

MINUTES OF THE CITY COUNCIL

SAN JOSE, CALIFORNIA

TUESDAY, NOVEMBER 4, 2003

The Council of the City of San Jose convened in Regular Session at 9:33 a.m. in Council Chambers at City Hall.

Present: Council Members: Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Williams, Yeager; Gonzales.

Absent: Council Members: Williams. (excused).

Upon motion unanimously adopted, the City Council recessed to Closed Session at 9:37 a.m. in Room 600 to (A) confer with Legal Counsel regarding existing litigation pursuant to Government Code Section 54956.9 Subsection (a) to consider cases of Fisher et al v. City of San José, et al, (b) Chegwin Construction, Inc. v. City of San José, et al. (B) Public Employee Performance Evaluation Pursuant to Government Code Section 54957; Title: City Attorney, (C) Conference with Labor Negotiator Pursuant to Government Code Section 54957.6; involving City Manager-City Manager designee Alex Gurza and (1) San José Police Officers' Association, (2) International Association of Firefighters, (3) Municipal Employees Federation, (4) Confidential Employees Organization, (5) City Association of Management Personnel, (6) Association of Maintenance Supervisory Personnel, (7) Operating Engineers, Local 3, (8) International Brotherhood of Electrical Workers, (9) Association of Building and Mechanical and Electrical Inspectors, (D) confer with real property designated representatives pursuant to Government Code Section 54956.8; designated representatives: Carl Mosher for the City of San José and Joan Gallo for Los Esteros Critical Energy Facility, LLC; property: APN015-31-063 (Eastside Zanker Road, North SR237 approximately 119 acres), under negotiation of price, terms and conditions for lease, sale and/or use agreements of all or part of parcel. By unanimous consent, Council reconvened from Closed Session and recessed at 10:45 a.m. and reconvened at 1:39 p.m. in Council Chambers, City Hall.

Present: Council Members: Campos, Chavez, Chirco, Cortese, Dando, Gregory, LeZotte, Reed, Yeager; Gonzales.

Absent: Council Members: Williams (excused).

INVOCATION (DISTRICT 10)

Pioneer High School choir delivered the Invocation.

PLEDGE OF ALLEGIANCE

Mayor Gonzales led the Pledge of Allegiance.

ORDERS OF THE DAY

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

CEREMONIAL ITEMS

1.1 Presentation of a proclamation declaring the week of November 16-22, 2003 as Hunger and Homelessness Awareness Week in the City of San José. (Housing)

Documents Filed: None.

Discussion/Action: Mayor Gonzales was joined at the podium by Director of Housing Leslye Corsiglia Emergency Housing Consortium President and CEO Barry Del Buono, Executive Director of InnVision Christine Burrows, and Executive Director of San José Family Shelter Trish Crowder to recognize November 16-22, 2003 as Hunger and Homeless Awareness Week and to present a proclamation to the City of San José Housing Department for their assistance in helping to house and provide shelter for the homeless community of San José. Director Corsiglia thanked the Mayor and Council for their proclamation and addressed the City's Homeless Strategy to continue developing the assistance needed for homelessness issues and to help raise awareness amongst the community.

1.2 Presentation of a commendation to Don Johnson for his dedicated service to the community through providing outstanding junior tennis programs and teaching life skills to the youth of the City of San José. (Williams) (Rules Committee referral 10/29/03)

Documents Filed: None.

Discussion/Action: This item was heard with Item 1.3.

1.3 Presentation of a commendation to Siebel Open/Silicon Valley Sports & Entertainment for its continuing generous contributions to the City of San José through community service, charitable giving, and sponsorship of junior tennis programs for our community's youth. (Williams) (Rules Committee referral 10/29/03)

Documents Filed: None.

Discussion/Action: Council Member Chavez joined Mayor Gonzales at the podium to present a commendation to Don Johnson for his contributions to the youth of San José and the community. Don Johnson thanked the Mayor and Council for their commendation and acknowledged the number of students he taught over the years and for their participation within the program. Mayor Gonzales and Council Member Chavez also presented a commendation to Siebel Open/Silicon Valley Sports & Entertainment and the members who participated in their event; Greg Jamison, Kent Russel, Barry

1.3 (Cont'd.)

McKay, Bill Rapp, Tony Silveira, Jim Sporraco, and Chip Moreland. Greg Jamison thanked the City of San José for their assistance in helping to make the Siebel Open such a success and thanked the Council for their continued support.

CONSENT CALENDAR

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

2.1 Approval of City Council Minutes for:

- (a) **Regular meeting of May 27, 2003**
- (b) **Regular meeting of June 3, 2003**
- (c) **San José Parking Authority meeting of June 3, 2003**
- (d) **Adjourned regular meeting of June 9, 2003**
- (e) **Regular meeting of June 10, 2003**

Documents Filed: (1) Regular meeting minutes of May 27, 2003. (2) Regular meeting minutes of June 3, 2003. (3) San José Parking Authority meeting minutes of June 3, 2003. (4) Regular meeting minutes of June 9, 2003. (5) Regular meeting minutes of June 10, 2003.

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

2.2 Final adoption of ordinances:

- (a) **ORD. NO. 27000 – Amends Title 25 of the San José Municipal Code by adding a new Chapter 25.03 to amend and restate the curfew hours and aircraft restrictions provisions of the Norman Y. Mineta San José International Airport Noise Control Program.**

Documents Filed: Proof of publication of title of Ordinance No. 27000 executed on October 28, 2003, submitted by the City Clerk.

Discussion/Action: This item was dropped and was adopted on October 21, 2003. Vote: 10-0-1-0. Absent: Williams.

- (b) **ORD. NO. 27002 – Prezones certain real property situated on the east side of Wabash Avenue, approximately 80 feet northerly of Olive Street (105 Wabash Avenue) to R-1-8 Residence Zoning District. C 03-065**

Documents Filed: Proof of publication of title of Ordinance No. 27002 executed on October 28, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27002 was adopted. Vote: 10-0-1-0. Absent: Williams.

2.2 (Cont'd.)

- (c) **ORD. NO. 27003** – Rezones certain real property situated on the northwestern corner of East Capitol Expressway and McLaughlin Avenue to CN Commercial Neighborhood Zoning District. C 03-074

Documents Filed: Proof of publication of title of Ordinance No. 27003 executed on October 28, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27003 was adopted. Vote: 10-0-1-0. Absent: Williams.

- (d) **ORD. NO. 27004** – Rezones certain real property situated on the south side of Taylor Street, approximately 70 feet westerly of Myrtle Street to CO Commercial Office Zoning District. C 03-077

Documents Filed: Proof of publication of title of Ordinance No. 27004 executed on October 28, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27004 was adopted. Vote: 10-0-1-0. Absent: Williams.

- (e) **ORD. NO. 27005** - Rezones certain real property situated on the west side of Senter Road, approximately 100 feet northwesterly of Pocatello Drive to CN Neighborhood Commercial Zoning District. C 03-067

Documents Filed: Proof of publication of title of Ordinance No. 27005 executed on October 28, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27005 was adopted. Vote: 11-0-0-0. Absent: Williams.

- (f) **ORD. NO. 27006** - Prezones certain real property situated on the east side of Ruby Avenue, 250 feet northerly of Murillo Avenue to A(PD) Planned Development Zoning District. PDC 02-047

Documents Filed: Proof of publication of title of Ordinance No. 27006 executed on October 28, 2003, submitted by the City Clerk.

Discussion/Action: Ordinance No. 27006 was adopted. Vote: 10-0-1-0. Absent: Williams.

- (g) **ORD. NO. 27007** – Amends Section 4.20.080 of Chapter 4.20 of Title 4 of the San José Municipal Code to allow for the private sale of City property for economic development.

Documents Filed: Proof of publication of title of Ordinance No. 27007 executed on October 31, 2003, submitted by the City Clerk.

2.2 (Cont'd.)

Discussion/Action: Ordinance No. 27007 was adopted. Vote: 10-0-1-0. Absent: Williams.

2.3 Adoption of a resolution to:

- (a) Create the following job classifications:
 - (1) Investigator Collector II (1273).
 - (2) Animal Shelter Veterinarian (3255).
 - (3) Events Coordinator I (6330) and (6340) PT.
 - (4) Section Manager, CAE (1641).
- (b) Change the job classification titles of:
 - (1) Investigator Collector (1272) to Investigator Collector I (1272).
 - (2) Arts Program Officer (6313) to Sr. Arts Programs Coordinator (6313).
 - (3) Events Coordinator (6332) and (6333) PT to Events Coordinator II (6332) and (6333) PT.
 - (4) Management Intern U (1626) to Management Fellow U (1626).
- (c) Change salary ranges for the classifications of:
 - (1) Investigator Collector (1272).
 - (2) Sr. Investigator Collector (1274).
 - (3) Sr. Events Coordinator (6336).
 - (4) Events Coordinator (6332) and (6333) PT.
 - (5) Arts Programs Coordinator (6311).
 - (6) Operations Manager (3776).
- (d) Delete various job classifications:
 - (1) Associate Building Project Specialist (3847).
 - (2) Associate Electrical Engineer (3823).
 - (3) Associate Sanitary Engineer (5237).
 - (4) Deputy Director (1644).
 - (5) Deputy Director Public Works (3863).
 - (6) Librarian I Specialist (7231).
 - (7) Librarian II Specialist (7233).
 - (8) Plan Check Engineer (3952).
 - (9) Planning Intern PT (4117).
 - (10) Research Attorney SII (2117).
 - (11) Senior Electrical Engineer (3824).
 - (12) Senior Sanitary Engineer (5233).
 - (13) Chief of Operations & Maintenance (6339).
 - (14) Library Assistant Specialist (7221).
 - (15) Downtown Promotion & Events Officer (6315).
 - (16) Downtown Promotion & Events Director (6314).
 - (17) Arts Program Director (6312).
 - (18) Event & Technical Services Supervisor (6341).

CEQA: Not a Project. (Employee Services)

Documents Filed: Memorandum from Director of Employee Services Mark Danaj, dated October 20, 2003, recommending adoption of said resolution.

2.3 (Cont'd.)

Discussion/Action: Council Member Reed asked Staff why the personnel issues that affect the Conventions, Arts & Entertainment (CAE) employees waited until the Convention Center Request For Proposals (RFP) were complete and asked Staff for the reasoning behind the employee pay increases included within the proposed resolution. Acting Director of Conventions, Arts & Entertainment Jim McBride stated the positions affected by the resolution have been studied over a 6-year timeframe and have been acknowledged as needing to be adjusted, at that time, it was decided to hold off on these positions for a year but due to recent budget decisions they could not be held off any longer and the proposed employee pay increases would impact only three employees, the rest of the employees would be re-titled. Director of Employee Services Mark Danaj stated the aggregate impact of the changes are a result of the two classification studies in both finance and those that were referred to in the CAE report and are approximately \$100,000 for the remainder of the fiscal year and a little less than \$50,000 each and slightly over \$139,000 on an annual basis.

Council Member Reed asked Staff why the changes should not wait until the budget cycle, along with the other City contracts. Director Danaj stated both of the classification studies are indicative of lengthy and numerous deferments of corrective actions that are necessary for classification and equity and both are subjected to analysis over a two-year period and had been deferred time and again because of the financial impacts they incurred and the City's financial situation to which both departments that will be affected by the situation have been made aware of the actions that might be taken and are willing to absorb those financial impacts within their current listing budgets.

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and unanimously carried, Resolution No. 71804, entitled: "A Resolution of the Council of the City of San José Approving Amendments to the City of San José Pay Plan to Create, Change Titles and Salary Ranges and Delete Various Job Classifications", was adopted. Vote: 10-0-1-0. Absent: Williams.

2.4 **Adoption of a resolution accepting a donation from the Friends of Willow Glen for collection enhancement in the amount of \$5,700. CEQA: Not a Project. (Library)**

Documents Filed: Memorandum from Library Director Jane Light, dated October 15, 2003, recommending the adoption of said resolution.

Discussion/Action: Resolution No. 71805, entitled: "A Resolution of the Council of the City of San José Accepting a Donation in the Amount of \$5,700 from Friends of Willow Glen to Be Used for Collection Enhancement for the Library", was adopted. Vote: 10-0-1-0. Absent: Williams.

- 2.5 Adoption of a resolution initiating proceedings and setting November 18, 2003 at 1:30 p.m. as the date for Council consideration of the reorganization of territory designated as McKee No. 120 which involves the annexation to the City of San José of 5.37 acres of land, more or less, consisting of three parcels totaling approximately 4.80 acres and a portion of Hyland Avenue totaling approximately 0.57 acre, located at Hyland Avenue between Marian Lane and Maro Drive, and adjacent to the City of San José annexation McKee No. 91, and the detachment of the same from Santa Clara County Lighting District, Santa Clara (Library Services) County Service, Area No. 01 and the Library Benefit Assessment County Service Area No. 01. CEQA: Mitigated Negative Declaration, PDC 01-082. Council District 5. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from October 15, 2003, recommending the adoption of said resolution.

Discussion/Action: Resolution No. 71806, entitled: “A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Uninhabited Designated as McKee No. 120 and Described Herein, and Setting the Date and Place for Consideration of Such Reorganization”, was adopted. Vote: 10-0-1-0. Absent: Williams.

- 2.6 Adoption of a resolution initiating proceedings and setting November 18, 2003 at 1:30 p.m. as the date for Council consideration of the reorganization of territory designated as Winchester No. 39 which involves the annexation to the City of San José of 0.16 acre of land, located on the west side of Henry Avenue, approximately 380 feet southerly of Stevens Creek Boulevard and generally bounded by the City of San José Annexation Winchester No. 6, and the detachment of the same from the appropriate special districts including: Central Fire Protection, West Valley Sanitation District, Santa Clara County Lighting Service Area, and the County Service Area No. 1 (County Library Services Area). CEQA: Exempt, Winchester No. 39. Council District 1. (Planning, Building and Code Enforcement)**

Documents Filed: Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated October 15, 2003, recommending the adoption of said resolution.

Discussion/Action: Resolution No. 71807, entitled: “A Resolution of the Council of the City of San José Initiating Reorganization Proceedings for the Annexation and Detachment of Certain Inhabited Territory Designated as Winchester No. 39 and Described Herein, and Setting the Date and Place for Consideration of Such Reorganization”, was adopted. Vote: 10-0-1-0. Absent: Williams.

- 2.7 Report on bids and award of contract for the Doerr Park Youth Lot Renovation Project to the low bidder, Robert A. Bothman, Inc., in the amount of \$136,937, and approval of a contingency in the amount of \$7,000. CEQA: Exempt, PP03-05-078. Council District 9. (Public Works/Parks, Recreation and Neighborhood Services)**

2.7 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated October 15, 2003, recommending the award of said contract and approval of related contingency.

Discussion/Action: The award of said contract to the low bidder, Robert A. Bothman, Inc and related contingency were approved. Vote: 10-0-1-0. Absent: Williams.

2.8 Adoption of a resolution amending Resolution No. 63396 adopted on December 10, 1991, which sets streetlighting standards for new development, to provide for special streetlighting design standards for the Communications Hill Planned Community. CEQA: Resolution Nos. 63624 and 70194, PP03-09-306. Council District 7. (Public Works)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated October 15, 2003, recommending the adoption of said resolution.

Discussion/Action: Resolution No. 71808, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 63396 to Modify the Design Standards for Public Street Lighting for New Development Within the Communications Hill Specific Plan Area", was adopted. Vote: 10-0-1-0. Absent: Williams.

**2.9 Report on bids and award of contract for the Edenvale Garden Park Perimeter Fencing Project to the lowest responsive bidder, Central Fence Co., to include the base bid and Add Alternate No. 1 in the amount of \$119,500, and approval of a contingency in the amount of \$6,000. CEQA: Negative Declaration, PP90-03-078. Council District 2. (Public Works)
(Deferred from 10/28/03 – Item 2.9)**

Documents Filed: (1) Supplemental memorandum from Director of Public Works Katy Allen and Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated October 28, 2003, providing additional information after bids were opened. (2) Memorandum from Director of Public Works Katy Allen and Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated October 6, 2003, recommending the approval of the report on bids and to take the appropriate action based on the evaluation of bids for the Edenvale Garden Park Perimeter Fencing Project and approval of a five percent contingency.

Discussion/Action: The award of said contract to the lowest responsive bidder, Central Fence Co. and related contingency was approved. Vote: 10-0-1-0. Absent: Williams.

- 2.10 Adoption of a resolution authorizing the City Manager to negotiate and execute:**
- (a) Eleven agreements with the owners of real property on Towers Lane for the donation of frontage within Towers Lane.**
 - (b) A Joint Use Agreement with Pacific Gas and Electric to relocate all utilities, easements, and poles within the newly created right of way within Towers Lane.**
- CEQA: Exempt, PP02-03-046. Council District: 7. SNI: W. Evergreen. (Public Works)**
(Rules Committee referral 10/29/03)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated November 4, 2003, providing revisions to the PG&E requirements. (2) Memorandum from Director of Public Works Katy Allen, dated October 28, 2003, recommending adoption of said resolution.

Discussion/Action: Resolution No. 71809, entitled: “A Resolution of the Council of the City of San José Delegating Authority to the City Manager to Negotiate and Execute; (1) Agreements with the Owners of Real Property on Towers Lane for the Donation of Property Rights Within Towers Lane; and (2) A Joint Use Agreement with Pacific Gas and Electric to Relocate Utilities, Easements and Poles Within the Newly Created Right of Way on Towers Lane”, was adopted. Vote: 10-0-1-0.

- 2.11 Approval of the eleventh amendment to the Zone I Fire Protection Agreement with the Santa Clara County Central Fire Protection District (Central Fire), extending the term of the agreement until June 30, 2004, at no cost to the City over the revenue received under the agreement. CEQA: Not a Project. (Fire)**
(Order of the Day)

Documents Filed: Memorandum from Acting Fire Chief Dale Foster, dated November 3, 2003, recommending approval of said eleventh amendment.

Discussion/Action: The said eleventh amendment with the Santa Clara County Central Fire Protection District was approved. Vote: 10-0-1-0. Absent: Williams.

- 2.12 Approval of appointments to the HNVF Advisory Committee. (Mayor)**
(Rules Committee referral 10/29/03)

Documents Filed: None.

Discussion/Action: This item was deferred to November 18, 2003.

- 2.13 Approval of the first amendment to the Operations and Maintenance Agreement between the City of San José and Los Lagos Golf Course, LLC to provide a mechanism for the golf course operator to manage immediate delivery of a netting project for the course at no additional cost or extended time to the term of the agreement. CEQA: Resolution No. 69623, PP03-10-312. Council District 7. (Parks, Recreation and Neighborhood Services)**
(Orders of the Day)

2.13 (Cont'd.)

Documents Filed: Memorandum from Director of Parks, Recreation & Neighborhood Services Sara Hensley, dated October 26, 2003, recommending the approval of said first amendment.

Discussion/Action: The said first amendment to the Operations and Maintenance Agreement was approved. Vote: 10-0-1-0. Absent: Williams.

STRATEGIC SUPPORT SERVICES

3.1 Report of the Study Session

Mayor Gonzales, Chair

- (a) **May 14, 2003 - Proposed 2003-2004 Operating Budget**
- (b) **May 15, 2003 - Proposed 2003-2004 Operating Budget**
- (c) **May 16, 2003 - Proposed 2003-2004 Operating Budget**
- (d) **May 12, 2003 – Proposed 2003 – 2004 Operating Budget**

Documents Filed: The May 12, 14, 15, and 16, 2003 Proposed 2003-2004 Operating Budgets.

Discussion/Action: The Reports of the Study Session for May 12, 14, 15, and 16, 2003 were approved. Vote: 10-0-1-0. Absent: Williams.

3.2 Report of the Rules Committee – Meeting of October 22, 2003

Vice Mayor Dando, Chair

Documents Filed: The Rules Committee Report of October 22, 2003.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
 - (1) Review November 4, 2003 Draft Agenda

The Committee recommended approval of the November 4, 2003 City Council agenda.

- (2) Add New Items to October 28, 2003 Amended Agenda
 - Mayor and Council Member Requests
 - City Manager Requests
 - City Attorney Requests
 - City Clerk Requests

The Committee recommended two additions to the October 28, 2003 City Council agenda.

3.2 (Cont'd.)

- (3) List of Reports Outstanding. Attachment: Report from the City Manager's Office, dated October 21, 2003, listing three staff reports outstanding for the October 28, 2003 Council agenda.

The Committee noted and filed the City Manager's report listing three staff reports outstanding for the October 28, 2003 Council agenda.

- (c) Legislative Update
 - (1) State—There was no report.
 - (2) Federal
 - (a) Federal Lobbyist Monthly Report. Attachment: Memorandum from Director of Intergovernmental Relations Betsy Shotwell., dated October 16, 2003, transmitting the August –September 2003 Federal Lobbyist Report from Patton Boggs, LLP.

In anticipation of upcoming Council legislative priorities study sessions, the Committee urged the Administration to include City lobbyist, local legislators, and community groups in the discussions. The Committee accepted the August-September 2003 Federal Lobbyist Report from Patton Boggs, LLP.

- (d) Meeting Schedules – There were none.
- (e) The Public Record. Attachment: Memorandum from City Clerk Patricia O'Hearn, dated October 16, 2003, transmitting items filed for the Public Record for the period October 1 – 14, 2003.

The Committee noted and filed the Public Record.

- (f) Appointment to Boards, Commissions and Committees – There were none.
- (g) Rules Committee Reviews, Recommendations and Approvals – There were none.
- (h) Oral communications. Attachment: Letter from Pete Campbell, District 1 resident, requesting an item be placed on the next Council agenda regarding selection of the Redevelopment Agency Director.

The Committee directed the City Clerk to place a request from Pete Campbell regarding selection of the Redevelopment Agency Director on next week's Rules Committee agenda.

- (i) Adjournment
The meeting adjourned at 2:30 P.M.

3.2 (Cont'd.)

Discussion/Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, and unanimously carried, the Rules Committee Report and Actions of October 22, 2003 were approved. Vote: 10-0-1-0. Absent: Williams.

Report of the Rules Committee – Partial Meeting of October 29, 2003

Documents Filed: The partial Rules Committee Report of October 29, 2003.

(g) Rules Committee Review, Recommendations and Approvals. Attachments: (1) Memorandum from Acting Chief of Police Thomas R. Wheatley, dated October 23, 2003, recommending posting on the San José Police Department web site specified information on high-risk sex offenders residing in San José. (2) Copy of a letter dated October 23, 2003, sent to Attorney General Bill Lockyer forwarding San José Police Department's recommendations for improvements to California's Megan's Law.

- (1) Proposal for posting high-risk sex offender data on the San José Police Department web site
See Item 3.5 for Council Action taken

Discussion/Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and unanimously carried, the partial Rules Committee Report and Actions of October 29, 2003 were approved. Vote: 10-0-1-0. Absent: Williams.

3.4 **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Lamberson Koster & Company, a wholly owned subsidiary of Arthur J. Gallagher & Company, dba Gallagher Construction Services, to provide insurance broker services for an Owner Controlled Insurance Program for the Airport Master Plan projects, including security improvements to be constructed at the Norman Y. Mineta San José International Airport for the upcoming three to five year period, in an amount not to exceed \$1,575,000, for a period of three years, with two one-year options for extension. CEQA: Resolution Nos. 67380 and 71451, PP03-10-317. (Finance/Airport) (Deferred from 10/28/03 – Item 3.4)**

Documents Filed: (1) Supplemental memorandum from Finance Director Scott Johnson, dated November 3, 2003, providing further clarification on issues raised in a letter provided to Council by Aon Insurance Services. (2) Memorandum from Finance Director Scott Johnson and Aviation Director Ralph G. Tonseth, dated October 16, 2003, recommending the adoption of said resolution.

Discussion/Action: Council Member Reed asked Staff when the scoring matrixes are utilized to assist in sorting out multiple vendors in the Request for Proposals (RFP) process. Finance Director Scott Johnson stated the scoring matrixes are used for

3.4 (Cont'd.)

consultant type services and they have used consensus-type ratings for those specific scorings, to which a team is put together to ensure the required criteria are adhered to and finally the rankings are calculated for the particular consultants. Reed asked Staff how the rankings for consultants compared to what was done for the airport security contracts in terms of the scoring matrix. Director Johnson stated those scores were in reference to goods procured versus services procured. Council Member Reed asked if the subjective analysis conducted had a ranking system they could utilize. Deputy City Manager Ed Shikada stated a distinction had been drawn between professional consulting services and processing or consumer-related services with the latter being more conducive with a quantitative analysis. Upon motion by Council Member LeZotte, seconded by Council Member Chavez, and unanimously carried, Resolution No. 71810, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Lamberson Koster & Company to Provide Insurance Broker Services for an Owner Controlled Insurance Program for Airport Master Plan Projects, in An Amount Not to Exceed \$1,575,000", was adopted. Vote: 10-0-1-0. Absent: Williams.

3.5 **Approval and direction to the Police Department to post specified information on high-risk sex offenders residing in San José on the San José Police Department website. CEQA: Not a Project. (Police)** **[Rules Committee referral 10/29/03 – Item 3.2(g)(1)]**

Documents Filed: (1) Memorandum from Mayor Gonzales and Vice Mayor Dando, dated October 31, 2003, recommending the approval of posting information on registered "high risk" sex offenders living in San José on the San José Police Department website as outlined in the staff report. (2) Memorandum from Acting Chief of Police Thomas R. Wheatley, dated October 23, 2003, recommending posting on the San José Police Department web site specified information on high-risk sex offenders residing in San José.

Discussion/Action: Vice Mayor Dando thanked Staff and the departments who worked steadily on this issue and thanked the Team 290 members for taking the initiative in this effort as well. She stated the Mayor and herself had issued a memorandum to assist in setting the standard on public safety for the entire state and to help ensure public safety is top priority. She commented San José was one of the first cities in the state of California and the United States to require information on sex offenders and yet it has been a long journey to get to this point. She stated it was very important for Council to do all they can to help the families and communities of San José protect their children and if this bill helps provide more safety and more piece of mind for families and communities it is time to approve the recommendation. She commented that San José is equipped with advanced technology and it is a shame Silicon Valley has yet to incorporate that technology with helping to advance this bill. Vice Mayor Dando motioned for approval of Staff's recommendation in form of Mayor Gonzales' and her memorandum, dated October 31, 2003, recommending approval of posting information on registered "high risk" sex offenders living in San José on the San José Police Department website as outlined in the

3.5 (Cont'd.)

Staff report. Council Member Chavez seconded the motion. Deputy Chief of Police Bureau of Investigations Rob Davis stated thanked the Mayor and Council for their support of this issue and assisting the Police department to provide the needed support in helping to protect the children of San José.

Trish Morgan and William Garbett spoke on the issue. Council Member Reed asked Staff to clarify upon the remaining 1800 serious sex offenders that are not being dealt with in this manner. Deputy Chief Davis stated it was not that the Police department did not want to take the same action with all registered sex offenders but there were state laws from the Department of Justice that prevented them from doing so and he hoped by taking this initial step it will help move people towards that direction and change those rules. Vice Mayor Dando commented that action was underway to pressure the State of California to follow suit and allow all cities to inform their communities via the Internet about the registered sex offenders that live amongst their communities and she stated further correspondence was upon their legislative agenda. On a call for the motion, the recommendation in the form of Mayor Gonzales' and Vice Mayor Dando's memorandum, dated October 31, 2003 and the direction contained therein was approved. Vote: 10-0-1-0. Absent: Williams.

ECONOMIC & NEIGHBORHOOD DEVELOPMENT

4.1 Report of the Building Strong Neighborhoods Committee – October 20, 2003 Council Member Chavez, Chair

Documents Filed: The Building Strong Neighborhoods Committee report of October 20, 2003.

- (a) Community Preservation Ordinance Review. Attachment. Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated October 9, 2003, providing a community preservation ordinance update.
- Single-Family Units
 - Multi-Family Units – 1 year to 3 year comparison

The Committee accepted the Community Preservation Ordinance Update.

- (b) Review Policies Related to City Parks and Open Space

The Committee accepted the Policies related to City Parks and Open Space Report, with direction to Staff to include in the next update:

- Define the parameters of an agreement for a starting point (general framework)
- Update an open space that is actually out there.

4.1 (Cont'd.)

- (c) Discussion of Strategies for Strong Neighborhoods Initiative (SNI) and Neighborhood Development Center (NDC) Outreach

This was an informational report and no formal action was taken.

- (d) Review and Input on the proposed Airport Neighborhood Services Group Workplan. Attachment: Memorandum from Airport Ombudsman Cathy Gaskell, dated October 15, 2003, transmitting the draft work plan for Airport Neighborhood Services Group.

This was an informational report and no formal action was taken.

- (e) Oral petitions – None.

- (f) Adjournment
The meeting adjourned at 3:35 P.M.

Discussion/Action: William Garbett spoke on the issue. Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and unanimously carried, the Building Strong Neighborhoods Committee Report and Actions of October 20, 2003 were accepted. Vote: 10-0-1-0. Absent: Williams.

4.3 (a) **Approve the following recommendations for items discussed in Section B of this report:**

- (1) **Accept staff's proposal on criteria factors and proposed methods for refunding fees when deadlines are missed;**
- (2) **Implement tax relief to encourage investment in San Jose as outlined in staff's report on the Special Tenant Improvement Program, and approved by Council on October 28, 2003 (see Council Agenda, Item 4.5), and direct staff to return by December 16, 2003 with an assessment of the fiscal impact of a 50% reduction in the Construction Excise Tax for Driving Industries;**
- (3) **Report to Council in 90 days with recommendations to revise the City Employee Suggestion Award Program to one that focuses on both revenue generating and cost saving ideas, including a fiscal impact analysis; and,**
- (4) **Integrate City and redevelopment functions into a "One Voice" structure, including changes in reporting relationships.**

(b) **Approve the following recommendations for items discussed in Section C of this report:**

- (1) **Present to Council for consideration Design Guidelines for the Downtown Core on November 18, 2003;**
- (2) **Accept staff's list of identified current regulations that may hinder business development or operations and report on progress in March 2004;**

4.3 (b) Approve the following recommendations for items discussed in Section C of this report: (Cont'd.)

- (3) Direct the use of multiple-prime contractors as the project delivery method to be used on those projects where it is the most efficient and effective method of delivering a project on time and on budget.**

CEQA: Not a Project. (City Manager's Office)

Documents Filed: (1) Memorandum from City Manager Del D. Borgsdorf, dated October 28, 2003, recommending approval of said recommendations for items discussed in Section B and C of said report. (2) Hardcopy of powerpoint slide presentation of the Getting Families Back to Work study sessions.

Discussion/Action: City Manager Del D. Borgsdorf presented a powerpoint slide presentation on the overview of the Getting Families Back to Work study sessions. Mayor Gonzales asked what was Council expected to approve today and stated he thought the actions taken today were to allow the City Manager to move forward and bring on the Cisco teams to initiate some of the missions and objectives in terms of economic development, redevelopment and community development and then have them return to Council. City Manager Borgsdorf stated the actions for Council approval today is to allow Staff to work on and bring back those options to Council for their consideration and requested Council give direction to the City Manager himself to return to Council with a report. Mayor Gonzales asked if the report back would be in the form of a study session and would Council be allowed to have input. City Manager Borgsdorf stated he felt it would be helpful if his office reported back at least twice during the time period and it could be in the form of a study session or however Council preferred. Council Member Cortese asked Staff to continue the further exploration of Planned Development Zoning and Planned Development Permit mergers is reviewed with the caveat that they incorporate the Council and still contain the community outreach component. He commented on the WiFi (Wireless Fidelity) pilot program and mentioned the City should move forward and rethink implementing a "pilot" program in contrast to a set program. Director of Economic Development Paul Krutko stated the reference to the WiFi pilot program in the Staff report referred to the work that was requested in the Mayor's budget message and informed Council there is another team being led by Deputy Director of Public Works Timm Borden with the instruction for them to return to Council with a status report.

Vice Mayor Dando asked Staff for a status update on implementing tax relief to encourage investment in San José in terms of housing and encouraging developers of high-rise housing in the Downtown core and the possibility of forgiving fees charged for housing above the fourth floor, she asked Staff when would Council receive further information regarding this issue. City Manager Borgsdorf stated it would not be returning by Mid-November but his office would make it an assignment to return to Council with a progress update report. Vice Mayor Dando asked Staff what they use as an incentive for small contractors to utilize the City's Fast Track program and have they had any complaints pertaining to the additional fees charged for using Fast Track. Director of Planning, Building & Code Enforcement Stephen Haase stated the turnaround time in utilizing fast track runs from 8 to 14 days and by using the program there is less review

4.3 (Cont'd.)

time for the projects although the fees charged may be of larger benefit for a larger contractor as they work on larger projects and smaller contractors would not see much benefit from using the program.

Council Member Yeager asked Staff what will be done and what will be reviewed before the final report is given to Council. City Manager Borgsdorf stated the theme of the Getting Families Back to Work (GFBTW) study sessions was "One Voice" and Staff would like to return with a series of choices that will produce a variety of results and return to Council with the final report early in the budget process.

Council Member LeZotte commented on the refund of fees issue referenced on pages 3 and 4 of the Staff report and the direction from Council that refunds be approved for the accelerated service program when performance targets aren't met and that Staff was directed to eliminate 100% of the delays in turnaround time, she stated the current Staff memorandum brings both of those directions together stating if Staff does not adhere to the turnaround time then the City will begin refunding regular fees, she commented that action would be counterproductive and commented on the criteria Staff may be using to adhere to in refunding fees may need to be further analyzed and she asked Staff when a fiscal analysis of the process would be available for Council. City Manager Borgsdorf stated a set criteria was crafted to help understand how to meet the appropriate cycle time and the Staff report was not to mean that projects would be refunded whom did not meet the 100% compliance but the criteria was crafted to mark 75% as the goal cycle time. Council Member LeZotte stated the importance of Staff to return to Council with the determination that they cannot meet the 100% cycle time and will not be refunding fees because of it. Director Haase stated 80% of the projects have met the deadline but Staff is concentrating on the 20% that don't meet the deadline and most applicants would rather Staff do a good job than a quick job, thus the current model allows the City to do that. Council Member LeZotte commented if the City is meeting 90% of the project schedule they should not be penalized for the remaining 10% who do not and the City should work harder to meet the remaining 10% meet those goals but it should not affect the General Fund.

Council Member Chavez moved approval of Staff's recommendation with the addition of the following Council changes: (1) To report back on how to encourage greater housing density in the downtown core in particular and if it adheres to the November timeline. (2) To ensure all analysis incorporates how much money will be moved and from what "pot" pertaining to all future analyses. (3) To incorporate report backs at least twice and to incorporate customers within the CISCO process. Council also understood by taking the vote, they understood Council will take the responsibility for the process to rely on the City Manager. (4) To flush out focus on the Downtown and highlight the neighborhood business districts. (5) To ensure the merger of the planning functions continue to move forward. (6) To return to Council with a fiscal analysis on the small business relief for the 3000 sq. ft that was inadvertently dropped. (7) To continue the further exploration of Planned Development Zoning and Planned Development Permit mergers be reviewed with the caveat that they incorporate the Council and still contain the community

4.3 (Cont'd.)

outreach component. (8) Regarding Attachment B, all future attachments like this shall include the guidelines that determine what is considered business friendly and not business friendly, therefore, Council did not accept the current list but requested the guidelines return to Council as part of future feedback. (9) To assess city fees for events and to evaluate the possibilities for a tiered structure based on small vs. large and Non-profit vs. For-profit events. (10) To assess the billing practices and to create a protocol in which the City departments create timely invoices explaining all charges. (11) To explore ways in which the City can improve event evaluations. (12) To improve the grant process for special events using feedback from event stakeholders. (13) To implement incentives to help increase the quantity and quality of events in San José; In addition to the friendly amendment for Council to determine a timeframe for Council to incorporate a study session to discuss the future of the Redevelopment Agency Board and to include all requests for information made by Council and for Staff to deliver the information to the irrelative Council Members, seconded by Council Member Cortese, and unanimously carried, the Staff's recommendation was approved with said Council changes. Vote: 10-0-1-0. Absent: Williams.

4.4 **Adoption of a resolution approving revisions to the form Facility Use Agreement between clients of Convention and Cultural Facilities and the City. CEQA: Not a Project. Council District 3. (Conventions, Arts and Entertainment)**

Documents Filed: Memorandum from Director of Conventions, Arts & Entertainment, Jim McBride, dated October 15, 2003, recommending adoption of said resolution.

Discussion/Action: Upon motion by Council Member Chavez, seconded by Council Member Williams, the motion was carried and Resolution No. 71811, entitled: "A Resolution of the Council of the City of San José Approving Revisions to the Form Facility Use Agreement to Allow Use of the Convention and Cultural Facilities", was adopted. Vote: 9-0-2-0. Absent: LeZotte, Williams.

4.5 **Public Hearing and adoption of a resolution approving the vacation of a cul-de-sac at Crucero Drive and a public service easement. CEQA: Exempt, HA62-062. Council District 7. SNI: Santee. (Public Works)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated October 15, 2003, recommending a public hearing be conducted and the adoption of said resolution. (2) Proof of publication of title of Resolution No. 71777 executed on October 15 & 22, 2003, submitted by the City Clerk.

Discussion/Action: Upon motion by Council Member Gregory, seconded by Council Member Chavez, and unanimously carried, the Public Hearing was held and Resolution No. 71812, entitled: "A Resolution of the Council of the City of San José Vacating a Portion of Crucero Drive and Reserving a Public Service Easement", was adopted. Vote: 9-0-2-0. Absent: LeZotte, Williams.

4.6 Adoption of a resolution:

- (a) Authorizing the issuance of tax-exempt multifamily housing revenue bonds designated as "City of San José Multifamily Housing Revenue Bonds (Almaden Family Apartments Project) Series 2003D" in an aggregate principal amount not to exceed \$31,300,000 (the "Bonds");**
- (b) Approving in substantially final form the Bonds, Trust Indenture, Financing Agreement, Regulatory Agreement and Declaration of Restrictive Covenants, the Official Statement, Bond Purchase Agreement, Remarketing Agreement, Mortgage Note, LITHC Agreement, Assignment and Inter-creditor Agreement, Subordinate Trust Indenture, Subordinate Loan Agreement and other related documents;**
- (c) Approving a loan of bond proceeds to Almaden Family Housing Partners, L.P., a California limited partnership, for financing the construction of Almaden Family Apartments to be located at 1525-1541 Almaden Road;**
- (d) Authorizing the issuance of subordinate tax-exempt refunding bonds at the time of completion of the Project in an amount not-to-exceed \$5 million;**
- (e) Approving in substantially final form the Subordinate Refunding Bonds, Subordinate Trust Indenture, Subordinate Loan Agreement, and the Forward Bond Purchase Agreement; and**
- (f) Authorizing the Director of Finance and Director of Housing to execute and, as appropriate, to negotiate, execute, and deliver these documents and other related documents as necessary.**

CEQA: Negative Declaration, PDCSH98-089. Council District 7. (Finance/Housing)

(Deferred from 10/28/03 – Item 4.3)

Documents Filed: (1) Memorandum from Finance Director Scott Johnson and Director of Housing Leslye Corsiglia, dated October 6, 2003, recommending the adoption of said resolution. (2) Supplemental memorandum from Finance Director Scott Johnson, dated October 22, 2003, transmitting the preliminary Official Statement and proving updated status on financing.

Discussion/Action: Upon motion by Council Member Gregory, seconded by Council Member Chavez, and unanimously carried, Resolution No. 71813, entitled: "A Resolution of the City Council of the City of San José Authorizing the Issuance of Variable Rate Demand Multifamily Housing Revenue Bonds and the Loan of the Proceeds Thereof for the Financing of the Almaden Family Apartments Project and Approving Others Related Documents and Actions", was adopted. Vote: 9-0-2-0. Absent: LeZotte, Williams.

4.7 Approval of actions to establish funding for the preparation of the Evergreen Community Plan, update of the Evergreen Area Development Policy, and related environmental documents:

- (a) Adoption of a resolution authorizing the City Manager to negotiate and execute a funding agreement with Yerba Buena Opco, Inc. for the work associated with the preparation of the Evergreen Smart Growth Strategy, Evergreen Area Development Policy update, and related environmental documents in an amount of approximately \$8.8 million, for a term from November 4, 2003 to June 30, 2005; and delegate the authority of approving minor amendments to the funding agreement to the Director of Planning, Building and Code Enforcement to account for increases in funding received from Yerba Buena Opco, Inc. and minor schedule or task changes that remain consistent with the information contained in and the goals identified in this memorandum, and delegate to the Director the authority to extend the term of the agreement for up to 18 months.**
- (b) Adoption of 2003-2004 Appropriation Ordinance and Funding Sources Resolution Amendments in the General Fund as follows:**
 - (1) Establish a City-Wide expenditure for the Evergreen Smart Growth Strategy in the total amount of \$235,590 for November 2003 through June 2004; and**
 - (2) Increase earned revenue from Other Revenue by \$235,590.**
- (c) Authorize the creation and filling of a temporary 1.0 FTE Senior Planner position through June 2005 to complete the Evergreen Smart Growth Strategy, update of the Evergreen Area Development Policy, and related environmental documents.**

**Council District 8. SNI Area: KONA and West Evergreen. CEQA: Exempt, PP03-10-349. (Cortese)
(Rules Committee referral 10/29/03)**

Documents Filed: Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase and Budget Director, Larry D. Lisenbee, dated November 3, 2003, recommending approval of said actions to establish funding for the preparation of the Evergreen Community Plan and update of the Evergreen Area Development Policy and related environmental documents.

Discussion/Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, and unanimously carried, Ordinance No. 27009, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the General Fund for the Evergreen Smart Growth Strategy; and Providing That This Ordinance Shall Become Effective Immediately Upon Adoption" and Resolution No. 71814, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate an Execute a Funding Agreement with Yerba Buena OPCO, Inc. for the Work Associated with the Preparation of the Evergreen Smart Growth Strategy, Evergreen Area Development Policy Update and Related Environmental Documents in An Amount of Approximately \$8.8 Million", and Resolution No. 71815, entitled: "A Resolution of the Council of the City of San José

4.7 (Cont'd.)

Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the General Fund”, were adopted. Vote: 10-0-1-0. Absent: Williams.

(Items 4.8 and 4.9 were heard together.)

**4.8 Discussion and direction on an ordinance relating to a local preference in the procurement of contracts. (City Attorney’s Office)
(Rules Committee referral 10/29/03)**

- 4.9 (a) Adoption of a resolution implementing a policy and appeal procedures for the prequalification of contractors on public works projects.**
(b) Direction to the Department of Public Works to return in a year with a status report regarding prequalification and recommendations on whether to continue and/or modify the prequalification policy and appeal procedures.
(City Attorney's Office)

Documents Filed: (1) Memorandum from City Attorney Richard Doyle, dated October 30, 2003, recommending the discussion and direction on an ordinance relating to a local preference in the procurement of contracts. (2) Memorandum from City Attorney Richard Doyle, dated October 30, 2003, recommending the adoption of said resolution and said direction to the Department of Public Works.

Discussion/Action: Council Member Chavez asked Staff if local preference can be used as a component of pre-qualification. City Attorney Doyle stated they were both related and unrelated although local preference is a quality that can be looked at, the most important order to follow is how to gear up and ensure the work is completed and the responsibility of the Council is to determine whether someone is qualified to be a responsible bidder by looking at the determining factors such as financial stability, reputation with worker’s compensation claims, labor disruptions and a number of other factors that can be looked at besides local preference. Council Member Chavez stated she was interested in the City incorporating local preference into the pre-qualification policy and to review training as an element for the companies and how they relate to safety issues. City Attorney Doyle stated in order for the City to officially incorporate local preference into the pre-qualification policy the City would have to amend the charter to include that. Council Member Chavez asked the City Attorney incorporating issues on training and worker safety was safe to add to the charter. City Attorney Doyle stated those were relevant issues and can be looked at in all processes relating to the issue of pre-qualification. Council Member Chavez asked Staff how many percentages of contracts did the \$10 Million mark enable in terms of the overall percentage of work done by the City. Director of Public Works Katy Allen stated she would provide that percentage number at a later date and commented on projects such as libraries, community centers and animal service centers all exceeded the \$10 Million mark. Council Member Chavez asked Staff how does the \$10 Million mark helps the Public Works department. Director Allen stated the \$10 Million mark helps create a starting place for a threshold and enables Staff to make their first effort to bring pre-qualification into the contracts.

4.8/4.9 (Cont'd.)

Mayor Gonzales stated the current policy of the purchase of goods grants a 1% credit to local vendors because they pay local taxes, the recommendation before Council today requests the City raises that percentage to 2%. He asked Staff how they justified that increase and if that percentage could be justified further and increased to 5%. City Attorney Doyle stated the increase was based on responses received from the Getting Families Back to Work study sessions and local businesses, he commented the increase had been justified and if Council wanted to further increase the percentage again it would need to be justified. Mayor Gonzales requested Staff re-examine the issues pertaining to credit percentages and re-evaluate the increase to a 5% credit percentage. Vice Mayor Dando requested Staff provide all documents pertaining to local preference to the Small Business Commission and if there are any comments, they be provided to Council. She stated she was interested in knowing the feedback from the Small Business Commission regarding the increase of the credit percentages to 5%.

Council Member Yeager asked Staff to who would the City need to justify a 5% increase. City Attorney Doyle stated the City would have to justify the increase to the courts since they require a rationale basis to distinguish between various businesses under the U.S. Constitution and provide an equal basis to defend the program and the rationale provided at the GFBTW study sessions. Council Member Yeager stated the increase to 2% was not worthwhile and asked Staff if the 1% or 2% credit can be applied to the third party agreements made with other agencies to purchase large volumes of goods. City Attorney Doyle stated he did not know if either credit could be applied to the third party agreements but he would ensure Staff will re-evaluate that option and return to Council with a status update.

Council Member Cortese commented he felt the \$10 Million mark was too high and that Public Works should evaluate creating a single project pre-qualification document and there should be a baseline rather than the \$10 Million dollars. Director Allen stated if the \$10 Million threshold was lowered to \$5 Million dollars, it would limit the pre-qualified bidders and in essence affect the competitive bids, but by keeping the high threshold amount it helps to identify a performance criteria and raises the bar and enable a competitive bid. She stated her only concerns would be if the bar is too high the bidding pool would thus be small and the process would become over-cumbersome. Council Member Cortese suggested Staff move the criteria around to prevent the limited pool. Director Allen stated they would re-evaluate the criteria to clarify how it will be used in reference to such large contracts. Mayor Gonzales stated regardless of what dollar amount is chosen today it was equally as important to have Staff return within one year with a status report on the programs approved today showing the results and hopeful positive impacts that have occurred.

Council Member Reed requested Staff initiate a tracking mechanism that applies to tracking how the local business preference was utilized in consulting contracting evaluations. Jim Tucker and William Garbett spoke on the issue. Council Member Chavez moved approval of the discussion and direction of said ordinance relating to a local preference in the procurement of contracts and direction for Staff to: (1) Re

4.8/4.9 (Cont'd.)

-examine the issues pertaining to credit percentages and reevaluate the increase to a 5% credit percentage. (2) To re-examine the local goods for purchases. (3) Ensure further examination regarding local preference above \$100,000 as it relates to other cities and materials completed by the City Attorney be routed to Council for further evaluation. (4) All matters be reviewed by the Small Business Commission. (5) Direction for the City Attorney to examine ways in which Council can dispense with large umbrella-type consulting contracts, seconded by Council Member Campos and unanimously carried. Vote: 10-0-1-0. Absent: Yeager.

Council Member Chavez moved approval of said resolution and said direction to the Department of Public Works for Item 4.9 with direction to Staff to: (1) Ensure training and local offices be incorporated into the points-for-evaluation pertaining to pre-qualification. (2) Ensure the threshold of between \$5 Million and \$10 Million projects are used and when reported back to Council, to include the reasoning as to why pre-qualification was or was not used. (3) Ensure the recommendation is brought forth to the Small Business Commission, seconded by Council Member Cortese, and unanimously carried. Resolution No. 71816, entitled: "A Resolution of the Council of the City of San José Adopting a Policy and Appeal Process for the Prequalification of Contractors Desiring to Bid on Public Works Projects", was adopted. Vote: 9-0-2-0. Absent: Williams, Yeager.

TRANSPORTATION SERVICES

6.2 Adoption of a resolution authorizing the Director of General Services to:

- (a) Execute a one-year agreement with 4 one-year options to renew with Turbo Data Systems for the City's parking citation processing and collection services, with a total first year compensation not to exceed \$500,000;
- (b) Execute change orders in a total amount not to exceed \$50,000 to cover any unanticipated increase in the volume of parking citations and related transactions; and
- (c) Execute each of the options to renew without further City Council action other than the appropriation of necessary funding.

CEQA: Not a Project. (General Services/Transportation)

Documents Filed: (1) Memorandum from Director of General Services Jose Obregon and Director of Transportation James R. Helmer, dated October 15, 2003, recommending the adoption of said resolution.

Discussion/Action: Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and unanimously carried, Resolution No. 71817, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of General Services to Execute an Agreement with Turbo Data Systems for Parking Citation Processing and Collection Services", was adopted. Vote: 10-0-1-0. Absent: Williams.

6.3 Approval of an ordinance amending Chapter 11.48 of Title 11 of the San José Municipal Code to establish a residential permit parking zone in the Santana Area neighborhood. CEQA: Exempt, PP03-10-327. Council District 6. (Transportation)

Documents Filed: Memorandum from Director of Transportation James R. Helmer, dated October 21, 2003, recommending the approval of said ordinance.

Discussion/Action: Upon motion by Council Member Yeager, seconded by Council Member LeZotte, and unanimously carried, Ordinance No. 27010, entitled: “An Ordinance of the City of San José Amending Chapter 11.48 of Title 11 of the San José Municipal Code to Add a New Section to 11.48.180 to Establish a Santana Area Neighborhood Residential Permit Parking Program”, was passed for publication. Vote: 10-0-1-0. Absent: Williams.

PUBLIC SAFETY SERVICES

9.1 Report on bids and award of contract for the Fire Station No. 26 Upgrade Project to the low bidder, D.L. Falk Construction, Inc., for the base bid and Add Alternate No. 1 in the amount of \$684,742, and approval of a contingency in the amount of \$102,711. CEQA: Exempt, PP03-09-305. Council District 7. (Public Works)

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen and Acting Fire Chief Dale Foster, dated October 28, 2003, providing additional information after bids were opened. (2) Memorandum from Director of Public Works Katy Allen and Acting Fire Chief Dale Foster, dated October 15, 2003, recommending the award of said contract.

Discussion/Action: Upon motion by Council Member Gregory, seconded by Council Member LeZotte, and unanimously carried, the award of said contract with low bidder, D.L. Falk Construction, Inc. and related contingency were approved. Vote: 10-0-1-0. Absent: Williams.

9.2 Adoption of a resolution:

- (a) **Determining that public use and necessity require the acquisition of fee title to the entire property located at 3075 Driftwood Drive, owned by Isek Wekselman Enterprises Inc.**
- (b) **Finding that the property needs to be taken, and is necessary, for the construction and location of the Public Safety Bond funded Westside Community Policing Center.**
- (c) **Directing the City Attorney to file an eminent domain action to acquire this real property interest.**

CEQA: Exempt, PP03-07-244. Council Districts 1 and 6. SNI: Winchester. (Public Works/Police)

Dropped.

9.2 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen and Acting Chief of Police Thomas R. Wheatley, dated October 15, 2003, recommending the adoption of said resolution.

Discussion/Action: This item was dropped.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened to consider Item 10.1 in a Joint Session at 5:17 P.M.

10.1 **Approval of the revised Downtown San José Historic District Design Guidelines. CEQA: Exempt, PP03-01-010. Historic Landmarks Commission (7-0) and Planning Commission (7-0) recommend approval. Council District 3. (City Manager's Office/Redevelopment Agency)**

Documents Filed: Memorandum from City Manager Del D. Borgsdorf and Executive Director of Redevelopment Agency Susan F. Shick, dated October 28, 2003, recommending approval of the revised Downtown San José Historic District Design Guidelines. (2) Hardcopy of the Downtown San José Historic District Design Guidelines.

Discussion/Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and unanimously carried, the revised Downtown San José Historic District Design Guidelines was approved. Vote: 10-0-1-0. Absent: Williams.

10.2 **Approval of an ordinance amending certain time limitations with respect to redevelopment plans. (City Attorney's Office) (Rules Committee referral 10/29/03)**

Documents Filed: (1) Supplemental memorandum from City Attorney Richard Doyle, dated November 4, 2003, providing the CEQA Resolution No. 65459, PP03-11-354. (2) Redevelopment Agency memorandum from City Attorney Richard Doyle, dated November 4, 2003, recommending the adoption of said ordinance.

Discussion/Action: Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and unanimously carried, Ordinance No. 27011, entitled: "An Ordinance of the City of San José Amending Certain Time Limitations with Respect to the Redevelopment Plans for the Alameda, Almaden Gateway, Alum Rock Avenue, Century Center, Civic Plaza, East Santa Clara Street, Edenvale, Guadalupe-Auzerais, Japantown, Julian-Stockton, Market Gateway, Monterey Corridor, Neighborhood Business Clusters, Olinder, Park Center, Pueblo Uno, Rincon De Los Esteros, San Antonio Plaza, Story Road Strong Neighborhood Initiative, and West San Carlos Street Project Areas", was passed for publication. Vote: 10-0-1-0. Absent: Williams.

The Redevelopment Agency Board portion of the meeting adjourned at 5:20 P.M.

CLOSED SESSION REPORT

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

None.

In accordance with Sec. 19.16.140d of the San Jose Municipal Code, this is notice of the City Engineer's receipt of the following Final Maps for review:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>
9539	SE/C of South 3rd St. and Margaret St.	3	Green Valley Corporation	74 units	Multi-Family

OPEN FORUM—

Stephen Hazel spoke on issues pertaining to the Grand Jury.

RECESS/RECONVENE

The City Council recessed at 5:24 p.m. and reconvened at 7.02 p.m. Council Chambers, City Hall.

Present: Council Members - Campos, Chavez, Chirco, Cortese, Dando, Gregory, Reed, Williams, Yeager; Gonzales.

Absent: Council Members - None.

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

PUBLIC HEARINGS

(Heard by the City Council at 7:02 P.M.)

- 11.1 PUBLIC HEARING ON APPEAL of the Planning Commission's decision to approve, with standard and special conditions, a Conditional Use Permit to allow an addition to an existing public utility facility (San José Water Company) located on the northwest corner of San Tomas Expressway and Williams Road in the R-1-8 Residence Zoning District on a 17 acre site. The proposed addition consists of two settling ponds and three storage bins for temporary storage of excavated soil, asphalt, concrete, and base rock. (San José Water Company, Owner/Developer). CEQA: Exempt, CP03-009. Director of Planning, Building and Code Enforcement recommends upholding the decision of the Planning Commission to approve.**

CP 03-009 - District 1

(Continued from 6/17/03 – Item 11.3 et al., and 10/21/03 – Item 11.3)

11.1 (Cont'd.)

Documents Filed: None.

Discussion/Action: This item was continued to November 18, 2003.

**11.2 PUBLIC HEARING ON STREET RENAMING for the segment of Guadalupe Parkway between O'Nel Drive and N. First Street to Charcot Avenue. (City of San José, Applicant). CEQA: Exempt. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).
ST 03-009 - District 4**

Documents Filed: Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated October 15, 2003, recommending approval of the said street renaming.

Discussion/Action: Upon motion by Council Member Reed, seconded by Council Member Chavez, and unanimously carried, Ordinance No. 71818, entitled: "A Resolution of the City Council of the City of San José Renaming a Section of Guadalupe Parkway Between O'Nel Avenue and N. First Street to Charcot Avenue", was passed for publication. Vote: 9-0-2-0. Absent: Gregory, Yeager.

**11.4 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the southeast corner of East Virginia Street and South 5th Street (250 E. Virginia Street), from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 170 single-family attached residences with underground parking on a 3.9 gross acre site. (250 E. Virginia, LLC, Owner). CEQA: Mitigated Negative Declaration. SNI: Spartan/Keyes. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (7-0-0).
PDC 03-022- District 3
(Continued from 10/21/03 – Item 11.8)**

Documents Filed: (1) Memorandum from Council Member Chavez, dated November 4, 2003, recommending approval of the Planning Commission and Staff recommendation with direction contained therein. (2) Memorandum from Secretary of the Planning Commission Stephen Haase, dated October 23, 2003, recommending approval of the proposed rezoning. (3) Memorandum from Secretary of the Planning Commission Stephen Haase, dated October 1, 2003, transmitting the Department of Planning, Building, and Code Enforcement Staff Report on Project File Number PDC03-022, dated September 18, 2003, recommending approval of the planned development rezoning.

Discussion/Action: Council Member Chavez moved approval of Staff's recommendation to include her memorandum, dated November 4, 2003, recommending the adoption of the Planning Commission and Staff recommendation with the following direction to staff: (1) Pursue construction of a signal at 6th and Virginia that allows conversion of both 6th Street between Virginia and Martha and Virginia between 6th and 7th Streets. (2) Explore

11.4 (Cont'd.)

funding options for the modification of the signal at 7th and Virginia through: Funds derived from Sale of a portion of the 6th Street right-of-way to the project (narrowing of the street is currently proposed in the project design). (3) Work with the community to identify additional funds for 7th and Virginia (if necessary) and complete the construction of the signal at 7th and Martha Streets: Funds allocated by the JSM project for the Seventh and Martha signal, Funds derived from future development in the area, seconded by Vice Mayor Dando, and unanimously carried, Ordinance No. 27012, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated at the Southeast Corner of E. Virginia and S. Fifth Streets", was passed for publication. Vote: 11-0-0-0.

- 11.5 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the west side of South 11th Street, approximately 140 feet north of Margaret Street (671 S. 11th Street), from R-M Residential District to A(PD) Planned Development Zoning District, to allow demolition of an existing historic single family residence and construction of two single-family attached units on a 0.14 gross acre site. (Raymond Ruiz, Owner). CEQA: Exempt. SNI: University. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2). PDC 00-115 - District 3**

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated October 15, 2003, recommending approval of the proposed rezoning. (2) Proof of publication of Notice of Public Hearing, executed on September 26, 2003, submitted by the City Clerk

Discussion/Action: Upon motion by Council Member Chavez, seconded by Council Member Cortese, and unanimously carried, Ordinance No. 27013, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on the West Side of S. Eleventh Street, Approximately 140 Feet North of Margaret Street (671 S. Eleventh Street) to A(PD) Planned Development Zoning District", was passed for publication. Vote: 11-0-0-0.

- 11.3 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the northwest corner of Hillsdale Avenue and Almaden Expressway (1175 Hillsdale Avenue), from CO Commercial Office and R-1-8 Residence Zoning Districts to A(PD) Planned Development Zoning District to allow (1) renovation of an existing two-story, 12, 250 square foot classroom building for private instruction and dormitory uses for approximately 75 students at an existing church, (2) replacement of an existing 176 space surface parking lot at the corner of Foxworthy Avenue and Almaden Expressway with a ball field and a 1,200 square foot modular building (no on-site outdoor lighting or PA system), and (3) addition of new landscaped areas and other minor site plan changes on a 10.4 acre site. (Calvary Chapel of San José, Owner/Developer). CEQA: Exempt. Director of Planning, Building, and Code Enforcement and Planning Commission recommend approval (7-0-0). PDC 03-027 - District 9
(Continued from 9/16/03 – Item 11.5 and 10/21/03 – Item 11.4)**

11.3 (Cont'd.)

Documents Filed: (1) Memorandum from Director of Planning, Building & Code Enforcement Stephen Haase, dated August 28, 2003, recommending approval of the proposed rezoning. (2) Proof of publication of Notice of Public Hearing, executed on August 13, 2003, submitted by the City Clerk

Discussion/Action: Cindy Carey, Joe Lechner, David Hennessee, Michael L. Riley, Britton P. Grimm, and Eric Martinez spoke on the issue. Council Member Chirco moved approval of the proposed rezoning with the condition that a 7-foot masonry or pre-cast fence with appropriate landscaping screening be required along the entire westerly property line and gates at the end of each cul-de-sac shall be provided if they are determined to be appropriate at the planned development permit stage, seconded by Council Member Reed, and unanimously carried, Ordinance No. 27014, entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situate at the Northwest Corner of Hillsdale Avenue and Almaden Expressway to A(PD) Planned Development", was passed for publication. Vote: 11-0-0-0.

11.6 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at both sides of Delmas Avenue between Santa Clara and San Fernando Streets, from CN Commercial District, LI Light Industrial, and HI Heavy Industrial to A(PD) Planned Development Zoning District, to allow a mixed use project consisting of up to 1,009,100 square feet of office/commercial/retail uses and 325 multi-family attached residences on a 8.93 gross acre site. (SJW Land Company, Owner; Joe Ernst, Developer). CEQA: Resolution to be adopted. SNI: Delmas Park. PDC 02-046 - District 3

Documents Filed: None.

Discussion/Action: This item was dropped.

11.7 PUBLIC HEARING on a modification of the Edenvale Area Development Policy to include the proposed future economic development of the underutilized IBM site with up to 222,673 square feet of commercial uses on a 18.75 gross acre site, located at the northeast corner of Poughkeepsie Road and Cottle Road (5600 Cottle Road). (International Business Machines Corp Ed Bunker, Owner; Lowes Home Improvement Warehouse, Inc., James Manion, Developer). CEQA: Resolution No. 69699, 70021, and addenda thereto. District 2

Documents Filed: (1) Memorandum from Secretary of the Planning Commission Stephen Haase, dated October 15, 2003, transmitting Edenvale Area Development Policy. (2) Proof of publication of Notice of Public Hearing, executed on October 10, 2003, submitted by the City Clerk. (3) Letter from President and CEO of the San José Silicon Valley Chamber of Commerce Jim Cunneen, recommending approval of the proposed modification. (4) Letter from Richard T. Drury of Adams, Broadwell, Joseph and Cardozo law office, dated November 3, 2003, objecting to the proposed modification.

11.7 (Cont'd.)

Discussion/Action: Council Member Chavez asked Staff if there was a financial plan infrastructure built into this type of gateway improvement. Deputy Director of Public Works Timm Borden stated the design of the gateway improvement will be completed by October 2004 and the funding for the project is not currently funded. Council Member Chavez asked Staff where the funding for the proposed project was anticipated to come from. Deputy Director Borden stated the original source was from the Redevelopment Agency and the Community Facilities District who helped fund the extension of Hellyer Avenue which was a major element for the entire infrastructure but the funding doesn't extend to the gateway improvements at the Highway 101 interchange at Hellyer Avenue and Blossom Hill Road. Council Member Chavez asked what were the costs currently estimated at. Deputy Director Borden stated the estimated costs were at \$5 Million dollars combined and stated with the current recommendation, the City would be placing the gateway infrastructure into the same category with the rest of the Edenvale and Highway 101 area which allows degradation to traffic in various locations in the anticipation of the gateway improvements being constructed in the near future, but without the funding the future is questionable.

Council Member LeZotte commented on the appropriateness of bringing the proposed item forward at this time and asked Staff to define what is a courtesy review by the planning commission. Director of Planning, Building & Code Enforcement Stephen Haase stated the term of a courtesy review was used since there is no requirement in the Municipal Code for the Planning Commission to review and advise the City Council on this type of policy change so since it's not a requirement, they utilized the term of a courtesy review. City Attorney Richard Doyle stated the policy set by Council would normally return back to Council but since there was a related matter involving the Lowe's planned development rezoning it was decided that both items should go to the Planning Commission, where it was deferred and the recommendation was to take the policy issue to Council where it would ultimately bring the policy question to Council and the rezoning of the particular project whether it be Lowe's or not will need to still go through the Planning Commission for review. Council Member LeZotte stated in the Staff's recommendation it states they want to approve their recommendation to address timely economic development but since there is no economic development in front of them, why is Council looking at it now. Director Haase stated they had analyzed the project and found it appropriate from an economic development standpoint and includes some changes to land use, which makes it appropriate for the Edenvale area. Council Member LeZotte stated Staff's memorandum includes the economic development to the underused IBM site, which is directly related to the Lowe's project that will be coming to Council and asked Staff to clarify on this item. Director Haase stated the recommendation that is for Council approval today does not obligate or require Council to approve that particular project but would rather enable the underused IBM site to be redevelopment at some future point. Council Member LeZotte expressed concern pertaining to Council making a decision on the proposed project and felt it will send a bad signal by approving a policy that is clearly tied to a project that has yet to be voted upon by Council and instead would initiate changes to a policy that has yet to be initiated. Mayor Gonzales stated Council has the option to defer the item and stated Council is looking at moving forward on the

11.7 (Cont'd.)

number of economic development policies and their vote will be sending a positive signal to the community stating the City of San José wants economic development within the Edenvale area and are willing to accommodate that growth.

James Manion and Neil Struthers spoke on the issue. Mayor Gonzales stated the proposed project recommendation allows San José to send a signal to businesses interested in relocating that San José wants their business and is open to them relocating to our City and stated the specific project being affected by this is the Lowe's project and although that project remains to have some outstanding labor issues that needs to be resolved, he appreciates Lowe's representing themselves at the Council meeting on this issue and felt it is important that Lowe's helps to do everything they can to resolve their labor issues with the concerned parties as soon as possible. He expressed his commitment to the proposed project and it's effects on the future of San José.

Vice Mayor Dando moved approval of the said modification of the Edenvale Area Development Policy. The motion was seconded by Council Member Reed. Council Member Campos stressed the importance that Lowe's take their labor issues into strong consideration and continues to work with the labor unions to resolve them and she hopes Lowe's will return to Council when the City has an official project that is strong and viable. Council Member LeZotte stated she will reluctantly support the motion and commented the larger picture is to support economic development although she is troubled by the way the process is going forward and stated they have yet to hear issues regarding the historic structure on the site and will need to hear from the Planning Commission regarding their obligation for the historic structure and the ordinance-sized trees that may need to be destroyed. On a call for the motion, the motion passed unanimously. Resolution No. 71819, entitled: "A Resolution of the Council of the City of San José Modifying the Edenvale Area Development Policy to Address Timely Future Economic Development of That Certain Underutilized Site Located at the Northeast Corner of Poughkeepsie and Cottle Roads, with Approximately 220,000 Square Feet of Commercial Uses on An Approximately 18.75 Acre Site", was adopted. Vote: 10-0-0-1. Disqualified: Williams.

11.8 PUBLIC HEARING ON PLANNED DEVELOPMENT REZONING of the property located at the southeast corner of Blossom Hill and Cottle Roads (5600 Cottle Road), from IP-Industrial Park Zoning District to IP (PD) Planned Development District, to allow approximately 222,673 square feet of commercial uses on a 18.75 gross acre site. The proposed development would be located in the northeast portion of IBM's/Hitachi's existing Cottle Road facility. The site is currently occupied by the vacant IBM/Hitachi Research Building 25 that is eligible for the *California Register of Historic Resources*. The proposed project would demolish IBM/Hitachi Research Building 25 and remove 156 ordinance-sized trees from the site. (Hitachi Global Storage Technology, Owner; Lowes Home Improvement Warehouse Inc., Developer). CEQA: Resolution to be adopted. PDC 02-086 - District 2

Documents Filed: None.

11.8 (Cont'd.)

Discussion/Action: This item was continued to December 12, 2003.

ADJOURNMENT

The Council of the City of San José adjourned at 8:00 P.M.

RON GONZALES, MAYOR

ATTEST:

DEANNA J. SANTANA, CITY CLERK

EW/11-04-03