to be paid out of the City's Budget Operating Margin. (3) Agenda of meetings. (4) Memorandum from Chair Trixie Johnson and Vice Chair David Pandori of the Guadalupe River Park Task Force, dated June 14, 1996, recommending re-evaluation of the maintenance needs for the Guadalupe River Park.

The Committee voted tentative approval of Mayor Hammer's Final Budget Modifications memorandum and the City Manager's Proposed FY 1996-97 Operating Budget, Proposed FY 1996-97 Capital Budget, Proposed Five-Year Capital Improvement Plan, Proposed FY 1996-97 Fees and Charges; and tentative approval of the recommendations in the Manager's Budget Addendums (MBAs), with final adoption to be taken on June 18, 1996; and with the additional comments and referrals to come back for Council discussion on June 25, 1996.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson, and unanimously carried, the Committee of the Whole reports and actions of May 30, 1996, June 5, 1996, and June 17, 1996, were accepted. Vote: 10-0-1-0. Absent: Dando.

GENERAL GOVERNMENT

9a Approval of the Administration's response to the 1995-96 Grand Jury's report "A Review of the San José Teen Curfew Program." (City Manager's Office)

Documents filed: Memorandum from City Manager Regina V.K. Williams, dated August 1, 1996, recommending Council approval of the Administration's response to the 1995-96 Grand Jury report, entitled, *A Review of San José Teen Curfew Program*.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson, and unanimously carried, the Administration's response to the Grand Jury report was approved. Vote: 10-0-1-0. Absent: Dando.

9b PUBLIC HEARING on the Mixed Recyclables Collection Franchise application of California Cleansweep Property Services, Inc., approval of an ordinance granting the franchise, and approval of Mixed Recyclables Collection Franchise Agreement with California Cleansweep Property Services, Inc., to be effective September 27, 1996. (Environmental Services)

Documents filed: (1) Memorandum from Director of Environmental Services, Louis N. Garcia, dated July 26, 1996, recommending approval of an ordinance granting the franchise, and approval of said agreement with California Cleansweep Property Services, Inc. (2) Affidavit of Posting and Proof of Publication of the notice of public hearing dated July 30, 1996, submitted by the City Clerk.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini, and unanimously carried, the Mixed Recyclables Collection Franchise Agreement with California Cleansweep Property Services, Inc., was approved, and Ordinance No. 25151, entitled: "An Ordinance of the City of San José Granting a Mixed Recyclables Collection Franchise to California Cleansweep Property Services, Inc.," was passed for publication. Vote: 10-0-1-0. Absent: Dando.

9c Report on bids and adoption of a resolution authorizing the Director of General Services to:

- (1) Award the purchase of one (1) 60,000 pound GVWR cab and chassis with high pressure sewer cleaner for the Streets and Traffic Department to the lowest responsive bidder, Mission Valley Ford of San José, at a total cost of \$212,992.93, including tax.**
- (2) Award the purchase of one (1) 43,000 pound GVWR cab and chassis with high pressure sewer cleaner body for the Streets and Traffic Department to the lowest responsive bidder, Municipal Maintenance Equipment of Sacramento, at a total cost of \$177,484.01.**
- (3) Execute all necessary documents to add the purchase price of \$177,484.01 for one (1) 43,000 pound vehicle to the Master Equipment Lease Agreement with Access Public Funding.**

(General Services)

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated July 26, 1996, recommending the adoption of said resolution.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson, and unanimously carried, Resolution No. 66842, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute All Necessary Documents to Award the Purchase of One 60,000 lb. High Pressure Sewer Cleaner to Mission Valley Ford; One 43,000 lb. High Pressure Sewer Cleaner to Municipal Maintenance; and to Execute All Documents Necessary to Add the Purchase of the 43,000 lb. Cleaner to the Master Equipment Lease with Access Public Funding, Inc., was adopted. Vote: 10-0-1-0. Absent: Dando.

9d Adoption of a resolution authorizing the issuance of multifamily housing revenue bonds and the loan of the proceeds thereof for the financing of the Siena at Renaissance Square Apartments including:

- (1) Approving in substantial form the Bonds, Indentures of Trust, Loan Agreements, Regulatory Agreement and Declaration of Restrictive Covenants, Bond Purchase Agreements, the Official Statements, and authorization for the Director of Finance to negotiate, execute, and deliver those documents and other related documents as necessary.**
- (2) Approval of an exception to the City's Investment Policy to allow the proceeds of the Bonds to be invested in an investment agreement with an institution whose participation in the financing will not adversely affect the expected rating on the Bonds.**
- (3) Approval of an agreement with CGMS Incorporated in an amount not to exceed \$90,000 for the provision of financial advisory services.**
- (4) Authorization for the City Attorney to negotiate and execute an agreement with Jones Hall Hill and White and the Law Offices of Leslie M. Lava in an amount not to exceed \$208,000, for the provision of co-bond counsel services.**
- (5) Approval of a loan of 20% Housing Funds by the City to the borrower, FC Siena Associates, L.P. in a principal amount not to exceed \$5,696,000, to provide permanent financing for the Project.**
- (6) Approval of an amendment to the Affordability Restriction for the Siena at Renaissance Square Housing Project.**
- (7) Authorizing the Director of Housing to negotiate and execute the 20% Housing Loan documents including any intercreditor and subordination agreements on behalf of the City.**
- (8) Authorizing the Director of Finance to execute any necessary bond document on behalf of the City.**

(Finance/Housing)

(Deferred from 6/18/96 - Item 9g and 8/6/96 - Item 9a)

Documents filed: (1) Memorandum from Director of Finance, John V. Guthrie, and

from Director of Housing, Alex Sanchez, dated July 26, 1996, recommending the adoption of said resolution. (2) Supplemental memorandum from Director of Finance, John V. Guthrie, dated August 8, 1996, attaching copies of the draft Preliminary Official Statements for the City of San José Variable Rate Demand Multi-family Housing Revenue Bonds for the Siena at Renaissance Square Apartment Projects, Series 1996A and Series 1996B as discussed in the July 26, 1996 Staff report prepared by the Finance and Housing Departments.

Discussion/Action: Director of Housing, Alex Sanchez, reported that this project has been a lengthy process, that the Administration is now ready to issue the bonds and should close the project within a week. He stated the Administration is working on three business issues with the developer as discussed in the Staff report. Director of Finance, John Guthrie, advised that following the financial difficulties experienced by Orange County, there have been changes to state law which make the City Council and the Board of Supervisors of any independent city or county in the State more responsible for disclosure of documents. He advised that in keeping with those requirements, separate Preliminary Official Statements were distributed for both Series A and Series B bonds, which disclose all material information that Staff believes to be substantial to the issue itself and Staff has review all the Statements. He noted that since those Statements had been distributed, three material changes have occurred, as follows: (1) The maximum interest on both Series A and Series B bonds has been changed from 9% to 12% to accommodate any increases in the variable rate market, (2) The construction fund letter of credit term will be 24 months with two 6-month renewal options, and (3) The Series B bonds at no time will be secured by a deed of trust under the existing documents. Council Member Fiscalini inquired as to the dollar implications of the interest rate changes and the repayment term changes. Director Sanchez stated he would provide that information once negotiations with the developer are completed. William Garbett addressed the Council in opposition to this proposal. Upon motion by Council Member Fernandes, seconded by Council Member Fiscalini, and unanimously carried, Resolution No. 66843, entitled: "A Resolution of the Council of the City of San José Authorizing the Issuance of Two Series of Multi-family Housing Revenue Bonds and the Loan of the Proceeds Thereof for the Financing of the Siena at Renaissance Square Apartments and Approving City Loan and Other Related Documents and Actions", was adopted. Vote: 10-0-1-0. Absent: Dando.

- 9e Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the County of Santa Clara for the purchase of real property rights located in the City of Milpitas on the west side of Abel Street, south of the Hetch-Hetchy Pipeline for the South Bay Water Recycling Project, at a cost not to exceed \$265,750, and authorization for the Director of Public Works, or designee, to negotiate the acquisition and execute necessary documents. CEQA: Resolution No. 64667. (Public Works)**
[Deferred from 6/18/96 - Item 9o(4) and 8/6/96 - Item 9b]

Documents filed: (1) Memorandum from Director of Public Works, Ralph Qualls, Jr., and from Director of Environmental Services, Louis Garcia, dated August 2, 1996,

recommending the adoption of said resolution. (2) Letter from the Treatment Plant Advisory Committee, dated August 9, 1996, recommending adoption of said resolution.

Discussion/Action: William Garbett addressed the Council in opposition to this issue. Council Member Fiscalini suggested the Administration work with the County of Santa Clara on the possibility of trading water for the easement rights. Mayor Hammer concurred with the suggestion, which she hoped would be successful. Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini, and unanimously carried, Resolution No. 66844, entitled: "A Resolution of the Council of the City of San José Delegating to the City Manager the Authority to Negotiate and Execute an Agreement with the County of Santa Clara for the Purchase of a Public Utility and Service Easement and Temporary Construction Easements Over a Parcel of Land Located in the City of Milpitas Between State Route 880 and Abel Street and Adjacent to the Elmwood Correctional Facility for the South Bay Water Recycling Project; and Authorizing the Director of Public Works, or Designee, to Execute the Necessary Documents to Effect the Transfer", was adopted. Vote: 10-0-1-0. Absent: Dando.

**9f Discussion and approval of the City Administration's Workplan for the New Realities Task Force recommendations. (City Manager's Office)
(Deferred from 6/25/96 - Item 9h and 8/6/96 - Item 9c)**

Documents filed: (1) Memorandum from Mayor Hammer and Council Member Fiscalini, dated August 7, 1996, recommending approval of the City Administration's New Realities Workplan, with the revisions listed under Analysis Section and Attachment 1 of this memorandum. (2) City of San José Administrative Workplan to Implement the Recommendations of the New Realities Task Force, prepared by the Office of the City Manager, and dated June 1996. (3) Memorandum from Council Member Dando, dated August 13, 1996, recommending revisions to the implementation plan for the New Realities Task Force recommendations.

Discussion/Action: Mayor Hammer stated that the proposed action constitutes an important effort to make very serious changes in the operation of San José's government, a challenge which will require determination and commitment on the part of everyone, and stated she is committed to continuing the effort for the next two-and-one-half years until all, or the majority, of the recommendations are implemented. She stressed that structural deficits anticipated over the next five years will require either changing government in a planned, balanced and comprehensive way or changing through crisis and conflict. She stated that she and Council Member Fiscalini have proposed several mechanisms to assure a balanced and fair implementation plan, that the process under consideration brings labor and management to the table as equals to work together, rather than in a competitive and adversarial fashion, and this approach, while requiring new thinking and flexibility, represents the best way to make systemic changes and achieve lasting reform. Stating that the timelines are reasonable and intended to not compromise the quality of work, she indicated that when opportunities such as multi-jurisdictional purchasing become possible, they will be pursued irrespective of the timeline, and noted that sunseting of taxes will provide impetus for expediting the plan. She stated that estimating quantitative goals or predicting cost

savings from implementing procedures such as zero-based budgeting or a competitive policy is very difficult, but the overall goal is to achieve significant cost savings in the City's internal operations and place the City in a better fiscal condition. Steve Tedesco, San José Metropolitan Chamber of Commerce, suggested approving but not implementing tax increases until the Task Force recommendations are in place, tying the sunseting of the tax to concrete actions, stated the competition/contracting-out policy was important to the Chamber, and the business community would like to be involved in that issue. Indicating the Chamber is not ready to support an increase in taxes based simply on the Manager's Report and this final report, he requested strong consideration for delaying implementation of the tax until some of those issues are worked out, review of the competition policy, and reconsidering the long-term impact of a "no lay-off policy". Toby Rogers, Program Director for Working Partnerships, U.S.A., stated the plan is a balanced, thoughtful package, the timetable is very aggressive, and a labor/management team is essential to the success of the effort. Council Member Fiscalini thanked the City Manager and Staff for the Workplan, especially in light of the complexity of the issues involved, spoke in support of a balanced approach and team effort, and expressed appreciation to the response received from employees and the business community. He pointed out that the far-reaching consequences of implementing the recommendation warrant taking sufficient time at the outset to see that changes will truly be better than what is currently in place. He stated that Steve Tedesco raised valid concerns and suggested that as recommendations come back to the City Council, the City Attorney advise what options are available to the City. Council Member Diaz thanked Mayor Hammer, Council Member Fiscalini, and the City Manager and Staff for pursuing what he termed an historic endeavor, expressed concerns about maintaining fairness for the community, supported team efforts and accelerating the timing of issues involving sunset clauses, especially appointments to the Civil Service and the Retirement Task Force. Vice Mayor Johnson commented that although the labor/management team is one of the more difficult concepts, it is potentially one of the more productive aspects of the workplan, and should ultimately provide the greatest savings. She stated support for a no lay-off policy, either for entire projects or on a project-by-project basis, noting that the City should be able to redeploy those whose jobs may be eliminated and stressed the importance of retraining and redeployment of valuable workers. Regarding taxes, she expressed support for sunset provisions and stated that San José has had no new taxes in six years in spite of significant revenue problems, and although the City has reorganized and sought means to enhance efficiencies, revenue sources in the foreseeable future will not be sufficient to provide resources for a city of this size and complexity. Council Member Pandori expressed concerns about the philosophical notion underlying the report, i.e., that in order to save money in the City or implement new efficiencies, the quid pro quo has to be tax increases, and respectfully disagreed with Vice Mayor Johnson that there were no tax increases in the last six years, citing the landfill tax and parcel taxes as two examples. He noted that the report summary portrays a dichotomy in recommending tax increases in the short term and reforms in the long term, and while agreeing with some of the most significant recommendations, stated the implementation schedule is too slow. For instance, zero based budgeting, which is not a new idea, is not scheduled for a report for a year and could take five years afterwards to implement. Similarly, with the cost center budget format and per-

formance based budgeting, on which he thought consensus had been reached; and on the Workers Compensation pilot program, no report is scheduled for one and one-half years. He commented on the competition issue, where it will be one year before a policy is prepared, followed by more discussions; whereas, he thought the purpose of the New Realities Task Force, with representation from labor, business, and residents, was to gain consensus. He questioned the use of labor/management committees without input from residents and the business community, and stated that because the reforms are proceeding slowly and taxes are proceeding ahead of implementation, he does not support the proposal. Council Member Woody acknowledged the work done by Mayor Hammer, Council Member Fiscalini, the City Manager and City Staff, and by labor representatives. She expressed agreement with the concept, stating it will requires bold, decisive action, with all parties working together in a complete spirit of cooperation and compromise. She stated that the timelines are aggressive and there are short term goals which can be achieved, stressed the importance of balance and fairness in implementing the changes, and stated that if the City Council gives clear direction in a spirit of commitment to what is best for the City of San José, then the plan can work. Council Member Fernandes expressed support for the workplan, stated that although a lot of work still has to be done, she was comfortable with the leadership of Mayor Hammer and Council Member Fiscalini on this issue, and stressed the need for commitment to the process by the entire Council. Council Member Powers expressed support with the goals of the Workplan and for the recommendations in Mayor Hammer and Council Member Fiscalini's memorandum, stressed that implementation requires commitment of the whole Council and it is worthwhile to take the time to do it right. Mayor Hammer stated that while the private sector is now doing very well with profits at an all-time high and employment at an all-time low, those gains are not and will not be reflected in the public sector and, even though revenues are up, there is no way to address long term the demands on the General Fund or the capital needs of the City. She advised that within the next six weeks taxes will be implemented on gasoline tank farms, interstate and international long distance phone calls, and the business license tax will be reviewed for the first time in twelve years. She stated these are reasonable actions in light of the increasing demands on the General Fund and capital needs. Regarding timing, she stated the plan will be expedited as quickly as possible, and timelines shorted where possible, perhaps with competition policies or zero-based budgeting in some departments, stating it is better to take time to get a consensus and a "buy-in" from all affected parties. She thanked City Manager Williams and her Staff, Council Member Fiscalini and Joe Guerro from his office, and Staff from the Mayor's Budget office, and stated that the City Attorney will provide the necessary ordinances for each of the suggestions for tax revenue increases for Council discussion before the first of November. Council Member Pandori commented that he did support taxing the gasoline tank farms--recommended by the City auditor several years ago--and his concerns relate primarily to the other taxes, and stated that he shared the concerns listed in Council Member Dando's memorandum dated August 13, 1996. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson, and carried, the City Administration's Workplan for the New Realities Task Force recommendations dated June 1996, with the revisions listed under the Analysis Section and Attachment 1 of the memorandum from Mayor Hammer and Council Member Fiscalini, dated August 7, 1996, was approved. Vote: 9-1-1-0. Noes: Pandori. Absent: Dando.

FISCAL AFFAIRS

10a Adoption of a resolution amending the Administrative Citation Schedule of Fines to set forth Administrative Citation Fine amounts for certain violations of Chapter 9.10 of Title 9 of the San José Municipal Code, effective August 14, 1996. (Planning, Building and Code Enforcement)

Documents filed: Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated July 26, 1996, recommending the adoption of said resolution.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. Upon motion by Council Member Powers, seconded by Council Member Shirakawa, Jr., and unanimously carried, Resolution No. 66845, entitled: "A Resolution of the Council of the City of San José Setting Forth the Administrative Citation Schedule of Fines for Certain Violations of the San José Municipal Code, Effective August 14, 1996", was adopted. Vote: 8-0-3-0. Absent: Dando, Diaz, Pandori.

CLOSED SESSION REPORT

City Attorney Gallo disclosed the following Closed Session actions of August 13, 1996:

A. Authority to Initiate or Intervene in Litigation:

1. Case Name: *City and County of San Francisco, et al. v. Philip Morris, et al.*

Adverse party or parties: Philip Morris, Inc., R. J. Reynolds Tobacco Company, Brown Williamson Tobacco Corporation, B.A.T. Industries P.L.C., Lorillard Tobacco Company, Liggett Group, Inc., The Council for Tobacco Research U.S.A., Inc., and The Tobacco Institute.

Substance of litigation: This is an action to challenge unfair business practices with regard to the sale of cigarettes.

Council Vote: Ayes: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Woody; Hammer.

Noes: None.

Absent: Dando.

Abstain: None.

CLOSED SESSION REPORT

City Attorney Gallo disclosed the following Closed Session actions of August 13, 1996:

B. Authority to Enter Litigation Cases as Amicus Curiae:

1. Case Name: *Ellis v. State of California*

Adverse party or parties: Ellis

Substance of litigation: This action is before the California Supreme Court to determine whether comparative fault applies to inverse condemnation actions.

Council Vote: Ayes: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Woody; Hammer.

Noes: None

Absent: Dando.

Abstain: None.

2. Case Name *Galaviz v. City of Carlsbad*

Adverse party or parties: Galaviz

Substance of litigation: The issue before the court is whether a city has a mandatory duty based on a special relationship when it fails to prevent a crime.

Council Vote: Ayes: Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Woody; Hammer.

Noes: None.

Absent: Dando.

Abstain: None.

CONVENE SAN JOSÉ FINANCING AUTHORITY

The City Council convened the Annual San José Financing Authority meeting at 3:10 p.m.. There was no business to discuss, and the San José Financing Authority was adjourned at 3:11 p.m.

ORAL COMMUNICATIONS

Cathy S. Brandhorst addressed the Council on issues facing the homeless population.

ADJOURNMENT

The Council of the City of San José adjourned at 3:17 p.m.

SUSAN HAMMER, MAYOR

ATTEST:

**PATRICIA L. O'HEARN
CITY CLERK**