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>> Mayor Reed: (gavel strike) Good afternoon, I'd like to call the San José city council meeting to order for August 16th, 2011. We'll start with the invocation, Vice Mayor Nguyen will introduce the invocator.

>> Councilmember Nguyen: Thank you, Mayor Reed. I'm very happy to welcome Sister Mary Becker from the Santee mission to provide today's invocation. Sister Mary is also a licensed social worker who has spent many years counseling and supporting the holistic development of individual families and children. Having served in multiple geographical areas in the Bay Area as well as abroad, she has gained the knowledge and experience needed to help fulfill her mission of empowering people everywhere. Sister Mary is also committed to working with many agencies to provide quality services to residents in the Santee neighborhood. I'd like to thank sister Mary becker for her diligent work and her passion for the community. Thank you.

>> That introduction was longer than the invocation. So each of us arrives from a very busy morning. So let's take a couple of seconds to just leave behind everything that happened this morning, and put ourselves in the present. Give full attention to a new and creative reality of now. O divine creator spirit. You know that know the way, let us approach you and each other with profound respect and humility. We thank you for the privilege of serving your people. We ask for your guidance as we deliberate issues and make decisions that touch their lives. Give us the gift of discernment, wisdom, honesty and love. Amen.

>> Mayor Reed: Thank you, sister. Next item is the pledge of allegiance. Please stand. [pledge of allegiance]

>> Mayor Reed: Are there any changes to the printed agenda order, under orders of the day?

>> Councilmember Pyle: Move to approve.

>> Mayor Reed: Motion is to approve the orders of the day. All in favor, opposed, none opposed, those are approved. We will adjourn today's meeting in honor of Richard Chavez, a longtime civil rights activist, local hero, and a friend of a great many people in the City of San José as he did many years of work with the farm workers, Councilmember Campos has some additional comments.

>> Councilmember Campos: Thank you, mayor. Richard Chavez, a local legend and leader in the California's farm worker movement passed away on Wednesday, July 27th, at the age of 81. He was born on November 12th, 1929, in Yuma, Arizona. Richard was born into a very humble and hardworking family during the great depression. During this time the Chavez family as many families across this country had experienced turbulent times and they lost their family farm. This led the Chavez family to work the fields across California and influence this experience the legacy of the Chavez family would begin and they would make their way to San José. In 1951, Richard entered a carpenter's union apprenticeship program where he had an opportunity to work on commercial and residential projects across the state. Even though he enjoyed construction. Richard joined his brother Cesar in the late 1960s into a career of advocacy by creating the organization we know now as the United farm workers union. A group that began to cultivate the need for human rights and workers rights in the fields. In this new organization, Richard assisted with organizing the boycotts that forced grape and lettuce growers to sign contracts ensuring hire wages and safer working conditions for farm workers. Upon his retirement from the UFW, Richard continued his advocacy by serving as a board member to the Chavez Family Vision Foundation and the Dolores Huerta foundation. Working tirelessly to keep the vision alive. Even though Richard is no longer with us today, his legacy will always be remembered. The infamous chant, sí se puede, is an iconic tribute to Richard and the Chavez family. And we do have members of Chavez family sitting here with us today. Richard is a great loss, not only to our city, but to the nation. And his legacy will continue with all the hard work that we all do to keep hope alive. Thank you.

>> Mayor Reed: Thank you, Councilmember Campos. And thank you to the members of the Chavez family who have joined us today. We appreciate your being here. Next item is the closed session report. City Attorney.

>> City Attorney Doyle: The council will be adjourning into closed session at the end of this meeting so there is no report.

>> Mayor Reed: And if any action is taken at closed session it will be reported out at our next meeting?

>> City Attorney Doyle: We would report it out immediately if there's something to report.

>> Mayor Reed: Okay. We'll now move to the ceremonial items. I'd like to start by inviting Councilmember Chu, Councilmember Campos and members of the San José crime prevention unit to join us at the podium. Today we're commending the San José police department's crime prevention unit for their hard work to mobilize and educate our communities to become active leaders on crime and drug prevention. Councilmember Chu has some additional comments.

>> Councilmember Chu: Thank you, mayor. Thank you, mayor and councilmember colleague to join me to commend the crime prevention specialists for their outstanding service to make our community a safer place to live. On August 2nd, crime prevention unit in collaboration with the council offices, neighborhood organizations and local merchants participate in the 28th annual National Night Out in the City of San José. National Night Out is designed to heighten crime, and drug awareness, encourage participation, and in anticrime effort and strengthen the neighborhood spirits so that we can all work together to keep our communities safe. This year, the City of San José had over 80 registered National Night Out events. In district 4, write represent, the event was a great success. We have five going out in the district and one of the most successful events happens in Alviso, which we have over 370 community member attended. And I want to thank the City Manager Deb Figone and deputy Chief Dave Cavallero and Fire Station 25 firefighters for lending a hand with the barbecue. I'd just like to take this opportunity to specifically thank Mimi Lee for working with my office to coordinate such a wonderful successful event. And here today to accept this commendation are Mimi Lee, Sandra Avila, King Godis and Ray Sodino. So mayor can you please.

>> Thank you so much, Councilmember Chu. Mayor Reed and city council members. It's really an honor to be here and we are so fortunate to be a part of something that brings so much of the community together in a positive manner. Every year, we have 80 to 100 neighborhood groups, and community groups that register for National Night Out. And our team would like to specifically, and especially, acknowledge Kim Gaddis, my co-worker Kim. Because Kim has been the lead of registering all of these groups for the last 16 years. She's been the one that's been communicating to our patrol command staff, the city council, other officials, City Hall in

general tall media. So Kim thank you so much because you are the one that makes it all come together for every year and you've done that for the last 16 years. We want to thank you so much for this wonderful honor today. We really appreciate it. Thank you.

>> Mayor Reed: Thank you. [applause]

>> Mayor Reed: Our next item I'd like to invite Councilmember Liccardo and Eddie Gale to join me at the podium. As we commend Eddie Gale for his many contributions of fine music and devotion to selflessly contributing meaningful, many meaningful things to our community, all around music. Jazz in particular.

>> Councilmember Liccardo: Thank you, mayor. Eddie is coming down with his wife, Georgette, who has the camera. Certainly, those of us who have the pleasure of enjoying the wonderful jazz fest weekend, last weekend, don't need to be told how music can help create community in a city like San José. Eddie Gale has known about that remarkable remarkable recipe for creating community for many, many years. Of course, jazz in San José predated this jazz fest. Eddie began his career at the age of 8, I'm told, in New York City, although he didn't make it to San José until 1972. By which time he was already a nationally acclaimed jazz musician, after his 1968 release of ghetto music, which hit the charts, and launched Eddie as a national jazz figure. By 1974, then mayor Norm Mineta, declared that Eddie was San José's ambassador of jazz. He's certainly been recognized with many great distinctions including the Jefferson award, he was deemed the ambassador of music for San Francisco's Association of world citizens and has been, since 1995, and certainly with all the albums and all the distinction, certainly that is enough to commend Eddie Gale but in fact Eddie has had a remarkable hardened passion for the community. I know there are members here of the Horace Mann Neighborhood Association, every National Night Out features Eddie and various musicians who are just eager to be able to play with Eddie and enjoy the opportunity to play great jazz and the community absolutely loves it. He also routinely has fund raisers for students at Horace Mann, for science camps, he has been on a mission to try to create a fund for health insurance for struggling musicians much as Austin and other cities have. He does with it a variety of fund-raisers that he has spearheaded including jazz on wheels, drum night, or jazz youth, adult jazz festival and concerts for world peace. Clearly, Eddie through his life and his music, has demonstrated his belief that artists have a

responsibility to help direct the community, in a positive direction through artistic experience. Those are his words, not mine. I want to thank and ask the mayor to commend Eddie Gale for his extraordinary lifetime contributions to San José and to the jazz community as well. [applause]

>> Thank you very much, city council, and mayor. And all the wonderful people that run this city. You know, I'll tell you a short story how I got here is that in 1967, I came to Stanford university artist in residence with Cecil Taylor's band and some students liked what we did and they came to New York and saw me playing in a club and asked me to come back out. So I told them that if they were to get me just three minutes if nothing else at Stanford Berkeley bay game that guarantee that they would win. And they won that game. They got me three minutes, and it's on record, they won that game! So people heard this, and we was on television and they gave me a house in San José to live! And I said San José, where is San José? I probably should have said, do you know the way to San José? The students say Mr. Gale you being a musician you really love San José. I say why? They said because you take one freeway and go up to the West side of the Bay Area and you go the other free and go to the East side. I said oh that makes sense. I say why they said because you don't have to cross no bridges. I've been here since 1972. I've seen this city become a city. Because being from New York, everything was old before I got there, before I was born. But I've seen this city really develop to be a beautiful place. All my children was raised here, they were born in New York but they were raised leer, some of them still live here. I'm looking forward to a greater future for this city because I carried it with me during the bicentennial, proud to be a partly of that took it around the country. Every place I go, I am proud to say, yes, I'm San José's ambassador of jazz. Other people say wow, we don't have that in our city, but San José has it. Thank you so very much. [applause]

>> Councilmember Liccardo: I declined to mention a couple of important details. First is that Eddie just celebrated his 70th birthday, just a couple of days ago, 70 years young. And for our listening pleasure, Georgette was kind enough to distribute to all of us here on the dais the Vision Festival 10 New York City, this is Eddie playing with William Parker at a wonderful festival in New York City. So I'm sure this exceeds the gift ordinance, so we're going to have to work it out with the attorneys, but thank you very much.

>> Mayor Reed: Thank you, Eddie for joining us today. Next I'd like to invite Councilmember Liccardo to hang here for a minute and Lenora Porcella to join us at the podium as we commend Lenora Percella for being instrumental in the development of the Hensley Historic District in San José. Councilmember Liccardo has some of the details.

>> Councilmember Liccardo: So we are here with Lenora Porcella, and she is here with her husband John, who is manning the camera, and their daughter Jessica. We are thrilled to honor Lenora, but saddened to hear that she's leaving for warmer climates down South. Lenora came to San José 40 years ago and was one of the pioneers of the Hensley historic district. The only national registered historic district in the entire city. The first and the only, we hope there will be more, but right now we've got one and it's a great one. And those of you who don't know where the Hensley is, it's that neighborhood of beautiful Victorian homes that is roughly between Japantown and they'll on first street. It is a true treasure and gem of the city. It is a treasure of the city because of the people who live there who are so passionate about restoring their homes and making that community a very special one. And no one is more passionate than Lenora who for many years has served as the president of the Hensley historic district. She is joined by the way by many neighborhood leaders from many other neighborhoods one of them, Tina Morrill, is holding a we heart Lenora sign very appropriately because she has been a leader throughout the downtown and throughout the city for how it is you advocate for communities. Particularly for those of know who moved into the Hensley in the '70s and the '80s and part of the '90s know how rough it was, and how tough going it was to try to create community in a place where frankly there were a lot of forces aligned against you. Everything from blight to crime and all the other challenges that urban neighborhoods have. And because of Lenora's neighborhood we've seen extraordinary gains, historic lighting pedestrian improvements, couplet conversions, historic neighborhood signage, you can view the signs that just went up last year right now on third street and her advocacy for neighborhoods against some of the challenges of living underneath an airport as well, are duly noted. So in 40 years Lenora has broken a San José record for most meetings attended by any other human being and for that reason alone I'm going to ask the mayor to commend her for her many great years of service and leadership. [applause]

>> Well, I just want to thank Councilmember Liccardo, Mayor Reed and the whole council, and any of the department heads here today I hope when you'll go back to office you'll also thank your staff for me because it hasn't always been easy. But I'm looking back over 40 years of a lot of fun, a lot of great friendships, a lot of great relationships. A lot of my neighbors are here today, I'm just touched how many people took time off work to come and wish us well. And I see city employees along with my friends and neighbors out here in the audience. So one of the biggest thrills for me I think this week was to see not only just this neighborhood care about historic preservation but I think all of the neighborhoods in the downtown have really come together. And I have -- I see Don, I see Tina, I see Patty from my neighboring neighborhoods and I think that's really one of the most special things. It's one thing to involve your neighborhood but to have all these friends in the surrounding neighborhoods, it's so special. So thank you all. Thank my families for all the beans and weanies they ate while we were doing these meetings so thank you again.

>> Mayor Reed: I'll take up the consent calendar. I have a couple of requests to speak on the consent calendar. We will be pulling item 2.12 and 2.10 for council discussion. So anybody wants to speak on those can wait. Any others councilmembers want to pull for discussion or other action? Councilmember Liccardo.

>> Councilmember Liccardo: Mayor did you just indicate 2.11 would be pulled?

>> Mayor Reed: No.

>> Councilmember Liccardo: Okay I'd like to pull 2.11.

>> Mayor Reed: Okay. We have a motion to approve the balance. We'll take testimony on the rest of the consent calendar and decide if there's anything else we want to pull before we vote. Mr. Wall.

>> David Wall: Good afternoon, Your Honors. Good to see you all. We just rightfully gave accolade to the crime prevention unit for the San José police department. These photos here represent an ongoing crime in the city that affects everybody here, in this room in the city. Shopping cart theft. These photos were taken yesterday at 10th

and Horning as often they have been since July of 2008. Weekly reports have shown up on the Rules Committee since about that time period, independent letters, about an ongoing crime. We see on the media of late, what is the San José police is not going to be able to provide services for, as a function of your decision-making. They did show people stealing recyclables on the local television news program. The use of shopping carts. But San José police to my knowledge have never come into my neighborhood to take care of this blight, this nuisance that shows up at all hours of the night, disturbing the public's peace, stealing what allegedly is city property to fund the recycle plus! program. Yet all of you know about this and have done relatively nothing about it. Now I think it would be prudent to start holding businesses account annal for our carts. They show up in our creeks, they show up everywhere. And your lack of leadership on this issue is not only unacceptable, but it is devastating because it puts more and more cost of crime onto the community that you have the power to resolve. Thank you.

>> Mayor Reed: Any other public testimony on the record? I believe I forgot to mention one thing and that is on item 2.2, there are councilmembers that are going to abstain. It's a matter dealing with Cisco. Is that right City Attorney?

>> City Attorney Doyle: Yes three abstentions have been filed, and that is councilmembers Oliverio, Herrera and Liccardo. It is a Cisco development agreement.

>> Mayor Reed: That is reflected in the motion. So we have pulled, 2.10, 2.11 and 2.12 will be discussed plus the abstentions on item 2.2. Anything else Councilmember Oliverio?

>> Councilmember Oliverio: I just want to throw out that the reason for the abstention on 2.2A is because I own more than \$2,000 worth of stock in Cisco. Originally I thought it was \$100,000, was the threshold, ut apparently it is \$2,000. Thank you.

>> Mayor Reed: All right, on the motion, all in favor. Opposed, none opposed, that's approved. Item 2.10. That's development principles associated with development of lands on the West side of the airport. Before we consider this I want to disclose that my staff in preparation for this meeting have met with representatives of Atlantic

aviation, Signature Flight Services, and HP Aviation. In doing that, I have one request from the public to speak. I'll take that now, Tim Murray.

>> Good afternoon, honorable mayor, members of city council. My name is Tim Murray. I'm the general manager for Atlantic aviation out at Norman Y. Mineta international airport. I respectfully request that you support the memorandum authored by Mayor Reed and councilmembers Herrera and Pyle. Their proposal strikes the right balance between advocating the greatest economic potential for the city, and working with the existing businesses on the west side of the airport. That have invested tens of millions of dollars in San José's airport. Over the last several years Atlantic aviation has invested over \$50 million in upgrading and expanding our fixed base operations to provide our customers with a first class aviation experience. The general aviation industry has suffered tremendous losses over the last several years, much like the commercial air traffic. GA takeoffs and landings are down some 20% from their peak in 2007. Both in San José and nationwide. Our San José operation has the ability to absorb any significant increases in the general aviation and commercial office leasing needs. With the potential to increase the developable acreage at the airport from 40 acres to over 130 acres we strongly encourage the council to explore both aviation as well as nonaviation related uses. Airports across the country are increasingly pursuing nonaviation related development at their airports to provide diverse base of tax and fee revenues as well as good jobs. We think by taking a comprehensive planning approach, you will be able to develop your lands for its highest and best use. Finally, we appreciate your sentiment expressed in the memo regarding the need to work closely with the existing businesses. As we move forward on the future of the West Side development we believe it is critically important that existing businesses be engaged directly in a meaningful way so we can mutually work to ensure the future development is a positive experience for both current and new businesses. We thank the memo's author for leadership on this issue and urge the council to support the recommendation. Thank you.

>> Mayor Reed: That concludes the public testimony on this item. Councilmember Pyle.

>> Councilmember Pyle: Thank you, mayor. I would like to first disclose that I had -- first of all, let me begin with I'd like to move the motion.

>> Councilmember Herrera: Second.

>> Mayor Reed: Okay, we have a motion to approve this matter with the memorandum.

>> Councilmember Pyle: And I would like to make a disclosure that I have had conversations with Dustin Derollo representing Atlantic aviation. I would like to say that our airport which as we all know is a vital economic tool to our economy is critical to all of us and as we consider the development of the West Side and the long term vision for runway 1129, we should examine all options. Expanding the development principles to include nonaviation use on the West side will give us the opportunity to expand our thinking on how best to use this land. I'd like to thank my colleagues on the airport ad hoc committee Mayor Reed and Councilmembers Herrera and Liccardo for expressing to me their support for this memo. I would also like to thank our insight and our dedicated airport staff. Thank you.

>> Mayor Reed: I just had one thing to add. I want to make sure that nobody gets surprised by this. I mean you think it would be surprised by anything that happens at the airport because so much coverage but we do have stakeholders out there that aren't necessarily readily apparent because they are not the main lessors. But we have major Silicon Valley companies that have an interest in the airport, trying to make sure that we're considering their interests and impacts on them, things like HP aviation, to be one example of the kinds of folks that we need to be talking to. And that's what we're trying to get at when we say talking with the tenants. Because we may have a major operator like Atlantic aviation but there are some very important tenants who have an interest as well. That was the intent of adding that. Councilmember Herrera.

>> Councilmember Herrera: I think most of it's been said. I strongly support this. That's 80 signed onto it. I think it's really important that we do maintained the ongoing communication with the partners that are already there. And I think in looking forward to development that might happen there, I think it's very important to look at our region's competitive strengths as we look forward to that development and be very careful about what we do bring in there. Because I think there's some businesses that will naturally want to be located near airport,

especially time sensitive businesses. So we need to look at this because we need to create more jobs frankly and looking forward to this moving forward. Thank you.

>> Mayor Reed: Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you, mayor Reed. I just wanted to thank mayor Reed and Councilmember Herrera and Pyle for the memo. I think it clearly sets the direction in terms of where we want to go, in terms of helping to generate revenue, not just for the airport but also for the City of San José. I had the opportunity to visit Atlantic aviation several months ago and took a tour and I really appreciate their recent investment of \$50 million into our city and hoping to expand that into the future and encourage more companies to make similar investment. Because definitely that's one of the ways that we're looking at to help generate revenue for our upcoming year and our upcoming budget. So thank you.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Just wanted to disclose I did also speak to a representative of Atlantic aviation and I will be supporting the motion.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. If I may ask for a friendly amendment, but maybe I should actually start with a question for airport staff in terms of the process for how this is going to proceed. What would be the next step on as you progress on looking at the property there, and how you'd move forward after these -- after this action today?

>> Bill Sherry: I think the -- Bill Sherry aviation director for the City of San José. Councilmember Rocha, the first thing we need to assess is how much land we have. And that is predicated on the ultimate air field layout, whether we keep runway 1129 or whether we decide to decommission it. If we decide to keep it, we've got a minimum of

about 40 acres of developable property. If we decide that it's not needed and that it can be decommissioned, the west side could grow as high as 120, 130 developable acres. Once we know the envelope and the amount of land, then we really need to engage the interest and do our forecast not only to determine what the interest is today but what the demand will be in the forecasted period out 30, 40 years. And then at that point then it's bringing the master plan back to council, getting council approval of the recommendations in the master plan and then implementing it.

>> Councilmember Rocha: So the master plan would be just on the surplus property you're talking about?

>> Bill Sherry: No, the master plan is on the entire airport.

>> Councilmember Rocha: Would this be an amendment to it?

>> Bill Sherry: Yes.

>> Councilmember Rocha: Okay, so then the amendment would be specific to this potential surplus land for development opportunities?

>> Bill Sherry: That's correct.

>> Councilmember Rocha: So then that amendment would come back to council after you've done this work?

>> Bill Sherry: That's correct.

>> Councilmember Rocha: Okay, then I'm good, thank you.

>> Mayor Reed: We have an amendment based on the memorandum, all in favor, opposed, none opposed, that's approved. Item 2.11. Councilmember Liccardo, you wanted to pull that one.

>> Councilmember Liccardo: Thanks, mayor. Bill sorry to make you have to wandering back up. Just had a question. I should have asked you this before the meeting, forgive me for forgetting to do so. I know we've got a -- there's required mitigation under the master plan EIR. And this bus system is part of the transportation system management program you've got in place there. Does the reduction in service in any way put at risk our mitigation in terms of the ability to satisfy whatever's required?

>> Bill Sherry: Again, Bill Sherry, director of aviation. Councilmember, no. The requirement under the master plan and the EIR is that we provide transit back and forth between light rail and CalTrain. It doesn't stipulate the frequency and how often it is. And quite frankly these reductions are very, very minor when the ridership is very low or nonexistent.

>> Councilmember Liccardo: Okay, thank you very much. I move to approve.

>> Mayor Reed: Motion is to approve item 2.11. All in favor? Opposed? None opposed, that's approved. Item 2.12, Councilmember Chu I believe wanted to pull that one.

>> Councilmember Chu: Thank you, mayor. I do have some questions, and concern of approving the \$500,000 contract to some outside contractors. First I'm looking at the memo page -- number 3, the money will be spent on planned fall protection analysis. So the -- we will have some protection measures, on the temporary or permanent basis, the roof being replaced, I felt that we are contracting out the roof replacement to a roofing company. They probably should have some protections and procedures that they follow. And I just don't see a need for us to spend money and hire a contractor to do fall protection analysis, on this water treatment plant. I don't know if we have fall protection analysis on City Hall or if we have fall protection analysis on the airport. This is my first concern. The second question, process hazard analysis, we're not talking about preventing, we're not talking about prevention. We're talking about spending money to find out the consequences of potential equipment and human value. Again I 30 the potential equipment failure should be put on the burden of the equipment manufacturer. I mean what happened if your equipment failed, and the consequences and to go along with it, and

again not spending the tax dollars, taxpayers' money on working to find out the consequences of the potential vendor equipment failure. And then I look at the -- the next one they're talking about the lock-out procedures again I felt that should be the responsibilities of the manufacturers, and the next page we are talking about the above ground storage tank assessment. I know the San José fire department has been doing that for years. Now we're turning over to the Santa Clara County hazardous material compliance division. But this is something I believe that the ESD may not have the in-house talent but the City of San José definitely be able to bid on that contract and work out assessment. The next one, the control plant security evaluation. I would really hope that our PD, you know, department be able to lend a hand and probably also has an opportunity to bid on the contract, instead of spending \$500,000 on the outside consultant.

>> Mayor Reed: Kerrie.

>> Kerrie Romanow acting director, environmental services. Thank you for the example. We do have a lot of work to do at the water pollution control plant. Recall that the facility was built in 1955. So quite a bit of the equipment has been around for that long and unfortunately we don't have all the lockout tagout procedures as an example written down. We are certainly though I want to assure you not going to do the contractor's work for them. So in the roofing example we are not going to provide a service to an outside firm that is their responsibility and likewise when we buy new equipment we are looking to that particular manufacturer to provide the save assurance. But there are when we're designing new processes, in related to the master plan. We do want to make sure that we're looking at the human interface and we're looking at all the required safety procedures and hazard protocols so that we're buying the right equipment that's going to last us and provide safety not only for our employees but for our community. The plant is facing unprecedented attrition. We have a high turnover rate. We have a lot of new employees they need a lot of training. So loot of these money is going to go towards training folks. We have worked with the fire department on collaborating on confined space efforts and to the extent they have capacity they're very supportive to help us with that bit we feel like that's not going to be enough. The way these contracts are structured, it's as-needed. We'll pull them in, we're not thinking we're going to spend this kind of money but should there be an event we want to have it available to use. But we are very thoughtful about when we need it and we'll be very prudent about that.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: Hi, Kerrie. I just wanted to know, do we have folks on staff right now that have that expertise to do these jobs that we are hiring the consultant for?

>> We have one safety officer out at the plant. We have a vacant safety officer within ESD. But the diversity of these skills, it's just an average person, is not going to have it. A superaverage person is not going to have this variety of skill sets. We're keeping that second safety officer vacant. And we're trying out this as an option, because we need so many different things. We're not going to find it in one persons.

>> Councilmember Herrera: So the answer is we really don't have this on staff.

>> In summary some no, we don't.

>> Councilmember Herrera: How much would it cost if we were to hire folks to do this? What would be the difference if we analyzed it into having this person on call versus hiring staffing up so we could have all this expertise in-house?

>> We would need several FTE and we wouldn't be able to keep them all busy all the time.

>> Councilmember Herrera: So it's not something you need to do all the time, that's why the on-call contract works well.

>> Yes.

>> Councilmember Herrera: Because when you need this how often do you think you would need to call them in?

>> It depends on how quickly we ramp up on how some of the technology evolves. Right now we do have a lot of training. So that would be one area we have not done as an example a very thorough job of process hazard analysis on new equipment, really looking at ensuring there is no single point failure so we want to make sure we're following all the expected protocols.

>> Councilmember Herrera: So in some ways this is going to be good to train the employees so you will have the expertise in-house is that partly what you're thinking, the training you're talking about?

>> When our average age of the employees, when people had been around, their average tenure was longer than it is today, they would get the experience over time. We're feeling like we need to ramp people up faster and we can do that best through an external party, to get a group of folks moving and productive more quickly.

>> Councilmember Herrera: So this is -- what percentage is training versus just supplying these?

>> It's hard to say.

>> Councilmember Herrera: You don't know yet?

>> It's hard to say. I don't want to say we're going to spend \$250,000 on training, it's not my plain but I don't know until we see that lined out.

>> Councilmember Herrera: But if you do train, these folks will have the skills and they will be part of our team and they will be able to continue to deliver those kinds of skills on the job, right?

>> That is certainly our intent.

>> Councilmember Herrera: Okay thank you.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you Kerrie for your comments. It's pretty apparent that you're doing this because we don't have X amount of people here to do the specific job and also Councilmember Herrera brought up the training perspective for current employees. Question, if you chose just not to spend this money, what would be the consequences if you didn't do any of this stuff?

>> We could potentially have hurt employees and I could go to jail.

>> Councilmember Oliverio: Thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. On page 3 through page 4, the scope of work that's listed, so as related to these two consultant contracts, have we had consultant contracts in the past that are close to this scope or identical or is this a new direction that we're going in consulting?

>> This has a broader safety component than we have had in the past. We have had overlapping scopes of work with other firms but we're trying to broaden the firms that we use and we actually interviewed four firms for this one and selected two to see which one had the technical expertise but also get a little bit better pricing.

>> Councilmember Rocha: And how often do you RFP out these consulting contracts? For my benefit, I've only been here seven months.

>> Every two to four-ish years.

>> Councilmember Rocha: Okay. Thank you.

>> Mayor Reed: That's all the questions I didn't have -- yes a motion. Councilmember Herrera has got the motion to approve. Further discussion? All in favor opposed none opposed, that's approved. That concludes the consent calendar. Item 3.1, report of the City Manager.

>> City Manager Figone: Thank you Mr. Mayor, members of the council. I have one report. I know that many of you attended the San José jazz festival this weekend and I'm happy to report to you that the event was a great success. Based on counters at the festival gates organizers report that more than 100,000 people attended this signature event in the heart of our downtown. This was the 22nd annual event and in addition, to so many people coming downtown to enjoy great jazz we believe that there was a strong economic impact as well. Most hotels reported that they were either full, or near capacity. By way of comparison, in 2006, we measured the festival's economic impact at \$11 million, answer since then attendance has grown by roughly 30%. As a reminder, the jazz festival supports two of the City's economic development strategies. Positioning our downtown as Silicon Valley's city center and developing distinctive events for San José's diverse population. An event like this takes a great deal of hard work and planning to cross many, many city departments, in this case the office of cultural affairs, the departments of transportation, Public Works, parks, recreation and neighborhood services, our police and fire departments all help support the festival. According to the San José police department, despite the large crowds attending the three-day event, there were no incidents of note to report. My thanks to all who worked tirelessly, to this event a tremendous success for our city. And that concludes my report.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: I just have to add, the jazz festival was fabulous. And I actually met several people there that reported to me that they were coming from as far away as Atlanta, Iowa, Detroit, we are getting people from all over the country and they've actually stopped going to some of the other festivals. They told me they were no longer going to Sedona, they picked ours over that one. They told me we have one of the best jazz festivals in the country. So we can be very proud of it.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: I want to second that sentiment. I also heard the rumor that Councilmember Herrera actually got on stage at one point, and so they have booked her and Darcy Green, I think, for next year. Congratulations, Rose.

>> Mayor Reed: I think that concludes the report of the City Manager. Item 4.2 would be our next item, that's an appeal of the Planning Commission's decision to deny offsale of alcohol at a CVS on @ First, North First Street. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor, would you want to entertain a motion at this point? Is there any public comment?

>> Mayor Reed: I don't have any requests to speak. I'll see if the appellant wants to address the city council at this time. I'll take appellant, which is I believe the developer applicant is the appellant. I'm sure that's right. We'll take any other public testimony. Go ahead sir.

>> My name is David Greensfelter, and I'm with Landmark Retail Group, here on behalf of CVS and the developer. And I just wanted to first thank the council for agreeing to hear our appeal. CVS has a major investment in San José so we take this very seriously and we appreciate -- we appreciate your doing the same. We have since the time of the Planning Commission's decision continued to work hard to work both with the council and staff and the community. We appreciate, in particular, the support of both the mayor and Councilmember Chu for their memorandum of support that was issued last week. There are two points in particular that I'd like to make. The first is that we held a public meeting since the Planning Commission meeting. We noticed a very wide area as opposed to the minimum area had 60 people in attendance at the meeting, and there was overwhelming support. The notes that I was given from the meeting, 98%, but that's -- even a supermajority no matter how you want to call it of support for our appeal for the right to sell alcohol at this location. The second thing I wanted to point out is that CVS has significant training programs and has an absolute

zero tolerance policy for the sale of alcohol in contravention of local and state laws. So we take our responsibility very seriously. If there are any questions that the council has I'd be more than happy to answer those. Thank you very much.

>> Mayor Reed: Thank you. Is there any other testimony from the public? Or the applicant? You haven't used up all your time yet.

>> Mr. Mayor, members of the council. My name is Ed Storm of hunter storm. Just briefly I want to thank you for the support in the past of the project that this is part of. We've been very successful in getting the type of tenants we hoped for out there. We think CVS adds to that mix. Everybody is in support of this, save one, and we think that it would be odd for the council to be the only people opposed to something that the community wants, that the tenant wants, that the developer wants. So there's total support for this so we would appreciate your supporting us in this and seeing this development being completed which is the last tenant obstacle we have. We want to give this behind us and finish our shopping center and get people to work. So thank you very much for your time.

>> Mayor Reed: I have no other cards requesting to speak so I think that concludes all the public testimony unless you want a rebuttal to what Mr. Storm just said. I didn't think so. I wanted to before we get into this disclose that I met with Laura wooding of landmark retailer group in preparation of this meeting. Councilmember Chu back to you.

>> Councilmember Chu: Thank you very much, mayor. At this time I'd like to make a motion to support the appeal of the Planning Commission's decision to deny the offsale of alcohol as an allowed use in the conditional use permit. In conjunction with the new approximately 17,000 square feet of retail store pharmacy with the drive-through use, and 24-hour use as the shopping center for the North First Street.

>> Mayor Reed: All right, we have east motion as outlined in Councilmember Chu's memo.

>> Councilmember Chu: Also I'd like this opportunity to thank the staff for their effort to work with the developer and CVS on the request for drive-through and 24-hour operation. This is kind of a long awaited drugstore in the North San José area, near Alviso. And it's really on the border of San José, Milpitas and Santa Clara. So by adding a drugstore there, to provide the convenience for people to do their one-stop shopping, I think definitely adds value to not just the develop -- not just that area but to the City of San José. It is a low crime area, it is very, very far, far away from any schools. And so at this point I really encourage my colleagues to support an appeal to allow the offsale of alcohol at the CVS.

>> Mayor Reed: Vice Mayor Nguyen.

>> Councilmember Nguyen: Thank you. I just wanted to disclose that my staff met with Patrick Hollum of Byrd Davis public affairs who represents CVS.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Thank you, mayor. I just wanted to disclose that my chief of staff did have a discussion with the representative of CVS. I want to make the comment that I make every single time one of these comes to us. I wish we could find a quick way to just skip the Planning Commission when we know they have the mandatory denials. And I know that this is not one of them, but it's an opportunity for me to talk about it, because we keep having them, and I know there's others coming up soon. So I just want to make sure that that's still on track, and I think it's important that we, like with this, get things moving as quickly as we can so people can get to work. As Ed pointed out in his comments. So I just want us to keep thinking about that, because I know I think we have one in just a couple of weeks coming up, another mandatory denial. And I just want to make sure we keep the emphasis on that. I know you're working on that Joe, but I just have to say it every time I can.

>> Joe Horwedel: I will note for the record that ReneÉ has drafted an ordinance working with my staff and have already reviewed it that would eliminate the mandatory denial for full service markets. So that is coming forward, I think October is our schedule for it.

>> Mayor Reed: Councilmember Pyle.

>> Councilmember Pyle: Well, I absolutely 100% agree with Councilmember Constant. And just wanted to say that not only sit inconvenient, not only does it waste time and money but it also from my framework, shows discrimination. So I'm very happy to hear that you're going to do that. Thank you very much.

>> Mayor Reed: Councilmember Oliverio.

>> Councilmember Oliverio: Thank you, mayor Reed. Joe in this shopping center I believe there's a target that sells alcohol is that correct?

>> Joe Horwedel: That is correct and we're also working on a fresh and easy full service market that would move into this complex also.

>> Councilmember Oliverio: Okay so that's why I wanted to throw up the grocery store has an opportunity to open here as well.

>> Joe Horwedel: That's correct, that is one of the comments that I did want to share with the council. As the council is aware there is a number that then trips the mandatory denials on offsale of alcohol. We already have three approvals three use permits in this center. The hotel Sierra also has an approval of offsale of alcohol in it and the Marriott hotel has a drinking establishment approved as a part of it. Staff is concerned about how we put grocery stores at the bottom of the list of coming through this process and at this point, fresh and easy would have to go through a mandatory denial of the market. Even though it is what we most want in this area because of the license we have approved in front of it.

>> Councilmember Oliverio: Thank you, Joe, as my continued policy, I support alcohol with food, and so I will continue to say that, so unfortunately I won't be able to support that today, but I will be supporting any grocery store that opens in that shopping center for the ability to sell alcohol. Thank you.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you, mayor. Two questions I had have already been broached and that was any other liquor, offsale was the term, offsale liquor licenses at the site and you just spoke to that. And I did have a question, in the short time I've been here there's a previous action similar to this and it was the Walgreen's at meridian and Hamilton. And we denied had a. Can you talk to the similarities or differences between this circumstance and that one?

>> Joe Horwedel: From the staff standpoint they are absolute similar and both of them staff have not supported, that we have been -- staff really clear with the council that we are supportive of offsale of alcohol for full service markets but for other types of establishments, that are not a full service market, staff has not been supportive of those. The council does have the prerogative through appeal process, and the determination -- the findings through that process, of deciding that it is appropriate at a given location or not. And much the conversation today with the council about is there an overconcentration of offsale at this location and today there is not. Is there a demand for the services, are there schools nearby. So those are all the findings that are made by the council or the Planning Commission in deciding offsale of alcohol. I don't remember the specific circumstances of the offsale of meridian and Hamilton. I think there was a lot more community involvement. There was some in support but there were a lot of opposition. I think it had residential in a little bit closer proximity though there is residential near this one too. But from staff standpoint we looked at them both the same and recommended no on both.

>> Councilmember Rocha: Can you speak to a little bit the policy you spoke about that you're working with the city attorney's office on?

>> Joe Horwedel: So the ordinance we're working on with the City Attorney's office would define full service market. So our goal is to give the council a choice about how to create a streamlined process. We can have a very similar process today, but it comes to the council for the decision, for offsale, where it would be a mandatory denial. Also, want to explore an option that says, full service market is such an important part of our community, and our goal to get those into every neighborhood, are we willing to go and maybe do offsale of alcohol for a full service market by right or with a much more streamlined process that is either delegated to the Planning Commission or to the staff, similar to what we do for other types of approvals. So there's some really important policy questions that we're going to bring forward to the council around that. But, there really is -- we're going to come back with getting rid of that mandatory denial for a full service market. But it's really you know how far do we want to go with that.

>> Councilmember Rocha: To your point about the full service market, full service market, full service grocery store, is that one and the same, or are the two terms different, as far as you're concerned?

>> Joe Horwedel: Right, we're calling it full service market I think is the term we're using. The thought is defining what that means, so fresh produce and fresh meat, so it's more than prepackaged lunch meats and two apples in a basket. Looking at what is the breadth of that, and recognizing that the grocery industry has changed dramatically. With companies like Fresh and Easy and trader Joe's they are offering fresh foods but they're not -- there is not a butcher shop on site but they are offering fresh meat, that's there. So it's trying to come up with the difference that would reflect that versus a convenience market that has a very limited supply of fresh foods. And so we're also looking at linkages of square footage so the amount of fresh food is directly related to the amount of alcohol could you have.

>> Councilmember Rocha: So that fresh component is really going to be critical in how you draft this ordinance. And really what is driving this as far as you're concerned of moving that direction? Is that a need from the community? I mean clearly we're going to be addressing this as a city so there must be something for that purpose that we would be moving that direction.

>> Joe Horwedel: This is an issue that came up as we went through general plan update. The envision process. The task force was really concerned about neighborhoods that had no access to fresh food. That the only food that was available in the community was highly processed or fast food. And what are the opportunities in every neighborhood that -- to have access to fresh food whether that is from a full service market, from farmers markets, community gardens, those are all part of the picture. So now staff we're working at how do we go through and solve the headache we have today about the mandatory denial that affects grocery stores that we all want but how to also advance that, access truly to get fresh foods into neighborhoods since we don't have the ability to go through and essentially subsidize through what we were able to do with redevelopment, of being able to put dollars into it, it is one of the few tools we have as a city to say we can help a full service market come into a location that they might not otherwise be able to make pencil out.

>> Councilmember Rocha: That's for me extremely compelling. For staff's concerned position. I'll ask a question of City Attorney if you don't mind. Is there any legal exposure speaking about the earlier issue of the site at Meridian and Hillsdale, and now this one for us legally if we're just -- I don't know what the right term is here -- how we are being selective on this?

>> City Attorney Doyle: No, there isn't. The Hamilton meridian hearing as I remember it, there was a lot of opposition, there were positions, there were and I think there was even greater concentration, there were two liquor stores, I'm very familiar with the area. There was another drugstore that sold alcohol.

>> Councilmember Rocha: Two restaurants I think as well.

>> City Attorney Doyle: A Safeway, there was a couple of restaurants. So there was a lot more concentration I guess in the final analysis. So there's sufficient distinction between the two.

>> Councilmember Rocha: Okay. Well, I'm going to look back to the point that was just made by the planning director and that compelling reason for me and as far as being consistent, I'm going to not going to be able to support the recommendation from my colleagues on this. And thank you for your time.

>> Mayor Reed: Councilmember Herrera.

>> Councilmember Herrera: So I'm very moved by what Joe has to say and I've been working on getting grocery stores in my district for a while. And we've recently got two new grocery stores, I'm happy to say, new leaf market and Fresco, both of which are going to supply a lot of fresh produce. And I think it's really important, not only as an economic development tool, to bring in grocery stores but having options for this community to be able to have fresh produce is a matter of health, too. It's a matter of we're fighting childhood obesity and a number of other things in the community and so it's really important that folks have access to these grocery stores that do sell fresh produce, and sell a variety of things that are healthy for people. I know that a lot of stores are getting into -- so they're doing groceries. I've been in one of them recently, a big store that says it now sells groceries. And my husband and I deliberately went through every aisle to see how much of a grocery store they really were, and most of it was processed. And very limited fresh produce and we actually bought some of it and it turned out to be not very good actually. It was on the edge of going bad, even though it was a good price, had a lost leader in a couple of areas. So I'm concerned that we support grocery stores that really provide produce and all of the things that we're trying to make available to our community. Remember, some of those folks may not be able to drive across town to get to a trader Joe's or a whole foods or some other store. They may need stores that are within walking distance or bicycling distance. I want to be consistent on this thing, does CVS or Joe somebody give me that information, I want to know what they provide.

>> Joe Horwedel: I think David would probably be a good one to talk to. I think most of the drugstores have started bringing in some amounts of food in and that's partly why we think it's important to also link square footage of fresh food, the fresh produce and fresh meat to this square footage of alcohol sales. And so it's literally, if our goal is fresh then it's like you should have two square feet of fresh food to every square foot of alcohol sales. I think that will be the challenge that will weed out a lot of the convenience markets. Our goal would be I would love all the drugstores to go through and be offering fresh food in. Because our goal is to get this into the community and drugstore is an important part of the community.

>> Councilmember Herrera: Yeah, we don't care, I mean the drugstore could provide it too if they were willing to provide that much fresh --

>> Joe Horwedel: Exactly. We're going to build the definition that it could be -- if Southern Lumber wants to go through and sell you know hamburger and tomatoes and that and want to sell beer too I would be perfectly okay with that. Our goal is to get access to foods.

>> Councilmember Herrera: I think that's great that there is a recognition that the grocery store business is changing. So I don't want it to be set in concrete saying it has to look like this if in fact the store is going to offer it. So could somebody from CVS come and tell me what you offer?

>> Mayor Reed: I think we'll's that question here, sir. .

>> CVS stores typically offer a variety of food items. Increasingly, stores are being retrofitted to offer some fresh produce. We are primarily a pharmacy and a general merchandiser. So we're not trying to become a grocery store. But I think exactly to your point we recognize that there are people who can't necessarily get across town to get to a trader Joe's who can't get across town to get to a whole foods. And we're trying to fill that gap in situations where it's appropriate. But on a level that's consistent with what -- with what we are. We also do cooperate, you know, in many, many circumstances with other grocery stores like fresh and easy or like trader Joe's we have Mexico substances where we share a project with them and we all offer our normal and full array of items.

>> Councilmember Herrera: Thank you. This is a tougher decision. I know I voted no on the last time this came around and there was a lot of community opposition. And this is a little bit different because we've got community support. We've got apparently CVS flocks stowing with fresh and easy and that's interesting too because I've noticed that in shopping centers that grocery stores tend to they locate near certain other stores so that they kind of don't go there isolated, they work an ecosystem. Is there any middle room here at all, Joe?

>> Joe Horwedel: We've had a lot of discussions with CVS about this site, and I think one of the things they did of acquiring license -- another offsale license so that essential they took one off the market or transferred to this location, is a step in the right direction, you know reducing just general exposure to alcohol. But, you know, from staff's standpoint I think we're trying to go through and provide some level of consistency to our applicants about what our goals are trying to work within that piece. In the same way that where the council may want to go through and approve this one you've also heard me in front of you supporting offsale alcohol where council may not be interested in it because it was a full service market and again it was so important around that. So you know from staff standpoint we are trying to provide you know consistency and guidance around that end of it. I know that maybe frustrating but --

>> Councilmember Herrera: I'm with you. The only thing is I think there here just before we get the regulation in place where we can say, this much produce justifies this much of an alcohol license. So we're not quite there to meet their needs right now and I do want to be consistent but I think the situation is a little bit different. And so I'm going to support this request.

>> Mayor Reed: Councilmember Campos.

>> Councilmember Campos: Thank you, mayor. Also want to disclose my staff met with members of the CVS team. I know we've dealt with this a lot at the Planning Commission and when I was still on the commission that's when we wanted to get the ball rolling on coming up with a policy that would counteract this automatic denial. I do think this is different. I do remember the Walgreen's project out, you know, that we were just referencing. And I think that one was an automatic denial because of overconcentration, was that?

>> Joe Horwedel: That was my memory, it was an automatic denial.

>> Councilmember Campos: So this is where the council or the commission had no discretion, they had to do an automatic denial. Even if they had overwhelming community support to approve it the commission would have had to deny it bringing the decision back to us. And I think this is where the new policy that you will be putting

forward will help us out a lot. One of the things that we can't predict the future. So you know you gave us an information that fresh and easy is planning to come out to this site, hopefully they do. But what if they don't? Alviso, since they have been incorporated into the city from the '60s they have -- they have been waiting for empty promises from a number of things that you know have not been delivered to them. And I know they have been waiting for a grocery store. Unfortunately this is what they got. They got Target that has fallen into this niche of trying to be some sort of something in between. They don't -- you're right they don't have a full grocer there and they don't have a full -- a full produce person there and they don't have full butchers there. And CVS sort of faults in between that and you know your corner 7Eleven or quick stop in which they provide a little bit more of the grocery items. I know you can buy rice and beans you know dry rice and beans there and so forth. But I think this is -- it's not what Alviso's wanted. It's not what they've been asking for but it's what they're getting. And I hate to -- I hate to settle but it's almost like we're settling. And I think the residents of Alviso, that's probably why a lot of them came out to speak in support of this. Because they're tired of having to drive that extra ten miles to Milpitas. And at some point you know you really have to feel for this community. And I was at the front of the line leading the charge on, we need to have better -- a better way of helping us determine whether or not we should be supporting ABC licenses. So with this one, yeah. I don't see it the same. I will be supporting the motion. Because it does have a lot of community support. And I think at some point we have to get service out to Alviso. And I'd hate for fresh and easy -- I'd hate for us to deny this here, fresh and easy falls through and then you know Alviso again is -- you know basically feeling that they're being ignored. So I'll be supporting the motion. Thank you.

>> Mayor Reed: Councilmember Kalra.

>> Councilmember Kalra: Thank you. And you know this -- I'm thankful that the Planning Department has been working on getting to a place where we can start to streamline some of these processes. I know that Councilmember Campos and I went through all those frustrating votes that we had to go through where we are nodding our heads yes and saying no, to folks that are trying to get these permits, and it is quite ludicrous. I know we're getting there, I understand the frustration of some of my colleagues. Now when it comes to the direction we're heading in, I think that anything that heads us in a direction where we have by right puts us in the

same if not worse position as these automatic denials. And so I think certainly a streamlined for full service but there always needs to be subjective analysis allowed by both the commission and ultimately the council. And we have to look at these on a case-by-case basis. That's always how I look at these. Because there are 11 of us up here, we collectively know our neighborhoods. We understand them. We know the issues we have. We know that there are issues regarding crime, we live there and so we can determine I think better along with the neighborhoods and the community members that obviously give us input, as to what makes sense in a particular neighborhood and particular community. I've certainly looked at you know drugstores, pharmacies that are requesting these permits, some skepticism and certainly a very cautious eye but I definitely see a distinction with the Meridian, Hamilton, and others that that are in the neighborhoods with this project with the @ First shopping center which I think is a totally different type of new development that's not strictly neighborhood serving, it is more regionally serving, serving the industry there Brocade and all the other businesses there this is certainly going to be a much broader draw, doesn't -- is not something in a well established neighborhood and it's also not a area that's been saturated with stand-alone liquor stores which certainly all of us, I know, have had a lot of concern about is giving these permits to stand-alone liquor stores and therefore we can't give them to liquor stores. All of us I think at one time expressed great interest in making sure the grocery stores have the opportunity to get these permits. We know that's a vital part of their business and they do bring a huge value to neighborhoods and to the community beyond certainly just the ability to be able to serve offsale. They bring a whole range of products that a lot of neighborhoods are in desperate need of. In this case, I think that you know, there's certainly an opportunity for fresh and easy or other grocery store to come forward and I look forward to a streamlined process to allow those kinds of grocers to be able to get those permits in a way that's not so burdensome. But in this case I don't see an issue at all with this permit being approved. I do share some of the concerns of the neighbors and I hope that as we build some of these developments we continue to have some focus on pedestrian access. I understand that this is a regional draw with a lot of vehicle traffic so it's not easy, it is easier said than done when we create these kinds of complexes, similar to the San José market plan, it's hard to do everything and create everything for everyone but as much as possible they'll be able to allow for pedestrian and bicycle access especially because we would hope that a lot of the employees who are working right across the street would walk across and take advantage of some of the shops and restaurants that we're going to be providing them. So as much as possible it would be great to see some of that incorporated into not just the design

of the store, of this particular store but the whole development so that we have some good pedestrian access around the complex there but I certainly will be supporting this motion.

>> Mayor Reed: Councilmember Liccardo.

>> Councilmember Liccardo: Thanks mayor. The questions of Councilmember Rocha and Oliverio and your responses Joe have given me some pause. And I'm trying to understand things a little better than I did walking into the meeting today. At this point, has fresh and easy submitted an application for a C.U.P?

>> Joe Horwedel: They have and we're scheduled for the Planning Commission I think their next meeting. So they're trailing right behind.

>> Councilmember Liccardo: Okay, as I understood it from the report, we now have -- in order to approve it there would be two establishments within a thousand foot radius, is that right? A Target and the CVS? There would be two that would have ABC licenses. There would be three others that would have conditional use permit approvals. So we've already essentially given the land use approval for another location for off sale, it's a part of a hotel, so it's not a traditional --

>> Councilmember Liccardo: I was trying towns that. So the hotel would have the ability to sell offsite?

>> Joe Horwedel: Their license, the waists structured, because they have a gift shop travel store within the hotel, they would have the ability, they could not just limit it to the to guests of the hotel.

>> Councilmember Liccardo: Okay, so they could sell wine or something?

>> Joe Horwedel: It's a quirky sort of thing, so it's -- it is counted that way.

>> Councilmember Liccardo: I imagine most folks don't head to the Hilton when they want to get their six pack.

>> Joe Horwedel: Correct.

>> Councilmember Liccardo: Okay, so I'm just trying to understand that -- I know that obviously fresh and easy isn't before us but it's the elephant in the room. Is the concern that if the hotel got the ABC permit, you would now have three within a thousand foot radius and fresh and easy would be number four and that would trigger a recommendation of denial under our C.U.P. ordinance, is that right?

>> Joe Horwedel: Correct, it puts you into the mandatory denial process, puts you through a more rigorous process. When we talk about the hurdles that grocery stores have to go through, it is in same ways we create those hurdles ourselves from other decisions we make. So it just happens to hit on the same project.

>> Councilmember Liccardo: It's a very fair point. It would still be a discretionary decision ultimately for the council, is that fair?

>> Joe Horwedel: That's correct.

>> Councilmember Liccardo: I understand CVS, full disclosure here when I first heard of the notion that a drugstore of CVS was trying to get offsale of liquor, my first reaction is, no way. What -- I understand that there was some effort to obtain a permit that another business held. I assume that business went out of business?

>> Joe Horwedel: That I do not know. You would have to ask the applicant of where that license was coming from.

>> Councilmember Liccardo: Could the applicant help us with that? I just want to understand. I understand there was one effort to at least take one other C.U.P. out of circulation so to speak.

>> Joe Horwedel: My understanding it was from District 4, from the city in this general area.

>> I can't tell you the name of the business right off the top of my head. But what I can tell you is that the intent was to take another license from the area, so there would be no net gain in licenses. It was part of -- it was part of what we intended to be a responsible way of approaching this situation. Probably, because I think somewhere in the neighborhood of 3.5% to 4% of our sales area is devoted to alcohol, when you look at it on a per square foot basis, we're probably reducing the number of square feet of alcohol that are actually being sold under a constant number of licenses.

>> Councilmember Liccardo: Okay, thank you. And forgive me for not looking carefully at the terms of the C.U.P. but would there be restrictions on square footage in the C.U.P?

>> Joe Horwedel: That is would be a normal requirement. I realize that I don't have a copy of the resolution in my binder. But we normally limit them no more than 10%, and in a lot of cases to less than 5% of total floor area.

>> Councilmember Liccardo: Okay. That would be in the resolution.

>> Councilmember Liccardo: Had and at this point you don't remember whether it was 5 or 10?

>> Joe Horwedel: That I don't know. When I walked down here I realized I didn't have it in my binder.

>> Councilmember Liccardo: I was looking at the applicant, with a simple question, nod or shake your head it's fine with me. You indicated 3.5% of your square footage is simply for alcohol, is that right? Would you be able to live with a 5% limit? There is a thumbs-up. I guess I would like to make a request for a friendly amendment that there would be a 5% cap on square footage.

>> Mayor Reed: We have a friendly amendment. I don't know who had the second.

>> Councilmember Liccardo: That was me.

>> Mayor Reed: We have a modest amendment to the motion. Councilmember Chu.

>> Councilmember Chu: Thank you, mayor. Again I just have to thank Councilmember Campos for speaking up for people in Alviso. I know you spent a lot of time working with the youth in Alviso so thank you very much for understanding the need and the desire of the people in Alviso. Also I want to disclose that I have talked to the CVS people, actually I was there at the community meeting. I counted, there was over 80 people there, community member there. Only one couple opposing it. I was really -- we kept adding chairs during the community meeting because I guess none of us expected such a great turnout. I remember having a community meeting on BART, coming down to the flea market, we couldn't get more than 80 people turn out in the meeting. So I wanted to congratulate hunter storm and the developer for having the community meeting. Another thing though. I would like to thank hunter property investing over \$2 million in the larger shopping center. This is probably one of the largest investment we witnessed in the last few years in the City of San José. Thank you very much. I definitely will work, continue to work with the developer to make sure, to make sure that we will have a full service grocery store. If not fresh and easy, you know, something, some grocery store to continue serving the neighborhood in an around Alviso. So thank you very much. Again, I ask for your support.

>> Mayor Reed: Councilmember Constant.

>> Councilmember Constant: Well I know there's been some wavering of support here. I just wanted to give a final word of encouragement to my colleagues to support the motion. You know, we have had a number of discussions over the past several years about our issue of being business-friendly, about being underretailed, and I wanted to highlight the specific discussions we've had working with areas on the edge of our city. Areas like in District 4 and virtually all of District 1 that are within a stone's throw of other jurisdictions that have done a very, very good job of building and placing their retail right on our borders so they can draw our residents into their cities to spend their tax dollars. And here we have an opportunity to do exactly the opposite, and that is, to encourage can a very high-quality, responsible, respectable business right on the edge of our city, to draw residents from that city, into our city, to spend their precious money and provide us with the tax dollars that we

need to fund those deficits that we are all too familiar with. So I think it's important that we continue to think about those discussions we've had in the context of these types of applications. And while I know that there's been a lot of discussion over the years I've been here about the ABC licenses, I think we really have to take each instance individually and look at what the business offers, not only to the immediate community, keeping in mind the community support that is very evident here, but also, the greater community of San José, and what the upside benefits are to us. So I hope those of you who are on the fence move in the direction of supporting the motion. I think that's the important thing for us to do today.

>> Mayor Reed: Councilmember Rocha.

>> Councilmember Rocha: Thank you. I have a follow-up question. It's based on a lot of what I've been hearing from my colleagues and maybe I misheard. But has it been suggested to you Joe that we would not see CVS unless they had a liquor license?

>> Joe Horwedel: I think they can answer that directly. But they have told us that three would not build new stores in San José unless they had a drive through, unless it had offsale of alcohol, unless it matches their floor plan. So kind of this is the way we build them.

>> Councilmember Rocha: In any part of San José?

>> Joe Horwedel: Or any part of the U.S. So it's then part of the challenge.

>> Councilmember Rocha: Thank you.

>> Mayor Reed: I think that concludes the discussion. We have a motion that's been amended by friendly amendment made by -- any other discussion? All in favor, opposed, I see one opposed, two opposed, Oliverio and Rocha opposed so that passes on a 9-2 vote. So that concludes our work on that item. It was so much fun let's do it over.

>> Joe Horwedel: Staff recommends approval of this one. We think it's a great offsale alcohol opportunity bringing fresh food into the community.

>> Mayor Reed: 4 much 3, consideration of an appeal of the Planning Commission's decision to deny a conditional use permit around determination of public convenience or necessity to allow the offsale of alcohol.

>> Councilmember Rocha: Irony hits me in the head here. I would like to recommend that council uphold the appeal of the planning commission's decision to approve the subject conditional use permit and make a determination of public convenience or necessity by finding that the required findings for a conditional use permit can be made and find there is a significant overriding public benefit served by the proposed offsale of alcohol and grant a determination of public convenience or necessity and this is based on purely the full service market issue.

>> Second.

>> Mayor Reed: We have a motion to approve the offsale of alcohol. Just double check to see if that's a denial or a approval of a denial or an approval of an appeal. So the director has --

>> Councilmember Rocha: Did I read it right Joe?

>> Mayor Reed: In this case we are following the staff's recommendation which would allow the offsale of alcohol.

>> Councilmember Rocha: That is correct.

>> Mayor Reed: Discussion on the motion? I have no requests to speak. Does the applicant wish to speak? Okay, we'll take the applicant's comments at this time. Applicant or appellant or whatever your title you wish here.

>> Good afternoon. My name is Steve Cryon, and I represent sunflower farmers market. Thank you so much for hearing our case. I want to take a few minutes and introduce sunflower farmers market for you who are not familiar with it. It is a company that has about 34 grocery stores throughout some of the sun belt states. California they have one open currently in Roseville. The concept behind sunflower farmers market is to provide natural, organic and healthy foods choices and selections to the public and to do so at a very affordable price point. So they often kind of target whole foods but then they make sure that they can provide the food at levels that are really accessible to everyone. The store itself dedicates about a third of the floor plan to fresh produce. Fruits and vegetables. They have bulk goods, they have a Deli, they have a fresh meat section and so they really want to guys a healthy living style and create something that the community can really -- you know really desire and want to shop there. They will sell, and reason obviously I'm here today is the ancillary sales of wine and beer only. It will comprise less than 5% of the sales floor area and this is more than anything for the convenience of the consumer for them to be able to go in and buy, you know, ingredients to make a great healthy dinner for their family and also maybe pick up you know a bottle of wine if it's a couple who is going to have a nice dinner or they're going to have a barbecue the next day. So it's the convenience of having that all together and it really is essential for the model itself to work. So again, I would like to really thank you for hearing us and hope -- and look forward to your approval, should you have any questions please by all means let me know. Thank you.

>> Mayor Reed: All right, we'll see if we have any questions here from the councilmembers. I have no requests at this point. I have a motion on the floor, further discussion, staff do you have anything you want to add?

>> Joe Horwedel: I was just going to note for the council's benefit this is one of the grocers moving into nontraditional spaces. This is the former orchard supply location on Branham lane so it is filling in the neighborhood.

>> Mayor Reed: On the motion, all in favor, opposed, none opposed, that is approved. Taking us to open forum. Mr. Trout.

>> I don't know if you know this or not. But I moved to this city years ago for one reason: To talk to everybody about Jesus. And preachers who come to this city to preach the gospel are given money. I had no money offered me but I came here for that one goal to talk to everybody, including the mayor, the city council, the cops, the janitors, the rich, the poor and the in between about salvation. That's why I came here. And I don't know if you follow Alex Jones and info wars.com but there is anarchy with the mayor in courts Arizona I believe taking place and you can watch it where this lady gets up on their open forum and the mayor says as the cop comes up and arrests this lady during her three minutes of speech, given her by the mayor where the mayor says I have control of this meeting and the cop arrests this lady and he is now appealing to Phoenix ads to become mayor again. He's still mayor but he is not mayor. The Chief of Police has basically taken over the town because this mayor believes in free speech. Now I'm well aware most of you don't want to hear what I have to say but in an inverted way if I'm denied my rights the same thing is really happening because the constitution is our supreme law of the land supposedly, right? Time flies. But what I'd like to say is that some of you, one of you actually I guess Councilmember Pyle was the only one when my wife came down here I finally convinced her to come down here and testify that I predicted 9/11 a month before it happened, had to buy her a car. She speaks glorious things about Christ but she doesn't obey me very well. But she testified that I said on 9/11 the sixth trumpet would sound, there is a reason for that. I ought to be the most famous man in the world. I would like you to ask me some questions because all of you ought to be interested. I'm not a prophet.

>> Mayor Reed: That concludes the open forum. The council will now adjourn into closed session. We will not be back in here until the next council meeting.