

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, FEBRUARY 25, 1997

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: Dando, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.

Absent: Council Members: Diaz (excused).

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 *In re Cleveland, Greene v. City of San José, et al, Silva v. City of San José, City of San José v. Eckadams Corporation*; to discuss anticipated litigation pursuant to Subsection (b) of Government Code Section 54956.9 in four matters; and to discuss Public Employment/Public Employee Appointment pursuant to Government Code Section 54957, for (1) Title: Director of Planning, Building and Code Enforcement, and (2) Title: Library Department Director.

By unanimous consent, Council reconvened from the Closed Session, recessed at 10:35 a.m., and reconvened at 1:39 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

St. John Vianney Student Chorus sang the Irish National Anthem in Gaelic to introduce Irish Week.
(District 2)

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 11a was deferred to March 18, 1997, and the Orders of the Day and the Amended Agenda were approved. Vote: 11-0-0-0.

CEREMONIAL ITEMS

- 5a Presentation of commendation and award honoring the Outstanding Employee for February 1997 to Jimmy Salandanan, Senior Accountant, Finance Department. (City Manager's Office)**

Documents filed: None.

Discussion/Action: City Manager Regina V.K. Williams joined Mayor Hammer for the presentation and called to the podium Finance Director John Guthrie, who commended Jimmy Salandanan for his outstanding work in automating systems within the department, leading to his nomination for the award by his peers with the full support of management.

5b Presentation of a commendation to Gary J. Schoennauer for 30 years of service to the City of San José. (Mayor)

(Rules Committee referral 2/19/97)

Documents filed: None.

Discussion/Action: Mayor Hammer presented a commendation to Gary J. Schoennauer, Director of Planning, Building and Code Enforcement, who is retiring after 30 years of service to the City of San José, and stated the fact that San José is recognized nationwide as one of the best planned cities is a tribute to his outstanding service to San José. Each Council Member in turn spoke about their experiences in working in partnership with Director Schoennauer on land use issues in the City, calling him a professional leader and a true visionary whose legacy will endure as the City continues to grow and develop under the policies and guidelines he instituted. His wife, Laura, and his mother, Rae Schoennauer, who were in the audience, were asked to stand and be recognized. Director Schoennauer thanked Mayor Hammer and the Council Members for their recognition and acknowledged the contributions of the employees of the Department of Planning, Building and Code Enforcement to the achievements of the Department.

5c Presentation to St. John Vianney Elementary School Choir and Mitty High School Choir for their participation in both the 1996 and 1997 Irish Week celebrations. (Powers)

(Rules Committee referral 2/19/97)

Documents filed: None.

Discussion/Action: Mayor Hammer was joined by Council Member Powers, who acknowledged the St. John Vianney Elementary School Choir and Mitty High School Choir for their participation in the 1996 and 1997 Irish Week celebrations, and called to the podium John Hannigan of the Dublin Sister City Committee for comments on behalf of the Committee.

CLOSED SESSION REPORT (Partial)

5d Appointment of James R. Derryberry, Jr. as Director of the Department of Planning, Building and Code Enforcement (Mayor)

Documents filed: None.

Discussion/Action: The Council unanimously approved the appointment of Deputy Director James R. Derryberry, Jr. as the new Director of the Planning, Building and Code Enforcement Department. Mayor Hammer introduced his wife Allegra, son John, and daughter Melissa. Vote: 11-0-0-0.

5e Appointment of Jane Light to the position of City Librarian. (Mayor)

Documents filed: None.

Discussion/Action: The Council unanimously approved the appointment of Jane Light as City Librarian of the City of San José. Vote: 11-0-0-0.

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 items taken as indicated. Vote: 11-0-0-0.

Minutes for Approval

6a(1) Regular Meeting of December 17, 1996

Documents filed: Minutes of December 17, 1996.

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

6a(2) Joint City Council/Redevelopment Agency Meeting of December 19, 1996

Documents filed: Minutes of December 19, 1996.

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

Ordinances for Final Adoption (Ord Titles from Contracts)

6b(1) ORD. NO. 25262 - Amends Chapter 2.08 of Title 2 of the San José Municipal Code by adding Section 2.08.470 to provide compensation for non-City employee members of The Board of Administration for the Police and Fire Department Retirement Plan.

Documents filed: Proof of publication of title of Ordinance No. 25262 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25262 was adopted. Vote: 11-0-0-0.

- 6b(2) ORD. NO. 25263 - Amends Title 23 of the San José Municipal Code by amending Section 23.04.120 of Chapter 23.04 to authorize skyline signs in the Downtown Sign Zone for buildings between 190 ft. and 200 ft. in height inclusive.**

Documents filed: (1) Proof of publication of title of Ordinance No. 25263 submitted by the City Clerk. (2) Informational memorandum from Downtown Coordinator Dennis Korabiak, dated February 13, 1997, clarifying that the Sign code approved on February 11, 1997, specifies that the (maximum) two signs for buildings over 200 feet in height will now be allowed in buildings 190 feet or higher.

Discussion/Action: Ordinance No. 25263 was adopted. Vote: 11-0-0-0.

Plans and Specifications

- 6d(1) TRACT NO. 8766 - South side of East William Street between South 19th and South 22nd Streets, Brookwood Partners, L.P., (Developer) - 31 single family attached units. Adoption of a resolution approving the plans, final map and bonds. CEQA: ND. District 3. (Public Works)
(Orders of the Day 4a)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 14, 1997, recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67160, 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. 8766"; Resolution No. 67161, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8766"; Resolution No. 67162, 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. 8766", were adopted. Vote: 11-0-0-0.

- 6d(2) TRACT NO. 8397 - North side of Foxworthy Avenue, 400 feet east of Meridian Avenue, Roem Development Corporation, a California Corporation, (Developer) - 8 detached residential lots. Adoption of a resolution approving the final map and the Parkland Agreement for Tract No. 8397. CEQA: ND. District 9. (Public Works)
(Orders of the Day 4b)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 18, 1997, recommending adoption of said resolutions.

Discussion/Action: This item was dropped from the agenda.

- 6d(3) TRACT NO. 8882 - Northwest Corner of Capitol Avenue and Mabury Road, Pfeiffer Ranch Investors II, Inc., a California Corporation (Developer) - 41 single family detached units. Adoption of a resolution approving the final map and the Parkland Agreement for Tract No. 8882. CEQA: ND. District 4. (Public Works)**

(Orders of the Day 4c)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 18, 1997, recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67163, entitled: "A Resolution of the Council of the City of San José Approving and Accepting Final Map of Tract No. 8882", was adopted. Vote: 11-0-0-0.

Contracts/Agreements

- 6e(1) Adoption of a resolution authorizing the City Manager to negotiate and execute agreements with the cities of Santa Clara and Milpitas for the annual operation and maintenance of South Bay Water Recycling facilities within their respective jurisdictions. (Environmental Services)**

Documents filed: (1) Memorandum from Director of Environmental Services, Louis N. Garcia, dated February 7, 1997, recommending adoption of said resolution. (2) Letter from the Treatment Plant Advisory Committee, dated February 14, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67164, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute Agreements Between City of San José and the Cities of Santa Clara and Milpitas Relating to Annual Operation and Maintenance of South Bay Water Recycling Facilities", was adopted. Vote: 11-0-0-0.

- 6e(2) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1996-97 #15, and authorization for the Director of General Services to execute the purchase orders. (General Services)**

Discussion/Action: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated February 7, 1997, recommending approval of said open purchase orders.

Discussion/Action: The award of open purchase orders List No.15 was approved and the Director of General Services authorized to execute the purchase orders. Vote: 11-0-0-0.

- 6e(3) Approval of award of a service order to Cooper Cameron Corporation for the overhaul of twenty-three (23) cylinder heads for the dual fuel engines at the Water Pollution Control Plant for an amount not to exceed \$200,000. (General Services)**

Documents filed: (1) Memorandum from Director of General Services, Ellis M. Jones, Jr., dated February 7, 1997, recommending award of said service order to Cooper Cameron Corporation. (2) Letter from the Treatment Plant Advisory Committee, dated February 14, 1997, recommending said award to Cooper Cameron Corporation.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. The award of service order to Cooper Cameron Corporation was approved and its execution authorized. Vote: 11-0-0-0.

- 6e(4) Report on bids and award of purchase of one (1) compressed natural gas (CNG) street striper for the Department of Streets and Traffic to the lowest responsive bidder, Kelly Creswell Company, Inc., at a total cost of \$283,998.83, 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 February 7 and 18, 1997, recommending award of said purchase to the lowest responsive bidder, Kelly Creswell Company, Inc.

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

- 6e(5) Approval of award of purchase of five (5) bi-fuel Ford Contour sedans to Wondries Fleet Group of Alhambra, California, in the amount of \$112,489.76, including tax, as an idle act 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 February 7, 1997, recommending award of said purchase to Wondries Fleet Group of Alhambra, California, as an idle act purchase pursuant to Chapter 1217 of the City Charter.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. The award of purchase to Wondries Fleet Group of Alhambra, California, as an idle act purchase was approved and the Director of General Services authorized to execute the purchase order. Vote: 11-0-0-0.

- 6e(6) Award the purchase of twelve (12) mid-size sedans for the Police Department to the low bidder, Carl Chevrolet, at a total cost of \$220,925.40, including tax, and authorizing the Director of General Services to:**
- (a) Execute the purchase order for twelve (12) vehicles.**
 - (b) Exercise an option to purchase additional mid-size sedans at the same unit price of \$18,453.27 for one (1) year, only after sufficient funds have been appropriated.**
- (General Services)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated February 7, 1997, recommending award of purchase to the low bidder, Carl Chevrolet, and authorization to the Director of General Services to execute the purchase

order and exercise an option to purchase additional vehicles at the same unit price for one (1) year, only after sufficient funds have been appropriated.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. The award of purchase to the low bidder, Carl Chevrolet, was approved and the Director of General Services authorized to execute the purchase order and exercise said option, contingent upon the appropriation of funds. Vote: 11-0-0-0.

6e(7) Award the purchase of one hundred (100) Motorola Saber II Radios for the Police Department to the low bidder, Motorola, Inc., at a total cost of \$206,715.14, including tax, and authorizing the Director of General Services to:

- (a) Execute the purchase order for one-hundred (100) Motorola Saber II radios.**
- (b) Exercise an option to purchase additional Motorola Saber II at the same unit price of \$1,918.47, including tax, for one (1) year, not to exceed \$65,000, only after sufficient funds have been appropriated.**

(General Services)

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated February 7, 1997, recommending award of purchase to the low bidder, Motorola, Inc., and authorization for the Director of General Services to execute the purchase order and exercise an option to purchase additional radios at the same unit price for one (1) year, only after sufficient funds have been appropriated.

Discussion/Action: The award of purchase to the low bidder, Motorola, Inc., was approved and the Director of General Services authorized to execute the purchase order and exercise said option, contingent upon the appropriation of funds. Vote: 11-0-0-0.

6e(8) Award the purchase of six (6) 11,000 pound cab and chassis with leaf bodies to the lowest responsive bidder, Carl Chevrolet, at a total cost of \$204,349.14, including tax, and authorizing the Director of General Services to:

- (a) Execute the purchase order for six (6) vehicles.**
- (b) Exercise an option to purchase additional vehicles at the same unit price of \$34,058.19 for one (1) year, only after sufficient funds have been appropriated.**

(General Services)

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated February 7, 1997, recommending award of purchase to the lowest responsive bidder, Carl Chevrolet, and authorization for the Director of General Services to execute the purchase order and exercise an option to purchase additional vehicles at the same unit price for one (1) year, only after sufficient funds have been appropriated.

Discussion/Action: The award of purchase to the lowest responsive bidder, Carl Chevrolet, was approved and the Director of General Services authorized to execute the purchase order and exercise said option, contingent upon the appropriation of funds. Vote: 11-0-0-0.

- 6e(9) Approval of award of purchase of eleven (11) dedicated compressed natural gas (CNG) scooters to Municipal Maintenance Equipment as a sole source purchase in an amount not to exceed \$264,000, including tax, and authorization for the Director of general Services to execute the purchase order. (General Services)**

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated February 7, 1997, recommending award of purchase to Municipal Maintenance Equipment as a sole source purchase pursuant to Section 1217 of the City Charter and authorization for the Director of General Services to execute the purchase order.

Discussion/Action: The award of purchase Municipal Maintenance Equipment as a sole source purchase was approved and the Director of General Services authorized to execute the purchase order.

- 6e(10) (a) Adoption of a resolution:**
- (1) Authorizing the City Manager to negotiate and execute a 25 year master lease with the Campbell Union School District regarding the Sherman Oaks School site,**
 - (2) Declaring a parcel of City owned land of approximately 24,720 square feet located at the Sherman Oaks School site on Fruitdale Avenue surplus to the needs of the City and authorizing the City Manager to negotiate and execute a purchase and sale agreement and quitclaim deed with the Campbell Union School District for the surplus land and**
 - b) Adoption of an appropriation ordinance amendment in the Council District 6 Construction and Conveyance Tax Fund in the amount of \$150,000 for the Sherman Oaks School site.**

**CEQA: Campbell Union School District ND.
(Parks, Recreation and Neighborhood Services)**

Documents filed: Memorandum from Mark Linder, Acting Director of the Department of Parks, Recreation and Neighborhood Services, and Budget Director Larry D. Lisenbee, dated February 20, 1997, recommending adoption of said resolution and appropriation ordinance amendment.

Discussion/Action: Resolution No. 67165, entitled: “A Resolution of the Council of the City of San José (I) Authorizing the City Manager to Negotiate and Execute a 25 Year Master Lease Between the City of San José and the Campbell Union School District Regarding the Sherman Oaks School Site, (II) Declaring a Parcel of City-Owned land of Approximately 24,720 Square Feet Located at the Sherman Oaks School Site on Fruitdale Avenue Surplus to the Needs of the City and Authorizing the City Manager to Negotiate and Execute a Purchase and Sale Agreement and Accompanying Quit Claim Deed for the Surplus Land”; and Ordinance No. 25272, entitled: “An Ordinance of the City of San José Amending Ordinance No. 25131 which Appropriates Moneys in the Construction and Conveyance Tax Fund to Establish an Appropriation in the Amount of

\$150,000, for the Sherman Oaks School Site Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption”, were adopted. Vote: 11-0-0-0.

6e(11) Adoption of a resolution accepting an Easement Deed from Jacques I. Bentitou, Trustee and Arlette Bentitou, Trustee for the Senter-Monterey Sanitary Sewer Rehabilitation, Phase II Project and authorizing the Director of Public Works to sign the Certificate of Acceptance. CEQA: Exempt. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 7, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67166, entitled: “A Resolution of the Council of the City of San José Accepting an Easement from Jacques I. Bentitou, Trustee, and Arlette Bentitou, Trustee, and Authorizing the Director of Public Works to Execute the Certificate of Acceptance for the Easement Deed and Any Other Documents Necessary to Accept the Easement Deed”, was adopted. Vote: 11-0-0-0.

6e(12) Adoption of a resolution accepting Easement Deeds for traffic signal facilities located at the intersection of Cropley Avenue and Lakewood Drive and authorizing the Director of Public Works to execute the Certificates of Acceptance. CEQA: Exempt. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 7, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67167, entitled: “A Resolution of the Council of the City of San José Accepting an Easement from Harman Cafes Employees Profit Sharing Plan and Oakwood Business Center Associates, and Authorizing the Director of Public Works to Execute the Certificate of Acceptance for the Easement Deed and Any Other Documents Necessary to Accept the Easement Deeds”, was adopted. Vote: 11-0-0-0.

**6e(13) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the Santa Clara County Social Services Agency for Youth Employment Services for the period July 1, 1996 to June 30, 1997, in an amount not to exceed \$100,000. (Parks, Recreation and Neighborhood Services)
(Rules Committee referral 2/12/97)
[Deferred from 2/18/97 - Item 6e(9)]**

Documents filed: Memorandum from Mark Linder, Acting Director of the Department of Parks, Recreation and Neighborhood Services, and Budget Director Larry D. Lisenbee, dated February 21, 1997, recommending adoption of said resolution.

Discussion/Action: This item was dropped from the agenda.

6e(14) Approval of an amendment to the employment agreement with Jim Anton. (Fernandes)

(Rules Committee referral 2/19/97)

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated February 7, 1997, recommending approval of said appropriation ordinance and related revenue resolution amendments.

Discussion/Action: The amendment to the employment agreement with Jim Anton was approved. Vote: 11-0-0-0.

Routine Legislation

6f(1) Adoption of appropriation ordinance and funding sources resolution amendments in the City-side Redevelopment Capital Fund for various projects in the amount of \$998,495. (City Manager's Office)

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated February 7, 1997, recommending approval of said appropriation ordinance and related revenue resolution amendments.

Discussion/Action: Ordinance No. 25273, 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 \$998,495 for Various Redevelopment Capital Projects; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", and Resolution No. 67168, 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 the Services for Redevelopment Capital Projects Fund", were adopted. Vote: 11-0-0-0.

6f(2) Adoption of a resolution authorizing the Director of General Services to execute all documents necessary for the donation of a 1981 Jeep 4X4 to San José Search and Rescue. (General Services)

Documents filed: Memorandum from Director of General Services, Ellis M. Jones, Jr., dated February 7, 1997, recommending adoption of said resolution, pursuant to Section 4.16 of the San José Municipal Code.

Discussion/Action: Resolution No. 67169, entitled: "A Resolution of the Council of the City of San José Approving the Donation of a 1981 Jeep 4x4 to San José Search and Rescue", was adopted. Vote: 11-0-0-0.

- 6f(3) (a) Approval of appointments to the San José Beautiful Steering Committee of Ben Andrews, Rebecca Elliot, James Ekblom, Joan Gallagher, and Jerry Matsukado for two (2) year terms.**
- (b) Approval of reappointments to the Steering Committee of Doris Liu, Diana Nichols, Robert Pfahnl, and Emily Yue to two (2) year terms.**

- (c) **Acknowledge the conscientious efforts of outgoing Steering Committee members Patti Benkert, Pat Jackson, John McCluggage, and Brian O'Halloran.**

(Parks, Recreation and Neighborhood Services)

Documents filed: Memorandum from Mark Linder, Acting Director of the Department of Parks, Recreation and Neighborhood Services, dated February 6, 1997, recommending the approval of said appointments and reappointments, and acknowledging outgoing Steering Committee members.

Discussion/Action: The appointments to the San José Beautiful Steering Committee of Ben Andrews, Rebecca Elliot, James Ekblom, Joan Gallagher, and Jerry Matsukado for two (2) year terms and the reappointments of Doris Liu, Diana Nichols, Robert Pfahnl, and Emily Yue to two (2) year terms, and acknowledgment of the conscientious efforts of outgoing Steering Committee members Patti Benkert, Pat Jackson, John McCluggage, and Brian O'Halloran, were approved. Vote: 11-0-0-0.

- 6f(4) Adoption of a resolution ratifying the submission of a grant application for one time grant funding in the amount of \$156,000 from the County of Santa Clara County Heritage Grant Program and to accept the grant if awarded. CEQA: Resolution No. 61042. (Parks, Recreation and Neighborhood Services)**

Documents filed: Memorandum from Mark Linder, Acting Director of the Department of Parks, Recreation and Neighborhood Services, dated February 6, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67170, entitled: "A Resolution of the Council of the City of San José Ratifying the Submission of a Grant Application to the Santa Clara County Heritage Grant Program and Authorizing the City Manager to Accept the Grant if Awarded", was adopted. Vote: 11-0-0-0.

- 6f(5) Adoption of resolutions to amend:**

- (a) **Resolution No. 51872, Exhibit 15, to create the classes of Network Engineer (F/T) (1328) at a salary range of 61I; Network Engineer (P/T) (1329) at a salary range of 61I; Enterprise Network Engineer ((F/T) (1388) at a salary range of 61I; and Enterprise Network Engineer ((P/T) (1389) at a salary range of 61I. (CONT.)**
- (b) **Resolution No. 66092:**
- (1) **Exhibit 05, to create the classes of:**
- (a) **Network Technician I (F/T) (1324) at a salary range of 56C; Network Technician I (P/T) (1325) at a salary range of 56C; Network Technician II (F/T) (1326) at a salary range of 58D; Network Technician II (F/T) (1327) at a salary range of 58D; Systems Applications Programmer I (F/T) (1338) at a salary range of 56C; Systems Applications Programmer I (P/T) (1339) at a salary range of 56C; Systems Applications Programmer II (F/T) (1341) at a salary range of 58D ; Systems Applications Programmer II (P/T) (1342) at a**

salary range 58D; Enterprise Network Technician I (F/T) (1396) at a salary range of 56C ; Enterprise Network Technician I (P/T) (1397) at a salary range of 56C; Enterprise Network Technician II (F/T) (1398) at a salary range of 58D; and Enterprise Network Technician II (F/T) (1399) at a salary range of 58D.

(2) Exhibit 07, to create the class of Senior Systems Applications Programmer (1346) at a salary range of 61I.

(c) Resolution No. 66961, Exhibit 21, to create the class of Data Base Administrator (8125) at a salary range of 64I.

(Human Resources)

Documents filed: Memorandum from Director of Human Resources, Nona Tobin, dated February 7, 1997, recommending adoption of said resolutions.

Discussion/Action: Resolution No. 67171, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 51872 to Amend Exhibit 15 to Create the Classes of Network Engineer (F/T) (1328), Network Engineer (P/T) (1329), Enterprise Network Engineer (F/T) (1388) and Enterprise Network Engineer (P/T) (1389), Effective March 9, 1997"; Resolution No. 67172, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 66092 Amending Exhibit I of the Memorandum of Agreement Between the City of San José and Municipal Employees Federation (AFSCME) Local 101, Unit 5 (Administrative, Technical, Clerical and Custodial Employees) to Create the Classes of Network Technician I (F/T) (1324), Network Technician I (P/T) (1325), Network Technician II (F/T) (1326), Network Technician II (P/T) (1327), Systems Applications Programmer I (F/T) (1338), Systems Applications Programmer I (P/T) (1339), Systems Applications Programmer II (F/T) (1341), Systems Applications Programmer II (P/T) (1342), Enterprise Network Technician I (F/T) (1396), Enterprise Network Technician I (P/T) (1397), Enterprise Network Technician II (F/T) (1398), and Enterprise Network Technician II (P/T) (1399), Effective March 9, 1997", Resolution No. 67173, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 66092 Amending Exhibit I of the Memorandum of Agreement Between the City of San José and Municipal Employees Federation (AFSCME) Local 101, Unit 7 (General Supervisory Employees) to create the Class of Senior Systems Applications Programmer (P/T) (1346), Effective March 9, 1997", and Resolution No. 67174, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 66961 Amending Exhibit I of the Memorandum of Agreement Between the City of San José and Association of Management Personnel (CAMP), Unit 21, to Create the Class of Data Base Administrator (8125), Effective March 9, 1997", were adopted. Vote: 11-0-0-0.

**6f(6) Approval of Mayor's appointment to the Project Diversity Screening Committee.
[Continued from 2/11/97 - Item 9b and 2/28/97 - Item 6f(6)]**

Documents filed: Memorandum from Mayor Hammer, dated February 24, 1997, recommending Maria Duran for appointment to the Project Diversity Screening Committee.

Discussion/Action: The appointment of Maria Duran to the Project Diversity Screening Committee to a term ending December 31, 1998, was approved. Vote: 11-0-0-0.

- 6f(7) Approval of Mayor Susan Hammer's travel to Washington, D.C., on March 5-12, 1997, to attend a ACTPN meeting. Funding: Mayor's Office Budget. (Mayor) (Rules Committee referral 2/19/97)**

Documents filed: None.

Discussion/Action: The travel for Mayor Susan Hammer to Washington, D.C., on March 5-12, 1997, was approved. Vote: 11-0-0-0.

- 6f(8) Approval for City Manager Regina V.K. Williams to travel to Johannesburg, South Africa as guest lecturer, March 5-16, 1997, at no cost to the City. (Rules Committee referral 2/29/97)**

Documents filed: Memorandum from City Manager Williams, dated February 24, 1997, requesting approval of said travel on March 5-16, 1997.

Discussion/Action: The travel for City Manager Williams to Johannesburg, South Africa on March 5-16, 1997, was approved. Vote: 11-0-0-0.

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - Meeting of February 12, 1997

Documents filed: Rules Committee report of February 12, 1997.

- (1) Review of February 25 Council Agenda

The Committee approved the February 25, 1997 agenda with one addition.

- (2) Add New Items to February 18 Amended Council Agenda

The Committee recommended five additions to the February 18, 1997 amended Council agenda.

- (3) The Public Record. Attachment: Memorandum from City Clerk Patricia L. O'Hearn, dated February 6, 1997, listing the items transmitted to the Administration and those items filed for the Public Record for the period January 29-February 4, 1997.

The Committee noted and filed the Public Record.

- (4) Report back on formation of a Spartan Stadium Task Force. Attachments: (1) Memorandum from City Manager Regina V.K. Williams, dated February 11, 1997, outlining her four recommendations for the development of a transportation and parking plan for Spartan Stadium. (2) Memorandum from Council Member Pandori, dated February 24, 1997, recommending that a Working Group of residents and businesses be formed to work with the City, University, and consultant on the recommended Spartan Stadium Traffic and Parking Plan, said group to meet a limited number of times--approximately four meetings--to assist Staff in identifying the specific issues and developing the recommended actions to improve traffic and parking.

The Committee recommended approval of the City Manager's recommendations, as follows:

- a. Develop a traffic and parking management plan for the area surrounding Spartan Stadium, with the cooperation of San José State University and the Clash soccer team, and with input of affected businesses and residents.
- b. Consider in the proposed 1997-98 budget an amount of \$75,000 for consultant support for this effort.
- c. Request San José State University and the Clash team to each contribute \$25,000 toward the consultant support costs.
- d. Schedule the plan for completion and review by Council by March 1, 1998.

Discussion/Action: Commenting on Item 7b(4)(a) relative to the Spartan Stadium Traffic and Parking Plan, Council Member Pandori stated his original request that a Task Force be formed is modified in his memorandum dated February 24, 1997, to request a Working Group be formed to review the issue. He stressed the importance of public input and the urgency of implementing the process in light of the twenty major league soccer games expected at the stadium next summer and moved approval of the recommendations in his memorandum. Council Member Dando seconded the motion. Following Council discussion regarding limited Staff availability and based on assurances that a minimum of four public meetings will be held on the issue, Council Member Dando withdrew her second, Council Member Pandori withdrew his motion and stated his office would work with the Manager's Office to facilitate public participation.

- (5) Report back on issue of scavenging from recycle bins

The Committee deferred this item to next week's meeting.

- (6) Request to use Council General funds for travel to Washington, D.C., to attend National League of Cities Conference on March 7-12, 1997. Attachment: (1) Memorandum from Council Member Woody, dated January 28, 1997, requesting authorization to use Council General Funds to attend National League of Cities Conference. (2) Memorandum from City Clerk Patricia O'Hearn, dated February 7, 1997, summarizing the Council General Travel Budget.

The Committee recommended approval for Council Member Woody to use Council General Funds to attend the National League of Cities Conference in Washington, D.C., March 7-12, 1997.

- (7) Request to use Council General funds to travel to Los Angeles on February 11, 1997, to serve on a League of California Cities Task Force on Tax Stabilization/Reform. Attachment: (1) Memorandum from Council Member Johnson, dated February 5, 1997, requesting authorization to use Council General Funds to attend the League of Cities Task Force on Tax Stabilization/Reform. (2) Memorandum from City Clerk Patricia O'Hearn, dated February 7, 1997, summarizing the use of Council General Travel Budget.

The Committee recommended approval for Council Member Johnson to use Council General Funds to attend the League of California Cities Task Force on Tax Stabilization/Reform in Los Angeles on February 11, 1997.

- (8) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee
 - (a) Recommendation that the Zoning Code be amended to allow Bed and Breakfast Inns in all R and C districts as a conditional use. Attachment: Memorandum from Council Member Fiscalini, dated February 3, 1997, recommending the zoning code is amended to allow Bed and Breakfast Inns in all R and C districts as a conditional use.

The Committee referred this recommendation to the City Attorney and to the zoning update process.

- (9) City Council and Rules Committee meeting schedules

There were none.

- (10) Oral communications

None were presented.

7b Report of the Rules Committee - Meeting of February 19, 1997

Documents filed: Partial Rules Committee Report of February 19, 1997.

- (6) Approve City-sponsored State legislation in 1997. Attachment: (1) Memorandum from Director of Intergovernmental Relations Georgiana Flaherty, dated February 14, 1997, recommending City-sponsored State legislation. (2) Memorandum from Director of Public Works, Ralph Qualls, Jr., dated February 13, 1997, recommending funding priorities for Proposition 204.

- (a) Local property tax base restoration under the Educational Revenue Augmentation Fund.

The Committee recommended approval of City-sponsored legislation in 1997 to restore the local property tax base and freeze the transfer of the growth in the property tax increment.

- (b) Voting membership for local government representatives on the California Tax Credit Allocation Committee

The Committee recommended approval of City-sponsored legislation in 1997 which provides local government a voice in the California Tax Credit Allocation Committee decision-making in order to recognize the partnership between local governments and the State in providing affordable housing.

- (c) Eligibility of bicycle facilities for funding under the Clean Air Grant Program

The Committee recommended approval of City-sponsored legislation in 1997 to extend the eligibility of bicycle facilities for funding under the Clean Air Grant Program (AB 434).

- (7) Direct City Administration to pursue legislative alternatives to secure funding for:

- (a) Implementation of river and stream trail projects along Coyote Creek

The Committee recommended that the City pursue legislative alternatives for the implementation of river and stream trail projects along the Coyote Creek in the amount of \$1 million under the River Parkway Program in Proposition 204.

- (b) The City of San Jose-San Jose State University Joint Library

The Committee recommended the City pursue legislative alternatives to secure funding for the City-San José State University joint library.

Discussion/Action: Upon motion by Vice Mayor Fernandes, seconded by Council Member Woody and carried unanimously, the report and actions of the February 12 and the February 19, 1997 (Partial) Committee report, were approved. Vote: 11-0-0-0.

7c Report of the Finance/Agency Finance Committee - February 12, 1997

Documents filed: Finance/Agency Finance Committee report of February 12, 1997.

- (1) Oral petitions

None presented.

- (2) Monthly Investment Report for November 1996. Attachment: November 1996 Investment Report.

The Committee accepted the report.

- (3) Monthly Investment Report for December 1996. Attachment: December 1996 Investment Report.

The Committee accepted the report.

- (4) Investment Committee Minutes for December 19, 1996. Attachment: Memorandum from Director of Finance, John V. Guthrie, dated January 15, 1997, transmitting the December 19, 1996, Investment Committee minutes.

The Committee noted and filed the report and directed the Administration to report back on the Investment Policy.

- (5) Monthly Financial Report for November 1996. Attachment: Memorandum from Budget Director Larry D. Lisenbee, dated January 13, 1997, transmitting the November 1996 Financial Report.

The Committee accepted the report.

- (6) Status Reports on New Realities Task Force Referrals.
- (a) Zero Based Budgeting Pilot Project (Recommendation #1.01) Attachment: Memorandum from City Manager Regina V.K. Williams, dated February 8, 1997, transmitting the status report.
 - (b) Guidelines and Criteria for Program Sunset Reviews (Recommendation #1.02). Attachment: Memorandum from City Manager Regina V.K. Williams, dated February 7, 1997, transmitting the status report.

The Committee accepted the reports.

- (7) Revised Committee Workplan. Attachment: Revised Workplan.

The Committee accepted the revised February - June 1997 workplan.

Discussion/Action: Upon motion by Council Member Woody, seconded by Council Member Powers, and unanimously carried, the Finance/Agency Finance Committee report and actions of February 12, 1997, were accepted. Vote: 11-0-0-0.

Documents filed: Transportation, Planning, and Environment Committee report of February 13, 1997.

- (1) Consent Calendar
 - (a) Status Report on the Intercity High Speed Rail Study. Attachment: Intercity High Speed Rail Study for February 1997.
 - (b) Status Report on the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Attachment: ISTEA Reauthorization Status Report for February 1997.
 - (c) Status Report on Measure A/B Program. Attachment: Measure A/B Program Status Report for February 1997.

The Committee accepted the reports.

- (2) Report Regarding the Solid Waste Fees Exemption for Non-Profit Charitable Recyclers. Attachments: (1) Memorandum from Director of Environmental Services, Louis N. Garcia, dated January 22, 1997, recommending Council exempt non-profit organizations from Source Reduction and Recycling (AB939) Fees. (2) Correspondence from Goodwill of Santa Clara County, dated February 13, 1997, requesting that Goodwill, Salvation Army and St. Vincent de Paul be exempted from all three City taxes on waste hauling and disposal: AB939, Franchise, and Disposal Facility.

The Committee recommended approval of the Staff recommendation and directed Staff to study other fee/tax for non-profit organizations with additional alternatives for relief of fee/tax burden to users and return to the Committee on April 24, 1997.

See Item 9h for Council action taken.

- (3) Approval of the Draft Revisions for the Residential Design Guidelines. Attachments: (1) Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated January 31, 1997, recommending that the Transportation, Planning and Environment Committee forward a recommendation for approval of the proposed revisions to *Toward Community, Residential Design Guidelines*. (2) Draft *Toward Community, Residential Design Guidelines*, Revised February 5, 1997.

The Committee recommended approval of the Staff recommendations with the following modifications: (a) Modify the requirement for attached residential projects regarding the proximity of required parking spaces within 150 feet of the units from 1.5 spaces (Planning Commission's Recommendation) to 1 parking space within 150 feet of the dwelling unit. Language should be added to encourage all parking spaces within a project to be well distributed for the convenience of all residents and guests, (b) The garage storage requirement

identified for single-family houses, courthomes, paired dwellings and rowhouses should remain as proposed by Planning Department Staff, and (c) Language should be added to the open space chapter to allow some flexibility in the common open space requirements for small lot single-family (4,000 square foot lots and smaller), courthomes and rowhouse development that are in close proximity to public parks.

Additional direction, not for specific inclusion in the revised guidelines at this time, is for staff to survey and/or evaluate the adequacy of parking in older (pre-Residential Design Guideline) attached unit projects to see if an amendment to the parking requirements is justifiable.

See Item 9g for Council action taken.

- (4) Status Report on the Median Island Landscape Program and the Proposed Pilot Median Island Landscape Program.

The Committee deferred this item to the February 27, 1997 meeting.

- (5) Transportation, Planning, and Environment Committee Workplan for January through June 1997. Attachment: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 3, 1997, recommending approval of the Committee Workplan.

The Committee approved the workplan with the understanding that changes may be incorporated in the workplan between now and June 1997.

- (6) Oral Petitions

None presented.

Discussion/Action: Upon motion by Council Member Powers, seconded by Council Member Johnson, and unanimously carried, the Transportation, Planning, and Environment Committee report and actions were accepted, with 7e(2) heard under Item 9h, and 7e(3) heard under Item 9g. Vote: 11-0-0-0.

LAND USE AND DEVELOPMENT

- 8a PUBLIC HEARING and adoption of a resolution authorizing the reorganization of territory designated as Berryessa No. 65, which involves the annexation to the City of San José of 51+ acres of land, located southeasterly of Berryessa Road, between Capitol and Flickinger Avenues, and the detachment of the same from the Santa Clara County Library Service Area. CEQA: ND. (Planning, Building and Code Enforcement)
(Continued from 1/28/97 - Item 8a)**

Documents filed: (1) Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated February 7, 1997, recommending adoption of said resolution. (2) Proof of publication of Resolution No. 67044 initiating reorganization proceedings for annexation and detachment of territory designated as Berryessa No. 65, and setting the date and place for consideration of such reorganization. (3) Affidavits of Mailing and Posting of Notice of Hearing, submitted by the City Clerk.

Discussion/Action: The public hearing was opened and there was no discussion from the floor. Upon motion by Council Member Johnson, seconded by Council Member Fiscalini, the public hearing was closed, and Resolution No. 67175, entitled: "Resolution of the Council of the City of San Jose Ordering the Reorganization of Certain Uninhabited Territory Designated As Berryessa No. 65 Subject to Liability for General Indebtedness of the City After Finding Protests Insufficient to Terminate Such Proceedings", was adopted. Vote: 11-0-0-0.

GENERAL GOVERNMENT

- 9a Approval of an ordinance amending Title 10 of the San José Municipal Code by adding a new Chapter 10.10 to ban sitting or lying down on public sidewalks in the Downtown Core Area. (City Attorney's Office)
(Deferred from 2/11/97 - Item 9a)**

Documents filed: None.

Discussion/Action: This item was deferred to April 8, 1997.

- 9b Adoption of a resolution:**
- (1) Approving a conditional fund reservation of up to \$3,050,000 to Charities Housing Development Corp. and Mercy Charities Housing California or their assignee, for the development of a 110-unit SRO housing project affordable to very low-income persons, on a site located at the southeast corner of Bird and Columbia.**
 - (2) 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 February 7, 1997, recommending adoption of said resolution.

Discussion/Action: Upon motion by Council Member Council Member Pandori, seconded by Council Member Johnson, and unanimously carried, Resolution No. 67176, entitled: "A Resolution of the Council of the City of San José (I) Approving a Conditional Fund Reservation of Up to \$3,050,000 to Charities Housing Development Corp. and Mercy Charities Housing California or their Assignee, for the Development of a 110-Unit SRO Housing Project Affordable to Very Low-Income Persons on a Site Located at the Southeast Corner of Bird and Columbia; and (II) Authorizing the Director

of Housing to Negotiate and Execute all Necessary Documents on Behalf of the City”, was adopted. Vote: 11-0-0-0.

- 9c Adoption of a resolution authorizing the purchase of real property from Donald Arthur Silva, Lawrence Andrew Silva, and the Estate of Marjorie Silva located at 201-203 Asbury Street in the amount of \$157,500, 207 Asbury Street in the amount of \$130,000, and 211 Asbury Street in the amount of \$137,500 for a purchase price of \$425,000, and authorization for the Director of Public Works to execute the purchase agreements and other documents necessary to complete the purchase. CEQA: Exempt. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 7, 1997, recommending adoption of said resolution.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Johnson, and unanimously carried, Resolution No. 67177, entitled: “A Resolution of the Council of the City of San José Approving the Purchase of Three Parcels of Real Property Known as 201-203, 207 and 211 Asbury Street, for a Purchase Price of \$425,000 and Authorizing the Director of Public Works to Execute the Purchase Agreements and Such Other Documents Necessary to Purchase the Property from Lawrence Andrew Silva, Donald Arthur Silva and the Estate of Marjorie Silva”, was adopted. Vote: 11-0-0-0.

- 9d Approval of the first amendment to the agreement with Boyle Engineering Corporation for consultant services for the South Bay Water Recycling Program - Coyote/Old Oakland Road Pipeline to expand the scope of the agreement to include construction inspection and administration services at an additional cost of \$366,000, for a total agreement amount of \$1,669,000. CEQA: Resolution No. 64667. (Public Works)**

Documents filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 7, 1997, recommending approval of the first amendment to said agreement with Boyle Engineering Corporation. (2) Letter from the Treatment Plant Advisory Committee, dated February 14, 1997, recommending approval of the amendment to said agreement. (3) Memorandum from Norberto L. Dueñas, Senior Executive Assistant, dated February 20, 1997, amending budget information in the Staff memorandum dated February 7, 1997.

Discussion/Action: Upon motion by Council Member Johnson, seconded by Council Member Powers, and unanimously carried, the first amendment to said agreement with Boyle Engineering Corporation was approved and its execution authorized. Vote 11-0-0-0.

- 9e Approval of three (3) continuation agreements with the City of Campbell for materials testing, surveying, and construction inspection services, extending the**

term of the agreements from January 1, 1997 to December 31, 1998, in an amount not to exceed \$730,000. (Public Works)

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated February 7, 1997, recommending approval of said agreements with the City of Campbell.

Discussion/Action: Upon motion by Council Member Johnson, seconded by Council Member Powers, and unanimously carried, the three (3) continuation agreements with the City of Campbell were approved and their execution authorized. Vote: 11-0-0-0.

**9f Approval of appointment of William P. Brill to the Federated City Employees Retirement System Board of Administration. (Civil Service Commission)
(Rules Committee referral 2/19/97)**

Documents filed: Memorandum from the Civil Service Commission, dated February 10, 1997, submitting the Commission's nominee to the Federation City Employees Retirement System Board of Administration for a term expiring December 1, 2001.

Discussion/Action: Council Member Fiscalini expressed concerns that the appointment of Bill Brill would upset the balance on the Retirement Board in terms of the employees having the majority vote. He suggested the Board may need restructuring, in part because retirees want representation on the board. He emphasized that his comments do not reflect on Mr. Brill personally. Mayor Hammer expressed similar concerns about maintaining the ability of the Board to make balanced decisions and recommendations. City Attorney Gallo advised Council that complexities involved in making changes to the Retirement Board would result in a long-term process and stated that the Council's options at this time are to either approve the appointment or ask the Commission for another recommendation. Mayor Hammer suggested deferring the issue and communicating the Council's concerns to the Civil Service Commission and requesting an alternate nominee. Upon motion by Council Member Pandori, seconded by Council Member Woody, and carried, the item was deferred to March 18, 1997, and the Mayor authorized to write the Civil Service Commission on behalf of the Council. Vote: 8-3-0-0. Noes: Diquisto, Johnson, Powers.

**9g Approval of revisions to the Residential Design Guidelines. (Planning, Building and Code Enforcement)
[Transportation, Planning, and Environment referral 2/13/97 - Item 7e(3)]
(Deferred from 2/18/97 - Item 9b)**

Documents filed: See Item 7e(3) for the Staff report. (1) Supplemental memorandum from the Planning Commission, dated February 21, 1997, recommending the City Council approve the proposed revisions to *Toward Community, Residential Design Guidelines*, with the additions as contained therein. (2) Supplemental memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated

February 21, 1997, submitting revisions to the Draft, which reflect changes recommended by the Transportation, Planning, and Environment Committee.

Discussion/Action: Council Member Johnson advised the Transportation, Planning, and Environment Committee had suggested the final draft include examples of each of the guidelines, either a physical picture or a statement of where it is being used in the community for reference to clarify for developers what the City is requiring. Council Member Fiscalini expressed concerns that the City's setting guidelines for design of what he termed interior spaces would be precedential and lead to problems, and stated he is in support of the motion with the exception of the garage storage guidelines. Director Schoennauer advised that the proposed garage storage guidelines are intended to deal with parking problems by facilitating the parking of cars in the garage rather than on the street or on the property and are not intended to involve the City in dictating to developers the design or configuration of interior space. He stated the guidelines are prompted by a new type of housing which is smaller than anything previously built in the City. Steve Schott, President of Citation Homes, addressed the Council in support of the Home Builder's Association's position favoring parking enforcement rather than garage storage space guidelines and stated limiting open space is appropriate for smaller lots to keep costs competitive for starter homes. Jim Pollard, Kaufman & Broad, stated that while he supported the Home Builder's Association's position, he is appreciative of the cooperative manner in which the Planning Staff worked with developers on this issue. Upon motion by Council Member Powers, seconded by Council Member Johnson and unanimously carried, the recommendation of the Transportation, Planning and Environment Committee to approve the Staff recommendations dated January 31 and February 21, 1997, as modified by the Transportation, Planning and Environment Committee, were approved. Vote: 11-0-0-0. Noes: Diaz, Fiscalini on the requirement pertaining to garage storage requirements.

**9h Direction to the City Attorney to draft an ordinance to exempt non-profit organizations from Source Reduction and Recycling (AB939) Fees.
[Transportation, Planning and Environment referral 2/13/97 - 7e(2)]**

Documents filed: See Item 7e(2) for documents filed.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Johnson, and unanimously carried, the recommendation of the Transportation, Planning and Environment Committee for approval of the Staff recommendation and direction to Staff to study other fee/tax for non-profit organizations with additional alternatives for relief of fee/tax burden to users and return to the Committee on April 24, 1997, was approved, and the City Attorney was directed to draft the ordinance. Vote: 11-0-0-0.

FISCAL AFFAIRS

10a Adoption of a resolution establishing the wholesale rates for recycled water produced by the South Bay Water Recycling Project (SBWRP), including

**discounted rates for water retailers who adopt discounted retail rate structures.
(Environmental Services)**

Documents filed: None.

Discussion/Action: This item was deferred to March 4, 1997.

JOINT CITY COUNCIL/REDEVELOPMENT AGENCY ITEMS

- 11a (1) Approval of an ordinance amending Title 12 of the San José Municipal Code by adding a new Chapter 12.15 imposing regulations with regard to prospective employment.**
- (2) Adoption of a resolution by the Redevelopment Agency Board accepting the applicability of the ordinance adding a new Chapter 12.15 imposing regulations with regard to prospective employment.**
- (City Attorney's Office)**
(Deferred from 2/4/97 and 2/18/97 - Item 11a)

Documents filed: None.

Discussion/Action: This item was deferred to March 18, 1997.

CLOSED SESSION REPORT

City Attorney Gallo disclosed the following Closed Session actions of February 25, 1997:

A. Pending Litigation - Settlements Authorized:

1. Case Name: In re Cleveland

Substance of Settlement: Approval of settlement of Workers' Compensation claim in the amount of \$75,000.

Council Vote:

Ayes: Dando, Diquisto, Fiscalini, Johnson, Powers, Shirakawa, Woody;
Hammer.

Noes: None.

Absent: Diaz, Fernandes, Pandori.

Abstain: None.

2. Case Name: Silva v. City of San José

Substance of Settlement: Approval of settlement of lawsuit. City to pay the sum of \$12,981 in full settlement.

Council Vote:

Ayes: Dando, Diquisto, Fiscalini, Johnson, Powers, Shirakawa, Woody;
Hammer.
Noes: None.
Absent: Diaz, Fernandes, Pandori.
Abstain: None.

3. Case Name: City of San José v. Eckadams

Substance of Settlement: Approval of settlement of lawsuit. City to receive the sum of \$4,000 in full settlement.

Council Vote:

Ayes: Dando, Diquisto, Fiscalini, Johnson, Powers, Shirakawa, Woody;
Hammer.
Noes: None.
Absent: Diaz, Fernandes, Pandori.
Abstain: None.

B. Authority to Enter Litigation Case(s) As Amicus Curiae:

1. Case Name: Stop Youth Addiction, Inc. v. Lucky Stores, Inc.

Adverse party or parties: Lucky Stores, Inc.

Substance of litigation: This is a tobacco litigation case which raised the broad issue of whether the existence of a Penal Code statute bars an unfair business practice suit brought pursuant to Business & Practice Code §§ 17200, et seq.

Council Vote:

Ayes: Dando, Diquisto, Fiscalini, Johnson, Powers, Shirakawa, Woody;
Hammer.
Noes: None.
Absent: Diaz, Fernandes, Pandori.
Abstain: None.

2. Case Name: Johanna Trevino v. Daryl Gates, et al.

Adverse party or parties: Johanna Trevino

Substance of litigation: This action relates to an attorney fee dispute in a § 1983 lawsuit. At issue is whether the trial court may, or should, consider rates charged by defense counsel and not just plaintiff's counsel.

Council Vote:

Ayes: Dando, Diquisto, Fiscalini, Johnson, Powers, Shirakawa, Woody; Hammer.
Noes: None.
Absent: Diaz, Fernandes, Pandori.
Abstain: None.

3. Case Name: Howard Jarvis Taxpayers Assn. v. City of La Habra

Adverse party or parties: Howard Jarvis Taxpayers Assn.

Substance of litigation: This is a challenge to a city utility users tax, which was enacted without voter approval. The issue to be decided relates to when, or if, there is a statute of limitations for bringing such a challenge.

Council Vote:

Ayes: Dando, Diquisto, Fiscalini, Fernandes, Johnson, Powers, Shirakawa, Woody; Hammer.
Noes: None.
Absent: Diaz, Pandori.
Abstain: None.

C. Appointments:

1. Appointment of James R. Derryberry, Jr. as Director of the Department of Planning, Building and Code Enforcement (Mayor)

This item heard under Item 5d.

2. Appointment of Jane Light to the position of City Librarian. (Mayor)

This item heard under Item 5e.

CLOSED SESSION REPORT

D. 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, Diquisto, Fiscalini, Fernandes, Johnson, Pandori, Powers, Shirakawa, Woody; Hammer.
Noes: None.
Absent: Diaz.
Abstain: None.

ORAL COMMUNICATIONS

- (1) David Wall addressed the Council regarding fiscal issues.
- (2) Jessie Garcia spoke about health and medical issues.
- (3) Robert Niswonder spoke about medical issues.
- (4) William Garbett spoke about environmental issues.

ADJOURNMENT

The Council of the City of San José adjourned at 3:32 p.m. in memory of Michael Antonacci, San José's first city planning engineer and downtown visionary; in memory of Kimberly Wirth, born and raised in Almaden Valley; in memory of Frank Volpi, father of Mary Bosch, City employee in the Department of Parks, Recreation, and Neighborhood Services; and in memory of Rita Hardin, former Director of the Department of Neighborhood Services for the City of San José.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O'HEARN, CITY CLERK