

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, APRIL 15, 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.; Hammer.

Absent: Council Members: Woody (excused).

Upon motion unanimously adopted, the City Council recessed to a Closed Session at 9:35 a.m. in Room 600 to (A) confer with Legal Counsel pertaining to existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider the cases of In re Potter; De La Torre v. City of San José; Richmond, et al. v. City of San José, et al.; Davidon Homes, et al. v. City of San Jose; City of San José v. Superior Court; and (B) to confer with Legal Counsel - Anticipated Litigation - regarding the initiation of litigation pertaining to two matters pursuant to subdivision (c) of Section 54956.9 of the Government Code.

By unanimous consent, Council reconvened from the Closed Session, recessed at 11:45 a.m., and reconvened at 1:40 p.m. in Council Chambers, City Hall.

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

Absent: Council Members: None.

INVOCATION

Girl Scout Troop 249 of Santa Clara County sang, "Can a Woman ... Yes She Can".
(District 4)

PLEDGE OF ALLEGIANCE

Mayor Hammer led in the Pledge of Allegiance.

The City Council joined Mayor Hammer in extending a special welcome to Deputy Mayor of Derry, Northern Ireland, Councilor Martin Bradley, and City Councilor Will Flight, who were accompanied by Ray O'Flaherty of San José.

ORDERS OF THE DAY

Upon motion by Council Member Fiscalini, seconded by Vice Mayor Fernandes and unanimously carried, the Orders of the Day and the Amended Agenda were approved.
Vote: 11-0-0-0.

CEREMONIAL ITEMS

- 5c Proclamation recognizing and supporting the observation of National Pay Inequity Awareness Day. (Fernandes)
(Orders of the Day 4a)**

Documents Filed: None.

Discussion/Action: Joined by Mayor Hammer, Vice Mayor Fernandes stated President Clinton has proclaimed a *National Pay Inequity Awareness Day* and has urged all citizens to recognize the full value of women's skills and contributions to the labor force. Mayor Hammer presented the proclamation to Penny Donovan–NWPC, Willie Wool–DAWN, and Deborah Powell–AFSCME.

- 5a Presentation of plaque to Dolores Crist for 2 years 9 months service on the Senior Citizens Commission. (Mayor)**

Documents Filed: None.

Discussion/Action: The plaque for Dolores Crist will be mailed, as she was unable to attend the Council meeting.

- 5b Presentation of commendation to the Girl Scouts of Santa Clara County in honor of their 85th anniversary. (Fernandes)
(Rules Committee referral 4/9/97)**

Documents Filed: None.

Discussion/Action: Vice Mayor Fernandes acknowledged the 85th anniversary of the Girl Scouts of Santa Clara County and their contributions to young women ages 5 to 17, and Mayor Hammer presented the commendation to Troop Leader Joanne Wang, accompanied by Caroline O'Campo, Girl Scouts Council of Santa Clara County. Vice Mayor Fernandes stated the "Birthday Celebration" held in Mountain View, CA, in March, 1997, was attended by 3,000 Girl Scouts and 500 adult supporters.

- 5d Presentation of a commendation declaring the week of April 14 as Anti-Graffiti Week. (Parks, Recreation and Neighborhood Services)
(Rules Committee referral 4/9/97)**

Documents Filed: None.

Discussion/Action: Joining Mayor Hammer at the Podium, Mark Linder, Acting Director of Parks, Recreation and Neighborhood Services, accompanied by Maria De Leon and Zulma Maciel from the Anti-Graffiti Program, accepted the commendation.

The City Council joined City Manager Regina Williams in extending a special welcome to Ms. Duduzile Maskeko, Human Rights Executive of Greater Johannesburg Metro, Northeast Republic of South Africa, who was asked to stand and be recognized.

Vice Mayor Fernandes left Council Chambers at this point in the meeting.

CONSENT CALENDAR

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

Ordinances for Final Adoption

- 6b(1) ORD. NO. 25281 - Rezones certain real property situated on the west side of McCreery Avenue, approximately 100 feet north of San Antonio Street.
C 96-11-070**

Documents Filed: Proof of publication of the title of Ordinance No. 25281 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25281 was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6b(2) ORD. NO. 25282 - Rezones certain real property situated at the southwest corner of Monterey Road and Bellevue Avenue.
C 96-10-068**

Documents Filed: Proof of publication of the title of Ordinance No. 25282 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25282 was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6b(3) ORD. NO. 25283 - Rezones certain real property situated on the east side of Lincoln Avenue, approximately 100 feet southerly of Nevada Avenue.
PDC 96-10-064**

Documents Filed: Proof of publication of the title of Ordinance No. 25283 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25283 was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6b(4) ORD. NO. 25284 - Rezones certain real property situated on the south side of Westmont Avenue opposite Kingston Way.
PDC 96-12-078**

Documents Filed: Proof of publication of the title of Ordinance No. 25284 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25284 was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6b(5) ORD. NO. 25285 - Rezones certain real property situated on the west side of Cadwallader Avenue, 200 feet southerly of Country Vista Court.
PDC 96-08-052**

Documents Filed: Proof of publication of the title of Ordinance No. 25285 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25285 was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6b(6) ORD. NO. 25286 - Rezones certain real property situated on the east side of White Road opposite Cunningham Avenue.
C 97-02-012**

Documents Filed: Proof of publication of the title of Ordinance No. 25286 submitted by the City Clerk.

Discussion/Action: Ordinance No. 25286 was adopted. Vote: 10-0-1-0. Absent: Fernandes.

Contracts/Agreements

- 6e(1) Approval of a second amendment to the agreement with KPMG Peat Marwick LLP for certification of Municipal Health Services Program (MHSP) clinic costs reports, modifying the scope of services for FY 1996-97, and increasing the compensation by \$7,120, for a seven year total amount not to exceed \$554,120. (City Attorney's Office)**

Documents Filed: Memorandum from City Attorney, Joan R. Gallo, dated April 7, 1997, recommending Council approve the second amendment to said agreement.

Discussion/Action: The second amendment to the agreement with KPMG Peat Marwick LLP was approved and execution of the amendment authorized. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(2) Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 1996-97 #20, and authorization for the Director of General Services to execute the purchase orders.
(General Services)**

Documents Filed: (1) Memorandum from Director of General Services, Ellis M. Jones Jr., dated, March 28, 1997, recommending Council award said open purchase orders list, and authorize the Director of General Services to execute the purchase orders. (2) Supplemental letter from Treatment Plant Advisory Committee, dated April 11, 1997, recommending approval of award of addition to existing open purchase order with Fisher Scientific and authorize the Director of General Services to execute the purchase order addition.

Discussion/Action The award of open purchase orders List No. 20 for FY 1996-97 was approved and execution of the purchase orders authorized. Vote: 10-0-1-0. Absent: Fernandes.

6e(3) Adoption of a resolution authorizing the Director of Public Works to:

- (a) Negotiate and execute an actual cost contract with Pacific Gas and Electric Company (PG&E) for the relocation of the PG&E facilities located on the Water Pollution Control Plant property with an advance payment of \$53,959.**
- (b) Execute an amendment of easement and all other documents necessary to accomplish relocation of the PG&E facilities.**

CEQA: Exempt. (Public Works/Environmental Services)

Documents Filed: (1) Memorandum from Director of Public Works Ralph A. Qualls, Jr., and Director of Environmental Services Louis N. Garcia, dated March 28, 1997, recommending Council adopt said resolution. (2) Letter from Treatment Plant Advisory Committee, dated April 11, 1997, recommending adoption of said resolution.

Discussion/Action: Resolution No. 67232, entitled: “A Resolution of the Council of the City of San José Delegating to the Director of Public Works the Authority to Negotiate and Execute Actual Cost Agreement With Pacific Gas & Electric Company for Relocation of Facilities With an Advance Payment of \$53,959; and Authorizing the Director of Public Works to Execute an Amendment of Easement and all Other Documents Necessary to Accomplish Relocation of the Facilities”, was adopted. Vote: 10-0-1-0. Absent: Fernandes.

6e(4) Adoption of a resolution authorizing the Director of General Services to:

- (a) Execute a 43-month sublease with Barry Swenson and Molly Swenson dba 777 Associates for 3,192 usable square feet of office space on the 6th floor of 777 North First Street for the Professional Standards and Conduct Unit for a rental amount of \$4,309.20 per month during the first seven (7) months of the lease, increasing to \$5,362.56 per month with additional annual increases to a high of \$5,809.44 per month during the final year of the lease, for a total of \$231,255.40 over the 43 month lease term.**
- (b) Execute addenda to the sublease for such other improvements and alterations deemed necessary in an amount not to exceed \$75,000 after sufficient funds have been appropriated.**

(Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 28, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67233, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute a 43-Month Sublease for 3192 Square Feet of Office Space at 777 North First Street", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6e(5) Report on bids and award of contract for the Central Service Yard Asbestos Removal Project to the low bidder, Bayview Environmental Services, to include the Base Bid and Add Alternate, in the amount of \$104,451, and approval of a contingency in the amount of \$20,000. CEQA: Exempt. (Public Works)**

Documents Filed: (1) Supplemental memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 8, 1997, recommending Council award said contract to the low bidder, Bayview Environmental Services. (2) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 28, 1997, recommending Council award said contract to the low bidder and approve 10% contingency.

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

Routine Legislation

- 6f(1) Adoption of appropriation ordinance amendments to shift \$20,000 from Non-Personal to Personal Services in the Environmental Services Department within the Storm Drainage Service Charge Fund for the Rangers in Schools Program. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated March 28, 1997, recommending Council approve said appropriation ordinance amendments in the Storm Drainage Service Charge Fund to effect the \$20,000 transfer.

Discussion/Action: Ordinance No. 25288, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 Which Appropriates Moneys in the Storm Drainage Service Charge Fund to Transfer the Amount of \$20,000 From Non-Personal Expenses to Personal Services in the Environmental Services Department for the Rangers in Schools Program; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(2) Adoption of appropriation ordinance amendments to increase the City Manager's Budget by \$90,000 within the General Fund for implementation of the Public-Private Competition Program. (City Manager's Office)**

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated March 28, 1997, recommending Council approve said appropriation ordinance amendments in the General Fund to effect the transfer.

Discussion/Action: Ordinance No. 25289, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 Which Appropriates Moneys in the General Fund to Increase the City Manager's Budget in the Amount of \$90,000, for Implementation of the Public-Private Competition Program; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(3)**
- (a) Adoption of a resolution accepting a donation from the South Bay Zoological Society in the amount of \$6,500 for Happy Hollow Park and Zoo. (Conventions, Arts and Entertainment)**
 - (b) Adoption of a resolution accepting a donation in the amount of \$6,000 from Dia Joyce for the Animal Spay/Neuter Program. (Planning, Building and Code Enforcement)**
 - (c) Adoption of appropriation ordinance and funding source resolution amendments in the Gift Trust in the amount of \$20,000 to reflect actual cash balances. (City Manager's Office)**

Documents Filed: (1) Memorandum from Director of Conventions, Arts and Entertainment, Nancy Johnson, dated March 28, 1997, recommending Council adopt a resolution accepting said donation for Happy Hollow Park and Zoo. (2) Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated April 9, 1997, recommending Council adopt a resolution accepting said donation for the Animal Spay/Neuter Program. (3) Memorandum from Budget Director, Larry D. Lisenbee, dated March 28, 1997, recommending Council approve said appropriation ordinance amendments and the source resolution amendment in the Gift Trust Fund.

Discussion/Action: Resolution No. 67234, entitled: "A Resolution of the Council of the City of San José Accepting a Donation in the Amount of \$6,500 From the South Bay Zoological Society"; Resolution No. 67235, entitled: "A Resolution of the Council of the City of San José Accepting a Donation in the Amount of \$6,000 From Dia Joyce for the Animal Spay/Neuter Program"; Ordinance No. 25290, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 Which Appropriates Moneys in the Gift Trust Fund in the Amount of \$20,000 to Reflect Actual Cash Balances in Individual Gift Accounts; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 67236, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 66717 Setting Forth the Estimated Sources of Funds for the Fiscal Year 1996-97 to Adjust Revenues in the Gift Trust Fund", were adopted. Vote: 10-0-1-0. Absent: Fernandes.

6f(4) Adoption of appropriation ordinance amendments to establish appropriations totaling \$150,000 in the Public Works Department and City Manager's Office with the Municipal Golf Course Fund to study the development of a golf course within the Coyote Creek park chain. (City Manager's Office)

Documents Filed: Memorandum from Deputy City Manager Darrell A. Dearborn, and Budget Director Larry D. Lisenbee, dated March 28, 1997, recommending Council approve said appropriation ordinance amendments in the Municipal Golf Course Fund.

Discussion/Action: Ordinance No. 25291, entitled: "An Ordinance of the City of San José Amending Ordinance No. 25131 Which Appropriates Moneys in the Public Works Department and the City Manager's Office Within the Municipal Golf Course Fund in the Total Amount of \$150,000 to Study the Development of a Golf Course Within the Coyote Creek Park Chain; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

6f(5) Adoption of appropriation ordinance and funding sources resolution amendments in the City-side Redevelopment Capital Fund in the amount of \$73,000 for the Old Edenvale Industrial Streetscape Project. (City Manager's Office)

Documents Filed: Memorandum from Budget Director, Larry D. Lisenbee, dated March 28, 1997, recommending Council approve said appropriation ordinance and funding sources resolution amendments in the City-Side Redevelopment Capital Fund.

Discussion/Action: Ordinance No. 25292, 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 \$73,000 for the Old Edenvale Industrial Streetscape Project; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption"; and Resolution No. 67237, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 66717 Setting Forth the Estimated Sources of Funds for the Fiscal Year 1996-97 to Adjust Revenues in the Services for Redevelopment Capital Projects Fund", were adopted. Vote: 10-0-1-0. Absent: Fernandes.

6f(6) Adoption of a resolution approving the filing of an application for certification under the Certified Local Government Program, and authorization for the City Manager to sign Certified Local Government Program documents and agreements. (Historic Landmarks Commission)

Documents Filed: None.

Discussion/Action: Council Member Pandori expressed appreciation for the comprehensive staff report and the advantages afforded the City to participate in the Program, and asked for an explanation of the recommended deferral of this item, since Council discussed this item during a previous meeting. Director of Planning, Building

and Code Enforcement, James R. Derryberry stated the one-week deferral will allow for completion of internal coordination of information with the City Attorney's Office. With respect to the Deferred Annexation Agreement between the County and the City regarding the implementation of the proposal, Council Member Powers stated the City's and the County's policies regarding appropriate uses in this non-urban area are not fully consistent, and that the discrepancies in the agreement between the two entities must be resolved. Upon motion unanimously adopted, the deferral to April 22, 1997 was approved as recommended. Vote: 10-0-1-0. Absent: Fernandes.

6f(7) Adoption of a resolution to amend Resolution No. 66583, Exhibit 06, to create the class of Exhibit Builder (PT) (6118) at the salary range of 49F. (Human Resources)

Documents Filed: Memorandum from Director of Human Resources, Nona Tobin, dated March 28, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67238, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 66583 by Amending Exhibit I of the Memorandum of Agreement With International Union of Operating Engineers, Local No. 3, Unit 6, to Create the Class of Exhibit Builder (PT) (6118), Effective April 30, 1997", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

6f(8) Acceptance of the Office of Economic Development, Report of Activities: July 1, 1996 - December 31, 1996. (Office of Economic Development)

Documents Filed: Memorandum from Director of Economic Development, Leslie S. Parks, dated March 28, 1997, recommending Council accept said report of activities.

Discussion/Action: The semi-annual report of activities of the Office of Economic Department was accepted. Vote: 10-0-1-0. Absent: Fernandes.

6f(9) Approval of the Community Development Block Grant (CDBG) Fiscal Year 1996-97 Second Quarter Monitoring Report. (Parks, Recreation and Neighborhood Services)

Documents Filed: Memorandum from Acting Director of Parks, Recreation and Neighborhood Services, Mark Linder, dated March 28, 1997, recommending Council accept the second quarter status report and extend the funding term for projects as specified therein which received funding approval in FY 1995-96.

Discussion/Action: The staff recommendation to (a) accept the second quarter monitoring report on the status and performance of 134 projects, including 3 project cancellations, with corrective actions as appropriate, (b) extend the funding term from June 1997 to June 1998 for 9 projects which received funding approval in FY 1995-96, and (c) to extend the funding term from June 1997 to June 1998 for 3 projects which received

funding approval in FY 1995-96, subject to corrective actions as stated in the staff report, was approved . Vote: 10-0-1-0. Absent: Fernandes.

6f(10) Approval of the addition of subcontractor, A&B Engineers & Builders, Inc. to perform structural steel construction for the South Bay Water Recycling Program Pump Stations and Reservoir Project at no additional cost to the City. CEQA: Resolution No. 64667. (Public Works)

Documents Filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 28, 1997, recommending Council approve the addition of said subcontractor. (2) Supplemental letter from Treatment Plant Advisory Committee dated April 11, 1997, recommending approval of the addition of a subcontractor to perform said construction work.

Discussion/Action: The addition of subcontractor A&B Engineers & Builders, Inc., was approved. Vote: 10-0-1-0. Absent: Fernandes.

6f(11) Adoption of a resolution summarily vacating a portion of the storm and sanitary sewer easement lying within private property located at 1730 North First Street. CEQA: Resolution No. 60197. (Public Works)

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 28, 1997, recommending Council adopt said resolution.

Discussion/Action: Resolution No. 67239, entitled: "Resolution of the Council of the City of San José Summarily Vacating a Portion of the Storm and Sanitary Sewer Easement Lying Within Private Property at 1730 North First Street", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

**6f(12) Approval of a Deferred Annexation Agreement for the property located 750 feet east of Monterey Highway and approximately 7,800 feet southerly of Bailey Avenue (Lands of Lobue), and authorization for the City Clerk to execute and forward the agreement to the County of Santa Clara for recordation. CEQA: Exempt. (Planning, Building and Code Enforcement)
[Deferred from 3/18/97 - Item 6f(6) and 4/1/97 - Item 6f(1)]**

Documents Filed: (1) Supplemental memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated April 4, 1997, providing additional information regarding the City-County review and comment process pertaining to the Deferred Annexation Agreement proposed for the "Lands of Lobue". (2) Memorandum from Director of Planning, Building and Code Enforcement, Gary J. Schoennauer, dated February 28, 1997, recommending Council authorize the execution and recordation of the Deferred Annexation Agreement.

Discussion/Action: The Deferred Annexation Agreement for the Lands of Lobue was approved and execution of the agreement and its recordation authorized. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(13) Approval of Council Member Charlotte Powers' travel to Minneapolis, Minnesota, April 10-11, 1997, to meet with the investment manager for the Police and Fire Retirement Board. Funding: Police and Fire Retirement Board. (Powers) (Rules Committee referral 4/9/97)**

Documents Filed: None.

Discussion/Action: The travel for Council Member Powers to meet with the investment manager for the Police and Fire Retirement Board was approved. Vote: 10-0-1-0. Absent: Fernandes.

- 6f(14) Adoption of a resolution authorizing the City Manager to submit the following grant applications:**

- (a) California EPA/State Water Resources Control Board in the amount of \$100,000 for Watershed Planning.**
- (b) California EPA/State Water Resources Control Board in the amount of \$250,000 for Watershed Implementation.**
- (c) United States Environmental Protection Agency in the amount of \$100,000 for Greenhouse Gas Emissions Reduction.**

(Environmental Services)

(Orders of the Day 4b)

Documents Filed: Memorandum from Director of Environmental Services, Louis N. Garcia, dated April 10, 1997, recommending Council authorize the submission of three grant applications to their respective agencies.

Discussion/Action: Resolution No. 67240, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute and Submit an Application to the U.S. Environmental Protection Agency for a Grant in an Amount Not to Exceed \$100,000 for Energy Efficiency Projects and to Submit Two Applications to the California Environmental Protection Agency and the State Water Resources Control Board in Amounts Not to Exceed \$150,000 and \$250,000 for Watershed Planning and Watershed Implementation", was adopted. Vote: 10-0-1-0. Absent: Fernandes.

END OF CONSENT CALENDAR

COMMISSION, COMMITTEE, AND STANDING REPORTS

- 7a Report of the Committee of the Whole - March 24, 1997**

Documents Filed: Committee of the Whole Report of March 24, 1997.

- (1) Mayor's FY 1997-98 Operating Budget Message. Attachment: Memorandum from Mayor Hammer, dated March 17, 1997, presenting the FY 1997-98 Operating Budget Message for consideration by the City Council and the public, in accordance with Section 1204 of the San José City Charter.

The Committee tentatively approved Mayor Hammer's FY 1997-987 Operating Budget Message.

Discussion/Action: Upon motion by Council Member Fiscalini, seconded by Council Member Johnson and unanimously carried, the Committee of the Whole Report and actions of March 24, 1997 were accepted. Vote: 10-0-1-0. Absent: Fernandes.

Vice Mayor Fernandes returned to Council Chambers at this point in the meeting.

7c Report of the Finance/Agency Finance Committee - April 2, 1997

Documents Filed: Finance/Agency Finance Committee Report of April 2, 1997.

- (1) Review Mayor, City Council and Council Appointee Budgets
 - (a) City Attorney. Attachments: (1) Memorandum from City Attorney, Joan R. Gallo, dated March 28, 1997, recommending acceptance of the Annual Revenue, Fast Track, and Status Report. (2) Document entitled *Augmentation & Reduction Proposals - FY 1997-1998*, submitted by the City Attorney's Office. (3) Document entitled *Workers' Compensation Legal Services & Investigations Proposals, FY 1997-1998*, submitted by the City Attorney's Office.

[1] Annual Revenue Fast Track Status Report

The Committee accepted the status report on the annual revenue fast track activities and recommended approval of the recommendations with specific augmentations.

- (b) City Auditor. Attachments: (1) Budget Proposal and Justification and Analysis Worksheet for the City Auditor's Office, submitted by the City Auditor. (2) Justification for Electronic Data Processing Auditor (EDP) position to review and evaluate controls related to key information processing systems, submitted by the City Auditor.

The Committee recommended approval of the Mayor's Budget recommendation with direction that serious consideration be given to the EDP position and that the Auditor work with the City Manager to determine if any cost savings can be worked out within the budget for the move that could be applied toward computer augmentation.

- (c) City Clerk. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated March 24, 1997, submitting worksheets outlining the

requested additions and required matching reduction proposal for the Office of the City Clerk.

The Committee accepted the Staff report.

- (d) City Manager. Attachments: (1) Memorandum from Mayor Hammer dated March 31, 1997, recommending the Finance Committee adopt the proposals for referral to the City Council and for inclusion in the FY 1997-98 Proposed Operating Budget. (2) Memorandum from City Manager, Regina V.K. Williams, dated March 24, 1997, transmitting to the Finance Committee the Office of the City Manager's Proposed Fiscal Year 1997-98 Operating Budget.

The Committee recommended approval of the Senior Systems Application Programmer and the membership in the Bay Area Employee Relations Consortium for augmentation, and the other augmentations to await further review.

- (e) Independent Police Auditor. Attachment: Budget Proposal Justification and Analysis Worksheet for the Office of the Independent Police Officer

The Committee recommended approval of the Budget Office recommendations.

- (f) Mayor and City Council. Attachments: (1) Memorandum from Mayor Hammer, dated March 26, 1997, recommending that the base allocations for the Mayor and City Council Offices be carried forward to the Proposed Operating Budget to be released in May and that any adjustments, if necessary, be discussed in conjunction with all other departmental proposals during the budget process. (2) Memorandum from Council Members Diaz and Diquisto, dated March 31, 1997, recommending that the City Council office budgets be augmented by \$20,000 on an ongoing basis during the fiscal year 1997-98 budget hearings, and that the \$20,000 that was approved during the 1996-97 budget process be used only to fund community grant proposals.

The Committee referred the Mayor and City Council budget back to the Mayor's Budget Office for further review.

- (2) Oral petitions

None presented.

- (3) Adjournment

The meeting was adjourned at 10:15 a.m.

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 April 2, 1997 were accepted. Vote: 11-0-0-0.

7b Report of the Rules Committee - Meeting of April 2, 1997

Documents Filed: Rules Committee Report of April 2, 1997.

- (1) Review of April 15 Council Agenda

The Committee approved the April 15, 1997 Council Agenda.

- (2) Add New Items to April 8 Amended Council Agenda

The Committee recommended three additions to the April 8, 1997 Amended Council Agenda.

- (3) The Public Record. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated March 27, 1997, listing the items transmitted to the Administration for the period March 19-25, 1997. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated April 2, 1997, summarizing the actions taken on items transmitted to the Administration and the items filed for the Public Record for the period March 19-25, 1997.

The Committee noted and filed the Public Record for the period March 19-25, 1997.

- (4) Boards and Commissions

- (a) Vacancy on Mobile Home Advisory Commission. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated March 28, 1997, advising Rules Committee of the response received for the vacant position on the Commission.

Member Charlotte Powers, Council Liaison to the Mobile Home Advisory Commission, informed the Committee that she and the City Attorney will confer about restructuring the Commission. No Committee action taken.

- (b) Request from Library Commissioner for Leave of Absence. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated March 19, 1997, submitting to Rules Committee a memorandum from the Chair of the Library Commission requesting on behalf of Commissioner H.J. Martin a one-year leave of absence and the appointment of an interim Commissioner.

The Committee recommended denial of the Library Commissioner's request for a one-year leave of absence and directed the City Clerk to draft a policy, which states a leave of absence may be granted once during a Commissioner's four-year term for a period not to exceed four months.

(5) Council Referrals for Assignment to Appropriate Committee, Administration, or Council Appointee.

- (a) Recommendation to implement an anti-graffiti proposal. Attachment: Memorandum from Council Member Fiscalini, dated March 24, 1997, recommending that the City implement a pilot program that would install signs at frequently tagged, heavily traveled locations that state "Catch a Tagger in the Act. Call 277-3828".

The Committee referred this recommendation to the Administration for a report back to Rules Committee to include an evaluation of emergency telephone numbers 277-3828 and 311 and an assessment of the time and resources involved to complete the request.

- (b) Recommendation to move authority for issuing special events permits. Attachment: Memorandum from Council Member Fiscalini, dated March 27, 1997, requesting referral of the special events permits issue to the Housing and Community Development Committee for review and recommendation to Council for approval.

The Committee referred this recommendation to the Administration for a report back to Rules Committee with an assessment of the time and resources involved to complete the request.

(6) City Council and Rules Committee meeting schedules

None presented.

(7) Oral communications

None presented.

(8) Adjournment

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

Discussion/Action: Upon motion by Vice Mayor Fernandes, seconded by Council Member Powers and unanimously carried, the Rules Committee Report and actions of April 2, 1997 were accepted. Vote: 11-0-0.

Documents Filed: Rules Committee Report of April 9, 1997.

(1) Review April 22 Council Agenda

The Committee directed the Administration to submit a list and status report of Homework Center contracts, Item 6e(7), and approved the April 22, 1997 Council Agenda with one change.

(2) Add New Items to April 15 Amended Council Agenda

The Committee recommended seven additions to the April 15, 1997 Amended Council Agenda.

(3) The Public Record. Attachment: Memorandum from City Clerk, Patricia L. O'Hearn, dated April 3, 1997, listing the items transmitted to the Administration for the period March 26-April 2, 1997. (2) Memorandum from Assistant to the City Manager, Nina S. Grayson, dated April 9, 1997, summarizing the actions taken on items transmitted to the Administration and the items filed for the Public Record for the period March 26-April 2, 1997.

The Committee noted and filed the Public Record for the period March 26- April 2, 1997.

(4) Boards and Commissions

(a) Discussion of proposed changes in structure and operation of the San José Appeals Hearing Board. Attachment: Memorandum from Council Member Johnson, dated April 1, 1997, recommending the City Attorney to be directed to draft an ordinance amending the Municipal Code to implement proposed changes regarding the Appeals Hearing Board.

The Committee directed Member Johnson, in conjunction with the City Clerk, to develop a memorandum before the April 15, 1997 Council meeting regarding a process to integrate the new recommendations to the greatest extent possible with the Project Diversity process and approved the following recommendations:

- [1] Increase the size of the Appeals Hearing Board to seven (7) members from the current five (5). Decisions will continue to require four votes.
- [2] One of the seven positions should be designated for an attorney.
- [3] The Board will be selected by the City Council, following open interviews in a City Council meeting.
- [4] New Board Members will receive training from the Code Enforcement Staff and the City Attorney prior to participating in a hearing.
- [5] The Board will meet twice a month, rather than the current single meeting.
- [6] Institute a stipend of \$100 per meeting, with a maximum of \$200 per month.

- (5) Request to use Council General Funds to attend the League of California Cities' Board of Directors meeting in Huntington Beach, CA, April 18-19, 1997. Attachments: (1) Memorandum from Council Member Johnson, dated April 2, 1997, requesting authorization for use of Council General Funds. (2) Memorandum from City Clerk, Patricia L. O'Hearn, dated April 9, 1997, complying with City Council Policy 9-5 requirement when requests to use Council General Funds are considered by the Rules Committee.

The Committee recommended approval for Council Member Trixie Johnson to use Council General funds to travel to Huntington Beach, CA, on April 18-19, 1997 to attend the League of California Cities' Board of Directors meeting.

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

None presented.

- (7) City Council and Rules Committee meeting schedules

The Committee recommended rescheduling from April 15, 1997 to either April 17, 1997, following the Redevelopment Agency meeting, or to April 29, 1997 following the Council meeting, the Committee of the Whole on Zero Based Budgeting Pilot Program Review.

- (8) Oral communications

None presented.

- (9) Adjournment

The meeting was adjourned at 3:00 p.m.

Discussion/Action: Upon motion by Vice Mayor Fernandes, seconded by Council Member Powers and unanimously carried, the Rules Committee Report and actions of April 9, 1997 were accepted. Vote: 11-0-0.

LAND USE AND DEVELOPMENT

- 8a PUBLIC HEARING and approval of an ordinance amending Title 20 of the San José Municipal Code by adding Chapter 20.38 to establish special zoning provisions for the Downtown. (City Attorney's Office)
(Continued from 5/21/96 - Item 15d et al., and 2/4/97 - Item 8a)**

Documents Filed: Memorandum from Redevelopment Agency Downtown Coordinator, Dennis Korabiak, dated April 11, 1997, recommending the City Council defer consideration of the Downtown Zoning Ordinance until May 13, 1997.

Discussion/Action: This item was deferred to May 13, 1997.

GENERAL GOVERNMENT

- 9a Approval of a five (5) year lease with Cornerstone Properties II, LLC a California Limited Liability Company, for 5,308 square feet of office space for the Office of Cultural Affairs, located on the fourth floor of the Horizon Center, 4 North Second Street, Suite 450, at a cost of \$7,696.60 per month for the first year, increasing annually for a total cost of \$498,739.68 over the five (5) year lease. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 28, 1997, recommending Council approve said lease.

Discussion/Action: Upon motion by Council Member Pandori, seconded by Council Member Johnson and unanimously carried, the five-year lease with Cornerstone Properties II, a California Limited Liability Company, was approved and execution of the lease agreement authorized. Vote: 11-0-0-0.

- 9b Approval of an agreement with Brown and Caldwell, Inc. for consultant services for the Fourth Major Interceptor Phase IV/IVA Project in the amount of \$504,148 and additional services in the amount of \$100,000. CEQA: Resolution No. 60197. (Public Works)**

Documents Filed: Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 28, 1997, recommending Council approve said agreement.

Discussion/Action: William J. Garbett spoke against the proposed action. In response to the speaker's comments, Director of Public Works, Ralph A. Qualls, Jr., stated for the public record that a 1986 study of the City's sanitary sewer interceptor system along Zanker Road produced a master plan which recommended the rehabilitation or replacement of the three existing interceptors and the construction of a Fourth Major Interceptor parallel to the others. He stated the project has been master planned to be constructed in seven phases—three of which have been completed from the Water Pollution Control Plant south to Zanker Road and Daggett Drive. He stated the next phase of the multi-staged project will be situated along Zanker Road between Daggett Drive and Trimble Road and is scheduled for completion by the year 2000. Upon motion by Council Member Fiscalini, seconded by Council Member Johnson and unanimously carried, the consultant services agreement with Brown and Caldwell, Inc., was approved and execution of the agreement authorized. Vote: 11-0-0-0.

- 9c Report on bids and award of contract for the Skyport Drive Bridge Project to the low bidder, R. M. Harris Company, in the amount of \$4,621,816, and approval of a contingency in the amount of \$462,000. CEQA: Resolution No. 65071. (Public Works)**

Documents Filed: (1) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated April 11, 1997, recommending Council award said contract to R.M. Harris Company, the low bidder. (2) Memorandum from Director of Public Works, Ralph A. Qualls, Jr., dated March 28, 1997, recommending Council award said contract to the low bidder.

Discussion/Action: Council Member Pandori noted his support of the proposed project, and requested that Staff conduct a traffic study during commute hours to determine the number of vehicles traversing through the Rosemary Gardens neighborhood, and to report back to Council prior to the opening of the Skyport Drive bridge overpass. Upon motion by Council Pandori, seconded by Council Member Johnson and unanimously carried, the award of contract to R.M. Harris Company, the low bidder, was approved and execution of the contract authorized with Staff directed to conduct a traffic count of vehicles traveling through the Rosemary Gardens neighborhood during commute hours, and to complete the study prior to completion of the project. Vote: 11-0-0-0.

- 9d Report on bids and award of contract for the South Bay Water Recycling Program (SBWRP) Golden Triangle Pipeline Project Northern Segment to the lowest responsive bidder, RGW Construction, Inc., in the amount of \$3,795,000, and approval of a contingency in the amount of \$380,000. (Public Works) (Deferred from 4/8/97 - Item 9c)**

Documents Filed: None.

Discussion/Action: Attorney John W. Busby, representing Mountain Cascade, Inc., and A. Robert Rosin, attorney representing J.W. Ebert, protested the award of contract to RGW Construction, Inc. Given the complexity of the issues raised by the speakers and concerns expressed by the City Council with respect to the MBE/WBE component of the bid, Mayor Hammer recommended a one-week deferral of this item to allow Staff the opportunity to prepare a response. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and carried, this item was deferred to April 22, 1997. Vote: 10-1-0-0. Noes: Diquisto, on the deferral.

- 9f Approval of the creation of a Domestic Violence Task Force (Mayor/Woody) (Rules Committee referral 4/9/97)**

Documents Filed: Memorandum from Mayor Hammer and Council Member Woody, dated April 10, 1997, recommending Council approve the creation of a Domestic Violence Task Force comprised of representatives from the organizations specified therein.

Discussion/Action: Mayor Hammer commended the Police Department on its coordinated efforts against domestic violence in the City of San José and Council Member Woody for accepting the responsibility to Chair the Task Force. Noting a dramatic increase in incidence of domestic violence in San José, she stated the Police Department's Assaults Unit in 1995-96 handled 6,800 reported cases of domestic violence—representing a 26% increase over the previous two years—and reported an 8% increase in domestic violence cases in the first quarter of 1997. She stated the City has responded with a number of innovative programs, most notably, the opening of the Police Department's Domestic Violence Center on Gish Road which will provide a less intimidating environment for victims of domestic violence and help them access legal services, social services, victims' advocacy groups, and other services. She stated the development of a more comprehensive community-wide strategy is needed to promote a holistic approach to domestic violence by investigating issues, coordinating services, and pursuing education, intervention, treatment, and prosecution, and that the creation of the Domestic Violence Task Force, chaired by Council Member Woody, will provide an established forum for the evaluation of City programs and the development of a more coherent strategy. She stated the Task Force will be initially comprised of representatives from the City Manager's Office, the San José Police Department, the Gang Policy Task Force, victim advocacy organizations (e.g., Next Door: Solutions to Domestic Violence, the Support Network for Battered Women, the YWCA), the District Attorney's Office, the County Department of Social Services, the health insurance industry, community groups, hospitals, schools, religious organizations, children's and senior advocates. In addition to making policy recommendations to the City Council, she stated the Task Force will submit a progress report to the Youth, Seniors, and Neighborhood Services Committee after one year. As the City Council considers proposals on this important issue, she urged Council to support the designated representation, and at the appointed time, the selection of the Task Force's exact membership. Sherry Simmons, representing Support Network for Battered Women and, as a member of the Santa Clara County's Domestic Violence Council, spoke in support of the proposal. She suggested additional community representation on the City's Task Force, namely, drug and alcohol agencies, the Department of Mental Health, disabled population, the San José Chamber of Commerce, and various ethnic Chambers of Commerce. She asked Council to consider appointing to the Task Force a specific delegate from the Domestic Violence Council to strengthen the lines of communication between the County and City with respect to domestic violence, and that the Task Force provide representation on many of the Domestic Violence Council committees, such as the Victim's Advocacy Committee, Workplace Plan Committee, and the Children's Issues Committee. Referencing page 2 of the April 10, 1997 memorandum from Mayor Hammer and Council Member Woody, she noted the definition of domestic violence is expanded to include child abuse; however, the Domestic Violence Council does not consider child abuse as part of domestic violence, even though children are victimized by domestic violence in the home, those cases are referred to special programs developed by the DV Council and the County Department of Social Services. Noting her support of the comments made by Mayor Hammer, Council Member Woody stated the National League of Cities' Public Safety Policy Committee has developed a resolution exposing domestic violence as a serious social crime requiring national awareness and intervention, and as a representative

serving on that Committee, she stated federal legislators have been contacted regarding financial impacts to cities combating domestic violence and their need for increased funding to continue with collaborative community-wide response to domestic violence. She commented on the mission of the Task Force and its focus on the prevention, intervention, and educational strategies of the programs implemented, and stated the Task Force will report to Council with recommendations as appropriate and with a status report after one year. Council Member Dando asked that the Task Force include as one of their priority issues the review of San Jose's policy on domestic violence with respect to City employees' access to support services provided by victim advocacy organizations, e.g., Support Network for Battered Women or Next Door: Solutions to Domestic Violence, and whether these groups can be added to the list of service providers. Upon motion by Council Member Woody, seconded by Council Member Johnson and unanimously carried, the creation of a Domestic Violence Task Force as recommended, was approved with the Mayor to appoint the committee's exact membership; the composition of the Task Force as contained in the April 10, 1997 memorandum from Mayor Hammer and Council Member Woody to include representatives from City Manager's Office, the San José Police Department, the Gang Policy Task Force, victim advocacy organizations, the District Attorney's Office, the County Department of Social Services, the health insurance industry, community groups, hospitals, schools, religious organizations, children's and senior advocate groups, was approved; and the addition of the agencies recommended by the Santa Clara County Domestic Violence Council was accepted. Vote: 11-0-0-0

9g Adoption of a resolution:

- (1) Approving a modification of business terms for a City permanent loan to Eden Palms Associates in an amount not to exceed \$6,000,000 for the 145-unit Eden Palms Apartments, which has completed construction.**
- (2) Authorizing the Director of Housing to negotiate and execute loan documents evidencing such loan on behalf of the City.**

(Housing)

(Rules Committee referral 4/9/97)

Documents Filed: Memoranda from Director of Housing, Alex Sanchez, dated April 15, 1997 and April 11, 1997, respectively, recommending approval of modification of the business terms for the permanent loan to Eden Palms Associates, and adopt a resolution to implement same.

Discussion/Action: Upon motion by Council Member Powers, seconded by Vice Mayor Fernandes and unanimously carried, Resolution No. 67241, "A Resolution of the Council of the City of San José (i) Approving a Modification of Business Terms for a Permanent Loan of Up to \$6,000,000.00 to Eden Palms Associates, or Its Assignee, for the Development of a 145-Unit Eden Palms Affordable Family Housing Project and (ii) Authorizing the Director of Housing to Negotiate and Execute All Necessary Documents Evidencing Such Loan on Behalf of the City", was adopted. Vote: 11-0-0-0.

9h Report on bids and approval to reject all bids, and authorization for the Director of Public Works to advertise and re-bid the following traffic signal projects:

(1) Traffic Signal Installation at Nineteenth Street and Santa Clara Street Project.

(2) Traffic Signal Installation at Lundy Avenue and McKay Drive Project.

(3) Installation of Traffic Signal Unit 96A Project.

CEQA: Exempt. (Public Works/Equality Assurance)

(Rules Committee referral 4/9/97)

Documents Filed: (1) Memorandum from Director of Public Works Ralph A. Qualls, Jr., and Director of Equality Assurance, Steven T. Wing, dated April 3, 1997, recommending Council reject all bids and authorize the Director of Public Works to advertise and re-bid the traffic signal projects. (2) Letter from Richard A. Heaps, President of Electrical Contractor, Inc., dated April 11, 1997, objecting to the recommended rejection of bids on the proposed traffic signal projects.

Discussion/Action: Mayor Hammer stated Staff has recommended the rejection of all bids and authorization for the Director of Public Works to readvertise and re-bid the traffic signal projects; however, public testimony will be accepted prior to Council discussion of the issue. Representing Tennyson Electric, Inc., Michael A. Tennyson and Brian Thomas, and Richard Heaps of Richard A. Heaps Electrical Contractor, Inc., spoke against the staff recommendation. In responding to the speakers' comments concerning the projects' bid results, Director of Equality Assurance, Steve Wing, stated the confusion involving the certification status of one subcontractor designated as a Caltrans-certified MBE supplier by the apparent low bidder and some of the other low bidders on each project is the reason for the recommendation to reject all bids. He stated OEA staff could not verify the certification through the Caltrans list or ascertain the exact nature of Traffic Signal Resources' certification status as a broker or supplier, since Caltrans had only recently certified the contractor. He stated the confusion about the certification status was further compounded by the timing of issuance by the Office of Equality Assurance of conditional certifications to the subcontractor for the three projects only. In response to Council Member Fiscalini's request to waive all bid irregularities and award each of the contracts to the low bidders, City Attorney, Joan R. Gallo, stated these are not waivable irregularities; this process pertains to the City's MBE/WBE program participation percentages approved by the City Council, and that the bids as submitted, through no fault of the low bidders, have not met the outreach efforts or participation levels of the City's bid specifications, because they used a subcontractor who is not qualified in accordance with Council-approved policy. Noting the complexity of the bid specifications and experienced contractors' familiarity with specifications and plans, Mayor Hammer encouraged the Office of Equality Assurance to provide new contractors with information that will enable them to better prepare their bid documents and understand the bid process and the City's MBE/WBE Program. Council Member Woody endorsed the Staff recommendation and requested Council approval predicated upon established procedures utilized by City Staff in determining the responsiveness of the contractors. According to the information obtained from the Office of Equality Assurance, Council Member Pandori noted the MBE/WBE percentage established for the

traffic signal installation at 19th & Santa Clara, with the certification of a broker, and that one of the contractors is qualified as a responsive bidder. He stated the funding for the traffic signal was appropriated in FY 1994-95 budget and that he would prefer that Council amend the recommendation to remove and consider on its own merits the award of the 19th & Santa Clara Street project. For the record, Council Member Woody amended the recommendation to remove from the report for separate action the traffic signal installation at 19th and Santa Clara Streets. Responding to Council's discussion on the policy and the intent to incorporate a discretionary element, City Attorney Gallo stated any Council discussion of this issue must occur separate and apart from the disposition of the bids for the traffic signals. She stated the contractor for the 19th & Santa Clara Street project was certified at the time of bid and can be considered responsive and Council can award the contract; however, the remaining projects should be rejected and the bids advertised. She stated the contractors' bids under the current specifications, according to Staff's findings, are non-responsive and that any Council discussion of revisions to the City's policy should be scheduled for a future session. Council Members Diaz and Dando expressed their support for the motion and opposition to any policy revisions. Council Member Fiscalini opposed the recommendation to reject all bids predicated on the fact the City is at fault, not the contractors, and that Council should award the three contracts. Upon motion by Council Member Woody, seconded by Council Member Diaz and carried, the recommendation to remove from the list and award the traffic signal installation at 19th and Santa Clara Streets to Tennyson Electric, Inc., was approved and execution of the contract authorized; and the staff recommendation to reject the bids for traffic signal installations at Lundy Avenue and McKay Drive and traffic signal Unit 96A projects, was approved with the Director of Public Works directed to readvertise and re-bid the traffic signal projects. Vote: 10-1-0-0. Noes: Fiscalini.

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

**9e Report and recommendation on card room issues.
(City Attorney/City Manager's Office/Police)
(Rules Committee referral 4/9/97)**

Documents Filed: Memorandum from City Manager, Regina V.K. Williams, dated April 10, 1997, transmitting reports from City Attorney Joan R. Gallo, dated April 10, 1997 explaining issues relating to betting limits; from Chief of Police, Louis A. Cobarruviaz, dated April 9, 1997, responding to questions raised by news articles on card rooms in San Jose, betting limits, table revenue, oversight of the establishments and compliance with the City's existing card room ordinance; and from the City Manager, dated April 10, 1997, providing an overview of the City's auditing and financial oversight of card clubs.

Discussion/Action: City Manager Regina V.K. Williams stated recently published news articles have raised concerns about the City's card room auditing practices, betting limits at card clubs, the general gaming practices of the establishments, and the quality of the City's oversight of the card rooms. She stated the Administration has categorized its response in three segments: (1) Card rooms are a legitimate business in San José and

treated no differently than other corporate citizens in the community. (2) Card rooms are subject to certain taxes and fees. (3) Card rooms raise concern about people who lose more money than they can afford. She stated the City has three basic responsibilities associated with card rooms and ethical walls must be maintained between those areas of concern so that the interests in one area do not inhibit the City's ability to actively pursue responsibility in either of the other areas; namely, to ensure all City, State, and Federal laws are followed; that the City's auditing efforts will continue unabated; and that the City has not and will not compromise any of its monitoring activities because of revenue generated by the card rooms. She stated any perceptions and suggestions to the contrary are erroneous and an insult to the integrity of the organization. Should Council consider changes to card room gaming practices, she stated an expert in the regulation of gaming is vital to ensure that proposed changes avoid unintended consequence. She recommended the City contract with a consultant who has special expertise in the area of regulating card rooms to provide an independent evaluation and, if necessary, to report to the Chief of Police. With respect to the betting limits, City Attorney Joan R. Gallo commented on the legal background for the current practices and explained the regulatory framework within which the card rooms operate. She stated an individual interprets the City's card room ordinance in accordance with precise language that applies to each bet or wager and not to the total amount waged during the course of a game. She stated State law, Not City Ordinance, controls the fee structure and whether the fees are or are not permissible will ultimately be decided by the courts. She pointed out the differences between the application to American Games and "California" Games, and compared betting limits of other cities to those of San José. She stated the interpretation of State law is independent of the interpretation of the City's ordinance, since they are two separate sets of laws; however, the State does not purport to regulate betting limits. If the City Council is inclined to change the way the games are played or to reduce the amount of betting, she stated any such changes will have to be developed in a manner that does not result in a regulatory taking; Council cannot regulate in a manner that is confiscatory. She stated due process requires that such regulation have a substantial relationship to the governmental objective; therefore, Council is advised to carefully study the effects of any proposed changes before adoption. She emphasized the appropriateness that card rooms are highly regulated and that such regulation be carefully designed to reasonably meet the City's legitimate objectives. She supported the Administration's recommendation for the retention of a consultant with regulatory expertise in the gaming area to review the City's ordinance, with direction to the Office of the City Attorney to work with the City's Legislative Representative toward the goal of a statewide regulatory system for card clubs. Chief of Police, Louis A. Cobarruviaz, agreed with the comments made by City Manager Williams and City Attorney Gallo with respect to the bet limit and reiterated the fact the Police Department does enforce the laws governing card rooms in accordance with State and City regulations. He stated the City Council in 1980 was provided with information on the impact of the City raising the bet limit from \$20 to \$80, and that the Police Department's analysis showed that in an \$80 limit game, an average "pot" would be \$400, which amounted to approximately \$11,200 per hour, or \$265,800 per day. He stated the Police Department's opinion at that time was the generation of more than a quarter of a million dollars a day at a single table is not adult recreation, but professional gambling and recommended against increasing

the bet limit. He stated a review and an evaluation of current card room regulations should be conducted and recommendations made to Council regarding future operation of card rooms in San José. He supported the City Attorney's recommendation to contract with a gaming consultant to provide independent evaluation relating to card rooms; after preparation of the Auditor's report, the Police Chief's report and recommendations will be submitted simultaneously. Representing Bay 101, Jackie Rose stated Bay 101 operates within the parameters of State and City laws governing card rooms; stated Bay 101 ownership objects to the inaccuracy of information published in recent news articles related to card rooms, and deems unnecessary the hiring of a consultant by the City of San José; however, Bay 101 pledges its cooperation with the City and the consultant in this endeavor. William J. Garbett spoke against the issue. In his opposition to the proposal, Council Member Pandori stated card room owners should honor family requests and refuse access to compulsive gamblers. With respect to bet limits, he stated the solution is compliance with existing card club regulations which prohibit single bets in excess of \$200, and that contracting with a consultant is unnecessary, as the current law precludes any expansion of betting limits in San José absent a vote of the people. With regard to the audit, he stated KMPG Peat Marwick was awarded a contract for 980 hours of work at a cost of \$118,000; without Council review, a contract was approved with Kafoury, et al. for 268 hours of work at \$18,000. He stated the response from each vendor was different, and after reviewing the RFP, the difference in the scope of services proposed by KMPG Peat Marwick compared to those currently performed by Kafoury, et al., remain unclear. He asked Staff for a clarifying report. He stated KMPG Peat Marwick in January of 1996 submitted to the City a work plan detailing 35 financial monitoring activities the firm believed was needed by Bay 101; to date, the status report had not been received by the District Three Office. He asked Staff to provide a report on Kafoury's progress made in accomplishing the activities recommended by KMPG Peat Marwick. With respect to the accounting position approved by Council in 1992 in conjunction with collection of the card room tax, he stated the position remained frozen and unfilled for two years; once filled, the position was placed under the auspices of the Finance Director, with services divided between the two Departments. He asked the Administration to make certain, during the budget review process that collection of tax revenues has occurred. To facilitate Council discussion, Mayor Hammer advised Council to consider the proposal as two separate items, betting limits and related card room issues. She stated changes that may be imposed on San José card rooms by way of further restrictions on betting or the way games are played should be carefully considered because of the complexity of the games and the fact San José card rooms compete with card rooms in other communities. With respect to issues perceived as problems at card rooms in San José, she advised Council to refer those to the City Manager and the Chief of Police, and that specific questions from Council should be referred directly to the consultant. Upon motion by Council Member Fiscalini, seconded by Council Member Diaz and carried, the recommendation from the Police Department and the City Attorney's Office to hire a gaming regulation expert to be a consultant to the Chief of Police and to review and make recommendations for changes to the City's Card room Ordinance on, but not limited to (1) enforcement enhancements, (2) additional auditing requirements, (3) betting structure, (4) employee and patron conduct, including patron check and charge card cashing practices and job buying, (5) hours of operation, and (6) compulsive gambling, was

approved. Vote: 8-2-1-0. Noes: Dando, Pandori. Absent: Shirakawa, Jr. Upon motion by Council Member Fiscalini, seconded by Council Member Diaz and unanimously carried, the recommendation from the Police Department and the City Attorney's Office to adopt a legislative policy endorsing immediate creation of a Nevada Style State Gaming Commission to regulate card rooms state-wide and direct the City's Legislative Representative to work with the authors of the various legislative proposals to achieve this goal, was approved. Vote: 10-0-1-0. Absent: Shirakawa, Jr.

ORAL COMMUNICATIONS

- (1) Cathy S. Brandhorst addressed Council on various human rights issues.
- (2) Bill Chew commended the City Council on its comprehensive discussion of items on today's Agenda and reiterated his desire to have the Council meetings televised on Channel 35A.

RECESS/RECONVENE

Following Oral Communications, Council recessed at 4:25 p.m. and reconvened at 7:05 p.m.

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

Absent: Council Members: None.

City Clerk, Patricia L. O'Hearn, read the requests for continuances of applications. Upon motion by Council Member Fiscalini, seconded by Vice Mayor Fernandes and unanimously carried, the below noted continuances were granted. Vote: 11-0-0-0.

- 15c PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southwest corner of Tennant Avenue and Piercy Avenue, from A-Agriculture to A(PD) Planned Development, to allow up to 84 single-family detached residential units on 16 gross acres (Pinn Bros. Construction, Owner/Developer). CEQA: ND.**

PDC 96-05-022 - District 2

(Continued from 2/18/97 - Item 15e et al., and 4/1/97 - Item 15a)

Documents Filed: None.

Discussion/Action: This item was continued to May 20, 1997.

- 15d PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the north side of Rose Avenue, 500 feet easterly of South Capitol Avenue, from A-Agricultural to A(PD) Planned Development, to allow 9 single-family attached residences and subdivide into 10 lots on 0.59 gross acre (Citibank, Owner; Sergio Estrada, Developer). CEQA: ND.**

PDC 96-12-081 - District 5

(Continued from 4/1/97 - Item 15g)

Documents Filed: None.

Discussion/Action: This item was continued to May 20, 1997.

- 15h PUBLIC HEARING ON CONFORMING REZONING of the property located on the west side of Cadwallader Avenue, 200 feet southerly of Country Vista Court, from R-1:B-8 Residence to A(PD) Planned Development, to allow up to 2 single-family detached residence on a 3.5 gross acre site (Oxsen, Owner/Developer). CEQA: ND. Director of Planning recommends approval. No Planning Commission action required.
PDC 96-08-052 - District 8**

Documents Filed: None.

Discussion/Action: This item was dropped. Council approved this item on April 1, 1997.

PUBLIC HEARINGS

- 15a PUBLIC HEARING ON TONY P. SANTOS STREET RENAMING of a public street located between North First Street and Wilson Way, from School Street to Tony P. Santos Street, at the request of members of the community. CEQA: Exempt. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1). District 4**

Documents Filed: Memorandum from the Planning Commission, dated March 28, 1997, recommending Council approve the subject street renaming.

Discussion/Action: Mayor Hammer opened the public hearing on renaming said portion of School Street. There was no discussion from the Floor. Upon motion by Vice Mayor Fernandes, seconded by Council Member Diaz and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Resolution No. 67242, entitled: "Resolution of the Council of the City of San José Renaming School Street Located Between North First Street and Wilson Way to 'Tony P. Santos Street' ", was adopted. Vote: 11-0-0-0.

- 15b PUBLIC HEARING ON APPEAL OF THE PLANNING COMMISSION'S DECISION to approve a Conditional Use Permit for a project located at the southwest corner of South Winchester Boulevard and Payne Avenue on a 7.88 gross acre site in the C-1 Commercial Zoning District for a child day care center for up to 120 children (Spieker Properties, L.P., Owner/Developer). CEQA: ND. Staff recommends approval without the five-year time limit condition.
CP 96-11-106 - District 1**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement, James R. Derryberry, dated March 28, 1997, recommending that the

Conditional Use Permit be approved without the condition limiting the life of the Permit to five years, even though the Planning Commission has recommended its inclusion in the Permit. (2) Notice of Public Hearing to consider the appeal of the five-year time limitation imposed by the Planning Commission.

Discussion/Action: Mayor Hammer opened the public hearing on the appeal of the Planning Commission's decision to approve a Conditional Use Permit for the subject location. Representing Spieker Properties, L.P., Richard Zlatunich spoke in support of the Staff recommendation for approval of the CUP without the condition to limit the permit for the childcare center to five years. City Attorney Joan R. Gallo suggested Staff amend the formal Guidelines for Child Day Care facilities. Council Member Johnson stated a Compliance Review to address the lack of adherence to conditions of approval can be required at any time. Council Member Dando asked Staff to provide the Child Care Commission with copies of the amended guidelines for their comments. Upon motion by Council Member Johnson, seconded by Council Member Powers and unanimously carried, the public hearing was closed, the appeal was granted, the Staff recommendation approved without the five-year time limit condition with direction to Planning Staff to convey to the Planning Commission the Council's decision; and Resolution No. 67243, entitled: "Resolution of the Council of the City of San José Granting a Conditional Use Permit, Subject to Conditions, to Use Certain Real Property Described Herein for the Purpose of Granting a Conditional Use Permit, Subject to Conditions, to Use Certain Real Property Described for the Purpose of Operating a Child Day Care Center", was adopted. Vote: 11-0-0-0.

**15e PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the northeast corner of San Felipe Road and The Villages Parkway, from A-Agricultural to A(PD) Planned Development, to allow 31 single-family detached residences on 9.6 gross acres (UDC Homes, Owner/Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).
PDC 96-07-041 - District 8**

Documents Filed: (1) Memorandum from the Planning Commission, dated March 28, 1997, recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC 96-07-041, dated March 5, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property location. There was no discussion from the Floor. Upon motion by Council Member Woody, seconded by Council Member Johnson and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25293, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Northeast Corner of Villages Parkway and San Felipe Road", was passed for publication. Vote: 11-0-0-0.

- 15f PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located on the southeasterly corner of Monterey Highway and Bernal Road, from A-Agricultural to A(PD) Planned Development, to allow up to 224 attached residential units on 10.1 gross acres (James & Phyllis Livermore, et al., Owner; Security Capitol Pacific Trust, Developer). CEQA: ND. Director of Planning recommends approval. Planning Commission recommends approval (6-0-1).**
PDC 96-10-062 - District 2

Documents Filed: (1) Memorandum from the Planning Commission, dated March 28, 1997, recommending Council adopt an ordinance approving the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning for PDC 96-10-062, dated February 28, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the planned development rezoning of the subject property. There was no discussion from the Floor. Upon motion by Council Member Powers, seconded by Council Member Diaz and unanimously carried, the public hearing was closed, the Planning Commission recommendation approved, and Ordinance No. 25294, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the Southeasterly Corner of Monterey Highway and Bernal Road", was passed for publication. Vote: 11-0-0-0.

- 15g PUBLIC HEARING ON CONFORMING REZONING of the properties located on the east side of Rhodes Court, 150 feet southerly of West Julian Street, from C-Commercial to R-2 Residence, to allow residences on 3 adjoining vacant lots on a 0.38 gross acre site (Osborne Pastor Corporation, Owner/Developer). CEQA: Exempt. Director of Planning recommends approval. No Planning Commission action required.**
C 97-01-008 - District 6

Documents Filed: (1) Department of Planning, Building and Code Enforcement Staff Report for C97-01-008, dated March 27, 1997, recommending approval of the subject rezoning. (2) Public Hearing Notice to consider a change in Zoning for C 97-01-008, dated March 24, 1997, and Proof of Publication submitted by the City Clerk.

Discussion/Action: Mayor Hammer opened the public hearing on the conforming rezoning of the subject properties. There was no discussion from the Floor. Upon motion by Council Member Fiscalini, seconded by Council Member Powers and unanimously carried, the public hearing was closed, and Ordinance No. 25295, entitled: "Ordinance of the City of San José Rezoning Certain Real Property Situated on the East Side of Rhodes Court, 150 Feet Southerly of West Julian Street", was passed for publication. Vote: 11-0-0-0.

- 15i PUBLIC HEARING ON APPEAL OF THE PLANNING COMMISSION'S DECISION to approve a Conditional Use Permit for a project located at the north side of Barnard Avenue, 150 feet east of Stone Avenue, on a 1.25 gross acre site in**

**the M-4 Manufacturing Zoning District for a concrete/asphalt recycling heavy processing facility including a concrete crusher (Galante Bros., Owner/Developer). CEQA: ND. Staff recommends upholding the appeal (4-0-3).
CP 96-05-042 - District 7**

Documents Filed: None.

Discussion/Action: Mayor Hammer opened the public hearing on the appeal of the Planning Commission's decision to approve a Conditional Use Permit for the subject project location. Representing Galante Brothers Concrete/Asphalt Recycling Plant, Attorney Barton G. Hechtman of Matteoni, Saxe & Nanda, urged Council to deny the appeal and grant the Conditional Use Permit for a three-year period. Attorney Andrew L. Faber of Berliner & Cohen, representing Clasforms, Inc., urged Council to grant the appeal and deny the Conditional Use Permit based on incompatible land use, strong neighborhood opposition, inadequate site size and location, illegal operation, substantial adverse impacts, and failure of Galante Bros. to display good faith efforts in complying with regulatory processes. Harlan Andy Anderson, Principal General Engineering Contractor, Anderson Environmental Management, discussed the results of laboratory analysis of dust and debris samples collected from the roofs of GlasForms' Building and adjacent properties on Bernard Avenue across the street from the site. Approximately 25 citizens addressed Council, including the following who spoke in support of Council approval of the CUP: John Kolski, Stevens Creek Quarry, Inc.; Scot M. Gillis, Leland High School; Bill Tester; Al LeCompte, A.G. LeCompte Construction; Ken Bass, GlasForms, Inc.; Mark Randazzo, Randazzo Enterprises; Larry G. Watson, Fuller Excavating & Demolition, Inc.; Andy Garcia; Herb Lavender, Lavender Trucking Co.; Thad J. Corbett, Pacific Underground; Jerry Ferguson; Ralph Valderrama, Valderrama Construction Contractors; Glenn Mooty, Mooty Grading & Hauling; Philip Betipoulie, Mede Construction; Craig K. Breon, Audubon Society; and Jack Galante, owner, Galante Bros Engineering. David V. Ferreira and Glenn A. Bothwell spoke against approval of the Conditional Use Permit. As background information, Council Member Shirakawa, Jr., reviewed the April 9, 1997 Staff report and the allegations of noncompliance with environmental and regulatory processes by the asphalt recycling plant owned and operated by Galante Bros. He stated neither the importance of recycling concrete, which is undisputed, nor the character of the applicant provides an acceptable rationale for the proposed Conditional Use Permit. He stated the size of the Bernard Avenue site is inadequate; the type of business is incompatible with and negatively impacts surrounding light industrial uses; and the number of citizens' complaints received by the District Seven Office has been numerous. He recommended Council uphold the decision of the Planning Director with direction to Code Enforcement to survey the business operation for immediate closing. Speaking to Council Member Shirakawa's recommendation for approval, Mayor Hammer stated the negative impacts outweigh the positive aspects of the business in its present location, and requested Staff work with the Galante Bros. to find another site. Council Member Fiscalini expressed opposition to an immediate shutdown of the business operation and a preference for a definitive phase-out program with Staff working with the Galantes to acquire a more suitable location; anything less, he would not support. Council Member Pandori stated the proper balance of rights is to

allow the use for a limited amount of time to enable Galante Bros. to relocate to another site; immediate closing of the facilities is unacceptable. He suggested an amendment to Council Member Shirakawa's recommendation, which would require the business to relocate within two years. Given Council discussion of timeframes extending from six months to two years in which to allow the concrete business to remain at its present location while Staff works with the Galantes to relocate, City Attorney Gallo advised Council of the legal risks involved in approving a time-related Conditional Use Permit. She stated the Council must decide, consistent with the General Plan Land Use/Transportation designation and based on the information presented by City Staff, whether the concrete and asphalt recycling operation is the appropriate use for the Barnard Avenue site; and if the CUP is not granted, the City will be sued and the applicant will prevail. After considerable Council discussion of permitting issues, Code Enforcement policies, economic hardships, and problems related to immediate relocation of the concrete/asphalt business, Council Member Shirakawa, Jr. amended his recommendation to defer Council action on this item for six months with Staff directed to assist the applicant in locating a more suitable site for the business operation. Motion by Council Member Pandori, seconded by Council Member Dando to amend Council Member Shirakawa's recommendation to approve the Conditional Use Permit for two years and require the business to close and relocate within that time period, failed. Vote: 3-8-0-0. Noes: Diaz, Diquisto, Fernandes, Johnson, Powers, Shirakawa, Jr., Woody; Hammer. Upon motion by Council Member Shirakawa, Jr., seconded by Vice Mayor Fernandes and carried, the continuation of this item to October 7, 1997, was approved. Vote: 9-2-0-0. Noes: Dando, Pandori.

CLOSED SESSION REPORT

Disclosure of Closed Session Action of April 15, 1997 submitted by City Attorney, Joan R. Gallo:

A. Pending Litigation - Settlement(s) Authorized:

1. Case Name: In re: *Potter*
Substance of Settlement: Approval of Settlement of Workers' Compensation Claim in the Amount of \$85,000.

Council Vote:

Ayes: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr.

Noes: None.

Absent: Pandori, Woody; Hammer.

Disqualified: None.

2. Case Name: *De La Torre v. City of San José*
Substance of Settlement: Approval of Settlement. City to Pay the Total Sum of \$19,000.

Council Vote:

Ayes: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr.

Noes: None.

Absent: Pandori, Woody; Hammer.

Disqualified: None.

B. Authority to Initiate Litigation:

1. Authority to initiate litigation was given in one (1) matter. The name of the action and the defendants as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action is formally commenced.

Council Vote:

Ayes: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr.; Hammer.

Noes: None.

Absent: Pandori, Woody.

Disqualified: None.

2. Authority to initiate litigation was given in one (1) matter. The name of the action and the defendants as well as the substance of the litigation shall be disclosed to any person upon inquiry once the action is formally commenced.

Council Vote:

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

Noes: None.

Absent: Woody

Disqualified: None.

C. Authority to Seek Appellate Review or Further Appellate Review in a Litigation Case:

1. Case Name: *Davidon Homes, et al. v. City of San José, et al.*
Adverse Party or Parties: Davidon Homes
Substance of Litigation: Challenge to the Geologic Hazard Ordinance Based on the California Environmental Quality Act.

Council Vote:

Ayes: Dando, Diaz, Diquisto, Fernandes, Fiscalini, Johnson, Powers, Shirakawa, Jr.; Hammer.

Noes: None.
Absent: Pandori, Woody.
Disqualified: None.

ADJOURNMENT

The Council of the City of San José adjourned at 9:20 p.m. to meet again on Thursday, April 17, 1997, 1:30 p.m. in joint session with the Redevelopment Agency. The meeting was adjourned in memory of Charileen Pauneto, a student at Gunderson High School and daughter of Sara Pauneto, a City of San José employee in Planning, Building and Code Enforcement.

SUSAN HAMMER, MAYOR

ATTEST:
PATRICIA L. O'HEARN, CITY CLERK