

## MINUTES OF THE CITY COUNCIL

**SAN JOSÉ, CALIFORNIA**

**TUESDAY, MARCH 23, 2004**

The Council of the City of San José convened in regular session at 9:32 a.m. in the Mayor's Conference Room 600, at City Hall.

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

Absent: Council Members - None.

Upon motion unanimously adopted, Council recessed at 9:32 a.m. to a Closed Session in Room 600 to confer with Legal Counsel to discuss existing litigation pursuant to Government Code Section 54956.9; subsection (a) considering the case(s) of: (1) Bui, et al. v. City of San José, et al.; and (B) to confer with Legal Counsel to discuss anticipated litigation pursuant to Government Code Section 54956.9, subsection (b) in one (1) matter involving significant exposure to litigation; and (C) to discuss pursuant to Government Code Section 54957, subsection (c), Public Employment/Public Employee Appointment, Title: City Clerk; and (D) to confer with Labor Negotiator pursuant to Government Code Section 54957.6, City Negotiator: City Manager designee Alex Gurza, and the following Employee Organizations: (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.

By unanimous consent, Council reconvened from the Closed Session and recessed at 11:45 a.m. and reconvened at 1:36 p.m. in the Council Chambers.

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

Absent: Council Members - None.

## INVOCATION

Honoring International Women's History Month, Naiema Din, member of Girls for a Change, spoke of women sharing the power of leadership, and partnering with men to change the world. Niko Clifford is the Executive Director of Girls for a Change. (District 3)

## 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 carried unanimously, the Orders of the Day, and the Amended Agenda were approved. Vote: 11-0-0-0.

Mayor Gonzales welcomed the Sacred Heart students from Saratoga.

## CEREMONIAL ITEMS

Mayor Gonzales announced the appointment of the new City Clerk, Ms. Lee Price from the City of San Luis Obispo. Ms. Price thanked Mayor Gonzales, and the City Council, and remarked she is looking forward to serving the citizens of San José.

## CONSENT CALENDAR

Upon motion by Vice Mayor Dando, seconded by Council Member Chavez and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. Vote: 11-0-0-0.

- 2.1 Approval of City Council Minutes for:**
- (a) Regular meeting of February 24, 2004**
  - (b) Regular meeting of March 2, 2004**

Documents Filed: The Regular Meeting Minutes of February 24, 2004, and March 2, 2004.

Discussion/Action: The Minutes were approved, with Staff directed to correct the Minutes of February 24, 2004, Page 14, 4th paragraph, changing the wording from “the use of photo tapes”, to “the use of *photovoltaics*”. Vote: 11-0-0-0.

- 2.3 Adoption of a resolution authorizing the Director of Public Works to negotiate and execute an agreement with the State of California for the purchase of an easement over a portion of land located at the River Oaks Reach of the Coyote Creek Trail between State Route 237 and the Montague Expressway in an amount not to exceed \$22,000, and to execute any additional documents necessary to complete the transaction. CEQA: Exempt, PP03-07-230. Council District 4. (Public Works) (Deferred from 3/9/04 – Item 2.8)**

### 2.3 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated February 18, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 72005, entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Public Works to: (i) Negotiate and Execute an Agreement with the State of California for the Purchase of an Easement Located at the River Oaks Reach of Coyote Creek Trail in an Amount Not To Exceed \$22,000; and (ii) Execute all Documents Necessary to Complete the Transaction", was adopted. Vote: 11-0-0-0.

### 2.4 **Adoption of a resolution authorizing the City Manager to negotiate and execute an amendment to extend the term of an office lease with HMS Host through June 30, 2009, with minimum annual revenue to the City in the amount of \$45,525. CEQA: Resolution Nos. 67380 and 71451, PP04-03-067. (Airport)**

Documents Filed: Memorandum from Director of Aviation Ralph Tonseth, dated March 8, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 72006, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Amendment to Extend the Term of an Office Lease with HMS Host Through June 30, 2009 with a Minimum Annual Revenue to the City in an Amount of \$45,525", was adopted. Vote: 11-0-0-0.

- 2.5 (a) **Approval of a first amendment to the Ground Lease with AvBase San José LLC to re-configure the leased premises with no increase in the total square footage, and to modify provisions regarding compliance with the City's Airport curfew to be consistent with curfew provisions in all three Fixed Based Operator (FBO) agreements at the Airport.**
- (b) **Approval of a first amendment to the Ground Lease with ACM Aviation LLC to modify provisions regarding compliance with the City's Airport curfew to be consistent with curfew provisions in all three FBO agreements at the Airport.**
- (c) **Approval of a seventh amendment to the Ground Lease with San José Jet Center to modify provisions regarding compliance with the City's Airport curfew to be consistent with curfew provisions in all three FBO agreements at the Airport.**

**CEQA: Resolution Nos. 67380 and 71451, PP04-02-056. (Airport)**

Documents Filed: Memorandum from Director of Aviation Ralph Tonseth, dated March 11, 2004, recommending approval of first amendment to said Ground Leases with AvBase San José LLC, ACM Aviation LLC, and San José Jet Center.

## 2.5 (Cont'd.)

Discussion/Action: The amendments to the Ground Lease Agreements with AvBase San José LLC, ACM Aviation LLC, and San José Jet Center, to modify provisions regarding compliance with the City's Airport curfew to be consistent with curfew provisions in all three FBO agreements at the Airport were approved, and their execution authorized. Vote: 11-0-0-0.

## 2.6 **Acceptance of the 2004 Public Art Workplan. CEQA: Not a Project. (Conventions, Arts and Entertainment)**

Documents Filed: Memorandum from Acting Director Conventions, Arts and Entertainment Jim McBride, dated March 12, 2004, recommending acceptance of the 2004 Public Art Workplan, and transmitting the *2004 Public Art Workplan* Report.

Discussion/Action: Council Member Williams moved approval of the Staff recommendation. Vice Mayor Dando seconded the motion. Council Member Chavez remarked in terms of the Public Art Task Force, asked if there is a group that is impaneled by the Office of Cultural Affairs (OCA), prior to the artist being chosen. Acting Director Conventions, Arts and Entertainment Jim McBride replied that is correct, and it is in conjunction with Council Offices, the Department of Public Works, and the Client Department. Vice Mayor Dando commented there are three different art projects going on currently in District 10, and complimented the department for accomplishing such an outstanding job. On a call for the question, the motion carried unanimously, and the *Public Art Workplan* Report was accepted. Vote: 11-0-0-0.

## 2.7 **Adoption of a resolution authorizing the City Manager to negotiate and execute an agreement with Gloria Bornstein to fabricate and install public artwork at Emma Prusch Park, for an amount not to exceed \$86,160. CEQA: Exempt, PP04-01-007. (Conventions, Arts and Entertainment)**

Documents Filed: Memorandum from Acting Director Conventions, Arts and Entertainment Jim McBride, dated March 3, 2004, recommending adoption of said resolution.

Discussion/Action: Council Member Williams pointed out the fact that public art is going to be a benefit to the City, it is usable for community, highlighting it is functional as well as public. Upon motion by Council Member Williams, seconded by Council Member Cortese, and carried unanimously, Resolution No. 72007, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute an Agreement with Gloria Bornstein to Fabricate and Install a Public Artwork at Emma Prusch Park for an Amount Not To Exceed \$86,160", was adopted. Vote: 11-0-0-0.

**2.8 Adoption of appropriation ordinance and funding sources resolution amendments in the Workforce Investment Act Fund (290):**

- (a) **Establish an appropriation for High Technology National Emergency Grant to the Office of Economic Development, in the amount of \$1,191,165.**
- (b) **Establish an appropriation for Transportation National Emergency Grant to the Office of Economic Development, in the amount of \$396,613.**
- (c) **Increase Grant Revenue in the amount of \$1,587,778.**

**CEQA: Not a Project. (Economic Development/City Manager's Office)**

Documents Filed: Memorandum from Director of Economic Development Paul Krutko, and Budget Director Larry Lisenbee, dated March 11, 2004, recommending adoption of said Appropriate Ordinance and Funding Sources Resolution amendments.

Discussion/Action: Ordinance No. 27101, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the Workforce Investment Act Fund for National Emergency Grant Allocation; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption; and Resolution No. 72008, entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71608 Setting Forth the Estimated Sources of Funds for the Fiscal Year 2003-2004 to Adjust Revenues in the Workforce Investment Fund Act", were adopted. Vote: 11-0-0-0.

**2.9 Adoption of a resolution authorizing the City Manager to execute an agreement with the Santa Clara Valley Water District (SCVWD) for the relocation of the Route 237 Eastbound Bridge Water Main for a total cost not to exceed \$207,930. CEQA: Santa Clara Valley Water District Final Environmental Impact Report for the Lower Guadalupe River Flood Protection Project. Council District 4. (Environmental Services)**

Documents Filed: Memorandum from Director of Environmental Services Carl Mosher, dated March 5, 2004, recommending adoption of said resolution.

Discussion/Action: Resolution No. 72009, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Execute an Agreement with the Santa Clara Valley Water District for the Relocation of the Route 237 Eastbound Bridge Water Main in an Amount Not To Exceed \$207,930", was adopted. Vote: 11-0-0-0.

**2.10 Approval of award of open purchase orders for supplies, materials, equipment, and services for FY 2003-2004 #16, and authorization for the Director of General Services to execute the purchase orders. CEQA: See memo for CEQA designation(s). (General Services)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated March 3, 2004, recommending approval of award of said open purchase orders.

Discussion/Action: The award of open purchase orders for FY 2003-2004 #16 was approved and the Director of General Services was authorized to execute the purchase orders. Vote: 11-0-0-0.

**2.11 Approval of an agreement with the Estate of John T. Abeloe, for the purchase of a portion of property located at 3710 Stevens Creek Boulevard and a temporary construction easement on adjacent property, in the amount of \$12,500. CEQA: Exempt, PP02-01-001. Council District 1. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated March 3, 2004, recommending approval of said agreement between the City of San José, and Estate of John T. Abeloe.

Discussion/Action: The agreement between the City of San José, and Estate of John T. Abeloe, for the purchase of a portion of property located at 3710 Stevens Creek Boulevard, and a temporary construction easement on adjacent property, in the amount of \$12,500, was approved, and its execution authorized. Vote: 11-0-0-0.

**2.12 Approval of an agreement with San José Water Company for design, engineering and installation of water services for the New Civic Center Project in the amount of \$150,582. CEQA: Civic Plaza Redevelopment Plan, Resolution No. 68905, PP98-03-072. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated March 12, 2004, recommending approval of said agreement with San José Water Company for design, engineering and installation of water services for the New Civic Center Project.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition of the issue. Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the agreement with San José Water Company for design, engineering and installation of water services for the New Civic Center Project in the amount of \$150,582, was approved and its execution authorized. Vote: 11-0-0-0.

**2.13 Acceptance of the San José Arena Authority's Fiscal Year 2002-2003 Annual Report. CEQA: Not a Project. (San José Arena Authority)**

Documents Filed: Memorandum from Chris Morrissey, Executive Director, dated March 2, 2004, transmitting the San José Arena Authority's Fiscal Year 2002-2003 Annual Report.

Discussion/Action: The San José Arena Authority's Fiscal Year 2002-2003 Annual Report was accepted. Vote: 11-0-0-0.

- 2.14 Approval of an amendment to the lease between the City of San José and the San José Unified School District for District's use of 3.316 acres of City owned land adjacent to Watson Park, extending the term of the lease by 35 years to June 30, 2048. CEQA: Exempt, PP04-02-029. Council District 3. SNI: 13<sup>th</sup> Street. (General Services)  
(Deferred from 3/16/04 – Item 2.6)**

Documents Filed: Memorandum from Director of General Services Jose Obregon, dated February 25, 2004, recommending approval of amendment to said lease between the City of San José and the San José Unified School District for District's use of 3.316 acres of City owned land adjacent to Watson Park.

Discussion/Action: Council Member Chavez remarked in the Building Strong Neighborhood Committee Meeting there have been ongoing discussions in regard to the City's partnerships with the schools, and ensuring there is a framework for these agreements to come forward. She commented that recently an item came up relating to Staff having a difficult time with a similar lease agreement, and needing cooperation from the School District. She stated the City needs a framework in order to work out from a process, procedures, and expectation perspective, under what terms and conditions the City will move forward in these kinds of agreements, and what the outcome will be. She requested that Staff work with the City Manager's Office on this issue. Upon motion by Council Member Chavez, seconded by Vice Mayor Dando, and carried unanimously, the amendment to the lease between the City of San José and the San José Unified School District for District's use of 3.316 acres of City owned land adjacent to Watson Park, extending the term of the lease to June 30, 2048, was approved, and its execution authorized Vote: 11-0-0-0.

## **END OF CONSENT CALENDAR**

### **STRATEGIC SUPPORT SERVICES**

- 3.2 Report of the Rules Committee - Meeting of March 10, 2004  
Vice Mayor Dando, Chair**

Documents Filed: The Rules Committee Report dated March 10, 2004.

- (a) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (b) City Council
  - (1) Review March 23, 2004 Draft Agenda

The Committee recommended approval of the March 23, 2004 City Council agenda with two additions.

**3.2 Report of the Rules Committee - Meeting of March 10, 2004 (Cont'd.)  
Vice Mayor Dando, Chair**

(b) City Council (Cont'd.)

- (2) Add New Items to March 16, 2004 Amended Agenda

The Committee recommended five additions to the March 16, 2004 City Council Agenda.

- (3) List of Reports Outstanding. Attachment: Report from the City Manager, dated March 9, 2004, transmitting reports outstanding for March 16, 2004.

The Committee noted and filed the City Manager's report stating there are three Staff reports outstanding for the March 16, 2004 Council agenda.

(c) Legislative Update

- (1) State

There was no report.

- (2) Federal

There was no report.

(d) Meeting Schedules - There were none.

- (e) The Public Record. Attachment: Memorandum from Acting City Clerk Deanna J. Santana, dated March 4, 2004, transmitting the items to the Administration and the Public Record for the period February 25-March 2, 2004.

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

- (1) Request the City of San José take a position on the closure plan of Agnews Developmental Center. Attachment: Memorandum from Council Members LeZotte, and Chavez, dated March 5, 2004, recommending resolution in opposition to the closure of Agnews Development Center.

The Committee directed the Administration to forward a letter, opposing the closure of Agnews Development Center, to the Governor and local legislators urging them to find an alternative to closing this valuable facility.

**3.2 Report of the Rules Committee - Meeting of March 10, 2004 (Cont'd.)  
Vice Mayor Dando, Chair**

- (h) Oral communications - None were presented.
- (i) Adjournment - The meeting was adjourned at 2:10 p.m.

Discussion/Action: Mayor Gonzales called for public testimony. Brain Boxall spoke on the issue of the Agnews Development Center. City Manager Del Borgsdorf, Director of Intergovernmental Relations Betsy Shotwell will work with Mr. Boxall regarding this matter. Upon motion by Council Member Cortese, seconded by Council Member Chavez, and carried unanimously, the Rules Committee Report and the actions of March 10, 2004, were accepted. Vote: 11-0-0-0.

**3.2 Report of the Partial Rules Committee - Meeting of March 17, 2004  
Vice Mayor Dando, Chair**

Documents Filed: The Partial Rules Committee Report dated March 17, 2004.

- (c) Legislative Update
  - (1) State
    - (a) Request to support “The Local Tax Payers and Public Safety Protection Act”. Attachment: Memorandum from Director of Intergovernmental Relations Betsy Shotwell, dated March 15, 2004, recommending acceptance of the Local Taxpayers and Public Safety Protection Act Report.

The Committee recommended support of the Local Taxpayers and Public Safety Protection Act initiative, and requested Administration to confer with the League of California Cities regarding the necessity of a City resolution to support the initiative.

Discussion/Action: Vice Mayor Dando commented that Betsy Shotwell requested a one-week turnaround for the support of the Local Taxpayers and Public Safety Protection Act, which is a valid initiative that is being carried by the League of California Cities. Council Member Cortese clarified that this is a partial Rules Committee summary. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the Partial Rules Committee Report and the actions of March 17, 2004, were accepted. Vote: 11-0-0-0.

**3.3 Report of the Making Government Work Better Committee – March 10, 2004  
Council Member Campos, Chair**

Documents Filed: The Making Government Work Better Committee Report dated March 10, 2004.

### **3.3 Report of the Making Government Work Better Committee – March 10, 2004 Council Member Campos, Chair (Cont'd.)**

- (a) Investment Report – Follow-Up to Meeting of February 11, 2004. Attachment: Memoranda from Director of Finance Scott Johnson, dated February, 20, 2004, and March 2, 2004, recommending adoption of said resolution, and transmitting January 2004 Investment Report.

The Committee accepted the follow up report, with only two members present. See Item 3.8 for Council Action Taken.

- (b) Public Works Real Estate Division Audit

Item (b) deferred until May 2004.

- (c) Report on Culture Change Efforts in the City Organization for the New City Hall and “One Voice” Project. Attachment: Memorandum from Assistant City Manager Mark Linder, and Director Employee Services Mark Danaj, dated March 3, 2004, recommending acceptance of the City Culture Change Efforts.

The Committee accepted the Staff report.

- (d) City Clerk One-Stop Shop Status Report. Attachment: Memorandum from Acting City Clerk Deanna J. Santana, dated February 27, 2004, recommending acceptance of the City Clerk One Stop Shop Status Report.

The Committee accepted the Staff report.

- (e) Discussion of Additional Streamlining Opportunities to the Streamlining Ordinance. Attachment: Memorandum from Director of General Services Jose Obregon, dated March 2, 2004, recommending acceptance of Staff report.

The Committee accepted the Staff report, with Staff requested to bring back to the Committee in August, a proposed increase along with a statement of current policy, and a report on the performance of system measures.

- (f) Discussion of the Bureau of Fire Prevention Audit Outcomes. Attachment: Memorandum from Acting Fire Chief Dale Foster, dated March 3, 2004, recommending acceptance status of City Audit report.

The Committee accepted the Staff report, with the request that they revisit this at a later time.

### **3.3 Report of the Making Government Work Better Committee – March 10, 2004 Council Member Campos, Chair (Cont'd.)**

- (g) Continued Discussion of the Update of Major Information Technology Projects (Customer Relationship Management, Utility Billing System, Partner Relationship Management). Attachment: Memorandum from Chief Information Officer Wandzia Grycz, Director of Finance Scott Johnson, and Director of Environmental Services Carl Mosher, dated March 3, 2004, recommending acceptance of the CUSP Project Report update.

The Committee accepted the Staff report with the direction to cross-reference this item on the March 23, 2004 Council Agenda. See Item 3.9 for Council Action Taken.

- (h) Oral petitions - There were none.
- (i) Adjournment - The meeting was adjourned at 5:00 p.m.

Discussion/Action: Upon motion by Council Member Campos, seconded by Council Member Williams, and carried unanimously, the Making Government Work Better Committee Report, and the actions of March 10, 2004, were accepted. Vote: 11-0-0-0.

### **3.4 Adoption of a resolution:**

- (a) **Declaring results of the March 2, 2004 Municipal Election pursuant to Elections Code Section 15400; and,**
- (b) **Calling for a Run-Off Election to be held November 2, 2004, setting a deadline of August 3, 2004 for ballot measures to be added to the ballot, and authorizing the City Clerk to take such actions necessary to facilitate the Election.**

**(Acting City Clerk)**

Documents Filed: None.

Discussion/Action: Item 3.4 was deferred to 3/30/04.

### **3.5 Acceptance of:**

- (a) **The report of results from the 2003 San José Community Survey; and**
  - (b) **The Mid-Year 2003-2004 City Service Area Performance Report.**
- (City Manager's Office)**

Documents Filed: (1) Memorandum from City Manager Del Borgsdorf, dated March 15, 2004, recommending acceptance of the results from the 2003 San José Community Survey, and the Mid-Year 2003-2004 CSA Performance Report. (2) The City of San José 2003 Community Survey Results dated December 14-23, 2003. (3) 2003-2004 Mid-Year City Service Area Performance Report. (4) Staff slide presentation dated March 23, 2004.

### 3.5 (Cont'd.)

Discussion/Action: City Manager Del Borgsdorf gave a slide presentation of the 2003 San José Community Survey, and the Mid-Year 2003 City Service Area Performance Report. City Manager Borgsdorf introduced Brooke Myhre Principal Budget Analyst from the Manager's Office and author of the Performance Report, and David Metz Senior Vice President, Fairbank, Maslin, Maullin & Associates.

Vice Mayor Dando referring to Page 11 of the 2003 Community Survey results, remarked it states dissatisfaction with City Services tends to be the highest among apartment renters and Latinos, especially women and those over the age of 50, and asked when an item like this is identified, that is clearly an area where the City should make improvements, how will Staff address that issue. Principal Budget Analyst Brooke Myhre replied the surveys are initial starting points for the analysis, and the City Service Areas will explore where there is relevant services and focus on smaller groups, and as the data is refined, Staff will be able to address other causes and actions. Vice Mayor Dando remarked in regard to evaluation after the survey, requested that Staff pull out those areas identified that need to be addressed, and incorporate what can be done to correct them.

Council Member Chavez referring to Page 27, Reasons for Feeling the Downtown is Unsafe During the Day, asked for an explanations of the numbers in regard to the Open-End, Top Responses, Responses Grouped. She stated there has been debate about whether or not the City has too many police officers downtown that contribute to the feeling of not being safe. She commented in regard to the lack of police, asked if there were respondents that said there were too many police officers. David Metz replied this question was asked only of that 20% of respondents, who said they felt unsafe in the downtown area during the day, and the percentages on Page 27, are actually smaller subsets of that 20%, and therefore it would be less than 4%. Council Member Chavez moved approval of the Staff recommendation. Council Member Williams seconded the motion.

Mayor Gonzales congratulated City Manager Del Borgsdorf, the Administration, and all the City employees for maintaining high grades on this survey. He remarked in regard to the Fiscal Management, that is an issue any public agency grapples with, and the fact that the City has been able to maintain, as well as improve the bond rating during this recession, is phenomenal. He expressed concern that it is appropriate that this report be on the agenda at the same time the budget process begins, as it will be a challenge to maintain this great level as services are being cut back, and that needs to be acknowledged. On a call for the question, the motion carried unanimously, and the report of the results from the 2003 San José Community Survey, and the Mid-Year 2003-3004 CSA Performance Report, were accepted. Vote: 11-0-0-0.

- 3.6 (a) **Approval of the 2003-04 General Fund 100 Vacant Positions Elimination Plan recommended in the memorandum and detailed in Attachment A.**
- (b) **Direction to staff to utilize the \$5.4 million in 2004-2005 cost savings associated with the elimination of the 100 positions (not including Council Appointees) towards reducing the projected 2004-2005 General Fund shortfall.**

**(City Manager's Office)**

**(Referred from 2/17/04 – Item 10.1)**

Documents Filed: (1) Memorandum from Mayor Gonzales, dated March 22, 2004, recommending approval of the list of vacant positions for elimination for Council Appointees. (2) Memorandum from City Manager Del Borgsdorf, dated March 12, 2004, recommending approval of 2003-2004 General Fund 100 Vacant Positions Elimination Plan, and direction to Staff to utilize the \$5.4 towards 2004-2005 General Fund shortfall. (3) Supplemental memoranda from Budget Director Larry Lisenbee, dated March 16, and March 22, 2004, transmitting additional information.

Discussion/Action: Council Member Campos in reference to the Contract Compliance Coordinator, asked whether the Public Works Department was able to handle the work load with current Staff level and expressed concern that by eliminating more positions, the work will slow down the process. Director of Public Works Katy Allen replied last year was an agreement between Public Works and the Redevelopment Agency to do some of their contract compliance work and be reimbursed, and that agreement has been implemented. She added that one of two vacancies that existed in Equality Assurance has been filled permanently. She remarked there would be a service level impact and the officers are handling approximately a 250 case load per employee, and the elimination of this position could impact turnaround time, increase the backlog, and may have an effect on service delivery. Council Member Campos remarked a year ago, Staff was asked to come back with a Status Report on how the program was working, and asked for an update. Director Allen apologized that Staff had not returned with an update, and would check on that. Budget Director Larry Lisenbee added that in the Mid Year Budget Document that was reviewed February 17, 2004, there was a memorandum from Director Allen that addressed that particular issue.

Vice Mayor Dando referring to Page 4 in regard to postponing the Police Recruit Academy and the Fire Recruit Academies, expressed concern because there are a large number of baby boomers that will be retiring soon, and the Public Safety and response time will suffer if the City does not keep pace with the ongoing demand. She remarked another challenge is overtime, and if there are fewer people on the Police or Fire force, the City will have to use more overtime in order to cover the neighborhoods. She asked for comments on how the departments will handle deferring the Police and Fire academies, what will be the long term plan, and the number of firefighters that could retire today. Fire Chief Jeff Clet replied the number that might retire is quite high, and as far as planning adequate recruiting academies to replace the retirees is the larger challenge. He remarked that Staff has looked to potentially plan for an academy that would occur next year, which would allow the department to meet budget reductions,

### 3.6 (Cont'd.)

and at the same time be able to fill vacancies that occur. Vice Mayor Dando remarked it is crucial for Council to receive a report back once there has been an analysis and a development of strategy for covering the large number of retirees, and perhaps hires by lateral, as Staff looks at a complete strategy. She added it makes sense to have the workings of the plan for an Academy, and to find a way to be able to carry through with that Academy for both the Police and Fire Departments. Council Member Chavez remarked on the issue of how much the academies cost, and the strategy for delaying them, as at the first hearing she had requested what the anticipated savings would be in relationship to vacancies coming up, and how the City is covered with regard to overtime. She added in terms of making a short term gain, how long is the gain and what is the impact of strategies that is being employed now to potential overtime pay. Director Lisenbee replied the reason to delay the academies is not to save money, but to wait for further budget reductions, as Public Safety personnel may have to be laid off, and there are scenarios where that may have to be employed. He added it would not make sense to start an academy at the same time as the layoffs. Council Member Chavez remarked that perhaps one of the City's options is an opportunity to talk with the appropriate groups, whether it is with the bargaining units or not, and look at a more flexible system that allows the City to have money set aside in an emergent way for positions with a jury opportunity, and as positions were determined to be necessary, Staff would have more flexibility.

Mayor Gonzales called for public testimony. Jane Lawson, Park Peace Officer Association of San José spoke in opposition of the issue. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, and carried unanimously, the 2003-04 General Fund 100 Vacant Positions Elimination Plan recommended in the memorandum and detailed in Attachment A, and direction to staff to utilize the \$5.4 million in 2004-2005 cost savings associated with the elimination of the 100 positions (not including Council Appointees) towards reducing the projected 2004-2005 General Fund shortfall, was approved. Vote: 11-0-0-0.

### 3.7 **Approval of various actions related to adopting a position to oppose the placement of Cary Verse in San José. (Dando, Gregory, Williams; Mayor)** **(Rules Committee referral 3/17/04)**

Documents Filed: Memorandum from Mayor Gonzales, Vice Mayor Dando, and Council Members Williams, and Gregory, dated March 17, 2004, recommending opposition of the placement of Cary Verse in San José, including direction as stated below.

Discussion/Action: Council Member Williams moved approval of the memorandum he cosigned with Mayor Gonzales, Vice Mayor Dando, and Council Member Gregory, dated March 17, 2004. Council Member Reed seconded the motion. Mayor Gonzales called for public testimony. Ross Signorino, and William Garbett spoke in opposition to the issue. On a call for the question, the motion carried unanimously, and the memorandum from

### 3.7 (Cont'd.)

Mayor Gonzales, Vice Mayor Dando, and Council Members Williams and Gregory, dated March 17, 2004 was approved, with the following directives: (1) Adopt a position opposing the placement of convicted sex offender Cary Verse in San José; (2) Send a letter outlining the City Council's position to the California Department of Mental Health and to the Presiding Judge in this case, inviting each Council Member to cosign; (3) Adopt a position supporting changes to the current State of California notification requirements to ensure that local communities are notified prior to a decision to place a high-risk sex offender in a community; (4) Direct the Administration to work with State decision makers to: (a) Develop stricter notification requirements for State agencies to provide longer advance notification to local communities regarding the proposed release and placement of sex offenders; (b) Explore State legislation or policies to better define an overall process for placing sex offenders in local communities, with requirements that limit their placement away from parks, schools, and other places where children are likely to be present, to ensure a high level of safety; (c) Explore State legislation or policies that would prevent the disproportionate number of sex offenders in any community compared to the rest of the region to prevent inappropriate concentrations. Vote: 11-0-0-0.

### 3.8 **Adoption of a resolution to revise the City of San José Investment Policy to change the frequency of the investment reporting as follows:**

- (a) **From the current monthly detailed reporting format to a quarterly report.**
- (b) **An abbreviated monthly investment report to be distributed through an electronic means to the City Council.**

**CEQA: Not a Project. (Finance)**

**[Making Government Work Better Committee referral 3/10/04 – Item 3.3(a)]**

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated March 18, 2004, recommending adoption of said resolution. (2) January 2004 Investment Report, from the Office of the Director of Finance. (3) City of San José Investment Policy, dated March 23, 2004, from the Office of the Director of Finance.

Discussion/Action: Mayor Gonzales called for public testimony. William Garbett spoke in opposition of the issue. Upon motion by Council Member Reed, seconded by Council Member Williams, and carried unanimously, Resolution No. 72010, entitled: "A Resolution of the Council of the City of San José Approving Changes to the City's Investment Policy Regarding Reporting Requirements", was adopted, with Staff directed to include Interest Earning Year to Date for reporting of investment activity, in the monthly report. Vote: 11-0-0-0.

**3.9 Acceptance of the modified report for the CUSP Project as directed by the Making Government Work Better Committee and direction to staff to proceed with the CUSP RFP process and return to Council by the end of April with a recommended vendor for the purpose of procuring a software solution for an integrated utility billing, customer service, and performance monitoring system. (Finance)  
[Making Government Work Better Committee referral 3/10/04 - Item 3.3(g)]**

Documents Filed: (1) Memorandum from Director of Finance Scott Johnson, dated March 18, 2004, recommending acceptance of the modified CUSP project, and direct Staff to proceed with the CUSP RFP process. (2) Supplemental memorandum from Director of Finance Scott Johnson, dated March 23, 2004, transmitting update on funding alternatives for the CUSP Project. (3) Staff CUSP Slide Presentation, dated March 23, 2004.

Discussion/Action: Director of Finance Scott Johnson gave a brief overview of the two options of the Customer Utility Service Project (CUSP). Council Member Campos moved approval of the Staff recommendation. Council Member Reed seconded the motion.

Council Member Cortese asked if this process is intended to replace the competition policy. Director Johnson replied Staff is looking at the option of outsourcing versus not outsourcing. He stated the vendors for the outsourcing would host the system offsite rather than being maintained at the City of San José, and Staff did not feel it was necessary to go through that competitive process. He added Staff was looking at the overall cost and the benefits in regard to the two options. Council Member Cortese stated in the other report mentioned in reference to paying for this, it would entail more certificate participation or money coming from the enterprise funds, and asked if Council is acting on that today. Director Johnson replied the Staff recommendation is the funding option to be utilized, the commercial paper (CP) program, adding Staff went through the analysis and was asked by the Mayor's office to provide a supplemental analysis report. He stated based on what Staff can borrow, versus what can be currently invested, and if City funds paid for this project, there would be a benefit of moving forward with the commercial paper program over that ten year period for the total of approximately \$1.3 million. Council Member Cortese asked where the principal and interest would be coming from. Director of Finance Scott Johnson replied in both models, Staff is assuming that the rate payers would pay through the normal rates, and Staff would extend the payment for this project over 10 years, with the annual payment approximately \$922,000.

Council Member Cortese asked whether Staff intends to prorate that since there are multiple enterprise funds involved based on what the number of bills per capita. Director Johnson replied correct, Staff looked at the volume of the revenue, and the four utility funds consisting of \$170 million per year in revenue. He stated Staff also looked at the number of bills that the City currently produces, in regard to those four utilities, and it is approximately \$1.8 million per year. He added Staff took a factor of the number of bills and the total revenue, prorated that to determine how those costs would be charged to the four utilities. Council Member Cortese stated the pro rata share to a customer should still

### 3.9 (Cont'd.)

be driven by what it cost, not how much revenue is generated, but the cost of actually producing the billing. Director Johnson replied Staff is taking those costs, and what it takes for the system, and trying to find a mechanism on how to charge that back. He added for those customers who do not utilize the City Municipal water for example, they would not be paying for the cost of that bill, but for the other three services that they may receive, and it will be on a prorated basis. Council Member Cortese asked if Council is acting on that now or will Staff bring this back as part of the budget fee process. Director Johnson replied Staff would come forward in April 2004 with a recommended vendor, and funding method. Council Member Cortese asked for that to be included as part of the motion. Council Member Campos, maker of the motion, and Council Member Reed, seconder of the motion agreed to the amendment to the motion. Council Member Reed pointed out there will be a net savings to the rate payers, and Staff needs to look at how that is spread across to the rate payers in the different programs. On a call for the question, the motion carried unanimously, and the modified report for the CUSP Project was accepted, with Staff directed to return in April 2004 with a recommended vendor and funding method. Vote: 11-0-0-0.

## ECONOMIC & NEIGHBORHOOD DEVELOPMENT

### 4.3 Adoption of a resolution authorizing the City Manager to negotiate and execute:

- (a) **An Expansion Agreement with San José Arena Management LLC, a California limited company regarding the construction and financing of the second expansion to the Ice Centre of San José (Logitech Ice); and**
- (b) **The Amended and Restated Lease and Management Agreement with San José Arena Management LLC, for the operation and management of the Ice Centre of San José.**

**CEQA: Negative Declaration, File No. H-93-06-038 and add addenda thereto, File No. HO3-035. (Economic Development)  
(Deferred from 3/9/04 – Item 4.3)**

Documents Filed: (1) Memorandum from Director of Economic Development Paul Krutko, dated March 15, 2004, recommending adoption of said resolution. (2) Supplemental memorandum from Director of Economic Development Paul Krutko, dated March 19, 2004, transmitting changes to the anticipated start date of construction on the Ice Centre expansion.

Discussion/Action: Mayor Gonzales called for public testimony. Chris Miller, Dan Gralnek, Sharks, Eileen Castagna, Ron Glasow, Harvey Baker, and Nelly Maguire spoke on the issue. Council Member Gregory moved approval of the Staff recommendation. Council Member Chavez seconded the motion.

### 4.3 (Cont'd.)

Council Member Cortese referring to Page 64 of Lease Agreement itself, commented on the amended language that has to do with the Right of First Refusal and the Sharks, the current operator, would have relative to any outside proposal that pertains to a replacement rink anywhere in San José. He stated through some negotiation efforts, an exception has been made for a replacement of at least a single rink, such as Eastridge Rink, which could be replaced without triggering any clauses in this document that would invoke the Right of First Refusal or an additional process involving the Sharks. He added the document before Council today does include an exception for replacing a single sheet of ice for Eastridge. He expressed concern however, if a party comes forward, proposes more than a single sheet of ice anywhere in San José, including in the Eastridge area, or if the City wants to initiate construction, development or financing of another facility, then it triggers the Right of First Refusal that the Sharks, operating company, would be required to offer to do the proposal or not. He remarked the Lease Agreement also states if the Sharks do not opt into such a deal, and the impact of the new facility causes an economic hardship on Logitech Ice, then the lease would be required to be renegotiated, and then the language does not specify a process for resolving that issue or a process for determining how to figure out if any loss or reduction of revenue at Logitech would be directly caused by another facility, as opposed to an economic downturn or poor management. He added that he raised this issue to the General Counsel of the City and they did not see any changes to the language. Council Member Cortese asked for an explanation of where those negotiations left off.

Director of Economic Development Paul Krutko replied to understand the reason for the clause is that the existing 3 rinks and the additional rink have a lease structure set up in which the City is taking on the obligation of issuing bonds, and the Sharks are taking on the obligation of repaying those bonds. He stated the Sharks's payments from operating the facility is what repays the debt service the City issued on the facility. He stated part of what this clause deals with is the notion that as the entity is paying off the debt service on the facility the City owns and on which the City is leasing it to them, and if they would somehow be damaged by a competing facility, that would damage the City's own deal structure, and that is one of the reasons why the clause was inserted in the first place. He added this language is different than the language that was in the current agreement. He stated the current agreement has the same stipulation, so the existing lease situation the City is under, if the City did not move forward with the fourth rink, it does have the same scenario in place. He stated if a multi rink facility is brought forward, and if the attendance at Logitech declines, then they would have a cause to come to the City stating they have been harmed, and the lease would be opened for negotiation. He stated Staff has negotiated, with assistance from General Counsel, language that speaks actual decline in financial performance where the projected future impacts the facility. He stated Staff has moved the language from the lease from a decline in attendance to an emphasis on a decline in financial performance that would be impacted. He stated this is a negotiated process, and there is language within the document that describes an approach when the City is in dispute, there is a procedure for mediation of that dispute.

### 4.3 (Cont'd.)

City Attorney Richard Doyle remarked there is a mediation section, and this a delegation to the City Manager to negotiate the proposed lease and an agreement for the expansion if it is 95% substantially complete, and Staff could revisit Section 1818 if Council wants it make it clear. He stated the Council's concern is that the Manager must show that in fact there has been a resulting decline of financial performance, and there is a mediation process in place to take care of that. Director Krutko clarified in terms of this document, "Manager" is the HP Pavilion Manager not the City Manager. Council Member Cortese stated the City Attorney has summarized his own concerns, and if within the document there is room to negotiate, he requested that Staff clean up or tighten up this language to be clearer on how the City determines if they have been damaged, and how that is measured. He added it is better to support this on the right terms, with an exception in the language for developing the Eastridge Rink, so there is no harm done to the overall community of having less ice. He asked the maker of motion to amend the motion to allow additional direction to the City Attorney to resolve the language more to the City's benefit and satisfaction. Council Member Gregory, the maker of the motion, and Council Member Chavez, the seconder of the motion, accepted the amendment.

Council Member Cortese requested input from the Council regarding this motion, whether or not Council is interested in requesting the City Manager to "pursue" a replacement rink, and to make that a priority. He asked the City Manager to explore the possibility of City participation in a replacement rink for the Eastridge rink. Mayor Gonzales replied that issue should be referred to the budget process when it can be discussed with the other priorities. Council Member Cortese requested that Staff continue to help the community and potential operators explore alternatives for replacing Eastridge rink, with Staff commenting back in the budget session. On a call for the question, the motion carried unanimously, and Resolution No. 72011, entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute: (A) An Expansion Agreement with San José Arena Management LLC Regarding the Construction and Financing of the Second Expansion of the Ice Centre, and (B) An Amended and Restated Lease and Management Agreement with San José Arena Management LLC for the Operation and Management of the Ice Centre", was adopted, with Staff directed to resolve and amend the language in the Lease Agreement as it pertains to the Right of First Refusal; and to continue to assist the community and potential operators to explore alternatives for replacing the Eastridge rink, with Staff to report back during the budget sessions. Vote: 11-0-0-0.

## **RECREATION & CULTURAL SERVICES**

### **5.1 Report of the All Children Achieve Committee – March 11, 2004 Council Member Yeager, Chair**

Documents Filed: The All Children Achieve Committee Report dated March 11, 2004.

**5.1 Report of the All Children Achieve Committee – March 11, 2004 (Cont'd.)  
Council Member Yeager, Chair**

- (a) Civic Center Childcare Update

The Committee accepted the Staff report.

- (b) Update on the Early Child Care and Education Master Plan. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated February 25, 2004, recommending acceptance of the Update on the Early Care and Education Master Plan.

- No Child Left Behind Act
- Linkages with County Collaborative on Education
- Strategy on Achieving Master Plan Goals

The Committee accepted the Staff report.

- (c) Report on School Traffic Safety Program. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated February 25, 2004, recommending acceptance of the Safe School Program Update.

The Committee accepted the Staff report.

- (d) Safe School Program Update. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated February 25, 2004, recommending acceptance of the Safe School Program Update.

The Committee accepted the Staff report.

- (e) Oral petitions - There were none.

- (f) Adjournment - The meeting was adjourned at 2:45 p.m.

Discussion/Action: Upon motion by Council Member Yeager, seconded by Council Member Chavez, the All Children Achieve Committee Report and the actions of March 11, 2004, were accepted. Vote: 11-0-0-0.

- 5.2 (a) Report on bids and award of contract for Lone Bluff Mini-Park Project to the low bidder, Lone Star Landscape, Inc., in the amount of \$498,100, and approval of a contingency in the amount of \$24,900.**

- (b) Adoption of the following appropriation ordinance amendments in the Council District 7 Construction & Conveyance Tax Fund**

**(1) Increase the Lone Bluff Mini-Park Project by \$150,000.**

**(2) Decrease the Ending Fund Balance by \$150,000.**

**CEQA: Resolution No. 69623, and addenda thereto, H03-029. Council District 7. Public Works/Parks, Recreation and Neighborhood Services/City Manager's Office)**

## 5.2 (Cont'd.)

Documents Filed: Memorandum from Director of Public Works Katy Allen, Director of Parks, Recreation and Neighborhood Services Sara Hensley, and Budget Director Larry Lisenbee, dated March 3, 2004, recommending award of said contract for Lone Bluff Mini-Park Project to the low bidder, Lone Star Landscape, Inc., with related contingency, and adoption of said appropriation ordinance amendments in District 7 C&C Tax Fund.

Discussion/Action: Upon motion by Council Member Gregory, seconded by Council Member LeZotte, and carried unanimously, the award of the contract for Lone Bluff Mini-Park Project to the low bidder, Lone Star Landscape, Inc., with related contingency, was approved, and Ordinance No. 27102, entitled: "An Ordinance of the City of San José Amending Ordinance No. 26916 to Appropriate Moneys in the Council District 7 Construction and Conveyance Tax Fund for the Lone Bluff Mini Park Project; and Providing that this Ordinance Shall Become Effective Immediately Upon Adoption", was adopted. Vote: 11-0-0-0.

## TRANSPORTATION SERVICES

### 6.1 Report of the Building Better Transportation Committee – March 1, 2004 Council Member Cortese, Chair

Documents Filed: The Building Better Transportation Committee Report dated March 1, 2004.

- (a) Expansion and Improvement of Transit and Transportation Systems
  - (1) Taxicab Service Model Report (Continued from February 2, 2004). Attachment: Memorandum from Director of Transportation James Helmer, Director of Aviation Ralph Tonseth, and Police Chief Robert Davis, dated February 17, 2004, recommending acceptance of the Taxicab Service Model Progress Update.

The Committee accepted the Staff report.

- (b) Traffic Relief/Safe Streets
  - (1) Traffic Calming Program and Public Education Campaign "Street Smarts". Attachment: Memorandum from Director of Transportation James Helmer, and Police Chief Robert Davis, dated February 17, 2004, recommending acceptance of the Traffic Calming Program and Street Smarts Campaign.

The Committee accepted the Staff report, with Staff directed to move this item forward to April 2004, and report out on a quarterly basis.

**6.1 Report of the Building Better Transportation Committee – March 1, 2004  
Council Member Cortese, Chair (Cont'd.)**

- (2) Review of Proposed Transportation Development Act (TDA) Grants for Bicycle/Pedestrian Projects. Attachment: Memorandum from Director of Transportation James Helmer, dated February 17, 2004, recommending acceptance of the Pedestrian and Bicycle Project Grants Report.

The Committee accepted the Staff report.

- (d) Regional Relationships/Funding/Policy
  - (1) Freeway Litter Abatement Report. Attachment: Memorandum from Director of Transportation James Helmer, and Director of Parks, Recreation and Neighborhood Services Sara Hensley, dated February 17, 2004, recommending acceptance of the Freeway Clean-Up Program Status Report.

The Committee accepted the Staff report.

- (2) Update on the Santa Clara Valley Transportation Authority (VTA), Valley Transportation Plan (VTP) 2030 (Continued from February 2, 2004). Attachment: Memorandum from Director of Transportation James Helmer, dated February 17, 2004, recommending acceptance of the VTP 2030 Status Report.

The Committee accepted the Staff report, requesting that this item come back in April 2004 with final recommendations.

- (e) Oral petitions - There were none.
- (f) Adjournment - The meeting was adjourned at 3:45 p.m.

Discussion/Action: Upon motion by Council Member Cortese, seconded by Council Member Chavez, the Building Better Transportation Committee and the actions of March 1, 2004, were accepted. Vote: 11-0-0-0.

**ENVIRONMENTAL & UTILITY SERVICES**

**7.1 PUBLIC HEARING and adoption of a resolution vacating a 60-foot wide Storm Drain Easement on the northwest corner of Almaden Avenue and Woz Way. CEQA: Resolution Nos. 64273 and 68839 and addendum thereto, RH00-05-005. Council District 3. (Public Works)**

Documents Filed: (1) Memorandum from Director of Public Works Katy Allen, dated March 3, 2004, recommending adoption of said resolution. (2) Proof of Publication of Notice of Public Hearing, executed on March 9, and March 16, 2004, submitted by the City Clerk.

## 7.1 (Cont'd.)

Discussion/Action: Mayor Gonzales opened the public hearing for the subject property, and there was no discussion from the floor. Upon motion by Council Member Chavez, seconded by Council Member LeZotte, and carried unanimously, Resolution No. 72013, entitled: "A Resolution of the Council of the City of San José Vacating a Sixty Foot Wide Storm Drain Easement on the Northwest Corner of Almaden Avenue and Woz Way", was adopted. Vote: 11-0-0-0.

## JOINT COUNCIL/REDEVELOPMENT AGENCY

The Redevelopment Agency Board convened at 5:03 p.m. to consider Items 10.1 and 10.2 in a Joint Session.

### 10.1 PUBLIC HEARING and approval of the FY 2004-2005 Mayor's March Budget Message. (Mayor)

Documents Filed: (1) Memorandum from Mayor Gonzales, dated March 17, 2004, recommending approval for the March Budget Message for Fiscal Year 2005-2005. (2) Letters from the public, dated March 23, 2004, recommending funding the Clean Slate Program.

Discussion/Action: Mayor Gonzales remarked this is not a beginning but is a head start, and clearly this is the toughest budget year. He expressed concern in regard to the State Legislature and the Governor, stating that the Bond Measure will not solve all the problems for the State, and the City of San José may have to anticipate other cuts, which would entail providing services at less cost, and less core services to deliver.

Council Member Chavez referring to helping All Children Achieve on Page 8, the first element of that is increasing high school graduation rates. She stated one of the items she wants to make sure of is that Staff has looked at the companion programs that have helped the City be effective, and one of those programs is TABS, which has been keeping children in school, and one of the challenges has been that the City has continued to fund these programs and not share in any revenue from the schools having students actually attend class. She added part of this strategy is to figure out how the City participates in the upside of the expenditures that are being made, and Mayor Gonzales replied that is a good point. Council Member Chavez referring to the Citation Fees on Page 9, recommending the City Manager provide a comparison of other city citation fees, that when comparing fees of the smaller programs, suggested that Staff look at increases that allow the City to maintain funding those programs. She remarked on Page 9, in regard to the Driving a Strong Economy, expressed appreciation for Mayor Gonzales' continued focus on the housing. Referring to the Convention Center Expansion, Council Member Chavez suggested looking at the Boston Properties site as an opportunity for expansion, as that area will need the support of more parking. She remarked in reference to Page 7, the Police Department Permit Unit moving forward in terms of festivals and permitting would bring more people to use the festivals. Referring to Page 6, the Safest Big City in

## 10.1 (Cont'd.)

America, and the Public Safety Grant Writing and merging that into one department, she remarked the public safety component works well and wants to make sure the City is not merging functions in a way that impedes that ability, and limits its expertise.

Referring to the Senior Programs on Page 6, Vice Mayor Dando expressed encouragement that Mayor Gonzales made a commitment to maintain the basic senior services and asked that as discussions continue with senior services, that the Senior Commission be brought into discussions early on. Referring to Public Safety, Vice Mayor Dando mentioned one item regarding the Hazmat Team, and expressed reluctance to support the decentralization of the Hazmat Team, as it seems there is talk of more chemical spills, terrorists, and similar issues, and if the City is adjusting any of the Public Safety, it should be accomplished in a very thoughtful and deliberate manner. Referring to Page 7, the strategies related to where and what equipment is deployed, Vice Mayor Dando requested additional information about what that entails before the City changes how the Hazmat Team is currently organized. She remarked the bottom line with the Hazmat Team is that if the City begins moving them around, and splitting them up, the City no longer has a team, and will lose some of the skills they provide on fairly regular basis, and requested to know more about that issue. She remarked in regard to rotating closures of fire stations, that is a sensitive issue with the community, and requested that Staff look at the history of service in those particular areas. In regard to the Schools/City Collaborative and Education, Vice Mayor Dando remarked she discussed this issue with the Mayor's staff several times, and the School Districts currently are looking at cutting back and perhaps not providing the funding for the Schools/City Collaborative Staff position. She added that is a tough suggestion to make but worthwhile, and there could be savings in that area, plus other ways to provide some other services in working with the schools. In regard to the Library hours, she remarked rather than closing the libraries, recommended that Staff look at reducing hours, or "brown out", and limit the hours of services on a day.

Vice Mayor Dando, referring to the 911 User Fee asked to better understand exactly how the user fee works, and expressed concern about the fees, preferring that a fund be set aside for the 911 User Fee and that the money go to Public Safety, and as an alternative the City could augment or add to the current Public Safety Budget. City Attorney Richard Doyle replied the fee has to pay for the service, it is charged across the board, and it pays for the cost of the program. Vice Mayor Dando asked whether the fee appears on all phone bills, and will the money be earmarked for public safety, and City Attorney Richard Doyle replied that is correct. Vice Mayor Dando requested that Staff reflect upon a "sunset" of the 911 fees when the City is out of the difficult budgetary times, and asked for Staff to revisit the issue. Budget and Policy Director Joe Guerra replied there is not a specific proposal related to the 911 fees in the March message, but Council adopted an item directing the City Manager to explore that issue in the February Budget direction, with direction for the Manager to come back with detailed information. Vice Mayor Dando suggested that Staff discuss the possibility of a "sunset" of those fees, and added one of the difficulties with accepting new taxes, fees during tough times to meet budgets, is that the fees stay, and suggested there be an opportunity to reconsider those fees.

## 10.1 (Cont'd.)

Council Member LeZotte expressed appreciation for expanding the Vehicle Spotter Program on Page 6, which is a very successful program. She referred to the City's revenue relationships with other jurisdictions on Page 4, Item 10, the fees for non residents, and requested to see a list of the services the City of San José might charge its neighbors before the fee structure is actually changed. On Page 6, Item 2(a), Mutual Aid, Council Member LeZotte asked what is definition and extent of the non-emergency responses, and requested a list of services Staff is looking at in terms of expanding the definition beyond dignitary visits in other cities and crowd control assistance during demonstrations. On Page 6, Grant Writing for Public Safety, Council Member LeZotte expressed interest in how much money San José receives citywide with regard to the grant writing efforts, and how does this compare to other cities, what is San José's success rate, and requested Staff add this as part of a performance measure for each department. She added the City of San José should have a dedicated grant writer.

Council Member LeZotte referring to Page 10, Vehicle Fleet Issues, requested adding Item (7), "Invest in environmental procurement with regard to fleet vehicles". She stated as the City significantly increases the percentage of low emission and fuel-efficient vehicles in the fleet, Staff could also look at opportunities for grants. She remarked there is grant money to do this, of which the City has not been taking an advantage of, not only with regard to investing in the vehicles but also in technology that will save in impacts and operational costs. She stated that the best way to average the money the City has, is with its investments. In reference to Page 5, Item (d) the appointees office, she remarked, it states, "...with an across the board reduction equal to the average reduction proposed for non-public safety departments", she stated, the Independent Police Auditor (IPA) should be in this group, and not in the public safety group. She commented that 20% should be coming out of every appointee in order to save public safety for the Police and Firefighters, and the IPA should not be listed there for budget reductions.

Council Member Williams remarked on Page 6, the Seniors Program is important to a growing population, and the City of San José has to be sensitive to their needs. Referring to Page 10, he requested adding an Item "(f) to indicate that the City is trying to jumpstart the economy with opportunities for creativity, innovation, entrepreneurial opportunities with Bioscience and Nanotechnology". He stated those issues are key to driving the economy forward in the sense the City is investing in that as a part of creating jobs for the future.

Mayor Gonzales called for public testimony. Dora Sandoval, William Diaz, Mary, Benson, Clean Slate Tatto Removal, and Bryan Cong, San José Library Commission spoke on the issue. Upon motion by Vice Mayor Dando, seconded by Council Member Chavez, the March Budget Message for Fiscal Year 2004-2005, from Mayor Gonzales, dated March 17, 2004, was approved, with the following additions: (1) Helping All Children Achieve, Page 8, "Increase high school graduation rates", Staff requested to look at the companion programs that have brought forth effective results. (2) Citation

## 10.1 (Cont'd.)

Fees, Page 9, Staff requested to look at increases that allow the City to maintain (3) Public Safety, Hazardous Incident Team, Page 8, and decentralization of the Hazmat Team, Staff requested to forward detailed information on this issue. (4) Reduction of all Branch Libraries, Page 8, Staff requested to look at reducing the hours of operations per day in lieu of completely closing for the entire day. (5) In regard to the 911 User Fee, requested Staff look at a “sunset” for those fees when the economy improves. (6) The Vehicle Spotter Program, Page 6, Staff requested to provide a list of the services the City of San José might charge its neighbors before the fee structure is actually changed. (7) Mutual Aid, Page 6, Item 2(a), Staff requested to provide a list of services expanding the definition beyond dignitary visits in other cities and crowd control assistance during demonstrations. (8) Public Safety Grant Writing, Page 6, Item 2(c), Staff requested to provide information on how much money the City of San José receives in grant writing efforts, how does this compare to other cities, what is the City’s success rate, and include criteria to incorporate that process as part of a performance measure for each department. Staff also requested to look into the issue of a “dedicated grant writer” for the City. (9) Vehicle Fleet Issues, Page 10, Staff requested to add Item (7), “Invest in environmental procurement with regard to fleet vehicles”, thereby increasing the percentage of low emission and fuel-efficient vehicles in the fleet. (10) Page 5, Item (d) referring to the Appointee’s office, “...with an across the board reduction equal to the average reduction proposed for non-public safety departments”, Staff requested to include the “Independent Police Auditor” in the Appointee’s office, not in the public safety group. (11) Page 10, Driving a Strong Economy, Staff requested to add (f) indicating creativity, innovation, and entrepreneurial funding those programs when comparing fees of smaller programs. (12) Senior Programs, Page 6, Staff requested to include the Senior Commission in the upcoming discussions. opportunities with regard to Bioscience and Nanotechnology. Vote: 11-0-0-0.

- 10.2 (a) **Approval of an ordinance by the City Council modifying Section 4.01.010 of Chapter 4.01, and amending Sections 4.04.010 and 4.04.020 of Chapter 4.04 of Title 4 of the San José Municipal Code, making changes necessary to implement the Revenue Generating Policy adopted by City Council on January 20, 2004;**
- (b) **Adoption of a resolution by the City Council revising the Revenue Generating Policy pursuant to City Council direction at the meeting of January 20, 2004;**
- (c) **Adoption of a resolution by the Agency Board approving the Redevelopment Agency’s Revenue Generating Policy; and**
- (d) **Adoption of a resolution by the Agency Board amending Article II, Section 4.A of the Agency By-Laws to authorize the Executive Director to accept donations and enter into Sponsorship Agreements in an amount not to exceed \$100,000.**

(City Attorney’s Office)

Documents Filed: Memorandum from City Attorney Richard Doyle, dated March 11, 2004, recommending approval of said ordinance and adoption of resolution by the City Council, and adoption of resolution by Redevelopment Agency Board.

## 10.2 (Cont'd.)

Discussion/Action: Council Member Chavez moved approval of the Staff recommendation. Council Member Cortese seconded the motion. Council Member Reed remarked when this issue was discussed earlier the City Attorney was given direction to take a look at how this policy should apply to the Mayor and the Council, and pointed out a provision in Item 13 which is unworkable and does not reflect the way the City Council and the Mayor's Office is involved in sponsorships and fundraising. He commented it calls the for the Council to tell the City Manager of a potential donation or sponsorship opportunity, and the City Manager is supposed to take over. He remarked that he, his staff and other Council Members are currently in the process of organizing the Resource Fair for June, and are also doing the work, and raising the money. He expressed concern to the lack of an audit trail for what the Council and Mayor may do for sponsorships, and the way to deal with this issue is to take the same auditing and accounting requirements that are listed, including a record keeping of sponsorships of the name, type, size, contract, and including an annual report, which the City Manager is required to do for staff sponsorships. He commented the Council Members could keep track of sponsorship donations collected and complete an annual report. He asked if the maker of the motion would accept this amendment. Council Member Chavez, maker of the motion, accepted the amendment.

City Attorney Richard Doyle commented the whole idea of this issue going through the City Manager's office is that there are criteria for the City Manager to continue to consider in determining whether there is a net benefit to the City for any program. He added Staff would have the same policies apply to the Mayor and Council Offices. He stated Council can make the call, but at some point there should be some determination that there is a benefit to the City, including Council Offices. City Attorney Dole asked how would Council prefer Staff to proceed on those grounds, whether the Council prefers to independently have their offices go out and do fund raising without anyone signing off. He remarked whether that is within City policy, and meets the criteria or is a benefit to the City, ultimately that is the Council's goal, but the idea was to be able to bring it into some type of process. He added that was the only reason it was going to go through the City Manager's Office because they are set up for that, but Staff is open for other ideas.

Council Member Reed remarked the Council Offices do that now, wanting to raise money for an event, they go out and just do it. Mayor Gonzales remarked that the City Attorney raised an interesting point, but on the other hand, the reality of the City Manager telling a Council Member that their effort is not consistent with City policy or no value to the City, is unrealistic. Council Member Reed commented when Council Offices go out and ask for money, it is hard to imagine that getting money is not a net benefit to the City for something, it is different than the sponsoring and selling of the logo on the building. City Attorney Richard Doyle replied the only concern that came up in development of the policy was determining that there is a City benefit as opposed to raising funds for instance a third party, a nonprofit corporation. He added that is a completely different set of rules, and those need to be looked at independently. He stated

## 10.2 (Cont'd.)

Staff could put that in the body of a policy, that the program or the fund raiser is a benefit to the District or to the City, and that each Council Office is participating. He stated he does not want to be in a position where the Council Offices do not have an audit trail that may need to be reported to the Fair Political Practices Commission (FPPC), and there are certain fund raisers that are for the benefit of third parties.

Mayor Gonzales remarked that the bottom line is this will come back to the Council Members for self discipline, and guidance against the policy and the criteria. He pointed out it is up to the Council Members to be able to substantiate to and answer to his or her constituents, and state this money is being raised because it is consistent with the criteria that is in policy, and is for the good of the community overall. He stated the current recommendation puts the City Manager in a very awkward situation, and agrees with Council Member Reed. Council Member Reed replied his amendment is basically the audit trail, and keeping track of it, making an annual report, and "piggybacking" on the City Manager's Report. Council Member Cortese asked how would that be implemented. Council Member Reed replied each Council Member keeps his or hers' own log, and it is incorporated into the annual report put forth by the City Manager. Council Member Cortese, seconder of the motion, accepted the amendment.

Council Member Gregory asked for a clarification, as currently his understanding of the policy is that if Council Offices are doing fund raising, it is tracked through City Clerk's office through a special account. He added that event for which the fund raising is happening, has to be an event that is a collaboration between the Council Office and a department, and he understood the Council Offices cannot raise money for event that a Council Office by itself is doing, and asked for an explanation. City Attorney Richard Doyle replied the Clerk's Office serves as the escrow, essentially the paying agent, and the money comes through the City Clerk's office, and serves as the collector and distributor of the funds.

Vice Mayor Dando remarked she would like to make a substitute motion, as this is a very important issue it should be referred to the Blue Ribbon Task Force Committee, which is chaired by Council Member Yeager, and for the Council Offices to obtain more detailed information for consideration and discussion. Council Member Yeager seconded the motion.

Mayor Gonzales asked if there were questions on the substitute motion. Council Member Chavez asked if the majority of this item will move forward, with the exception of the part that pertains to the Council Members, so that Staff can start working on the budget. City Attorney Richard Doyle replied the motion is that the City Staff portion of this policy moves forward, and the Council portion of it is referred to the Blue Ribbon Task Force. Council Member Chavez encouraged her colleagues to support the motion. Council Member Williams asked whether the maker of the substitute motion included that Staff move forward with the Staff portion of the policy, and Mayor Gonzales replied that is correct. Council Member Williams asked what is Staff trying to resolve. City Attorney Richard Doyle replied there is a number of potential revenue generating

## 10.2 (Cont'd.)

opportunities for the City to engage in, and Staff is attempting to develop a policy, whether it is looking at or assisting with landscaping, parks, libraries, or other opportunities. He remarked the question came up at the last meeting, as to how does that apply to the City Council, and its fund raising abilities as well.

On a call for the question, the motion carried unanimously, and Ordinance No. 27103, entitled: "An Ordinance of the City of San José Amending Section 4.01.010 of Chapter 4.01, and Amending Sections 4.04.010 and 4.04.020 of Chapter 4.04 of the San José Municipal Code to Increase the Authority of the City Manager to Accept Donations and to Approve Sponsorship Agreements in Order to Implement the City's Revenue Generating Policy", was passed for publication; Resolution No. 72014, entitled: "A Resolution of the Council of the City of San José Revising the Revenue Generating Policy Pursuant to City Council Direction at the Meeting of January 20, 2004"; and the Redevelopment Agency Resolution, were adopted, with Item 10.2(d) to return to Blue Ribbon Task Force Committee for discussion, and Staff was directed to incorporate into the Annual Report each Council Member's District log of sponsorship donations collected. Vote: 11-0-0-0.

The Redevelopment Agency Board Portion of the Meeting was adjourned at 5:54 p.m.

### CLOSED SESSION REPORT

City Attorney Doyle disclosed the following Closed Session action(s) of March 23, 2004:

A. Public Employee Appointment Pursuant to Government Code Section 54957:

Title: City Clerk  
Name: Lee Price

Council Vote: Ayes: Nora Campos, Cindy Chavez, Judy Chirco, David Cortese, Pat Dando, Terry Gregory, Linda LeZotte, Chuck Reed, Forrest Williams, Ken Yeager; Ron Gonzales.

Noes: None.  
Disqualified: None.  
Absent: None.

**CLOSED SESSION REPORT (Cont'd.)**

**B. Authority to Initiate Litigation:**

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

Council Vote: Ayes: Nora Campos, Cindy Chavez, Judy Chirco, David Cortese, Pat Dando, Terry Gregory, Linda LeZotte, Chuck Reed, Forrest Williams, Ken Yeager.

Noes: None.

Disqualified: None.

Absent: Ron Gonzales.

**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:

None.

**ADJOURNMENT**

The Council of the City of San José was adjourned in memory of Nancy Spencer, former employee of the Departments of Employee Services and Environmental Services, who served the City of San José for 24 years, and in memory of Brenda Denise Brown who lost her courageous struggle with Cancer on March 11, 2004.

The Council of the City of San José was adjourned at 5:55 p.m.

**RON GONZALES, MAYOR**

**ATTEST:**

**DEANNA J. SANTANA, ACTING CITY CLERK**

smd/03/23/04min