

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, OCTOBER 29, 1996

The Council of the City of San Jose was scheduled to convene in Closed Session at 9:30 A.M. The Closed Session was canceled, and the City Council convened at 1:38 P.M. in the Council Chambers.

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

Absent: Council Members - None.

INVOCATION

Pastor Dave Bridgen, Police Officers' Association, delivered the Invocation.
(District 9)

PLEDGE OF ALLEGIANCE

Mayor Hammer led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, Item 6e(10) was dropped, and the Orders of the Day and the Amended Agenda were approved. Vote: 11-0-0-0.

CEREMONIAL ITEMS

5a Presentation of proclamation declaring November 2 and 3, 1996 as Special Olympics Day. (City Manager's Office)

Documents filed: None.

Discussion/Action: Mayor Hammer presented a proclamation to Area Director Mary

Burson and Training Director Kara Capaldo of the Santa Clara Special Olympics; commended Special Olympic athletes Jeff Dodge and Joe Nardone, and thanked Terry Eberhardt, Deputy Director of the Department of Parks, Recreation and Neighborhood Services for his work in coordinating the City's involvement in the Special Olympics.

- 5b Presentation of a commendation to Rachel Walderrama for receiving the 1996 Peninsula Association for the Education of Young Children (PAEYC) Teacher Recognition Award. (Dando)**
(Deferred from 10/22/96 - Item 5b)

Documents filed: None.

Discussion/Action: Council Member Dando joined Mayor Hammer in presenting a commendation to Rachel Walderrama in recognition of her accomplishments in the area of early childhood education and as the recipient of the 1996 Peninsula Association for the Education of Young Children Teacher Recognition Award.

CONSENT CALENDAR

William J. Garbett spoke in opposition to 6e(1), 6e(5) and 6f(3). Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, the Consent Calendar was approved and the below listed items taken as indicated. Vote: 11-0-0-0. Noes: Council Member Pandori on Item 6e(2).

Minutes for Approval

- 6a(1) Regular Meeting of August 27, 1996**

Documents filed: Minutes of August 27, 1996.

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

- 6a(2) Regular Meeting of September 3, 1996**

Documents filed: Minutes of September 3, 1996.

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

- 6a(3) Closed Session of September 10, 1996**

Documents filed: Minutes of September 10, 1996.

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

Contracts/Agreements

- 6e(1) Adoption of a resolution authorizing the Director of Aviation to execute an amendment to the Memorandum of Understanding with the Federal Aviation Administration (FAA) pertaining to the preparation of an Environmental Impact Report (EIR) and an Environmental Impact Statement (EIS) for the Airport Master Plan Update. (Airport)**

Documents filed: Memorandum from Airport Director Ralph G. Tonseth, dated October 10, 1996, recommending adoption of said resolution.

Discussion/Action: Resolution No. 66946, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Aviation to Execute, on Behalf of the City, an Amendment to the Memorandum of Understanding with the Federal Aviation Administration Pertaining to the Preparation of an Environmental Impact Report and an Environmental Impact Statement for the Airport Master Plan Update", was adopted. Vote: 11-0-0-0.

- 6e(2) Adoption of a resolution approving a rental increase for Hewlett Packard Corporation for Ground Lease of Parcel W-9 for the period:**
- (a) June 1, 1992 to May 30, 1996 with additional revenue to the City in the amount of \$48,000.**
 - (b) June 1, 1996 to May 30, 1997 with revenue to the City in the amount of \$217,717.85.**
- CEQA: Exempt. (Airport)**

- 6e(2) (Cont'd.)**

Documents filed: Memorandum from Airport Director Ralph G. Tonseth, dated October 10, 1996, recommending adoption of said resolution.

Discussion/Action: Resolution No. 66947, entitled: "A Resolution of the Council of the City of San José Approving a Rental Increase for Hewlett-Packard Corporation for Ground Lease of Parcel W-9 at San José International Airport", was adopted. Vote: 10 1-0-0. Noes: Pandori.

- 6e(3) Approval of a first amendment to the agreement with the Community Health Partnerships of Santa Clara County, Inc., for the City to provide the Partnership**

with part-time staff from the Municipal Health Services Program, extending the term of the agreement through December 31, 1996. (City Attorney's Office)

Documents filed: Memorandum from City Attorney Joan R. Gallo, dated October 23, 1996, recommending adoption of a first amendment to said agreement.

Discussion/Action: The first amendment to said agreement with Community Health Partnerships of Santa Clara County, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(4) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the Victorian Preservation Association to relocate and restore the Andrew P. Hill House to the San José Historical Museum, at no cost to the City except plan review and inspection costs. CEQA: Resolution No. 66098. (Conventions, Arts and Entertainment)**

Documents filed: Memorandum from Nancy Johnson, Acting Director of the Department of Conventions, Arts and Entertainment, dated October 10, 1996, recommending adoption of said resolution.

Discussion/Action: Resolution No. 66948, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with the Victorian Preservation Association for the Relocation and Restoration of the Andrew Hill House", was adopted. Vote: 11-0-0-0.

- 6e(5) Approval of a fifth amendment to the agreement with Montgomery Watson Americas, Inc., for technical assistance with implementation of the Clean Bay Strategy and related compliance issues, extending the agreement by eight (8) months, from November 1, 1996 to June 30, 1997, at no additional cost to the City. (Environmental Services)**

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated October 10, 1996, recommending approval of a fifth amendment to said agreement.

Discussion/Action: The amendment to said agreement with Montgomery Watson Americas, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(6) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1996-97 #8, 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 October 10, 1996, recommending approval of said open purchase orders.

Discussion/Action: The award of open purchase orders List No. 8 was approved and execution of the purchase orders authorized. Vote: 11-0-0-0.

- 6e(7) Approval of award of purchase of eight (8) samplers and sampling parts for the Water Pollution Control Plant to Oratech Controls, Inc., at a total cost of \$75,571.54, including tax, as a sole source purchase, 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 October 10, 1996, recommending Council award said purchase to Oratech Controls, Inc., as a sole source purchase in accordance with Section 1217 of the City Charter, and authorize the Director of General Services to execute the purchase.

Discussion/Action: The award of purchase to Oratech Controls, Inc., was approved and execution of the purchase order authorized. Vote: 11-0-0-0.

- 6e(8) Approval of an employment agreement with Helen Dowty. (Johnson)
(Rules Committee referral 10/23/96)**

Documents filed: None.

Discussion/Action: The employment agreement with Helen Dowty was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(9) Adoption of a resolution authorizing the City Attorney to execute an amendment extending the term of the agreement for consultant services with DKS Associates, from October 30, 1996 to August 30, 1997. (City Attorney's Office)
(Orders of the Day 4a)**

Documents filed: Memorandum from City Attorney Joan R. Gallo, dated October 25, 1996, recommending adoption of said resolution.

Discussion/Action: Resolution No. 66949, entitled: "A Resolution of the Council of the City of San José Delegating to the City Attorney the Authority to Execute an Amendment to the Agreement with DKS Associates Extending the Term Through August 30, 1997", was adopted. Vote: 11-0-0-0.

- 6e(10) Report on bids and approval to reject all bids and authorize the Director of Public Works to advertise and rebid the South Bay Water Recycling Program (SBWRP)/Golden Triangle-Northern Segment Project. CEQA: Resolution No.**

**64667 (Public Works)
[Orders of the Day 4b)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated October 25, 1996, recommending approval to reject all bids and authorize the Director of Public Works to advertise and rebid the South Bay Water Recycling Program (SBWRP)/Golden Triangle-Northern Segment Project.

Discussion/Action: This item was dropped from the Agenda. Vote: 11-0-0-0.

Routine Legislation

6f(1) Adoption of appropriation ordinance and funding sources resolution amendment to various Capital Funds. (City Manager's Office)

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated October 24, 1996, recommending adoption of said appropriation and related revenue resolution amendments.

Discussion/Action: Resolution No. 66950, entitled: "A Resolution of the Council of the City of San José Amending Revenue Resolution No. 66717 Setting Forth the Estimated Sources of Funds for the Fiscal Year 1996-97 to Adjust Revenues in Various Capital Funds", and Ordinance No. 25180, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 which Appropriates Moneys in Various Capital Funds to Reflect Changes in Project Estimates, Schedules and Funding Sources, to Reflect New Projects and to Perform Rebudgets Related to the Annual Report; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", were adopted. Vote: 11-0-0-0.

6f(2) Acceptance of the Report of Activities, January 1, 1996 to June 30, 1996. (Economic Development)

Documents filed: Memorandum from the Director of Economic Development, Leslie S. Parks, dated October 15, 1996, recommending acceptance of the Activities Report.

Discussion/Action: The Report of Activities, January 1, 1996 to June 30, 1996, was accepted. Vote: 11-0-0-0.

6f(3) Adoption of a resolution certifying:

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

**contained therein.
(Economic Development)**

Documents filed: Memorandum from the Director of Economic Development, Leslie S. Parks, dated October 10, 1996, recommending adoption of said resolution.

Discussion/Action: Resolution No. 66951, entitled: "A Resolution of the Council of the City of San José Certifying that the City's Revolving Loan Fund is Consistent with and Supportive of the Area's Current Economic Adjustment Strategy and that the Revolving Loan Fund is Being Operated in Accordance with Certain Policies and Procedure", was adopted. Vote: 11-0-0-0.

6f(4) Acceptance of the Third Quarter 1996 San José Arena Authority Ticket Distribution Program Report. (San José Arena Authority)

Documents filed: Memorandum from Chris Morrissey, Executive Director, San José Arena Authority, dated October 10, 1996, recommending acceptance of the report.

Discussion/Action: The Third Quarter 1996 Report of the San José Arena Authority Ticket Distribution Program was accepted. Vote: 11-0-0-0.

**6f(5) Adoption of an appropriation ordinance amendment to establish an appropriation of \$300,000 within the Storm Drain Capital Fund to remove storm water pollutants from public roads, to be offset by a reduction in the Storm Drainage Services Use Charge Fund. (City Manager's Office)
[Deferred from 10/22/96 - Item 6f(2)]**

Documents filed: None.

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

END OF CONSENT CALENDAR

**9c Report on the sale of the Municipal Water System.
[Finance Committee referral 10/2/96 - Item 7d(2)]
(Deferred from 10/22/96 - Item 9a)
(Heard Time Certain of 2:00 P.M.)**

Documents filed: (1) See Item 7d(2) for the Staff report and recommendation. (2) Supplemental memorandum from Director of Environmental Services, Louis N. Garcia, dated October 25, 1996, providing a proposed timeline for reporting out the analysis of leasing options, including long-term lease and other public-private partnership options,

and evaluation of lease revenue bonds as a method to bond the income stream of the System to raise capital for City needs, and clarification of issues raised by Committee members. (3) Memorandum from City Attorney Joan R. Gallo, dated October 25, 1996, responding to questions raised by Committee members on October 2, 1996. (4) Hard copies of the slide presentation given by Environmental Services, entitled: *“Evaluation of a Potential Sale of the Municipal Water System”*. (5) Hard copies of the slide presentation prepared by City Auditor Gerald A. Silva, entitled: *“An Evaluation of the Feasibility of the City of San José Selling the San José Municipal Water System”*.

Discussion/Action: Environmental Services Director Louis N. Garcia stated that following a Staff presentation, the Finance Committee unanimously accepted the Staff recommendation that the City retain ownership of the San José Municipal Water System. He introduced Lorrie Gervin, Manager of the San José Municipal Water System, to summarize the report given to the Finance Committee. She advised that under the “sell” alternative, Staff estimates net proceeds of \$30 million under a best case scenario, with numerous risks and obstacles, whereas on the “keep” side of the equation, a net present value of transfers to the General Fund over a forty year period is predicted to be in the mid \$50 million range. She stated risks consist of loss of local control, loss of Hetch Hetchy water, the potential of higher rates, and additional costs and risks to the South Bay Water Recycling Project due to the City’s inability to sell the right to retail recycled water, and due to costs related to the Water District’s tax exempt bond financing. She noted that earnings from prudent management of the system are sufficient to provide positive outcome for all rates for customers that are decreasing in constant dollars, growing reserves for the infrastructure needs of the water system, and \$2 million in annual safe return to the General fund and, based on those findings, the Administration recommends retaining the San José Municipal Water System, with direction to return with financial management policies during the Fiscal Year 1997-98 budget cycle. Director Garcia summarized the responses given in his Supplemental Memorandum dated October 25, 1996, to questions raised by the Finance Committee regarding the relative efficiency of the San José Municipal Water System and the Great Oaks Water Company, acquiring permanent status in the Hetch Hetchy System, servicing of the Coyote Valley, and the valuation of the system, and explained the difference between the Administration’s and Auditor’s reserve figures. In a brief presentation on his report, Auditor Silva responded to questions about alternative ways to value the system by referencing Page 2 of the report which lists four accepted methods and stated he and the Administration agreed that the fourth method, the rate-based calculation, was the appropriate method to use. He noted one difference between estimates of the value of the system was due to calculation methods--with the Administration relying essentially on the financial statements, whereas he had relied on a comprehensive inventory commissioned by the Administration which identified every asset in the San José Municipal Water System, resulting in a \$19 million higher estimated value than the Administration. With regard to calculated net proceeds, he stated the estimated value of the system was modified, net of depreciation, to allow for advances for construction and developer contributions, amounts which would decrease proceeds to the City sale. While consistent with the Administration in assuming a 20 percent purchase premium, he estimated a potential sale price of \$8.5 million more than

the Administration's, noted additions for cash reserves of \$6.9 million--the amount at the end of last year's audited financial statements--with calculated potential proceeds from the sale of approximately \$10 million more than the Administration's. He stated tax-exempt bonds for assessment districts where proceeds were used to finance the San José Municipal Water System would have to be repaid if the system was sold or the City would lose tax-exempt status for approximately \$70 million of other bonds at an estimated cost of \$10 million. He addressed potential sales costs to the City from a sale. Among financial benefits of retaining the System, he cited a potential rate of return of an estimated 9 percent over the next thirteen years, a one-time potential transfer of \$7 million, and the fact that the system is currently making money. He commented on the feasibility of using assets in the system for lease revenue bonds, generating \$22 million, which could be used in General Fund capital projects but not for operating costs. He stated leasing offers advantages of providing one-time up front money, retention of the system and the right to set fees, with all capital improvements and maintenance costs borne by the lessee, in addition to reducing potential obstacles from the PUC or voter acceptance. He stated that use of Hetch Hetchy water could be retained and permanent status pursued, which should be done whether or not the system is sold. He estimated user costs to be cheaper under a City-owned system, and stated the length of time to conclude a sale could be two to three years or more. Mayor Hammer thanked the Auditor's Office and the Administration for their work in providing the information which will assist the Council in making a decision on the future of the San José Municipal Water System. Council Member Woody moved acceptance of the Finance Committee recommendation to approve the Staff recommendation, dated September 11, 1996, by Environmental Services Director Garcia, that the City Council retain ownership of the San José Municipal Water System and direct the Administration to return during FY 1997-98 budget process with a comprehensive financial management policy for the System, establishing the method for determining the size of a long-term "rate-of-return" transfer, addressing methods to determine "rate base", customer rates, system reserves and maintenance needs, as well as methods to ensure that reasonable rates and high quality services are safeguarded; with the additional direction to Staff as recommended by the Finance Committee; and acceptance of the recommendation by Director Garcia, dated October 25, 1996, that Staff report back to the Finance Committee in April 1997 with the requested analysis. Mayor Hammer stated she would like the April timeline kept because it is important that Council make a decision as the Fiscal Year 1997-98 budget deliberations begin, and stressed that a full evaluation, including leasing and bonding options, should be provided in April 1997 so the issue can be decided without further deferrals. Council Member Fiscalini expressed concerns about the different figures presented and asked that the motion direct the work process include the Auditor as well as the Attorney and the Finance and Environmental Services Departments. City Manager Regina V.K. Williams advised there is no disagreement between the Administration and the Auditor regarding the \$40 million estimated value of the system, only different methods used in the calculations. Council Member Dando expressed interest in options such as long-term leases and public-private partnerships and suggested that professionals that currently provide services be included in discussions. Richard Ballocco, San José Water Company, commended the Finance Committee, City Auditor's Office and City

Staff for their work and expressed support for a public/private partnership and for directing Staff to evaluate lease options. Speaking in support of retaining the water system were Bill Chew, William Garbett and Kathy Napoli. Dan Stockton, Great Oaks Water Company, expressed support for the Finance Committee recommendation and for a public/private partnership arrangement. Brad Imamura, President, Municipal Employees Federation (AFSCME) Local 101, Unit 5, stated the bargaining groups would like to be involved in the process because of possible displacement of employees. Council Member Fiscalini reiterated that he would like to include in the motion direction for Staff to include in the process all parties mentioned earlier. Council Member Woody stated she could agree only to the extent practical. Stressing the need for a report back in April 1997, Mayor Hammer stated that whomever has a legitimate role and can meet the timeline should be included, but suggested that decision be left to the City Manager. On a call for the question, the motion carried unanimously and the Finance Committee report and recommendations were accepted; the Staff recommendation, dated September 11, 1996, that the City Council retain ownership of the San José Municipal Water System and direct the Administration to return during the FY 1997-98 budget process with a comprehensive financial management policy for the System; the Staff recommendation dated October 25, 1996, that Staff report back to the Finance Committee in April 1997; the additional direction to the Staff as recommended by the Finance Committee, and consideration of the additional comments by Council Members regarding adherence to the timeline for providing complete information, including leasing and bonding options, were approved. Vote: 11-0-0-0.

- 10a**
- (1) Final PUBLIC HEARING on the adoption of ordinances:**
 - (a) Imposing a 5% Utility Users Tax on interstate and international telephone service.**
 - (b) Providing an annual adjustment to the existing Business Tax found in Chapter 4.76 of Title 4 of the San José Municipal Code.**
 - (c) Changing the method of calculating the Business Tax for the operators of Fuel Tank Farms.**
 - (2) Adoption of a resolution declaring the City's goals in implementing the recommendations of the New Realities Task Force and providing a procedure for the suspension of the collection of certain taxes or increases of certain taxes in the event that specified implementation triggers are not met.**
 - (3) Adoption of an ordinance amending Chapter 4.68 of Title 4 of the San José Municipal Code to impose a Utility Users Tax on interstate and international telephone service and providing conditions for the suspension of collection of the tax.**
 - (4)**
 - (a) Adoption of an ordinance amending Chapter 4.76 of Title 4 of the San José Municipal Code to provide for a method of annually adjusting the City's business taxes for inflation and providing conditions for the suspension of such adjustments.**
 - (b) Adoption of a resolution setting the initial Business Tax inflation**

adjustment factor at 3%.

- (5) **Adoption of an ordinance amending Title 4 of the San José Municipal Code to add a new Chapter 4.79 imposing an alternative Business Tax on fuel tank farms and providing conditions for the suspension of collection of the tax.**

(Finance)

Documents filed: (1) Memorandum from City Manager Regina V.K. Williams, dated October 25, 1996, recommending the adoption of said ordinances. (2) Correspondence from Gerard A. Norve, dated October 29, 1996, opposing the proposed action. (3) Correspondence from John Messina, dated October 29, 1996, opposing the proposed action. (4) Correspondence from Santa Clara County Taxpayers' Association, dated October 29, 1996, opposing the proposed action. (5) See City Council minutes of October 8, 1996, for memorandum by Mayor Hammer and Council Member Fiscalini, dated October 7, 1996.

Discussion/Action: The Mayor opened the public hearing. Mayor Hammer announced the action under consideration represents a significant step in the difficult process both to restore fiscal stability in San José and to provide critically needed services to the neighborhoods. She cited the obstacles encountered during the last six years, including the lack of funding for police hiring plans or programs to counter the problems of gangs and juvenile crime, and shortfalls caused by seizure of property taxes of over \$12 million annually to balance the State budget. She stated the City requires additional funds to recover from these pressures and the revenue strategies being proposed are part of the overall New Realities Task Force package of recommendations, a set of proposals that asks all parts of the community to share in the burden of improving the City. She stated funding backlogs exist in street maintenance, traffic operations, parks maintenance and street installation. She described the Public Safety Augmentation Plan that reveals unfunded needs in the Police and Fire Departments, with first year priorities of over \$38 million, \$29 million of which is currently unfunded. She stated that, with extraordinary efforts, the gang problem has been contained, but containment is not enough--the goal should be to reduce the number of youths in gangs and bring the juvenile crime rate down--which will take additional resources and recommended support for the proposal. Council Member Fiscalini explained for the benefit of the audience how the New Realities Task Force--comprised of a broadbased cross section of the community--had arrived at the recommendations, and commended the Task Force for undertaking such a complex task and creating a series of well-balanced recommendations. He moved approval of the Staff recommendation and added a recommendation that moneys collected under this action be impounded and not spent until the triggers are met and if not met, the language included in the Staff recommendation would be operational. The following individuals addressed the Council in support of the proposal: Amy Dean, South Bay AFL-CIO; Terry Feinberg, Tri-County Apartment Association; Cora Tomalinas, and James Webb. Speaking in opposition were: John Messina; Kathleen O'Connell Sunderam, Santa Clara County Taxpayers Association; William Garbett; Gerard A. Norve; Kathy Napoli; Ross Signorini. Council Member Pandori stated that the proposal before the Council does

not adequately define the extent or nature of the problems which the proposed taxes are intended to address, specifically what services would be funded if the proposal is adopted, and at what cost. Regarding the impounding of taxes until specified triggers are met, he stated the triggers--which relate to implementation of other New Realities Task Force recommendations--are too weak. He stated that the approximately \$6 million which would be raised would be inadequate to address any serious needs in the City, that the utility tax would impact poor people and the business tax would affect predominantly small businesses. He stated he is not opposed to the fuel farm tax, which was proposed by the City Auditor three years ago. He pointed out the impact of Proposition No. 218 on the November 5, 1996 ballot, and stated he does not think the proposal should be adopted prior to that election. He noted increasing taxes to compensate for funds taken by the State sends the wrong message and encourages such actions on the part of State Government, and for the reasons stated, he opposes the proposal. Council Member Diaz stated that while he would support the proposal, he has reservations based upon his commitment to improving efficiencies in City government and stressed the need for a balanced package working with all key stake-holders involved in the process of the New Realities Task Force recommendations. He advocated continued efforts to identify ways to improve efficiencies, acceleration of the trigger dates where possible, questioned whether audits of the City's proposed Capital and Operating budgets could be helpful, and stressed the need to continue to work to make government more efficient and responsive. Council Member Diquisto stated the Council should delay making a decision until after the election to see the outcome of Proposition 218, because of the proposition's impact upon the proposal, and moved to defer the issue for two weeks. Council Member Pandori seconded the motion. On a call for the question, the motion failed. Vote: 8-3-0-0. Noes: Diaz, Fernandes, Fiscalini, Hammer, Johnson, Powers, Shirakawa, Woody. Vice Mayor Johnson stated the New Realities Task Force recommendations are not the first efforts the City has made to deal with its structural problems and make more efficient use of its resources. She cited ways in which the City has been doing more with less, even as demands for service increased due to growth in the City and in spite of the low ratio of employee per capita, including increased productivity by employees and utilizing enterprise funds to pay for services, and in some cases, by not providing service at a level that anyone considered adequate. She stated if the Council delayed action and Proposition 218 passed, the Council would have to either wait two years to go before the electorate with the issue, exacerbating the problem of declining services, physical decay and public safety threats, or incur the expense of a special election, which is not good use of City funds. Council Member Dando stated the New Realities Task Force was supposed to be a balanced approach that would enact revenue increases at the same time that government reform and money saving measures were implemented and increasing taxes at this time is wrong and will create distrust and cynicism among residents and businesses, and that she would not support the motion. Expressing support for the proposal, Council Member Woody stated the New Realities Task Force provides a plan by which to continue efforts to improve City government and stressed that Council has made cuts and searched for ways to improve efficiency over the past four years of economic downturn without raising taxes. Council Member Fernandes stated support for the motion, stressed that the City Council has cut already \$100 million out of the

City budget and implemented reforms, and expressed a commitment to see the reform part of the recommendation come forward. Council Member Fiscalini stated the triggers are adequate for dealing realistically with what is required to move to the next step of the process and restated his commitment that if the triggers are not met, the taxes are to be suspended. Council Member Diquisto stated he is opposed to the motion and reiterated his objections expressed earlier. Mayor Hammer stated her belief that the New Realities Task Force recommendations provide opportunities for significant change and reiterated her commitment to ensure that all of the recommendations are implemented. She noted that some of the triggers can be accelerated and stated that if the triggers are not met, she would recommend the taxes be suspended. Mayor Hammer clarified that the triggers referenced in Council Member Fiscalini's motion are the July 1997 triggers. On a call for the question, the motion carried, the public hearing was closed, Council gave direction to the Administration that money collected under the action be impounded and not expended until the July 1997 triggers are met and stipulated that if the triggers are not met the language included in the Staff recommendation dated October 25, 1996 would be operational; Resolution No. 66952, entitled: "A Resolution of the Council of the City of San José Declaring the City's Goals in Implementing the Recommendations of the New Realities Task Force and Providing a Procedure for the Suspension of the Collection of Certain Taxes or Increases of Certain Taxes in the Event that Specified Implementation Triggers Are Not Met"; Ordinance No. 25181, entitled: "An Ordinance of the Council of the City of San José Amending Chapter 4.68 of Title 4 of Section 4.68.020 to Include Interstate and International Telephone Service to the Definitions of Service Supplier and Service User and Adding a New Section 4.68.085 Imposing a Utility Users Tax on Interstate and International Telephone Service and Adding a New Section 4.68.086 Providing Conditions for the Suspension of Collection of the Tax in Accordance with the Targets Set to Implement the Recommendations of the New Realities Task Force Set Forth in Resolution No. 66952"; Ordinance No. 25182, entitled: "An Ordinance of the City of San José Amending Chapter 4.76 of Title 4 of the San José Municipal Code by Amending Section 4.76.360, 4.76.440, and 4.76.480 to Provide for a Method of Annually Adjusting the City's Business Taxes for Inflation and Providing Conditions for the Suspension of Such Adjustments in Accordance with the Targets Set to Implement the Recommendations of the New Realities Task Force Set Forth in Resolution No. 66952"; Resolution No. 66953, entitled: "A Resolution of the Council of the City of San José Setting the Initial Business Tax Inflation Adjustment Factor for Fiscal Years 1996-97 and 1997-98 at 3.0%", and Ordinance No. 25183, entitled: "An Ordinance of the Council of the City of San José Amending Title 4 of the Municipal Code to Add a New Chapter 4.79 Imposing an Alternative Business Tax on Fuel Tank Farms and Providing Conditions for the Suspension of Collection of the Tax in Accordance with the Targets Set to Implement Recommendations of the New Realities Task Force Set Forth in Resolution No. 66952", were adopted. Vote: 8-3-0-0. Noes: Dando, Diquisto, Pandori.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - October 16, 1996

Documents filed: Rules Committee report of October 16, 1996.

- (1) Review of October 29 Council Agenda

The Committee recommended approval of the October 29, 1996 Council agenda with one change.

- (2) Add New Items to October 22 Amended Council Agenda

The Committee recommended three additions to the October 22, 1996 amended Council agenda.

- (3) The Public Record. Attachment: (1) Memorandum from City Clerk Patricia L. O'Hearn, dated October 10, 1996, listing the items transmitted to the Administration and those items filed for the Public Record for the period October 2-8, 1996. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated October 15, 1996, summarizing actions taken on the items transmitted to the Administration and those items filed for the Public Record.

The Committee noted and filed the Public Record.

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

- (a) Referral regarding architectural review for construction of single-family detached housing. Attachment: Memorandum from Council Member Pandori and Council Member Fiscalini dated October 14, 1996, recommending the following issues be referred to the Transportation, Development and Environment Committee: (1) Requiring the same architectural review for construction of new single-family detached housing in conventional zoning districts that now occurs in Planned Development zones, and (2) As part of the comprehensive update of the zoning code, requiring architectural review for substantial renovations of housing and setbacks that reflect the existing neighborhood.

The Committee referred this issue to the Administration with direction to report back to the Rules Committee in two weeks with information regarding the impact of this request on the Planning Department's existing projects.

- (5) City Council and Rules Committee meeting schedules

There were none.

- (6) Oral communications

William Chew requested a copy of the job description for the newly appointed

Public Education and Community Outreach Manager.

(7) Adjournment

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

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Powers and unanimously carried, the Rules Committee report and actions of October 16, 1996 were accepted. Vote: 11-0-0-0.

**7d Report of the Finance Committee - October 2, 1996
[Deferred from 10/22/96 - Item 7d(1)]**

Documents filed: Finance Committee report of October 2, 1996.

(1) Oral petitions

None.

(2) Staff Presentations and Discussion on the Feasibility of the Sale of the Municipal Water System. Attachments: (1) Memorandum from City Manager Regina V.K. Williams, dated September 13, 1996, recommending approval of the Staff recommendation to retain ownership of the System, and recommending the lease revenue bond option presented by the City Auditor not be accepted. (2) Memorandum from Director of Environmental Services, Louis N. Garcia, dated September 11, 1996, recommending City Council retain ownership of the San José Municipal Water System and direct the Administration to return during FY 1997-98 budget process with a comprehensive financial management policy for the System, establishing the method for determining the size of a long-term "rate-of-return" transfer, addressing methods to determine "rate base," customer rates, system reserves and maintenance needs, as well as methods to ensure safeguarding water customer interests in reasonable rates and high quality services.

- (a) Environmental Services Department Report and Presentation
- (b) Auditor's Report and Presentation
- (c) Administration's Response to Auditor
- (d) Public Speakers
- (e) Committee Questions and Answers

The Committee recommended Council approve the Administration's recommendation that the City retain ownership of the Municipal Water System, and direct the Staff to explore leasing options of the System and report back to the Council on bonding the income stream for capital purposes, including a definition by Staff where that money would be earmarked with the understanding that there should be prohibition against any of the money being spent for operating purposes, develop a policy to establish a rate of return for

the City on the (2) Staff Presentations and Discussion on the Feasibility of the Sale of the Municipal Water System.

operation of the Water System, report back to the Council with an update of the Master Plan of the Water System that relates to the ongoing maintenance, rehabilitation and replacement leading to an appropriate reserve for the Water System, review Table VIII on Page 21 of the presentation packet distributed by the Auditor's Office and return to Council with definitive information on why these numbers are in discrepancy, and to address other issues raised by Committee members relative to clarification of the Coyote Valley service, clarification of legal issues affecting long-term leasing, and to provide a timeline recommendation.

See Item 9c for Council action taken.

- (3) Committee schedule

No discussion.

- (4) Adjournment

The meeting was adjourned at 11:30 a.m.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Diaz, and unanimously carried, the Finance Committee report and actions of October 2, 1996, Item 7d(2) heard under Item 9c, were accepted. Vote: 11-0-0-0.

LAND USE AND DEVELOPMENT

- 8a PUBLIC HEARING and approval of 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 5/21/96 - Item 15d et al., and 09/24/96 - Item 8a)**

Documents filed: None.

Discussion/Action: This item was continued to December 3, 1996, at 1:30 P.M.

- 8b PUBLIC HEARING and approval of an ordinance amending Title 20 of the San José Municipal Code by adding a new Section 20.04.355 to Chapter 20.04; amending Sections 20.28.255, 20.28.405 and 20.28.656 of Chapter 20.28; and amending Section 20.44.1040 of Chapter 20.44 relating to live/work uses. (Planning, Building and Code Enforcement)**

Documents filed: Memorandum from Planning Commission, dated October 10, 1996, recommending adoption of the amended Live-Work Ordinance and direct Staff to develop a policy to implement the ordinance.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini, and unanimously carried, Ordinance No. 25184, entitled: "An Ordinance of the City of San José Adding a New Section 20.04.355 to Chapter 20.04, Amending Sections 20.28.255, 20.28.405 and 20.28.565 of Chapter 20.28 and Amending Section 20.44.1040 of Title 20 of the San José Municipal Code to Define Live/Work Uses, to Allow Live/Work Uses in the C-1, C-2 and C-3 Zoning Districts with a Special Use Permit and to Set Forth the Findings for a Special Use Permit When No Other Findings are Specified in Title 20", was passed for publication. Vote: 11-0-0-0.

- 8c PUBLIC HEARING and adoption of a resolution granting tentative approval of the cancellation of California Land Conservation (Williamson Act) Contract No. 71-163 (formerly Lands of Kruse, and now owned by Greenbriar Hillstone, Ltd. and the Roman Catholic Bishop of San José) for 19.45 acres of land located on the west side of San Felipe Road, opposite The Villages Parkway, APN 680-32-003. CEQA: ND. (Planning, Building and Code Enforcement) (Deferred from 10/22/96 - Item 8b)**

Documents filed: Memorandum from Planning Commission, dated October 4, 1996, recommending adoption of a resolution granting tentative approval of the cancellation of California Land Conservation Contract No. 71-163.

Discussion/Action: Upon motion by Vice Mayor Johnson, seconded by Council Member Fiscalini, and unanimously carried, Resolution No. 66954, entitled: "A Resolution of the Council of the City of San José Certifying to the County Auditor of Santa Clara County the Amount of Cancellation Fee to be Paid Upon Cancellation of a Land Conservation Contract, Giving Tentative Approval to Such Cancellation, Prescribing the Conditions Under Which this Resolution will be Effective, Directing the Director of Planning to Record a Certificate Relating to Such Cancellation, Requiring Satisfaction of Such Conditions Prior to the Cancellation Becoming Effective, and Prescribing Conditions in Connection Therewith, and Disestablishing the Agricultural Preserve Within Which the Land is Located", was adopted.

Vote: 11-0-0-0.

- 9a Report on bids and award of purchase of 15 bi-fuel sedans to the lowest responsive bidder, Melrose Ford, at a total cost of \$296,922.75, including tax, and authorization for the Director of General Services to execute the purchase order. (General Services)**

Documents filed: Memoranda from Director of General Services, Ellis M. Jones, Jr., dated October 10 and 22, 1996, recommending award of said purchase to the lowest

responsive bidder, Melrose Ford.

Discussion/Action: The award of purchase to the lowest responsive bidder, Melrose Ford, was approved and the Director of General Services authorized to execute the purchase order. Vote: 11-0-0-0.

9b Status report for Central Service Yard Project: Phase II. CEQA: ND. (Public Works)

Documents filed: None.

Discussion/Action: This item was deferred to November 12, 1996.

**9d Acceptance and discussion of the status report on the Program and Performance Based Budgeting Pilot Project. (City Manager's Office)
(Rules Committee referral 10/23/96)**

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated October 24, 1996, recommending acceptance of the Status Report and provide through discussion (1) feedback on potential modifications to the pilot project format and content, and (2) input on the selection of two additional programs to be added to the pilot project for the 1997-98 budget process.

Discussion/Action: Council Member Fiscalini suggested that the objectives be spelled out in more detail to provide better guidance to the Staff and to the Council in evaluating the process. Mayor Hammer suggested the Administration try to determine if it is feasible to survey user satisfaction in some manner. Upon motion by Council Member Fiscalini, seconded by Council Member Powers, and unanimously carried, report was accepted, and the Administration directed to describe the objectives in more detail in the next status report, and to explore ways to survey user satisfaction. Vote: 11-0-0-0.

**9e Status report on Public Safety Augmentation Plan. (City Manager's Office)
(Rules Committee referral 10/23/96)**

Documents filed: Memorandum from City Manager Regina V.K. Williams, dated October 25, 1996, providing a Public Safety Augmentation Plan implementation status report, as directed by the City Council in May, 1996.

Discussion/Action: Mayor Hammer pointed out that the City of San José has done a good job since July 1, 1995, in spite of difficult budget times, in supporting the Police, Fire and other departments to keep San José the safest large City in the country. She noted that since July \$32.6 million has been allocated in ongoing and one-time high

priority public safety augmentation proposals, only \$5.8 million of which came from federal or state government. She stated she expects good discussions on continuing priorities as the Council moves forward on the Public Safety Augmentation Plan, and thanked City Manager Williams and her Staff for the work they have done on the Public Safety Augmentation Plan. Council Member Dando asked if the Domestic Violence Center funding will be ongoing if the grants from the State are unavailable. City Manager Williams advised that grant funds are available for one year and possibly for a second, after which an evaluation will be done, and funding for the center will be incorporated into the budget process. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Johnson, and unanimously carried, the Status Report was accepted and the issue of funding the Domestic Violence Center referred to the Administration for review of incorporation into the budget process. Vote: 11-0-0-0.

- 9f** **Approval of the multifamily housing underwriting eligible list to be used for the selection of investment banking firms for the period October 29, 1996 to January 1, 2000 for providing investment banking and underwriting services related to the issuance of multifamily housing revenue bonds by the City of San José. (Finance/Housing)**
(Rules Committee referral 10/23/96)

Documents filed: Memorandum from Director of Finance, John V. Guthrie, dated October 24, 1996, recommending approval of said multifamily housing underwriting eligible list, and approval of Newman & Associates as senior managing underwriter and Stone & Youngberg and E.J. De La Rose & Co., Inc. as co-managers for Almaden Lake Village Multifamily Housing Project [(Item 9g(1) and (2))].

Discussion/Action: Upon motion by Council Member Fiscalini, Council Member Dando, and unanimously carried, the multifamily housing underwriting eligible list to be used for the selection of investment banking firms for the period October 29, 1996 to January 1, 2000, was approved and its use authorized. Vote: 11-0-0-0.

- 9g** (1) **Approval of Newman & Associates as senior managing underwriter and Stone & Youngberg and E.J. De La Rose & Co., Inc. as co-managers for Almaden Lake Village Multifamily Housing Project.**
 (2) **Adoption of a resolution authorizing the City Attorney to negotiate and execute an agreement with Orrick, Herrington & Sutcliffe to serve as bond counsel for the Almaden Lake Village Project in an amount not to exceed \$100,000.**
(Finance/Housing)
(Rules Committee referral 10/23/96)

Documents filed: See Item 9f for the Staff recommendation.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council

Member Powers, and unanimously carried, Newman & Associates were approved as senior managing underwriter and Stone & Youngberg and E.J. De La Rose & Co., Inc. as co-managers for Almaden Lake Village Multifamily Housing Project; and Resolution No. 66955, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Orrick, Herrington and Sutcliffe LLP for Bond Counsel Services in Connection with The Almaden Lake Village Project", was adopted. Vote: 11-0-0-0.

ORAL COMMUNICATIONS

Cathy S. Brandhorst addressed Council about acts of violence perpetrated against homeless people.

ADJOURNMENT

The Council of the City of San José adjourned at 4:45 P.M.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK