

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, MARCH 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, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Pandori, Powers, Shirakawa, Jr., Woody; Hammer.
Absent: Council Members: None.

Upon motion unanimously adopted, Council recessed at 9:35 a.m. to a Closed Session in Room 600 to: (A) confer with real property negotiator pursuant to Government Code Section 54956.8: Under negotiation: Instruction to negotiator concerning possible acquisition; Property: Northside Route 237, west of Coyote River, east of Zanker Road (APN 015-31-002); Negotiating Parties: Carl Mosher for the City of San José; Tuck Lin, Elizabeth Lin, Hoo Hom, et al., Property Owners; (B) confer with Legal Counsel pursuant to Government Code Section 54956.9, Subsection (a) discuss existing litigation in the cases of Tuigamala v. City of San José and Certified Stainless, Inc. v. City of San José, and (C) confer with Legal Counsel to discuss anticipated litigation pursuant to Subsection (c) of Government Code Section 54956.9, in one matter regarding the initiation of litigation.

By unanimous consent, Council reconvened from the Closed Session, recessed at 11:15 a.m., and reconvened 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

Reverend Jim Crawford, First United Methodist Church, delivered the invocation. Council Member Pandori read excerpts taken from the San José City Council minutes of 100 years ago, dating from March, 1897. (District 3)

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, the Orders of the Day and the Amended Agenda were approved. Vote: 10-0-1-0. Absent: Fernandes.

CEREMONIAL ITEMS

- 5a Presentation of a commendation to Mr. Barney Orowitz for his outstanding service as a member of the Fund Advisory Board for the City's Development Enhancement Fund. (Shirakawa, Jr.)
(Rules Committee referral 3/19/97)**

Documents filed: None.

Discussion/Action: Council Member Shirakawa, Jr. joined Mayor Hammer for the presentation. Joining the commendation ceremony, Economic Development Director Leslie Parks expressed appreciation for Mr. Orowitz's availability and service to the City of San José, which provide an excellent example of a public/private partnership.

CONSENT CALENDAR

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

Minutes for Approval

- 6a(1) Regular Meeting of February 18, 1997**

Documents filed: Minutes of February 18, 1997.

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

Plans and Specifications

- 6d(1) TRACT NO. 8397 - North side of Foxworthy, 400 feet east of Meridian Avenue - Roem Development Corporation, a California Corporation - 8 detached residential lots. Adoption of resolutions approving the plans, final maps, and contract for Tract No. 8397. CEQA: ND. District 9. (Public Works)
(Rules Committee referral 3/19/97)**

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

Discussion/Action: Resolution No. 67203, 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. 8397"; Resolution No. 67204, entitled: "A Resolution of the Council of the City of San Jose Approving and Accepting Final Map of Tract No. 8397"; Resolution No. 67205, entitled: "A Resolution of the Council of the City of San Jose Approving and Authorizing the Execution of Contract and Approving Bonds for the Improvement of Tract No. 8397", were adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6d(2) TRACT NO. 8904 - East side of O'Toole Avenue, 500 feet south of Rincon Circle - Del and Mildred Wilkinson (Developer) - 1 lot commercial condominium complex. Adoption of a resolution approving the final map for Tract No. 8904. CEQA: Exempt. District 4. (Public Works) (Rules Committee referral 3/19/97)**

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

Discussion/Action: Resolution No. 67206, entitled: "A Resolution of the Council of the City of San Jose Approving and Accepting Final Map of Tract No. 8904"; was adopted. Vote: 10-0-1-0. Absent: Fernandes.

Contracts/Agreements

- 6e(1) Approval of a lease of hangar office and ramp space with Atlantic Aviation California, Inc. on a month-to-month basis commencing October 1, 1996, not to extend beyond five (5) years, September 30, 2001, with projected annual revenue to the City of \$36,000. CEQA: Exempt. (Airport)**

Documents filed: Memorandum from Airport Director Ralph G. Tonseth, dated March 7, 1997, recommending approval of said lease agreement with Atlantic Aviation California, Inc.

Discussion/Action: The lease agreement with Atlantic Aviation California, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(2) Report on bids and approval to reject all bids and to re-solicit bids for the Secondary Treatment Area Guardrails Replacement Project at the Water Pollution Control Plant. CEQA: Exempt: (Environmental Services)**

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated March 7, 1997, recommending the rejection of bids and authorization to re-solicit bids for said project.

Discussion/Action: The rejection and re-solicitation of bids was authorized. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(3) Approval of a Master Repurchase Agreement with Newsbyte Burns Securities, Inc. for re-purchase agreement transactions. (Finance)**

Documents filed: Memorandum from Director of Finance, John V. Guthrie, dated March 7, 1997, recommending approval of said agreement with Nesbit Burns Securities, Inc.

Discussion/Action: The Master Repurchase Agreement with Nesbit Burns Securities, Inc., was approved and its execution authorized. Vote: 10-0-1-0. Absent: Fernandes.

6e(4) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1996-97 #18, 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 March 7, 1997, recommending the award of said open purchase orders.

Discussion/Action: The award of open purchase order List No.18 was approved and execution of the purchase orders authorized. Vote: 10-0-1-0. Absent: Fernandes.

6e(5) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the South Bay Metropolitan Officials Association to perform officiating services in the City's Community Sports Program for the period April 1, 1997 to March 31, 1998, in an amount not to exceed \$90,000. (Parks, Recreation and Neighborhood Services)

Documents filed: None.

Discussion/Action: Council Member Shirakawa, Jr., expressed concern that this contract continues to be awarded without going through a Request for Proposal process, that the officials are not properly trained, and stated he has received a number of complaints from residents City-wide. At his request, this item was deferred to April 1, 1997, to enable Staff to review the issues and report back with recommendations. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(6) (a) Approval of a fifth amendment to the agreement with Public Safety Consultants, Inc. to increase document creation services, in an amount not to exceed \$22,570, including expenses, amending the scope of services to include creation of the system requirements specification, and extending the term of the agreement to June 30, 1997.**
- (b) Adoption of a related appropriation ordinance amendment in the General Fund in the amount of \$22,570.**
- (Police/City Manager's Office)**

Documents filed: Memorandum from Chief of Police, Louis A. Cobarruviaz, dated March 7, 1997, recommending approval of a second agreement to said agreement with Public Safety Consultants, Inc. and adoption of a related appropriation ordinance amendment.

Discussion/Action: The fifth amendment to said agreement with Public Safety Consultants, Inc., was approved and Ordinance No. 25278, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 which Appropriates Moneys in the Amount of \$22,570, for an Amendment to the Agreement with Public Safety Consultants, Inc., to Create a Detailed Systems Requirement Specification for the Automated Information System (AIS) Project; and Providing That This Ordinance Shall Become

Effective Immediately Upon Adoption”, was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(7) Report on bids and award of contract for the Traffic Signal Installation at Lundy Avenue and McKay Drive Project to the lowest responsive bidder, Rosendin Electric, Inc., in the amount of \$171,709. CEQA: Exempt. (Public Works)**

Documents filed: None.

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

- 6e(8) Report on bids and award of contract for the Traffic Signal Installation at Nineteenth Street and Santa Clara Street Project to the low bidder, Tennyson Electric, Inc., in the amount of \$79,415, and approval of a contingency in the amount of \$7,900. CEQA: Exempt. (Public Works)**

Documents filed: None.

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

- 6e(9) Report on bids and award of contract for the construction of the Wheelchair Ramps Unit 1 Project to the low bidder, Lucas Concrete, in the amount of \$94,599. CEQA: Exempt. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 7, 1997, recommending said award of contract to the low bidder, Lucas Concrete.

Discussion/Action: The award of contract to the low bidder, Lucas Concrete, was approved and its execution authorized. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(10) Approval of an agreement for consultant services with Cottong & Taniguchi for the Story Road Median Island Decorative Paving Project in the amount of \$56,000, and additional services in the amount of \$4,000, for a total agreement amount of \$60,000. (Public Works)**

Documents filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 7, 1997, recommending approval of said agreement with Cottong & Taniguchi.

Discussion/Action: The agreement with Cottong & Taniguchi was approved and its execution authorized. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(11) Approval of an employment agreement with Pablo Castro, Executive Assistant for the Office of the Independent Police Auditor. (Office of the Independent Police Auditor)**

Documents filed: None.

Discussion/Action: William J. Garbett addressed the Council in opposition to the proposal. The employment agreement with Pablo Castro, was approved and its execution authorized. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(12) Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with the Sobrato Development Company to temporarily relocate four (4) farm labor cottages to the San José Historical Museum and to pay the costs associated with fixing the cottages on foundations. CEQA: Resolution No. 66098. (City Manager's Office)
[Deferred from 3/18/97 - Item 6e(11)]**

Documents filed: None.

Discussion/Action: This item was deferred to April 1, 1997.

Routine Legislation

- 6f(1) Approval of status report on Police Department Management Review (New Realities). (City Manager's Office)**

Documents filed: Memorandum from City Manager Regina V.K. Williams, dated March 14, 1997, submitting said report and recommending acceptance.

Discussion/Action: The report was accepted. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(2) Adoption of a resolution designating the Director of Finance, the Deputy Director of Finance, or the Principal Accountant as the City's agent for submittal of reimbursement documents to the State and Federal Government relating to the January 24, 1997 Flood Disaster. (Finance)
[Deferred from 3/18/97 - Item 6f(3)]**

Documents filed: Memorandum from Director of Finance, John V. Guthrie, dated February 28, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67207, entitled: "A Resolution of the Council of the City of San José Designating the Director of Finance, the Deputy Director of Finance or the Principal Accountant as the City's Agent for Submittal of Reimbursement for Federal and State Natural Disaster Assistance Relating to the Flood Disaster", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(3) Adoption of an appropriation ordinance amendment in the General Fund to increase the Destination San José appropriation by \$150,000 to fund the continuing**

**activities of the San José Convention and Visitors Bureau. (City Manager's Office/Conventions, Arts and Entertainment)
(Rules Committee referral 3/19/97)**

Documents filed: Memorandum from Budget Director Larry D. Lisenbee, dated March 19, 1997, recommending approval of said appropriation ordinance amendment.

Discussion/Action: Ordinance No. 25279, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 which Appropriates Moneys in the General Fund to Increase the Destination San José Appropriation in the Amount of \$150,000, to Fund the Continuing Activities of the San José Convention and Visitors Bureau; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

Vice Mayor Fernandes entered the Chambers during discussion of Item 9c.

GENERAL GOVERNMENT

**9c Report and action on the Downtown Parking Study.
[Transportation, Planning, and Environment Committee referral 3/13/97 - Item 7e(2)]**

Documents filed: (1) See Item 7e(2) for documents filed with the Committee report. (2) Supplemental memorandum from City Manager Regina V.K. Williams, dated March 24, 1997, recommending responsibilities to be assigned to the proposed Downtown Parking Authority, staffing allocations, membership composition, and replacing the name of "Downtown Parking Authority" with "Downtown Parking Board". (3) Memorandum from Council Member Diaz, dated March 24, 1997, recommending the Council: (a) Accept the recommendations in the Parking Facilities Study by Wilbur Smith Associates and approve the policy recommendations made by City staff with modifications to the Downtown Parking Board membership make-up to exclude City Council representatives and (b) Direct Staff to explore the possibility of a partnership with the private sector in meeting San José parking needs, which may include existing garages, new garages, and joint venture development opportunities.

Discussion/Action: Mayor Hammer stated the study, conducted by Wilbur Smith and Associates, was commissioned for the purpose of clarifying the downtown parking situation, to look for ways to improve the effectiveness of the City's parking program and increase the availability of parking in the downtown, and will be critical to the development of more parking in the downtown. Dennis Hickey, Chairman, Parking Advisory Committee, addressed the Council in support of the recommendations in the study and of the formation of the Downtown Parking Board, which he stated should be empowered to a greater degree than was the Parking Advisory Committee. Scott Knies, Executive Director, San José Downtown Association, addressed the Council in support of the study recommendations. Bill Moore, San José Water Company, Chairman of the Downtown Parking Committee Study and member of the Parking Advisory Committee,

spoke in support of the recommendations and empowerment of the new Downtown Parking Board. Council Member Diaz expressed concern that Council Members on the board would set a precedent and could create conflicts and introduced his memorandum dated March 24, 1997 in support of the study recommendations and Staff recommendations, modified to exclude Council Members from board membership, and recommending Staff be directed to explore partnerships with the private sector. Council Member Pandori expressed support for the Committee recommendations, stated that Class B office space was deferred because it was agreed to be an unnecessarily divisive issue, and recommended proceeding with the recommendations without regard to the composition of the board at this time, but noted that excluding Council Members would create the same type of board as the present board and would result in the same problems. Mayor Hammer expressed similar concerns about encountering the same problems and suggested deferring that issue to explore the feasibility of a Council Member serving as a non-voter member of the board as a means of retaining the independence of the board. Council Member Pandori stated he preferred not to defer the matter, citing timing issues and, commenting on his memorandum dated March 11, 1997--which he stated was approved by the Committee but omitted from the Committee report--explained that his recommendation to defer consideration of the Century Center parking lot as the site of a new garage was predicated on the disruption that construction would cause to the new grocery store scheduled for that area. Council Member Johnson expressed a preference for a Council liaison to the board, support for Council Member Diaz's recommendation that private funding be explored, and suggested the grocery store could be well established by the time construction in the Century Center lot would commence, thereby limiting the disruption to the business. Regarding parking at 4th and San Fernando Street, which is currently under discussion for the library site, she noted Council Member Pandori's recommendation is for a University parking lot as opposed to one associated with a City function and, because there is potential for that block to be considered for other major City activities, consideration of the site as a specific kind of parking lot is premature. Council Member Fiscalini stated his concerns about Council Members being voting members of the board, while acknowledging the merit in that relationship if it could be maintained without loss of objectivity, and stated he is not willing to abrogate any of the City Council's fiduciary responsibilities. He expressed support for the recommendations of Council Member Pandori and Council Member Diaz, and stressed the importance of maintaining a good relationship with San José State University. Mayor Hammer stated that discussions were on-going regarding building a joint City/University library and a garage in the area of 4th and San Fernando, that 4th and San Fernando is a logical location to provide parking for the library given the likelihood that the library will be located in that general vicinity. Regarding the grocery store, she stated that while she would be willing to delay construction of a garage to avoid disruptions to the store, ultimately that site is likely to be determined to be very appropriate for a parking garage; therefore, timing is the key issue in balancing that situation. Council Member Dando expressed support for the involvement of one or two Council Members, whether voting or not, developing private/public partnerships, working with San José State University on parking issues, including relocation of the University bookstore to the ground floor of the potential new garage and possibly including a child care facility, and stressed the need for appropriate signage. Council Member Powers suggested exploring the possibility of

using the University's parking structure at 4th and San Salvador--close to San Carlos, which is empty most nights and weekends, the encouragement of private investment, and supported City Council representation as liaisons to the board. Council Member Shirakawa, Jr. stated support for Council Member Pandori recommendations, developing public/private partnerships, and stated he did not support having Council Members as voting members of the board. Council Member Pandori moved approval of the parking study policy recommendations as recommended by the Committee and as amended or supplemented by the supplemental memorandum by City Manager Williams and Redevelopment Agency Executive Director Taylor, dated March 24, 1997, recommendations in Council Member Diaz's memorandum dated March 24, 1997, and approval of the recommendations in Council Member Pandori's March 11, 1997 memorandum. Council Member Fiscalini seconded the motion. City Attorney Gallo requested the issue of the composition of the board be deferred for Staff review of legal implications of a Council liaison position on the Board. Mayor Hammer suggested the Council vote on the issue of the composition of the board separately. On a call for the question, Council Member Pandori's motion carried unanimously, and the recommendations of the Transportation, Planning, and Environment Committee for approval of the Parking Study Policy recommendations and approval of the recommendations by Mayor Hammer, Agency Director Taylor and City Manager Williams dated February 26, 1997, with discussion on Class B buildings referred to the new Downtown Parking Board and Staff to discuss parking site options with businesses in the SoFA district; recommendations in Supplemental Memorandum by City Manager Williams and Agency Director Taylor dated March 24, 1997; recommendations from Council Member Diaz dated March 24, 1997, and recommendations by Council Member Pandori dated March 11, 1997, were approved, with the issue of the composition of Downtown Parking Board deferred to April 1, 1997. Vote: 11-0-0-0. Council Member Pandori suggested that two people serve, preferably one from another district to provide a different perspective. Mayor Hammer agreed with having two members, one of whom should be from District 3. City Attorney Gallo advised that liaisons have no ordinance status, and the City Attorney, City Clerk and City Manager have been directed to report to the Rules Committee on a more formal understanding of the role of the liaison; currently, the Mayor nominates liaisons to Boards and Commissions and the Council makes the appointment, and suggested Council retain the flexibility to make appointments. Addressing the distinction between a non-voting member and a non-voting liaison, she stated the ordinance would address a member, whose role is as a participant in the discussion among other members, but without a vote, while the role of the liaison is less clear and clarification as to the most constructive, effective role of the liaison has been a referral from the Council to the Administration for a report to the Rules Committee. Mayor Hammer suggested a one-week deferral. Upon motion by Council Member Fiscalini, seconded by Council Member Pandori, and unanimously carried, the composition of the Downtown Parking Board was deferred to April 1, 1997. Vote: 11-0-0-0.

9d (1) Adoption of the Public-Private Competition Policy.

- (2) **Approval of the implementation plan for developing and implementing a Public-Private Competition Program based on the goals, guiding principles, criteria for selection, and approach to the process set forth in the policy.**
 - (3) **Direction to staff to prepare an appropriation ordinance amendment for FY 1996-97 in the amount of \$90,000 for current year costs associated with the development and implementation of a Public-Private Competition Program.**
- [Finance/Agency Finance Committee referral 3/19/97 - Item 7c(2)(a)]**

Documents filed: (1) See the Finance/Agency Finance Committee for the meeting of March 19, 1997 - Item 7c(6) for documents filed. (2) Hard copies of overhead transparencies used in the Staff presentation by Assistant City Manager Debra Figone. (3) Letter from the San José Metropolitan Chamber of Commerce, dated March 25, 1997, making recommendations relative to the proposed policy.

Discussion/Action: Mayor Hammer stated this issue is one of the most important items referred from the New Realities Task Force and has been a very positive effort involving labor and management within the City, as well as business people in the community, working together to bring forward the recommendations for a Public-Private Competition Policy which she expects to be very successful. She complimented City Manager Regina V.K. Williams, the employees and labor representatives, as well as others who worked on the proposals, for creating an environment whereby labor and management could work through difficult issues. City Manager Williams complimented the Staff, City employees and labor representatives who worked together to formulate the policy and clarified that the purpose of the competition policy is to increase the accountability of how City services are provided, to reduce and avoid costs and increase service levels--whether accomplished with City employees or the private sector--and not to set up a preference for one service delivery over another. Assistant City Manager Figone presented the Staff report and, with the use of overhead transparencies, stressed the goals of competition, the proposed Public-Private Competition Process, application of the competition process, the guiding principles and selection criteria for competition and the next steps in the process. She reviewed the pilot project, support structure, Ad Hoc operation teams, and the budget, and advised the process will apply to three categories of services, those currently provided in-house, those currently contracted out and services the City currently provides that might be marketable to other governmental agencies, or to the private sector if it meets a public purpose. She outlined the process whereby in-house competitive assessment will be made, using a ten percent margin as the benchmark for potential savings through issuance of an Request for Proposal, that readily achievable improvements will be made along the way and once that determination is made that a greater than 10% savings could be achieved, an Request for Proposal will be developed and City staff would compete for the work. She noted that performance and costs of the service delivery method will be monitored and commented on aspects of creating a level playing field, prevailing wage and third tier review, and enhancing the employees' ability to compete through training and continuous improvement and removal of barrier to competitiveness. She advised the "no lay-off policy" which is subject to meet and confer, is contingent upon having flexibility to retrain employees for placement in different jobs and clarified the policy is not applicable to displacements due to budget reductions.

Regarding the pilot projects, she explained that through the screening of the initial proposals, the Administration will select two services, one contracting out opportunity and one contracting in opportunity, based on the Council's original direction, conduct the competitive assessment to be developed, complete the managed competition process with the Request for Proposal in place by June of 1998. The following individuals addressed the Council regarding various aspects of the proposed program: Deborah Powell, President of Confidential Employees Organization, AFSCME, Local No. 101, member of the City Labor Alliance and the Labor and Management Committee; Kirk Pennington, Member of City Labor Alliance and the Labor and Management Committee; Tim Callahan, representing Operating Engineers, AFSCME, Local No. 3; Richard Sharp, Business Agent, AFSCME, Local 101; Steve Preminger, South Bay Labor Council. Mayor Hammer stated the proposal is for a fair and balanced policy, which will provide for greater efficiencies and help to protect City employees, who do an outstanding job. Council Member Woody commented on the City's commitment to provide training to City employees and on the benefits, which will accrue to residents from the continuous improvement aspect of the policy. Council Member Diquisto asked about a future evaluation of the entire program, suggesting an evaluation is provided by the City Auditor or a neutral party. Council Member Dando commented that the expectations in the initial project were too low and stated the goal of a competition policy should be to keep services in-house and its success not judged by the amount of service contracted out, expressing a preference for the language used in the City of San Diego's competition policy which calls for determining the best model for providing selected services, based on cost efficiency, effectiveness, customer service, and maintenance of essential public services. She stated that a ten percent project cushion would be an unacceptable amount on large contracts and stifle competition, that a no lay-off policy is contrary to the concept of competition and again suggested language used in San Diego which stipulates the city, while not guaranteeing employment to city workers, will make a good faith effort to offer or to have offered employment to any city employee impacted by the competitive bidding process through specified alternatives. She expressed confidence that City employees will be successful in competing for and maintaining city services in-house. Mayor Hammer reasserted her confidence in the City's employees and based on the cooperation from employee representatives, expressed faith that the proposed policy is fair and equitable. Council Member Powers asked how the internal costs associated with outside contracts will be handled, what will the procedures be when a contract fails, i.e., who is responsible and how will the issue be addressed, and suggested periodic reviews of the implementation of the policy be reported to the Finance Committee. Council Member Johnson commented on the importance of maintaining an ethical wall between the preparation of the Request for Proposal and the team who will be bidding on the Request for Proposal, and advised the California Labor Code definition of prevailing wage is subject to change and suggested that be taken into consideration. Responding to questions by Council Member Johnson, Assistant City Manager Figone advised the ten percent margin is within the range of the industry standard of 10-20 percent for on-going costs of contract administration. City Manager Williams advised that ten percent is a guideline, that contracts will be evaluated on a case-by-case basis and if a determination is made not to go forward with a Request for Proposal, that contract would come to the Council for a final decision. Council Member Pandori stated the policy does not reflect

free market principles, as evidenced by a preference for in-house service delivery and the range of services being considered for analysis, called the scope of the policy too narrow and the timeline too slow, and stated that companies competing in the private sector deal with competitive rather than prevailing wages and expressed what he termed a different philosophical view, referencing the social/political changes taking place in the country. Council Member Woody moved to approve the March 19, 1997 Finance Committee report and actions, which incorporated Council Member Powers direction to provide periodic reports to the Finance Committee on the implementation of the plan. Council Member Powers seconded the motion. On a call for the question, the motion carried, and the Council accepted the recommendations of the Finance Committee for adoption of the Public-Private Competition Policy, approval of the implementation plan, direction for Staff to prepare the appropriation ordinance amendment, as specified, and direction for Staff to provide periodic reports to the Finance Committee on the implementation plan. Vote: 9-2-0-0. Noes: Dando, Pandori.

COMMISSION, COMMITTEE, AND STANDING REPORTS

7b Report of the Rules Committee - February 26, 1997

Documents filed: See the City Council Minutes of March 18, 1997 for the Committee report of February 26, 1997.

- (4) Report on issue of scavenging from recycle bins
[Deferred from 3/18/97 - Item 7b(4)]

Committee action taken was reported on the March 18, 1997 Minutes.

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

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

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

- (1) Oral petitions

None presented.

Monthly Investment Report for January 1997. Attachment: January 1997 Investment Report.

- (3) Status Report on HR/Payroll Project. Attachment: HR/Payroll Project Report transmitted by memorandum from Finance Director Guthrie, Information Technology Director Jones, and Human Resources Director Tobin, dated March 7, 1997.

- (4) Presentation of the City's FY 1995-96 Management Letter Comments. Attachment: (1) Report entitled, *City of San José, Finance Committee Presentation, KPMG/GSO Corporation*, dated March 12, 1997. (2) Presentation of FY 1995-96 Management Letter Comments, transmitted by memorandum from Finance Director Guthrie, dated March 5, 1997.

Presentation of the City's FY 1995-96 Single Audit Report. Attachment: Presentation of FY 1995-96 Single Audit Report, transmitted by memorandum from Finance Director Guthrie, dated March 5, 1997.

- (6) Semi-Annual Report on Repair and Maintenance of Fire Fleet. Attachment: Semi-Annual Fire Assessment Report, by Director of General Services Ellis M. Jones, Jr., dated February 24, 1997.

The Committee accepted the reports.

- (7) Report on Operating & Maintenance Impact of Capital Budget Projects (New Realities TF Recommendation #1.03). Attachment: (1) Memorandum from Budget Director Larry Lisenbee, dated March 6, 1997, recommending amendments to the Capital Budget Policies as described therein and refers the recommendations to the Redevelopment Agency Board. (2) Memorandum from Redevelopment Agency Assistant Executive Director James Forsberg, dated March 11, 1997, recommending amendments to the Capital Budget Policies as they relate to Redevelopment Agency projects.

The Committee referred this item back to the Administration and Redevelopment Agency to revisit the recommendations.

- (8) Report on UBS Computer Operations.

The Committee deferred this item to the April 23, 1997 Finance Committee to be heard in conjunction with the Auditor's report.

- (9) Report on Computer Systems Master Plan. Attachment: Memorandum from Information Technology Acting Director Ellis Jones, dated March 6, 1997, reporting on the UBS Computer Operations.

The Committee accepted the report with direction for Staff to begin a continuous upgrading report and report to the Committee on a timely basis, and Staff to investigate loaned outside experts to assist the City in determining its computer needs.

- (10) Addition to Auditor's 1996-97 Workplan. Attachment: Memorandum from City Auditor Gerald A. Silva, dated March 6, 1997.

The Committee accepted the Workplan.

- (11) Committee schedule
 - (a) Approval of meeting time change
 - (b) Room change for March 19 Special Meeting

The Committee scheduled a special meeting on the Competition Policy on March 19, 1997 at 9:00 a.m. in the Council Chambers.

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

7c Report of the Finance/Agency Finance Committee - Meeting of March 19, 1997

Documents filed: Finance/Agency Finance Committee report of March 19, 1997.

- (1) Report on Public-Private Competition Policy. (1) Memorandum from City Manager Regina V.K. Williams, dated March 13, 1997, recommending the Committee recommend Council: (a) Adopt the Public-Private Competition Policy; (b) Approve the implementation plan for developing and implementing a Public-Private Competition Program based on the goals, guiding principles, criteria for selection, and approach to the process set forth in the policy; and (c) Direct Staff to prepare an Appropriation Ordinance Amendment for FY 1996-97 in the amount of \$90,000 for current year costs associated with the development and implementation of a Public-Private Competition Program. (2) Memorandum from City Manager Regina V.K. Williams, dated March 18, 1997, recommending additional language to clarify that the no lay-off provision does not apply in situations involving position reductions due to budget reductions. (3) Report entitled: *Alternative Service Delivery Methods and the Competition Process/Trends, Practices and a Framework for Design, prepared by the City Manager's Office and dated January, 1997.* (4) Hard Copies of transparencies used in the Staff presentation to the Committee.

The Committee recommended Council approves the Staff recommendations dated March 13 and 18, 1997, and direct Staff provide periodic reports to the Finance Committee on the implementation plan.

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

- (2) Oral Petitions

None

Discussion/Action: See Item 9d for Council action taken on the report and actions of the Finance/Agency Finance Committee of March 19, 1997.

7e Report of the Transportation, Planning, and Environment Committee - March 13, 1997

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

- (1) Consent Calendar

None.

- (2) Report on the Downtown Parking Study. Attachment: (1) Memorandum from Deputy City Manager Adriana M. Garza, dated March 5, 1997, recommending approval of the Executive Summary of the Downtown Parking Study as amended by the memorandum dated February 26, 1997 from Mayor Hammer, City Manager Williams and Redevelopment Agency Executive Director Taylor. (2) Memorandum from Council Member Pandori, dated March 11, 1997, recommending Council: (a) Direct City and Redevelopment Agency staff to evaluate the construction of a joint parking garage with San José State University in the vicinity of Fourth and San Fernando Street--in addition, the City should discuss with the University the relocation of the University Bookstore into the ground floor retail space of the potential garage; (b) Because of construction impacts to the new downtown grocery store and the opportunity to pursue a joint garage with the University, defer further consideration of the Century Center parking lot as the site of a new garage; and (c) Direct Redevelopment Agency staff to meet with business people in the SoFA district to solicit their input on parking site options. (3) Memorandum from the San José Downtown Association, dated March 11, 1997, making recommendations on the Downtown Parking Study Policy. (4) Memorandum from the Parking Advisory Commission, dated March 11, 1997, making recommendations and comments to the Downtown Parking Study Policy recommendations. The Committee approved the recommendations to include comments discussed at the meeting; approved the memorandum from Mayor Hammer, Redevelopment Agency Director Taylor, and City Manager Williams dated February 26, 1997, deferred action on the recommendation regarding Class B buildings and referred discussions on Class B buildings to the Downtown Parking Authority; and approved direction to Staff to meet with businesses in the SoFA district to discuss parking site options; and cross referencing of this item for City Council discussion on March 25, 1997.

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

- (3) Parking Advisory Commission Quarterly Report. Attachment: Memorandum from Director of Streets and Traffic, Wayne K. Tanda, dated February 27, 1997, submitting the FY 1996-97 third quarter report from the Parking Advisory Commission and recommending approval.

The Committee accepted the report.

- (4) Report on the Streetlight Installation Priority Criteria

The Committee deferred this item - date to be determined.

7e Report of the Transportation, Planning, and Environment Committee - March 13, 1997

- (5) Oral petitions

None.

Discussion/Action: Upon motion by Council Member Johnson, seconded by Vice Mayor Fernandes, and unanimously carried, the Transportation, Planning, and Environment Committee report and actions of March 13, 1997 accepted, with Item 2 heard under Item 9c. Vote: 11-0-0-0.

LAND USE AND DEVELOPMENT

- 8a (1) Adoption of an urgency ordinance of the City of San José adding a new Part 8 to Chapter 20.08 of Title 20 to establish a zoning category and criteria for Medical Marijuana Dispensaries and amending Section 20.08.1230 of Title 20 to prohibit a Medical Marijuana Dispensary as a home occupation.**
- (2) Adoption of a resolution initiating proceedings to add a new Part 8 to Chapter 20.08 of Title 20 to establish a zoning category and criteria for Medical Marijuana Dispensaries and amending Section 20.08.1230 of Title 20 to prohibit a Medical Marijuana Dispensary as a home occupation, setting a public hearing on June 3, 1997 at 7:00 p.m. and referring the ordinance to the Planning Commission for its review and recommendation.**

(City Attorney's Office)

Documents filed: (1) Memoranda from City Attorney Joan R. Gallo, dated March 21, 1997, recommending the adoption of said urgency ordinance and adoption of said resolution. (2) Memorandum from City Attorney Joan R. Gallo, dated March 25, 1997, amending the minimum age of persons allowed to enter the dispensaries to age 18.

Discussion/Action: Robert Niswonger, Santa Clara County Cannabis Club, addressed the Council in opposition to the regulation of Cannabis Clubs. Jesse Garcia, Peter Baez, and Annie Klein, Santa Clara County Medical Cannabis Club, addressed the Council in support of the ordinance and requested that delivery of medical marijuana be permitted. Donald Ramsey, The Gilroy Medical Clinic, addressed the Council in support of the ordinance. William Garbett spoke in opposition to the ordinance. Bill Chew spoke in support of the ordinance. Suzie Andrews, Rainbow Gifts and Balloons, addressed the Council regarding impacts of the ordinance to her location in the County. City Attorney Gallo stated the recommendation is intended to allow patients needing marijuana for medical purposes to have access in a safe and legal manner, consistent with the

environment, and in order not to delay the opening of medical dispensaries, an urgency ordinance to take effect immediately is proposed, with the ordinance to go to the Planning Commission for a public hearing and recommendation by the Commission to the City Council on June 3, 1997. She advised that that the urgency ordinance does not allow for home delivery but provides for dispensing to primary care givers at the facility, that no individual under the age of 18 may enter the Dispensary, and that applications for opening dispensaries will be handled through the Planning Department. She stated her office will be working with the Police Department to work through the regulations in order to provide clarity about how the law is being interpreted and what the City needs to do to ensure compliance with the law, and stated the process will provide ample opportunity for input. Council Member Fiscalini asked how it was determined that medical facilities should be no closer than 150 feet from any school, child day care center, church or property used for residential purposes, stated concerns about allowing the facilities that close to churches and day care centers and other sensitive areas, and suggested a distance of 500 feet. City Attorney Gallo responded that a 500 feet separation was found to be overly restrictive in terms of siting medical facilities in business centers, due to the proximity of residences to most centers. Council Planning Director James Derryberry stated that as written, the 150 feet is a minimum and in an individual case if there is a church or school or other sensitive property farther than 150 feet but close enough to create concern, that distance could be made more extensive. He stated the primary concern is about separation from residential areas and if a greater separation is desired from those other sensitive areas that would be Staff's intention in applying the ordinance. Council Member Pandori expressed similar concerns that 150 feet is too close, stating the minimum should be the same as that required for drive-through facilities and fast food stands. He stated the urgency ordinance should be amended, pointing out the difficulties that would be encountered if the distance is changed later since dispensaries may be sited based on the lesser distance, making retroactive application difficult. Responding to Council questions, Director Derryberry explained there are many locations in commercial zones which are further than 150 feet from churches and schools, however, because most commercial zones are on strip commercial streets or shopping centers, the land use behind them is residential, 150 feet with the distance measured around the property line or street to the residential area, would provide a respectful distance while not precluding any location from meeting the criteria, and enabling the dispensary to be in the middle of the block facing the street rather than on a corner facing a residence. City Attorney Gallo suggested setting the minimum distance at 150 feet from residences and 500 feet from schools, churches and day care centers or other sensitive uses, with the Planning Commission to study whether it is overly restrictive. Director Derryberry advised that the Special Use Permit provides for direct notice to property owners within the 300 feet of property considered for the use. Council Member Fiscalini moved approval of the Staff recommendation, amended to provide for a minimum separation of 150 feet for residential purposes and 500 feet for schools, churches, day care center, and other sensitive areas, with greater distances to be at the discretion of the Planning Department, and directed Staff to provide each Council Member immediate notification upon application for a site in their respective district. Council Member Shirakawa, Jr. seconded the motion. On a call for the question, the motion carried unanimously and Ordinance No. 25280, entitled: "An Urgency Ordinance of the City of

San José Adding a New Part 8 to Chapter 20.08 of Title 20 to Establish Regulations and Criteria for Medical Marijuana Dispensaries and Amending Section 20.08.1230 of Title 20 to Prohibit a Medical Marijuana Dispensary as a Home Occupation and Setting Forth the Facts Constituting Such Urgency”, and Resolution No. 67208, entitled: “A Resolution of the Council of the City of San José Initiating Proceedings on its Own Motion to Amend Title 20 of the San José Municipal Code Adding a New Part 8 to Chapter 20.08 of Title 20 to Establish Regulations and Criteria for Medical Marijuana Dispensaries and Amending Section 20.08.1230 of Title 20 to Prohibit a Medical Marijuana Dispensary as a Home Occupation”, were adopted. Vote: 11-0-0-0.

GENERAL GOVERNMENT

- 9a Report on bids and award of contract for construction project entitled “Nitrification Pipe Headers and Relief Valves Replacement Project” at the Water Pollution Control Plant to the low bidder, Anderson Pacific Engineering Construction, Inc., in the amount of \$394,000. CEQA: Exempt. (Environmental Services)**

Documents filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated March 7, 1997, recommending said award of contract to the low bidder, Anderson Pacific Engineering Construction, Inc.

Discussion/Action: Upon motion by Council Member Johnson, seconded by Council Member Fiscalini, and unanimously carried, the award of contract to the low bidder, Anderson Pacific Engineering Construction, Inc., was approved and its execution authorized. Vote: 11-0-0-0.

- 9b Approval of status report on Police Department Management Review (New Realities). (City Manager’s Office)**

Documents filed: See Item 6f(1) for documents filed.

Discussion/Action: This item was renumbered to 6f(1).

Council Member Fiscalini left the Chambers during discussion of Item 9e.

- 9e Adoption of a resolution:**

- (1) Approving a conditional fund reservation for up to \$5,314,000 to Eden Housing Inc., or its designated partnership, for a 195-unit family rental housing project, affordable to low- and very-low income households, on 7.3 acres of the Ohlone-Chynoweth Light Rail Station site located on the south side of the intersection of Chynoweth Avenue and Pearl Avenue.**
- (2) Finding that the proposed project is a benefit to the City’s Redevelopment Project Areas.**
- (3) Authorizing the Director of Housing to negotiate and execute all necessary documents on behalf of the City.**

(Housing)
(Rules Committee referral 3/19/97)

Documents filed: Memorandum from Director of Housing, Alex Sanchez, dated March 20, 1997, recommending adoption of said resolution.

Discussion/Action: Leslee Coleman, Michael Martin, Greenbelt Alliance, spoke in support of the project. Anthony Flanagan, spoke on behalf of the applicant, Eden Housing, Inc., in support of the project. Council Member Diquisto stated there are unresolved problems of traffic deferral and other issues of neighborhood impacts from the project still to be addressed and, expressing the hope that these issues can be resolved, moved approval of the Staff recommendation. Council Member Dando seconded the motion. On a call for the question, the motion carried unanimously, and Resolution No. 67209, entitled: "A Resolution of the Council of the City of San José (I) Approving a Conditional Fund Reservation for up to \$5.314 Million to Eden Housing, Inc., or its Designated Partnership, for a 195-Unit Family Rental Housing Project, Affordable to Low- and Very-Low Income Households, on 7.3 Acres of the Ohlone-Chynoweth Avenue Light Rail Station Site Located on the South Side of the Intersection of Chynoweth Avenue and Pearl Avenue, (II) Finding that the Proposed Project is a Benefit to the City's Redevelopment Project Areas, and (III) Authorizing the Director of Housing to Negotiate and Execute all Necessary Documents on Behalf of the City", was adopted. Vote: 10-0-1-0. Absent: Fiscalini.

9f **Report back on issue of scavenging from recycle bins.**
[Rules Committee referral 2/26/97 - Item 7b(4)]

Documents filed: Memorandum from City Manager Regina V.K. Williams, dated March 25, 1997, recommending: (1) Include questions regarding scavenging in the Annual Recycle Plus opinion survey to better understand citizen attitudes and perceptions of the issue from a City-wide customer base perspective; (2) Direction to Environmental Services and Code Enforcement staff to gather information regarding the current enforcement process, tracking of scavenging complaints, and other pertinent data regarding scavenging.

Discussion/Action: Jose Rodriguez, GreenTeam of San José, and Cynthia Palacio, Western Waste Industries, spoke in support of Council Member Pandori's recommendations. Council Member Pandori moved to refer the issue to the Transportation, Planning, and Environment Committee, and for Staff to review the designation of Staff for enforcement, in concert with the suggestions made at today's meeting. On a call for the question, the motion carried unanimously, and Council accepted the Committee report on Item 7b(4) and referred the issue of scavenging from recycle bins to the Transportation, Planning, and Environment Committee, with direction for Staff to review the designation of staff for enforcement, in concert with suggestions discussed relative to enforcement, education, problem areas, and impacts and prioritization. Vote: 10-0-1-0. Absent: Fiscalini.

Mayor Hammer left the Chambers and Vice Mayor Fernandes assumed the Chair.

FISCAL AFFAIRS

10a Adoption of a resolution amending the Fiscal Year 1996-97 Fees and Charges Resolution No. 66718 to change the methodology for collection of bingo permit fees and to reduce the general permit application fee to \$50. (Finance)

Documents filed: (1) Memorandum from Director of Finance, John V. Guthrie, dated March 7, 1997, recommending the adoption of said resolution to amend the Fiscal Year 1996-97 Fees and Charges resolution. (2) Supplemental memorandum from Director of Finance, John V. Guthrie, dated March 21, 1997, recommending an amendment to change the methodology for collection of bingo permit fees and to reduce the general permit application fee to \$50.

Discussion/Action: Upon motion by Council Member Powers, seconded by Council Member Johnson, and unanimously carried, Resolution No. 67210, entitled: "Resolution of the Council of the City of San José Amending Resolution No. 66718, the 1996-97 Schedule of Fees and Charges, to Change the Methodology for Collection of Bingo Permit Fees and to Reduce the Permit Application Fee to \$50, Effective March 25, 1997", was adopted. Vote: 8-0-3-0. Absent: Diquisto, Fiscalini; Hammer.

10b PUBLIC HEARING and adoption of a resolution confirming the Report of the Director of Planning, Building and Code Enforcement, as may be modified by Council, regarding the recovery of abatement costs for vacant and unsecured properties for Blight and Housing Code Violations, and ordering that notices of lien for the unpaid abatement costs be recorded as an assessed charge against the properties involved. CEQA: Exempt. (Planning, Building and Code Enforcement)

Documents filed: (1) Memorandum from Director of Planning, Building and Code Enforcement, James Derryberry, Jr., dated March 7, 1997, recommending the adoption of said resolution. (2) Proof of Publication of Notice of Public Hearing, dated March 14, 1997, submitted by the City Clerk.

Discussion/Action: Richard Steffens addressed the Council regarding the charges levied against his property at 1611 Glenfield Drive in San Jose. He stated he had been attempting to get information regarding the charges, having talked with several City departments and was recently informed that upon written request to Code Enforcement, information would be provided in three to four weeks; he requested a four week deferral. Following testimony from Code Enforcement Director Ed Gawf, the Council agreed to defer Mr. Steffens case for two weeks. Upon motion by Council Member Powers, seconded by Council Member Shirakawa, Jr., and unanimously carried, the Public Hearing was closed, Council approved the report with the Steffens property (Parcel No. 446-18-027) deferred to April 8, 1997, and Resolution No. 67211, entitled: "A Resolution of the Council of the City of San José Ordering that Certain Unpaid Nuisance Abatement Charges by an Assessed Charge Against the Property Involved, Confirming

the Report of these Property Assessments and Directing the City Clerk to record “Notices of Lien” with the Santa Clara County Recorder and to File the Recorded “Notices of Lien” with the Santa Clara County Assessor for Inclusion on the Assessor Role”, was adopted. Vote: 7-0-4-0. Absent: Dando, Diaz, Fiscalini; Hammer.

ADJOURNMENT

The Council of the City of San José adjourned at 5:19 p.m.

SUSAN HAMMER, MAYOR

ATTEST:

PATRICIA L. O’HEARN, CITY CLERK