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City of San José Planning Commission
Wednesday, March 10, 2010

COMMISSIONER JENSEN: (inaudible) As your name is called please line up in front of the microphone in the front of the chamber. Each speaker will have two minutes. Planning Commissioners may ask questions of the speakers, response to commissioner questions will not reduce the speakers time allowance. The public hearing will then be closed and the Planning Commission will take action on the item. The Planning Commission may request staff to respond to the public's testimony, ask staff questions and discuss the items. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is advisory only to the City Council. The City Council will hold public hearing on these items. Section 20.120.400 of the Municipal Code provides procedures for legal protest to the city council on rezonings and prezonings. The Planning Commission's action on conditional use permits is appealable to the city council in accordance with section 20.100.220 of the Municipal Code. Agendas and a binder of all staff reports have been placed on the table near the door for your convenience. Thank you. And I see that our chair has arrived. So I will turn -- I'm sorry. Would you like to speak?

COMMISSIONER DO: Sure. Yes, we can proceed if you like or since you've already started –

COMMISSIONER JENSEN: Well, you're the chair. You should concede. So I'm going to hand over to chair Do.

COMMISSIONER DO: Thank you, Commissioner Jensen. So first of all, the business of roll call. Let the record reflect that all commissioners are present, except for Commissioner Platten. Is that correct? So Commissioner Platten is absent. Everybody else is present. The next item of business is deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agendized items past 11:00 p.m, to continue this hearing to a later date, or to defer remaining items to the next regularly scheduled Planning Commission meeting date. Decisions on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. Staff, there are no items?

ORATOR: There are no recommended deferrals.

COMMISSIONER DO: Okay, thank you. Moving on to consent calendar. Usually there's a section to read from here. But consent calendar are items that will be adopted by the commission as a single motion essentially. There are two items on the consent calendar and there are no speaker cards. No speaker -- no speaker lights. So I would entertain a motion to Commissioner Campos.

COMMISSIONER CAMPOS: Move approval of consent.

COMMISSIONER DO: All in favor, say aye. So consent calendar is adopted. Moving on to public hearing. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to later agenda for public hearing time management purposes. Item 3 a. Ordinance amendment. An ordinance of the City of San José amending provisions of chapter 20.70 and 20.100 of title 20 of the San José Municipal Code to establish the city council as the decision making body for conditional use permits for drinking establishments that operate after midnight and have an occupancy greater than 250 persons within the D.C. downtown primary commercial zoning district. Staff.

ORATOR: Thank you, commissioner. Lee Wilcox, downtown coordinator in the office of City Manager. Today in front of you we have something that staff has referred to for the past two years as the downtown zoning overlay. And there we go. On December 18th in 2007, the council and redevelopment agency board directed staff to study the implications of developing new zoning regulations in the downtown, including a potential overlay and/or zoning guidelines which would identify areas for entertainment uses and drinking uses as well as appropriate development and operational standards for such uses. As stated at the time, council's intention and purpose with this direction was to express the desire for smaller venues in the downtown core specifically in the entertainment zone which would hopefully lead to overall better range of options for night life establishments. Today, staff's here to present two recommendations to you, a new process, for drinking establishments after midnight with an occupancy over 250, very similar to a PD rezoning, now. And a requirement that a management plan for drinking establishments operating after midnight with an occupancy over 250 be mandated. A little bit of background for the commission. Recently a number of stakeholder groups have been formed to address issues related to downtown night life. These groups have included the urgency ordinance task force, in 2005, which was the result of the shooting at the ambassador night club in downtown, the downtown working group, in 2006, the hospitality zone assessment reports, and the recently formed City Manager's downtown advisory committee. These groups have worked on a broad base of various strategies and initiatives to move forward night life in the downtown. As you can see the downtown zoning overlay is one of the many things that the city's been working on over the past few years to try to address our downtown and night life. The hospitality zone assessment report which I mentioned previously was adopted by council in 2008. And it is the major and strategy document for the city in regards to night life in the downtown. And

essentially the overall direction of this is to transition from a night club environment to a night life environment. And there are several avenues that the city's traveling upon to achieve that. This City's had great success in the last year and a half with the entertainment zone policing model and working with the venues in the downtown to create an overall better environment and stakeholders and the city are working on branding. For tonight's purposes we will be paying attention to the city policies and regulations, however. The hospitality zone assessment report that I just mentioned was a process that took over a year and included thousands of stakeholders as part of that process. In addition to that outreach the outreach for this project was conducted by the office of economic development, Planning, Building, and Code Enforcement, the agency and police department to engage stakeholders in a discussion for a vision of night life for the downtown. The outreach covered a broad range of groups as well as an online survey and the newly established City Manager's downtown advisory group heard this recommendation twice in 2009 as we were working through it with stakeholders. Based off of that outreach, three desired outcomes came that we promote a vibrant downtown with a welcoming environment that includes night life and downtown residents. That we minimize negative impacts from night life venues and that we encourage positive and more diverse types of entertainment uses. Participants throughout this process felt that the current night life options in the downtown, which happen to be mostly a large occupancy night clubs were geared towards a younger demographic and didn't cater to older adults. So back to the recommendations. Based off that outreach council direction staff is proposing that we approve a new conditional use process for drinking establishments operating after midnight with a maximum occupancy of 250 patrons or larger. As I stated before, this would be a similar process to a PD rezoning. It would go to Planning Commission with recommendation to City Council. We feel that because the council has expressed a desire for smaller night life venues and because the council is most familiar with their strategic documents, it makes sense for them to be the decision makers in this process, given the impact that some of these larger night clubs have in the downtown. While the current concentration of large occupant night clubs in the downtown core is not generally what the community has expressed through this outreach that we want, it still does add to the overall diversity of night life options in the downtown. So many cities are currently facing a similar problem that we have with this overconcentration and are passing moratoriums or really strict restrictions. We feel in the long term that could really hinder the City's process to have a broad range of activities in the downtown. So we don't feel that is appropriate. We feel on the second recommendation that since large occupant night clubs or these drinking establishments do require quite different set of circumstances and operational issues that it makes sense that they be required to have a management plan in place before they start operating so we are seeking direction from the commission that we be directed to perform outreach and develop a recommendation to amend council policy 623 to provide language that anyone as part of C.U.P. process that has an occupancy over 250 be required to develop a management plan in cooperation with the San José night life business best practices guideline policy document. This policy document is currently be developed right now with a number of stakeholders. It seeks to comply with title 6 the entertainment ordinance and title 20, as well as security requirements, parking requirements, noise abatement, queuing lines. And it also seeks at a business level to give managers, business

owners, security personnel and servers a set of tools that will help mitigate any alcohol related issues that may stem from that. The best practices document is currently in development with the San José downtown association, the San José restaurant entertainment association, and a number of other cities that have sound management plans. And so we would come back to council and the commission with recommendation language for council policy 623 at such time that it's finished. With that the presentation is over. If you have any questions.

COMMISSIONER DO: Thank you. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. We've been through this before. I really appreciate city coming to us with this policy, especially the management plan. Many times we've had establishments come to us and they've had some feedback from the community and we've recommended that they have management plans. I'm just wondering why we are limiting it to establishments over 250 people. In my opinion, it doesn't matter, anybody who operates after midnight and serves alcohol should probably have a management plan whether it is 25 people or 250 people. Obviously a sleepy wine and cheese place that operates after midnight probably doesn't need an elaborate management plan as somebody doing full live bands or whatever going at 250, 300 people, I agree. But having a management plan how to deal with specific situations is a great tool for management to use when they have staff involved in security and people facing kinds of positions. So in my opinion I don't see why it would be restricted to those over 250. Again there could be a stair step where smaller ones with wider venues, if you will, have a pared-down management plan and the larger ones with more active venues have a more comprehensive management plan. That would certainly be my recommendation on that. The other thing I don't understand is if I read this chart correctly from the staff report, currently all drinking establishments after midnight come before the Planning Commission for C.U.P. Right? And what we're doing is essentially saying, well if it's over 250, Planning Commission has we don't want to you have a say in it anymore.

ORATOR: That is actually incorrect. It would -- just as a PD rezoning it would still come to the Planning Commission for a recommendation to the city council. We're just essentially adding on an additional step at the end, not that the city council would hear those --

COMMISSIONER ZITO: So instead of having the final say with appeal, we would have a recommendation?

ORATOR: Correct.

COMMISSIONER ZITO: Okay because -- I see, proposed requirement by C.U.P. decided by city council with a recommendation from the Planning Commission okay, I see what you're saying. So but again, it -- it -- I guess what I'm trying to say is what are we trying fix? You know, I often go by if it ain't broke don't fix it. What are we trying fix here?

ORATOR: That's a good question commissioner. I think the intention or you know the overall purpose from the get-go was to create a broader range of night life options in the downtown doing that First Amendment wise with regulating the term entertainment is difficult. Our council has asked us for them to be more involved in downtown, for them to get more information, more of a decision making process involved. We think based on the impacts of these larger venues it makes sense for them to weigh in on that issue. Since they've kind of expressed the desire for smaller venues, so we don't want to take the entire C.U.P. process and give it to them, but we do think since they want to be involved they've expressed a clear direction where they want to go that it makes sense for them to weigh in on these few issues.

ORATOR: Laurel Prevetti: If I may Mr. Chair if I could just add, similar to other key policy issues that are of great importance to the city council, such as, as you know, the offsale of alcohol where they have chosen to really be that final decision maker, this is another topic where the council has expressed a desire to really set the tone, and be in a position to make that final decision. So this was discussed again, as Lee mentioned in some of the earlier recommendations that were coming out of the -- out of downtown analysis. So again, the council very much values the work of the Planning Commission. And so there is a expectation that the Planning Commission would hold a public hearing on a C.U.P., take public testimony and make a recommendation. And then they will consider that recommendation as they would together with staff's recommendation in their final determination. It's just these large events or these large establishments have gotten their attention and so they're interested in trying something different.

COMMISSIONER ZITO: So -- so this is -- this is not a -- voting on this ordinance is not a recommendation, this is a passing the ordinance, right?

ORATOR: Laurel Prevetti: The item before you today is, as you consider all ordinances and changes to title 20, we're looking for your recommendation to the city council, with respect to this ordinance. That is also the purpose, to take any public testimony if we have any. So your recommendation will come before the full city council and they are the final decision maker on all owners.

COMMISSIONER ZITO: Okay because I was a little bit confused reading the staff recommendation it specifically states approve an ordinance of the City of San José amending provisions.

ORATOR: Laurel Prevetti: It should say a recommendation for approval.

COMMISSIONER ZITO: I was a little bit confused about that. Thank you for that clarification. In any case we won't be making the final decision on changing this ordinance. Are there any speaker cards Mr. Chair?

COMMISSIONER DO: There are no speaker cards.

COMMISSIONER ZITO: Are there any other speaker lights?

COMMISSIONER DO: There are several. Thank you, Commissioner Zito.
Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Could you just explain what the vision was from I guess the community vetting of this process? What did they envision as alternative night life venues?

ORATOR: That's a good question. I think the hospitality zone assessment was conducted by a group called the responsible hospitality institute which is a worldwide renowned kind of entertainment zone think tank so to speak. Throughout that community process and the overlay process a majority of stakeholders have wished we had a gaslight district like San Diego did or why can't the downtown be like Santana Row with broader ranges. Most of the stakeholders throughout that process residents and patrons felt that San José, given its past, has simply geared downtown for one age group, you know, the 21 to 25-year-olds. And it needs to be a place where everybody feels comfortable coming down here enjoying themselves and economics wise it's much cheaper and easier and profitable to rent a place and open a large drinking establishment but that we should incentivize or create -- incentivize smaller places or make it more difficult for larger venues to come in since we kind of have an abundance of that already, to help achieve the balance that everyone talks about Palo Altos and Campbells are achieving now so that was kind of the division of the community.

COMMISSIONER CAMPOS: So are for example Santana Row, Palo Alto, Campbell, aren't they attracting that same age group? I mean it seems like they are but just the venues are smaller. I mean, I guess we can -- we'll never know unless we try but trying to recreate an atmosphere that Santana Row has, I mean it almost seems like we're -- we're spinning our wheels again and perhaps that's passed us by. Hopefully it hasn't with a lot of the new housing that's downtown. But I'm just trying get an idea, I mean, is it -- I mean is it -- is it an age demographic that they're just trying to -- you know we have that 21 to 25 or 26-year-old demographic downtown and we're trying to get an older demographic, and with that I'm just trying to figure out well how -- how is that going to be different than what you have at Santana Row? I mean Santana Row has high-end shops, a bookstore that might -- you know that brings different age groups in. But when you get down to bars and other entertainment at Santana Row it's the same age group.

ORATOR: I think, you know, the community's perspective trying to recreate an environment is difficult. I agree. I think what staff's intentions are, is to create a new process that will help create greater options for the downtown, so that we seek, you know, a broader range of people who may want to come and second that these large establishments do have a huge impact on the downtown core and city services. And that by creating additional step in the process by making them go through the process of using the guidelines to create a management plan, that those venues, new or existing, don't have a negative impact that they do now. Because those -- according to the community outreach those are the two top things that drive people away from downtown are the large

night clubs that create a violence, according to them and the police presence. And I think we've worked really hard over the past year with the police presence and this is one of many steps we're taking to trying to regulate the larger night clubs and create more options in the long run.

COMMISSIONER CAMPOS: So because -- again just reading this, it seems like this is a way to either stop, or reduce, the night clubs downtown. But it sounds like what you're explaining is to -- it gives it more teeth or it gives the city more teeth to be able to -- if a night club or a larger -- a larger venue will actually have more regulation, so that they'll be one, better managed, safer, and so is that --

ORATOR: Absolutely. This is in no way an attempt to hinder any development of night life, you know, the exact opposite. To get to the overall options and diversity of night life that we want, these large venues are a part of that process and a part of that environment. We simply you know especially with recommendation 2, need a little bit more power and regulation over those clubs.

COMMISSIONER CAMPOS: So will this still provide room or -- room to allow -- I know that there was a -- we were trying to have a -- what were they, soft closings, allowing some restaurants to stay off until 3:00 where other night venues had to close earlier, so you're kind of staggering people as they leave, I don't mean staggering but you're kind of staggering the hours of people as they leave downtown and they have choices to go after a night club?

ORATOR: That is already part of the options. The council in July of last year passed a soft closing to 2:30. Night club venues right now have the option to extend their hours to 2:30. What we've seen is as soon as a business starts serving alcohol they start losing money. What we've done in the sofa area is work with those stakeholders to stagger out the closings, up until 2:00. So no one goes over to 2:00 and needs to spend the money, but the soft closing and staggering it out has had a huge impact overall for that area.

COMMISSIONER CAMPOS: Okay. Thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I'm looking at it from a little bit of a different angle, and I'm looking at it from a how to expand the retail angle and I guess a commerce type of angle. I understand what you're recommending and I'm supporting it. I do see as commission losing a little bit of its power but it's to the city council so you know not much argument there. But would the recommendations from the Commission, could they be placed on the consent calendar for the city council, then if there is an issue or there is anybody wants to pull it from the council, from the consent calendar, then it can go to regular calendar, we talk to? The reason I suggest this, the impression, the image it gives to the rest of the outside retail community looking at us, not making San José a harder place for business, that's the angle I'm looking at it, is that a possibility?

ORATOR: I think counsel can speak to that but I wouldn't necessarily anticipate that these would just go straight to consent. I mean I think you know the typical public hearing to give people the opportunity to speak on it, as opposed to just stick it on consent and then cause them to pull it off if they wanted. I would anticipate that, you know, given the council's interest in it, it would, you know, go the route of all other land use items. That they are you know agenda'd under the public hearing because of the nature of the proposal.

COMMISSIONER KAMKAR: Okay. That was basically my concern. Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I would like to issue my appreciation to staff, and the various organizations that participated in this discussion. I know that following the incident at Club Wet not too long ago that it must be very challenging to try and find a way to make our downtown visitors safe and comfortable coming here. So I really applaud the efforts to try and both streamline the process of having a venue, as well as to encourage expansion of the diversity, as well as the type of venue and the visitors that come into downtown. I have the pleasure of living downtown, and I know that when I mention to people that I live downtown, most of them who don't live downtown or live outside or even outside of San José are all worried, oh my God it's so dangerous down there. And I have to do a lot of explanation that it's really a very beautiful, come to Downtown San José, it's a beautiful place to be. So I really applaud the work that you've done. Like Commissioner Zito, I think that it would be extremely helpful to have most of our -- if not all of our entertainment and drinking establishments be required to have management plans. I think that knowing going in that they have a plan for how they're going to address getting people in getting people out who's going to staff where the security guards are going to be is all very helpful for the organization, the business itself as well as for the commission, in developing a warm and fuzzy, you know, that they have thoroughly thought out how they're going to address their business. Mr. Chair since we have no speaker cards, is it appropriate to make a motion?

COMMISSIONER DO: Of course. Please do.

COMMISSIONER JENSEN: Okay, thank you. So I'm going to consider the use of an environmental impact report, San José downtown strategy 2000, in accordance with CEQA, recommend to the City of San José city council that the ordinance of the City of San Jose amending the provisions of chapter 20.70 and 20.100 of Title 20 of the San José Municipal Code to establish the city council as the decision making body for conditional use permits for drinking establishments as they operate after midnight and have an occupancy greater than 250 persons within the D.C. downtown primary commercial zoning district as recommended by staff.

COMMISSIONER DO: There's a motion. Is there a second? There's a second as well. There are additional comments. Commissioner Jensen have you finished your comments?

COMMISSIONER JENSEN: I have, yeah.

COMMISSIONER DO: Thank you. Commissioner Zito.

COMMISSIONER ZITO: Maker of the motion would you consider a friendly amendment to drop the wording of occupation greater than 250 with regard to the management plans?

COMMISSIONER JENSEN: Yes I would consider that yeah I'll accept that.

COMMISSIONER ZITO: Secunder?

ORATOR: Yes.

COMMISSIONER ZITO: We would consider a management plan for all drinking establishments operating after midnight. And again, leave it to staff, my amendment would leave it to staff what intensity that management plan would be. Okay? Thank you for that. I only have eight meetings left, so to me, not a lot is going to come before me personally. But I have a question in my mind still about the objectivity of these venues, right? So my concern is that business, when they decide to apply, and invest dollars and time and effort in finding a location saying I want to use that particular site and venue for a night club, that there are more or less objective criteria to meet. I don't mean this to be disrespectful but I see that the city council tends to be a little bit more political than the Planning Commission, in land use kinds of issues. And that's probably just the nature of the beast. My concern is that there wouldn't be as much consistency in approving these kinds of venues, that it will be more popularity contest than it would be a meeting specific criteria scenario. And I think that one thing that business, especially struggling economies and struggling businesses need, is a certain amount of certainty and a certain amount of consistency. So I'm still questioning the wisdom maybe I can do this because I'm gone in eight meetings anyway but I question the wisdom of make it a more political decision on these larger venues, than more of an objective land use decision.

ORATOR: Laurel Prevetti: Mr. Chair, if I could just comment on that. It is not uncommon for our city council to wear several hats just like you do. So right now you're considering a legislative action so you're in a recommendation mode. When council considers the ordinance they will be wearing that legislative hat and will be making their action accordingly. They also do consider appeals of conditional use permit permits now, in which case they are wearing their other hat which is the quasijudicial hat. If this ordinance will pass then the council will be in that role, they will be behaving according to all the legal rules in the state of California when you are doing quasijudicial actions. So that does have a higher standard of performance. And so it really does need to be -- I don't think it has the same -- those concerns would be addressed, essentially, then

because of the quasijudicial nature of that decision. So they would not be subject to -- they could not be dealing with certain influences, as they sometimes make that is the role of the council to make sure that the integrity of the process and the integrity of the decisions of all of our decision making bodies is done according, according to the rules. So they've -- they already have experience in that quasijudicial mode, in other words.

COMMISSIONER ZITO: Yes, I see that and you're right. On appeal they are in that position anyway. I mean that's on any -- you know even the five occupancy, not the 250. It -- I guess I'm concerned about a little bit we're drawing a line at 250, something that Mr. Campos has said, Commissioner Campos has said, drawing a line at 250. And I'm not sure that anything could be said either way, to help me completely understand what the ramifications are going to be, until it happens. So maybe there's not much that you know could be said in that regard. I'm just -- I guess you can say voicing an opinion that while I don't distrust city council in any way, shape or form, it just seems like you know we may not be sending the right message so I'm a little bit torn on this particular vote. But I do really like the idea that we'll have a management plan if this passes for all levels of drinking establishments operating after midnight.

COMMISSIONER DO: Thank you, Commissioner Zito. I just wanted to expand on what you say a little bit. Because I share the same kind of not confusion but lack of clarity or understanding as to the exact clarification for this change in ordinance. Because if the council wants to incentivize or wants to encourage or discourage certain activities there are lots of ways to do that. I mean, they can, I mean, I assume they can put additional requirements into the -- into zoning regulations or into other regulations, I mean, to add things that they feel would be need to either encourage or discourage certain things. I'm curious as to why a change in approval process is the mode that has been chosen to address this issue. That's my main thing. There's a motion on the floor already so we'll soon be voting on it but -- so I'll turn the floor over to Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I would like to be on record with a clarification. Want to make sure I understand exactly what we're voting on. The way I read the motion it seems like one motion for one item but in reality we are voting on two separate items. One is the city council hearing the C.U.Ps for venues larger than 250, and then the second one is venues smaller than 250 also have a management plan but not necessarily being heard by city council. Aim clear in that understanding?

ORATOR: I think that's the intent, but I'm not sure I had the same question I think you need to include in the motion under item B in the staff recommendation asking to direct the City Manager to continue review of council policy. Because that's the reference to the management plan and the 250 .

COMMISSIONER KAMKAR: Exactly.

ORATOR: So perhaps further discussion of the motion.

COMMISSIONER ZITO: As the maker of the amendment, yes, we would basically strike any reference to over 250 persons from section B. So where it says here, occupation of over 250 must have a management plan we get rid of that threshold.

COMMISSIONER JENSEN: If I may the motion would be in two parts as Commissioner Kamkar has said, part 1 is create a new process for drinking establishments operating after midnight with an occupancy over 250 to allow city council to hear that conditional use permit, part B would be require a management plan for drinking establishments operating after midnight. Does that assist staff in clarifying?

ORATOR: Laurel Prevetti: And again, it would be a recommendation because we're not bringing forward council policy 6-23 at this time.

COMMISSIONER JENSEN: Correct.

ORATOR: I was going to say I just noticed that's not actually on your agenda. It is in the staff report so I can see where that would be confusing but when I look at your actual agenda the only thing that's being brought to you tonight is the amendments to title 20. I did want to mention to the commission that our hook if you will in terms of requiring the management plan is a permit that is obtained from the police department. And I think those permits are for how many, 100? What triggers the entertainment permits?

ORATOR: The entertainment permit is triggered for drinking establishments with an occupancy over 100, that have live entertainment, dancing, music or audience participation in the venue.

ORATOR: So the reason I wanted the commission to know that is because I've heard, because I've heard a couple of commissioners say that they would like management plans for everyone. But really the management plan is something that we have moved over to the title 6 permit and you only need to go get a title 6 permit if your occupancy is 100 persons or over.

COMMISSIONER ZITO: Mr. Chair, this is just a recommendation, right? The staff report does mention item B in their recommendation, the concept of a management plan. I understand what counsel's saying that's all fine well and good but is that outside our purview that we would like to see that recommended, outside this recommendation ?

ORATOR: Thank you, Mr. Chair. My concern is the Brown Act on what's actually on your agenda for action this evening. And you know I'm not quite sure why those items are not on your agenda. No, I'm looking at -- the Brown Act in terms of what was posted on your agenda.

COMMISSIONER ZITO: Wasn't the ordinance amendment and staff report also posted in regards to this item?

ORATOR: I don't know but your agenda is what governs the action for you to take.

COMMISSIONER ZITO: I see, okay.

ORATOR: So that's my concern. Again I'm not quite sure why there's only one here. But the only thing I actually see under item 3A is the ordinance amendment.

COMMISSIONER ZITO: But it also does say in there permits for drinking establishments downtown, oh you're right it doesn't actually say, oh I get it.

ORATOR: I don't know -- will the proposed changed 6-23 come to the commission?

ORATOR: Yes, that's a land use policy which we would bring back to the commission. So really, you know, I think it probably was an oversight and really, subsection B is just a direction to City Manager to have staff continue to work on that policy and then once they've kind of finalized it, that will come back to the Planning Commission for their recommendation to city council. And perhaps Mr. Wilcox can give us a sense of the time line on that.

ORATOR: We hope to come back to council with the finalized recommendations for council policy 6-23 by mid summer. So it would be before the Planning Commission sometime in the next few months, relatively quickly.

COMMISSIONER ZITO: So if I understand council correctly, we really can't vote on that amendment, is that a correct statement?

ORATOR: Correct. The item that's before you is recommendation on the amendments to title 20.

COMMISSIONER ZITO: So we're only dealing with the 250 limit going to city council and nothing else?

ORATOR: Correct.

COMMISSIONER ZITO: I guess in that case I have to withdraw my friendly amendment.

COMMISSIONER DO: Okay, I think that's been cleared up I think. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. It is my impression that the city council is actually trying to improve our city and our downtown area by putting additional steps to assure that a large entertainment drinking establishment that there aren't so many of them that we are overwhelmed. And so I actually view this as a very positive step, that there's an additional checks and balances on what's going on in downtown and that we do diversify our downtown area so I fully support this motion.

COMMISSIONER DO: Thank you, Commissioner Cahan. There are no other speaker lights so let's vote by light. If motion is passed by all commissioners present. Commissioner Platten is absent. So moving on to item 3B. CP09-051 and ABC 09-003. Conditional use permit and determination of public convenience or necessity to allow the construction of a 4,640 square foot retail commercial building with 24 hour operation and off sale of alcoholic beverage on a .34 gross acre site, located at 4156 Monterey road in the CP pedestrian commercial zoning district. staff.

ORATOR: Thank you, commissioner. This is a request for determination of public convenience or necessity that was submitted to the city October 14th. It is on a site that was -- is currently cleared. It was a previously a gas station, where the buildings have been demolished for several months now. As far as anything additional in the staff report, I just want to point out, again, it is for 24 hour operation. Offsale of alcohol and determination of public convenience or necessity. I think in this case, wanted to point out that there -- the commission is in a position where they could support this, and that, you know, there are none of the findings that would trigger a mandatory denial. I think if you look in the plan set, the one question that brings it close was, its proximity to a residential structure, that the last, I believe it's the last page in the plan set, staff went out and took a measurement of the building, to the nearest residential, and it exceeded the 150 feet. So therefore, the commission is in a position that they could act on it, if they wanted to. I wanted also to point out that there should have been passed out to you an amended or corrected resolution. In the title of the resolution, we inadvertently left out the reference to 24-hour use. So this is for a conditional use permit for offsale of alcohol, 24-hour use, and supportive of a determination of public convenience and necessity. As well as a condition related to the hours of operation. You'll see in the amended resolution, condition number 9, which references may operate 24 hours a day. And then a condition we did modify with respect to the circumstances in which the offsale of alcohol may occur. And it would be condition number 10, on page 5, and if I can read that, it states that this permit allows for the offsale of alcoholic beverages for consumption in an area not to exceed 100 square feet or 3% of the floor area, whichever is less. Goes on to say this permit is only valid with the continuous sale of food beverages and groceries, specifically including the full range of fresh produce and meat that you would customarily find in a full service grocery store. Plows and meat shall be at least twice that area that's devoted to the sale of alcohol. And then it would constitute a violation of this permit should you not fall within those parameters . With that, staff is present to answer any questions.

COMMISSIONER DO: Thank you. Is the applicant here? Would you like to address the commission? Please come down to the podium. You have up to five minutes to address the commission. Please state your name.

ORATOR: (inaudible) leaders like yourself. My name is Tina and I'm on behalf of 7Eleven corporation. After extensive research 7Eleven signed a lease to occupy approximately 3,000 square feet of the proposed development. And 7Eleven as the number one franchisor is looking forward to investing in the community as a good neighbor and corporate citizen to provide fresh food. I would like to name a few that's

been sourced locally, sandwiches made in San José, doughnuts made in Oakland, milk, yogurt and dairy products from Berkeley farms, 7Eleven plans to be adding jobs and creating entrepreneurship especially in that community they are planning to renovate all of their existing stores in San José. In this evening, I am requesting of you Planning Commission to slightly modify the condition number 9 or 10, the amendment resolution that puts restrictions on the square footage, and the range of meat and grocery products that should be provided by our neighborhood store. I think working closely with the staff for the past couple of months, and I understand the director of Planning's concern related to this condition. And I believe this legitimate concern may not be applicable. Here I would like to share with you my reasons. As you know, the subject property, the allowable buildable area is about 4600 square feet. With the current economic condition, moms and pops do not have necessarily fund to commit to build or start a neighborhood oriented store. A chain store, those that they have, the urban model plan, usually they require minimum 5500 square feet. To name a few, target, cost plus, have been welcomed by the community and desired. If there is not any issue, of the square footage, even these businesses would not be support I by this condition because they do not provide meat or you know wide range of grocery products that you can find in the full service grocery stores. However, 7Eleven's model fits well with the available square footage of the proposed location, and they have the capital to start a project and serve the community as a neighborhood store. So -- and by the way we all know San José especially in this community is underretailed and there is a need to provide fresh food and consumable products, about 6 million people shop at 7Eleven every day. 28,000 stores in 18 countries. So in closing I would request, of you Planning Commission, that the number 9, 10 provision to be modified as stated in the zoning ordinance to read this permit allows for the sale of alcoholic beverages for offsale consumption in conjunction of the retail of 100 square feet or 3% of the tenant floor space whichever is less. If you have any questions, I'm here to answer. So please don't hesitate.

COMMISSIONER DO: Thank you. There are a number of questions from several commissioners. First, Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. Am I understanding correctly that you want to take out the entire reference to fresh produce and meat?

ORATOR: We, 7Eleven would provide fresh food, sandwiches muffins, you know, fruits, cut fruits, egg, yogurt, milk but for sure not lettuce, tomatoes and those items that have been served by the full service grocery stores. And the meat sections, as all of you shopped before, they provide hot dogs and some type of meat but for sure not steaks or lamb or chicken. So I would appreciate to take that out.

COMMISSIONER CAHAN: I will ask staff if in fact this would require you to provide those things which I don't think that it would. But are you trying to change at all the A square footage that you will be allowed to have alcoholic beverages ?

ORATOR: The beer and wine approximately for this proposed location would be under 100 square feet. For our estimation would be 88 square feet at the proposed location. So

it's under the -- it's under the 100 square feet and the proposed store is 3,000, so it's under 3%.

COMMISSIONER CAHAN: So really what you're trying to do is limit what is required of you for the fresh produce and meat?

ORATOR: Exactly. And also I believe there is a sentence there that talks about the square footage of the meat and produce should be twice as -- the beer and wine.

COMMISSIONER CAHAN: Currently what is your proposed amount that you would designate to fresh produce and meat?

ORATOR: I have the 7Eleven's representative here. I would like to ask if you allow me to ask him that question.

COMMISSIONER DO: That's fine.

ORATOR: Thank you.

ORATOR: The question, my name is Dennis Daley and I'm a senior retail rep for 7Eleven, hopefully I can answer any questions you have. Could you repeat that last question Ms. Cahan?

COMMISSIONER CAHAN: Yes. The question is currently you want to change the amount of fresh produce and meats that you're required to have at the store. And I'm trying to find out how much you are planning on having compared to the alcoholic beverage that you're planning to have. What is the ratio?

ORATOR: We don't currently sell any fresh meat. We sell packaged hot dogs and things like that and we sell fresh hot dogs and things off the grill and Taquitos and things like that. No fresh meat. Typically most stores have fruit and they'll have about three feet running of fruit presentation. We also have cut fruit that we have in what we call our salmon cases, fresh fruit. We have limited amount of produce. Some stores in certain areas where the community needs it might sell some potatoes and onions and things like that. But generally our template, we don't supply those for sale.

COMMISSIONER CAHAN: So the amount specifically for fresh produce and meat, it doesn't say fresh meat so I think that perhaps the Deli switches would qualify for that staff?

ORATOR: Fresh meat and not that you would prepare by yourself .

COMMISSIONER CAHAN: Sounds like you would only have 3% of your store for fresh produce because you don't provide fresh meat at your store at this time?

ORATOR: That's correct.

COMMISSIONER CAHAN: Thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner Zito.

COMMISSIONER ZITO: So I think essentially Commissioner Cahan asked my question. So you have 88 square feet right now that you're proposing for beer?

ORATOR: Beer and wine. And fresh consumable food product for sure they take the larger area. That is why.

COMMISSIONER ZITO: The few times I've frequented 7Eleven you have the packaged Deli products some times and sometimes you have some frozen meats like the hot dogs and such or refrigerated meats. But I've never seen a butcher shop at a 7Eleven.

COMMISSIONER ZITO, this is the first store in San José that is going to be actually under new 7Eleven's neighborhood store image. So we visited stores in Seattle, that actually provides you know what we are trying to, evoke an image here but this actually is going to be the first one.

COMMISSIONER ZITO: To be honest with you, from what you've said tonight, it may be, I saw the pictures in your presentation, it's very nice layout and so on. I don't see the products being offered much different than the other 7Elevens. Sounds like the layout, very fresh look but like you said as far as a neighborhood grocery store you're not. You're not going to have a butcher or baker or full produce department is what I'm hearing.

ORATOR: Yes.

COMMISSIONER ZITO: And 88 square feet 3% of 3,000 is 90. So you're just kind of right there as far as that's concerned. But everything else you're okay with in the conditions?

ORATOR: Yes.

COMMISSIONER ZITO: Okay, thank you.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. My concern was basically the same that Commissioner Cahan brought up. I've never seen any fresh meat in 7Eleven so I'm a little bit confused as to what's going on. Why is that being required? But if you don't do fresh meat can you double the size of your fresh produce to meet that requirement or is that going to interfere with your model? Because we love to have retail. We want to have retail, we thank you for applying, you know. It's just that I mean, fresh food that's great, you know, we like that too. But at the same time, if it's

going to interfere with the business model, and make you think twice, then, you know, we don't want that either. So what are you going to do if let's say you don't offer fresh meat? How you going to meet that requirement?

ORATOR: You know Commissioner Kamkar, 7Eleven's genome is to meet the every changing requirements of the customer every day. They listen to the customer what they want and how they want it. And I will leave it up to Dennis to answer that question.

ORATOR: Actually Commissioner Kamkar, to Tina's point if our customers told us they wanted fresh meat we certainly would begin to consider that. That's what we're in business for to be the best store we can be in our neighborhood. It is not -- I can't say not. Because there possibly are stores across the United States that maybe do have small meat sections but I'm not aware of them. But that is not our template in the Bay Area. I mean we do want to sell Deli products and we do want to sell bologna and ham and we sell a lot of fresh fruit and in fact our focus is on fresh fruit. And at this point we're a limited produce opportunity to shop. Mostly in relation to fresh fruit and celery sticks and carrot sticks and things like that and Deli meats and things like that.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. So like my fellow commissioners I'm a little confused because I've never seen a 7Eleven that has a butcher shop. But you mentioned that you're trying out a new model, a neighborhood market model. Can you talk about what a neighborhood market model is that's different from the normal 7Eleven that we're accustomed to because what I've heard you talking about sounds like the 7Eleven that's in my neighborhood.

ORATOR: I'm a little off track here because we are trying to improve on our 7Eleven model all the time. I'm not aware of a new term. Neighborhood market model.

COMMISSIONER JENSEN: I'm sorry, I heard you refer to a new market, new neighborhood market.

ORATOR: A new neighborhood store.

ORATOR: We try to emphasize on investing in the community. For instance this is a number one franchisor. They have very extensive grades, computer program for their employees, they encourage entrepreneurship. They would like to take action in the community. For example, they have the operation chill program that they reward kids with a lot of coupons, drink coupons when they exhibit good behaviors.

COMMISSIONER JENSEN: Okay but it doesn't refer then to the content of the store? The template for the content of the store is going to remain the same as the 7Elevens that we're all familiar with?

ORATOR: Sure and improves every day, that's the goal.

COMMISSIONER JENSEN: Okay, all right, thank you.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. Is there any plan for there to be organic food there?

ORATOR: We sell some organic milk in some stores. If our customers -- we would usually try it and we would probably try it in this store, if the customers buy it and sure they want it and we can sell it profitably or if there's an insistent demand we would certainly carry some organic things. We've explored the possibilities of organic fruit and things like that and we've tested that quite a bit to the north in Portland and Seattle area and we've had some limited success with that. And again if the neighborhood wanted that we would definitely do that, do that.

COMMISSIONER CAHAN: I had some concern with your suggestion that the neighborhood should come to you. Because I don't think that most people think of going to a 7Eleven and asking them to provide fresh meat or organic fruits and vegetables. So perhaps, if you were to start that, then the neighborhood would then follow. And that would also probably be a marketing issue but thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. There are no other speakers, no other questions so thank you very much.

ORATOR: Thank you.

COMMISSIONER DO: Motion to close public hearing.

COMMISSIONER ZITO: So moved.

COMMISSIONER DO: Second? All in favor? Okay. Great. So I think back to staff. I guess there seems to be a lot of discussion on the issue of the fresh produce and fresh meat and whether that's necessarily appropriate or recommended. So --

ORATOR: Well again, when we look at this application, even though 7Eleven has signed a lease we're not looking at it as approving a 7Eleven. We're looking at it as a land use, and what kind of circumstances would be appropriate for us to feel supportive of the offsale of alcohol. And whether there is a public convenience or necessity. So -- and again I'm not sure if the map got in your staff report but right across Senter road, it has a shopping center, bottle shop within 500 feet of this, a larger full service grocery store. But again our position is really to support land uses that really provide for the neighborhood beyond your typical convenience market. And there's convenience foods, and how can we you know broaden that opportunity for the neighborhood, similar to that

one that came before you. Previously, which was a full service market, regardless of the square footage, it did really serve as that neighborhood market which offered, you know, a meat counter, a produce aisle, you know, other typical grocery items, although albeit a smaller scale. Clearly, what we're conditioning doesn't fall within the business model of 7Eleven. But what we're looking at is not an application for a 7Eleven. We can't control whether they're there or somebody else goes in. We're looking at this from the longer term of what is the appropriate balance in a retail market here. So staff would not be supportive of modifying that condition to remove the requirement for fresh meat. And again, I think the term fresh, obviously all the food they sell is fresh. In one sense. But we're looking at the unprepared meats and produce such that you could buy and then take and prepare, you know, a meal on your own. So any other questions? I'm happy to answer.

COMMISSIONER DO: Thank you, Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Okay so I understand, you clarified the fact that we shouldn't consider this as a 7Eleven per se at least not from a land use perspective. But I think about what we've done with grocery stores and limited them to 10% most of the times it's been between 5 and 10% floor area for alcoholic beverages and a lot of times they have hard liquor as well. Second thing is gas stations, again we've allowed them to have wine and beer and again 5% is usually what we stick to most of the times there and we certainly don't require them to open up a butcher shop as well. It concerns me that I don't see anything in the staff report, or any testimony, saying that there's the possibility of any kind of bad influence at this site, the same way as personally myself I didn't see it with the last market that came before us. I mean that was the position of my vote there. And so to ask this particular applicant to change their business model to meet something that's going to require essentially a butcher department and, you know, fresh produce and so on, may prohibit them from actually even considering this site. And that to me is a concern. As far as the neighborhood's concerned you had mentioned it, right across the street there is a full service grocery store. And so if people need meat and groceries, I mean vegetables and baked items they could go across the street and get it there. I don't see anywhere where this would impede or down grade the character of the neighborhood or anything along those lines. And considering that we've even let gas stations have 5% or more floor area for alcohol, and, you know, they serve chips, for gosh sakes, you know, not even fresh sandwiches and other warm food. I personally, with all due respect to planning, I understand what you're trying to achieve here but I'm not sure it's doable at this particular site. So if it pleases the chair, I'm ready to make a motion.

COMMISSIONER DO: Please do so, Commissioner Zito.

COMMISSIONER ZITO: Let me find my cheat-sheet here. Okay. Okay. That we Approve a conditional use permit and determination of public convenience or necessity to allow the construction of a 4,640 square foot retail commercial building with a 24 hour operation and offsale of alcoholic beverage on a .34 gross acre site as recommended by staff, with the extra provision to remove the requirement for a full range of products from produce

and fresh meat customarily found in full service grocery stores but keeping of course the 3% floor area limitation. And that I also agree, just for clarity, that food would be served for the 24 hours, in other words, they can't stop serving warm food any time, that they're selling alcohol. I'm in agreement with that provision but just the portion of fresh food and veg tablet and meat customarily found in the full service grocery store.

COMMISSIONER DO: Commissioner Zito just clarification, you want to remove both fresh fruit and vegetables, and still require some meat just not the butcher style ?

COMMISSIONER ZITO: I think customarily they do sell packaged meats like Deli meats in a package likes Oscar Meyer Deli style meats. I'm not going to tell them, I don't think that's necessary is what I'm saying but just remove the fresh, because again, to me it would be more of a waste, it would be actually a detriment for them to be throwing away rotten food, because the fresh food would perish, you know perishables have a very limited shelf life and for that reason I just want to limit that portion of it.

COMMISSIONER DO: So just take out the word fresh basically?

COMMISSIONER ZITO: Well I don't -- I want to take out the section under number 10 saying including a full range of fresh produce and meat customarily found in a full service grocery store.

COMMISSIONER DO: Okay, great. There's a motion, there's a second. There's a motion and second. Commissioner Zito any further things to say?

COMMISSIONER ZITO: No I completely empathize with staff. I see what they're trying to do. I just don't see this is the proper place to make that stand. I would hate to turn this applicant down? It sounds like they're doing something great for the neighborhood and they're really limiting their alcoholic sales to 3% which is much less than we typically allow 5 to 10% so I think this will be good.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I fully support the motion. I think it pretty much you know touched on all the issues that I had with it. I think that the fact that their client is filling out the -- building out the plans, not building to the full 4600, if I understood the testimony, it is 3400 or something, 3,000 building and showing their good corporate side by limiting the alcohol sales to 3%. To me, all that makes sense and we should embrace them with both arms so I will be supporting the motion. Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. I will not be supporting the motion. And I believe what we need to be providing our city, are places that provide healthy food, and to limit, to take away a requirement of having fresh produce, I don't think anyone is

expecting to get fresh meat at 7Eleven. But to take away the fresh produce and to take away the requirement from this site and to allow them to serve alcohol is not healthy for our community. I believe that we need to provide healthy choices to people, I mean you go into a 7Eleven to get a snack, a magazine, beer, cigarettes or a lottery ticket. In my mind. And so we should be providing healthy snacks for people. We have a problem in this country with obesity, and we need, as a city, to be working on combating that by providing fresh produce when possible. Additionally with the sale of alcohol we need to be providing food when we sell alcohol. So I will not be supporting this, thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner Zito perhaps you could explain.

COMMISSIONER ZITO: I understand Commissioner Cahan and I ideally agree with that notion. My concern here is that we're opening up a new paradigm and you know we're requiring certain things that we don't even require of other venues and I'm just wondering if this is opening up the door for the new service station that is going to sell beer and wine and we're going to make them sell fresh meat and vegetables. And anyone that comes after that again that's the slippery slope, I'm going on with the application, they're going to provide what the neighborhood requests. I've gone into the 7Elevens and have seen what is portrayed as fresh fruit and vegetables. Given what I saw it didn't seem like the right venue for fresh fruit and vegetables. I think people in the neighborhood were purchasing it. I assume, if this is a 24 hour, where a grocery store isn't it, somebody says, I've got to have a hand of bananas in the middle of the night, I understand your concern and I agree with you we need to incentivize our vendors to offer more healthy foods. I think that, you know, there's a lot of places we can make that stand. In this particular case given the limited amount of alcohol space, it seems to make sense.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. I don't go into 7Eleven because I try to eat nonprocessed food as healthy food as possible but if my 7Eleven right down the street from me offered organic fresh produce I was aware of I would probably go there because it's so much closer than any of my grocery stores. Then additionally, I see this as a long term site so yes, we are talking about the 7Eleven and we are thinking about what 7Elevens usually provide. But we are talking about this location and allowing them to serve alcohol. And what our requirements with allowing someone to serve alcohol and I don't support a gas station just serving alcohol and not -- that's something I'm not -- not chickens, right. So I'm not going to support another alcohol-selling venue that doesn't provide healthy food.

COMMISSIONER DO: Thank you, Commissioner Cahan. Director.

ORATOR: Laurel Prevetti: Thank you. I'd like to give staff just an opportunity to say a couple words about the discussion. Because we didn't mean at all that fresh meat meant having a butcher. So I think there are other models in terms of how fresh items can be provided. Staff.

ORATOR: Yeah, and again it's not a butcher thing. But there are, you know and even fresh produce. I mean we have, you know, trader Joe's we have fresh and easy, which package their produce, and hopefully recyclable type packaging. But again it's not the open air, it doesn't have to be the open air. What I wanted to do, because what I'm hearing, 7Eleven indicate, is that this offsale of alcohol is really limited to beer and wine, and that currently isn't reflected in our conditions. So I'd like to see if we can pick up on that, and if the Commission so desires, to modify condition 10 at this point, also put in that limitation to beer and wine, this this is specific to the offsale of alcohol for beer and wine, since we do have the two separate enumerated uses.

COMMISSIONER DO: Thank you, counsel.

ORATOR: The only thing I wanted to clarify is the city doesn't regulate that. The city doesn't tell what you type of alcohol you can serve. So what I'm hearing is that is the type of ABC license that the applicant has. So they are nodding their head. It's that they have a bore and wine license. It's not that the city is trying to limit what type of alcohol they can sell.

COMMISSIONER ZITO: I think I'm the maker of the motion, right? The maker of the motion will yes include the wording to clarify that it is a type 20 beer and wine.

COMMISSIONER DO: Thank you. Let's see, I just have a couple of questions. Is this for a -- I don't know what other, if this is the right term to use, for a convenience store, is this about the regular size? Is this larger than normal convenience store? That may be perhaps the reason why you considered having these additional requirements for produce and meat and so on, so forth?

ORATOR: Well again, I think what you're going to be seeing coming forward out of planning is really a position of supporting offsale of alcohol in conjunction with the sale of food, beverage and groceries, including fresh produce. We're not really looking to be supportive of just beer and wine with just general retail merchandise, as a convenience. Again we're thinking that San José's got a number of those and to offer other opportunities we are now seeing the benefit of supporting that in conjunction with a broader range of food and grocery items than just the prepackaged, processed convenient items.

COMMISSIONER DO: Thank you. So this is an issue where I think I could go either way but given that argument and given the idea of wanting to promote a healthier retail, I would be against the motion, just in a matter of principle, in support of Commissioner Cahan's spiritually, anyway, so thank you. Commissioner Zito.

COMMISSIONER ZITO: If I could I want to read 10, this permit allows for the sale of alcoholic beverage for offsale consumption in an area not to exceed 300 continuous sale of prepared food, I'd like to add the word prepared, okay? Sorry?

COMMISSIONER JENSEN: 7Elevens have unprepared foods, eggs and milk and --

COMMISSIONER ZITO: I want the concept that hot food is available and should be available 24 hours whereas not just a box of rice, right? So -- because if this says continuous sale of food beverage and groceries then that means that essentially if I read that correctly anything is considered, I mean a package of dingdongs is food, right? And we want to get away from that. We want to say prepared food. The fact that they offer fresh sandwiches and hot dogs and you know prepared foods to me is the differentiator. It is the fact that somebody can go in there and get a hotdog and a beer if you will as opposed to a box, only a box of rice.

COMMISSIONER DO: Would it be appropriate to leave that to staff to choose the appropriate word? If that is the intent of the maker of the motion and the motion is passed? I mean, Commissioner Zito's intent is to hot food.

COMMISSIONER ZITO: Right.

COMMISSIONER DO: And not simply doughnuts.

COMMISSIONER ZITO: That's what I heard the applicant saying, not simply doughnuts. I heard the applicant saying they will have prepared sandwiches, hot dogs and Taquitos and et cetera, et cetera. Seeing they offered that, that we wanted it to be a place that they can get food that they can consume relatively quickly, that that along with grocery items is appropriate. And I would like to see that they have that ability, that people can go in at 1:00 in the morning because they feel like having a hot whatever and they can get that and that will be available.

COMMISSIONER DO: Counsel.

ORATOR: I think the phrase that I heard the applicant use was fresh food as opposed to prepackaged food.

COMMISSIONER ZITO: Not prepackaged. I'm talking about prepared.

ORATOR: They called it fresh food, when they talked about fresh food they included the fact that they have hot dogs, and the hot dogs are fresh not prepared.

COMMISSIONER ZITO: They're on a grill.

ORATOR: I anticipate this is a resolution that needs to come back for your approval so you can provide that general direction to staff and have a chance to review the resolution whether it comes back.

COMMISSIONER DO: So with that then let's vote by light. So the motion is passed with commissioners Jensen Campos Zito and Kamkar voting in favor, commissioners Do and Cahan opposed. Moving on to, counsel please.

ORATOR: Just for the sake of the applicant so what happened tonight is that the commission did approve your application for a conditional use permit. But the planning staff needs time to go and memorialize it in writing. So at the next Planning Commission hearing, on consent calendar, we will not reopen the hearing, the actual resolution will be brought back for consideration by the Planning Commission not regarding the item, or the application but rather, did planning staff memorialize what just occurred accurately. So it will be on consent calendar. Chances are there will be no discussion unless someone sees something that does not comport with what transpired this evening.

COMMISSIONER DO: Next item on the agenda is item 4, There are no items from staff but I would like to make a short announcement. And unless the director has -- okay. I just wanted to announce to the rest of the commission that I've submitted my resignation to the city, to resign from the Planning Commission and that's due to a change of residence to move out of the city. And so I had planned to stay at least for the -- at least until the next term begins, in June or July. But the -- I think that for one thing, it -- hopefully this minimizes the transition, because right now there are already several vacancies, and at least there would be two new commissioners starting in July. And so hopefully the city can recruit somebody to replace, for the replacement prior to that. And so on. But anyway, I will miss all of you and I, believe it or not I will miss these meetings. And so I just -- there will be more to say at the last meeting but thank you very much. So counsel.

ORATOR: Your last meeting would be?

COMMISSIONER DO: I'm sorry, I should have said. I'm resigning at the end of April which makes my last meeting April 21st. So thank you. Next item is number 5, referrals from city council, boards commissions or other agencies. Director.

ORATOR: Laurel Prevetti: There's none however I think we have a speaker.

COMMISSIONER DO: Oh, I apologize, Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. So now that we have had another grocery store, alcohol issue and we've gotten through another one of our ordinance changes that we're plugging up the pipeline, I'd like to check on the scheduling of the original commission request for Commissioner Campos and myself to participate in a grocery store-alcohol discussion and see where that is. We've been checking in periodically for over the course of a year and I'd like to see if we have an opportunity to schedule that.

ORATOR: Laurel Prevetti: If I might suggest to the chair that we take that under item 60, and staff has a suggestion.

COMMISSIONER JENSEN: Super, thank you.

COMMISSIONER DO: Thank you, Commissioner Jensen and director p.m. item 6, good -- item 5, were there any referrals? Director?

ORATOR: Laurel Prevetti: None.

COMMISSIONER DO: Okay, there are none. Excuse me. Item 6, good and welfare, report from city council.

ORATOR: Laurel Prevetti: Just a quick report. Last -- yesterday the city council did agree that park fees would be levied on affordable housing. Not the full 100% rate but 50%. So that does recognize that all members of our community should have parks. Council also accepted the status report on the habitat conservation plan. That is moving forward and we will have another study session for you at a future time. Thank you.

COMMISSIONER DO: Thank you director. Commissioners report from committees, Norman Y. Mineta San José international airport noise advisory committee. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair we haven't met.

COMMISSIONER DO: Envision San José 2040 general plan update process, Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I missed that meeting. My colleague Commissioner Zito could report.

COMMISSIONER ZITO: Thank you, Mr. Chair. We had a lively meeting on Monday. I think it was good. We considered several scenarios for growth and came up with an additional scenario for growth and what was voted on was that staff's scenario, was going to be adopted and brought back to us with the additional clarity on the triggering of building homes triggered by the number of job creation, am of job creation in the city and strongly recommend, it's getting to the good juicy part now so if you're interested to participate it's getting to the good stuff.

ORATOR: Laurel Prevetti: And if I may Mr. Mayor just report we have an online web based survey. So those of you in the audience or on the commission who would like to participate you can also share with us your preferred alternatives for the general plan. Thank you.

COMMISSIONER DO: Thank you. Next item is review and approve synopsis from the last meeting, February 24th, 2010. All in favor? Okay, so synopsis approved. Subcommittee reports and outstanding business. This is where we talk about the alcohol license.

ORATOR: Laurel Prevetti: Thank you, Mr. Chair. I would suggest that we set a study session for this topic for one of our May meetings, either May 12th or May 26th, we can

bring this back for your agenda on April 7th. But I think given our limited staff resources, I just don't think we can support a subcommittee. But I think this is of general enough interest of the full commission that would I recommend we do this as a study session so we can have a discussion about some of the items that even came up this evening. That would be our recommendation. Thank you.

COMMISSIONER DO: Commissioner Jensen is there anything you'd like to add?

COMMISSIONER JENSEN: Well, yes. Well, given the length of time that we've been delaying this I'll take a study session over ignoring it altogether. So I thank the director very much for the offer having a study session on it.

COMMISSIONER DO: Thank you, Commissioner Jensen. So then the meeting's adjourned.