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>> Commissioner Jensen: Good evening. My name is Lisa Jensen, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, July 28, 2010. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall are located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking validation Table at the rear, or at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. Example, 4A, and not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker card in the order received. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's 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 testimony, ask staff questions, and discuss the item. 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 hearings on these items. ROM call. Let the record reflect that all commissioners are here with the exception of Commissioner Platten and Commissioner Cahan. 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 would like 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 to either, one, proceed With the 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. decision on how to proceed

will be heard by the Planning Commission no later than 11:00 p.m. Item 1A. C-10-008. Is recommended for deferral per staff recommendation, and PDC 10-005 is also recommended for deferral per staff recommendation. Staff.

>> Thank you. Both those are items you just mentioned are being recommended for deferral to the August 11th Planning Commission meeting, per staff recommendation. Staff has no additional items for deferral.

>> Commissioner Jensen: Thank you. Is there a recommendation from the commission?

>> Commissioner Kline: Move to defer items 1A and 1B.

>> Second.

>> Commissioner Jensen: Thank you. There is a motion and a second. All those in favor, please say aye.

Opposed, thank you, that passes unanimously. Consent calendar. Consent calendar items are considered to be routine and Will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak to one of these items individually, please come to the podium at this time. 2A. CP06-012, conditional use permit to consider approval of a previously expired conditional use permit for an existing Business -- I'm sorry -- homeless shelter, CP09-056. Conditional use permit to convert a vacant City of San José community center to a child Daycare center, CP10-031. Conditional use permit to allow the conversion of an historic residential structure currently used as a law office back to the Original residential use, and CP10-012. Conditional use permit to allow for the installation of new water pump equipment at an existing water distribution Facility. Staff.

>> Staff has no modifications on the consent.

>> Commissioner Jensen: Is there a motion?

>> Commissioner Kline: Move 2 ABC and D.

>> Commissioner Jensen: All in favor? Opposed? That passes unanimously, with compensation of Commissioner Platten and Commissioner Cahan. Public hearing items. 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 A later agenda for public hearing Time management purposes. 3A. Zoning code amendment. An ordinance of the City of San José amending title 20 of the San José municipal code to include amendments to section 20.70.010 of the chapter 20.70 to expand the applicability of the downtown zoning district and to several sections of the zoning code to allow greater uses of historic landmark structures. Staff.

>> Laurel Prevetti: Thank you very much. This is a modification to the city's zoning code as described, so there is really two distinction components. One is to expand the applicability of our downtown zoning districts to include what is commonly called the river street area, this would essentially extend the boundary West towards the Guadalupe river, essentially including the area by Julian street down to about St. John or so. This would essentially allow the properties that are in that area to have the flexibility of what the downtown zoning districts provide and really better align with the overall vision that the city's general plan has for the greater downtown area. As we were thinking about the river street area we thought that a good companion modification to title 20, is something that we've actually been contemplating for quite some time but are just now getting to and that is really expanding the ability of our historic landmarks, our designated city landmarks to have a broader range of uses than whatever zoning district they might happen to be in. As you know we've had some recent challenges with some of our landmark buildings that have burned down or have had other kinds of threats, and our thought is that if we can facilitate new uses, new businesses, new homes, new people living in these buildings, that we have a better chance of overall preservation. So while the recommendation is I know very long in terms of the various chapters that are being amended, this is really our way, in working with our attorney's office, to make sure we've really dotted every I in temps of what's the appropriate permit to allow for these modifications? So you can see

that for our residential districts, that if a landmark is within a residential zone, we are recommending that a conditional use permit be the appropriate vehicle. Because those are a little bit more sensitive from a context perspective. That would mean that if we did have an application in a residential zone, that would really come before this body for its consideration. You would hold your public hearing, et cetera. Within our commercial, industrial and downtown, these are areas where we're really trying to focus and stimulate economic development. There would be a public hearing, but because the context is less sensitive, we believe the director's hearing is the appropriate level of review and approval for those applications. In addition, we took a look at our parking regulations and we realized that we didn't want parking to be the reason why a use could not enter a historic structure. So again, through the discretion of the respective permit, there would be the ability to modify park accordingly. If it's appropriate. Again, we're balancing what is appropriate for the new use, being entering into the historic structure, as well as what makes sense for the neighboring community that will be living with that new use. We have received some recent correspondence that I just distributed. I apologize for the lateness. I believe it was also sent to you via e-mail, in the event that the commission did not get a chance to review the e-mail. The first letter is from the preservation action council of San José supporting the proposed ordinance, and you can -- it's a very short letter so you have that for your reference. The other correspondence is from an attorney, Logan and Powell. Opposing the ordinance. They are concerned about the implications for particular property owners within this area and the challenges that they've been having as property owners to essentially update their properties and obtain viable uses. So I just -- and they've provided some supporting documentation for the concerns that they raise. So with this, staff is looking forward to the commission's comments. And as with all ordinances or policies, your comments will be provided to the city council, as well as your recommendation on the ordinance itself. And that concludes staff's report. Thank you.

>> Commissioner Jensen: Thank you. And I'm not going to ask the applicant since I believe the applicant is the city. Do we have any speaker cards on this item? Okay. So motion to close public hearing. Second. There's a motion and second. To close public hearing. All those in favor please say aye. Thank you. Commission, any questions or comments for staff? Thank you, Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. So I read the information that Logan and Powell had sent. And they raised some good points, some excellent points. I know one of the reasons we're doing this is to I guess help the property owners, there, be -- have a little bit more freedom and choice, you know, for the use of the properties, you know, but what they're saying in these letters is the properties are so old and dilapidated that there's nothing they can do with it, nothing economically feasible, other than to rebuild, you know. And so at which point were they contacted before we come up with this proposal and this recommendation to make the change to our, you know, this proposal I guess to make a change to our zoning regulations?

>> Laurel Prevetti: Well, again the river street area, the ordinance itself as it pertains to historic landmarks, is a citywide ordinance. So it would be applicable to all of the City's landmarks throughout the community. The expansion of the D.C. zoning district boundary essentially allows, if a property owner's interested, to rezone their property to the D.C. zoning district. This action itself does not actually rezone their property. There will be a future application the commission will be considering where a property owner has taken the initiative, they are interested in using that zoning district. So this ordinance really does not change the situation for the property owners who are expressing the concerns and the Logan and Powell letter they have a preexisting situation. The city council made their own policy decisions years before, around the status of River Street. There was conscious decision to move structures into this area when we were doing the Guadalupe river park and gardens. So there's other -- there is a lot of history as in most of San José. The issues that are in this letter are not really the issues that are before the Planning Commission this evening. I think it's important for you to understand some of the situations that the property owners are dealing with. But tonight what is your recommendation for our city council in terms of modifying the regulations as it pertains, one, to the boundary of where the D.C. district can occur and, 2, how we might want to handle historic landmarks in our community.

>> Commissioner Kamkar: Okay. So if I understand this packet correctly, and, you know, understanding your response, the owners are represented by here have the choice of not being affected by our decision tonight, if it is to recommend the proposed changes that you're recommending?

>> Laurel Prevetti: Correct. This is a facilitation type ordinance change where we are essentially changing the rules so to speak. This does not essentially change the underlying zoning of these properties themselves. If they're interested they can apply, you know, our zoning code specifies who is eligible to apply for rezoning of properties. And those powers are outlined very clearly. The property owner could make that change themselves. I think it is important to recognize they are opposed to the ordinance. You know, as is true with all of our processes, we welcome the public's comments we welcome their positions. They've eloquently stated their positions.

>> Commissioner Kamkar: Sure, that's democracy. I agree with that 100%. Would they also have the choice of removing themselves from their underlying, from their current zoning district if they come up with other ways of, you know, keeping the historic -- I guess it wouldn't be true the exact historic structures but it would be, you know, the gist of, you know, like a monument or something to -- so that both given the economic times, their hands are not tied but at the same time, be able to I guess express the historic value of the neighborhood and historic value of the structures that are represented. So it's sort of, you know, best of both worlds, you know.

>> Laurel Prevetti: And I appreciate the commissioner's -- your interest in trying to find a solution to this particular problem. There are certainly many options. I spoke with the attorney this morning about some possible next steps for this particular case. But again, you know, that how a particular property owner chooses to resolve their own concerns and issues in working with the city and the redevelopment agency, that's really not the topic that's before you this evening. Tonight is really, should the rules be modified so that this area of San José has more flexibility in terms of the range of uses that can occur there.

>> Commissioner Kamkar: I see. Okay. Thank you.

>> Laurel Prevetti: Thank you.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. Commissioner Kline.

>> Commissioner Kline: Yes, I'm all for this change. I think it would be real great for the flexibility of historic districts. My concern is the separation of the commercial from the historic here. That the change of use for historic within residential zoning districts still come to us, but that commercial, industrial, downtown zoning if I understand this correctly, any historic landmark structures within the city, the entire city, within any commercial any industrial any downtown zoning districts would not bypass I guess is the wrong word for it but would be handled at a director level and not come before us, is that correct? Am I reading this right?

>> It would come to you on appeal, so it would initially be a director level decision and then it would be an appealable decision.

>> Commissioner Kline: Would it get appealed to the city council, is that what would occur here, or are we just wordsmithing here?

>> So right now -- if the director wants to chime in, please do -- the uses that these structures can be put to would be constrained by what the current code provides. So this ordinance would broaden the potential uses but in that case it would be a discretionary permit so in some cases you would not see it at all and now it would make it if they're going to go what's currently allowed it would now trigger a discretionary permit and would come to you on appeal with regard to the structures that are in the commercial/industrial/downtown.

>> Commissioner Kline: I'm just trying to understand, if they were to appeal, it would come to city council, and if they were trying to change, it would not come to city council?

>> In some case it would not come to you at all because it would not be an allowable use.

>> Commissioner Kline: If we broadened this and accepted this without there particular section, business section, what's the change then from now to the change if we approved it?

>> In most cases I don't think it would come to the commission because you can use the structure for the uses that the zoning code allows.

>> Commissioner Kline: Okay.

>> Laurel Prevetti: Right so one way to think about it is if you have an historic landmark that's in a commercial zone for example but it doesn't want to be a business, it doesn't want to do -- it can't do it. The answer is no it can't do it. The answer here is saying you might be able to do it. We have a discretionary process where in a special use permit and on appeal to the Planning Commission you may be able to do something that's not an enumerated use within the commercial zone. So in our thought was, again, given the economic development perspective and the types of things we do see, most of our land marks quite frankly are in residential zones. So you are going to be seeing the vast majority of them. But in those instances where we don't, you know, then we're recommending --

>> Commissioner Kline: Again I'm 100% for the changes for expansion of historic districts 100% there but we have a split now between lands marks that are residential because they are so sensitive, quote, versus business which I assume then are not so sensitive. And I don't quite see the line there. Why are we separating the two? Why not a single process for both residential and business? And what would be the result of just combining them, deal with the businesses as we deal with residential?

>> Commissioner Jensen: If I may and please correct me if I'm wrong staff or City Attorney, if at the time of a motion you would like to make a recommendation to change that language, in the amendment, we can certainly pass that along to council as part of our vote, so that our recommendation is, does the language state that both of those items come before --

>> Commissioner Kline: Right, I might make that recommendation but I want to get clarification of staff, just their experience of examples of what would be in a business district that was not permitted now in existing rules, and then if we changed the rules, what would that process be in the future? And sounds like, to me, if it's more flexible

you could just prove it at the director level and we'd never see it or if someone appealed it it would come to us but would not go to city council at that stage. Where if it's residential we would make the decision and it could be appealed to city council if I understand that process correctly. So in some ways this is more flexibility and in some ways it could be considered less flexible because they don't have a chance to go to city council.

>> Well, if I could add something, the current process available to historic structures, if they want to have a use go into it that isn't -- we're not able to consider under the current zoning they have to go through a PD zoning process. Which comes to you upon recommendation, but then to the city council for approval. And after that, the body that he implements that zoning is at the director level. So again, it actually I think, the proposed amendment actually brings you into the process a lot more than you are currently afforded. The type of uses or examples in commercial districts are more than likely made for example maybe in the river Street, maybe not in River Street but they might want to use an historic structure for residential purposes or mixed residential commercial that might not be allowed under that commercial district because it doesn't have the appropriate general plan. So again, I think, in that context, that's why staff was thinking that we could probably handle that at a staff level and whatnot, because the range of uses that are allowed in the commercial districts are pretty wide from a just as of right standpoint. So the universe that would come to you anyway would be probably few and far between. The real bulk of the ones would be in the residential districts, and those are the ones that we thought were more appropriate to come to the commission for their input and decision.

>> Commissioner Jensen: To lend to Commissioner Kline's question and looking at table 20-140 on page 18, the staff report, which is the downtown district's land use regulations, where it says zoning districts, DC or DC-NTI or NT-1, if we were to look under one of those columns, which one would tell us what is now applicable for historic use?

>> Laurel Prevetti: So this is an excerpt from the actual zoning code. So you've got the actual ordinance as it will be presented to council. And the table presents what are uses that are permitted and which ones would require a conditional use permit. You see the notes there. We are proposing to add a line in the table, and I believe it is at the very end, this is a multipage table. So on page 23 of the draft ordinance you'll see historic reuse. Historic land

maker structure reuse. And then the S symbol in both columns for D.C. and D.C.-NT-1 and that essentially is indicating that a special use permit is the permit that would decide the discretion of whether or not this could be used. So a similar pattern is seen in the other land use tables in the ordinance where you'll see a separate enumerated use of historic reuse. So that way, the public, if they don't-d if you're a landmark and you want to do a car wash, you know, and you're already in the commercial then you know we would work with them through the, you know, site development permit HP permit et cetera. But if there's another use in this table or that's not in this table that they're interested in we would work with them. You know, again, in our world of zoning we try our best to anticipate what those uses are. But our world is changing. And we may not know what some creative ideas might be in the future. So this gives you the discretion and flexibility. It's possible that if it's already in a commercial zone most of the commercial uses have already been identified. But if there's something that we haven't thought of, maybe this will help us.

>> Commissioner Jensen: And so again my apologies for dragging us through this. If something is listed as being currently permitted in either a D.C. or a D.C. NT-I, DC NT-1, then it is already permitted if an historic landmark is in a commercial district. Whatever applies here, a P or and S oren ah a dash currently applies and this table is telling us anything that is not currently enumerated in this table that somebody could come up with, horse ranch or something that might not already be in there, if they wish to do that, they need to come to the director's hearing to make that request. Filing a special use permit, or is -- is everything that is in a commercial district, if they want to have that in a historic landmark, they need a special use permit?

>> Laurel Prevetti: Our intention was to essentially facilitate a broader range of uses for our historic structures. Already, if you are a landmark, you need to get historic preservation permits. There's a whole other body under title XIII that assists those property owners. If we need to make other clarifying comments to our -- to this proposed ordinance so that's clear, that if you are a historic structure and there's already a use that's enumerated that we aren't -- because there are uses as you can see in the table, for example, the offsale of alcohol. If someone had a general retail use that was going into a historic landmark, we would say yes, a C.U.P. is required so a conditional use permit would also be required for the situation of a historic landmark wanting the

ability to sell alcohol. So we wouldn't somehow reduce the level of review just because it happens to be a landmark structure.

>> Commissioner Jensen: And if it were for example the offsale of alcohol, as a conditional use permit that would come here to the commission?

>> Laurel Prevetti: Right. But we don't want to-d.

>> Commissioner Jensen: But anything that is not enumerated in this table that a creative person comes up with that hasn't already been identified and that like to do it in a historic landmark in a commercial district they request a special use permit and go to the director's hearing?

>> Laurel Prevetti: That's correct.

>> Commissioner Jensen: Okay.

>> Laurel Prevetti: And I don't know, we may -- if we can consult with counsel, but if we need to modify, either the definition or some other piece to make it very clear that historic landmark structure reuse is -- this is for nonenumerated items within a particular land use table.

>> Yes, I think the language that needs to be clarified as a result of the commission discussion would be section 20.80.2120 that says in any commercial industrial or downtown district additional uses beyond those allowed in the applicable district are allowed in or at a historic landmark structure subject to a special use permit. And the reason I think clarification is needed that in essence you would be taking every conditional use and saying it is not a conditional use it is a special use. So it needs to be clear that what you are referring to is any use that is not enumerated you could request with a special use permit. I'm hearing that your intent is not to make every conditional use a special use. Okay.

>> Commissioner Jensen: Thank you, thank you Commissioner Bitbadal for being so patient.

>> Commissioner Bitbadal: Thank you, chair. I want to thank staff also for really looking into being more flexible as it comes to our historic preservation projects, actually buildings in the City of San José. I work with a lot of historic buildings development and also actually rehab of historic building, and I know the challenges that it takes to reuse those buildings and to make them function for current use. I'm also really pleased to see that PAC SJ has also sent a letter, so that shows that the staff has been working with the historic preservation organizations and I really appreciate that. My next question is have you contacted San José downtown association with the property owners, what kind of outreach was done?

>> Laurel Prevetti: Yes, thank you for the question. We've published the notice of this ordinance and these hearings in a publication of general circulation which is our procedure. We did notify the redevelopment agency. We sent property owners within the River Street area a notice of this meeting so they would be aware that we were proposing these particular changes. This topic was discussed at a landmarks commission meeting. At least in terms of the proposed zoning code changes, back in April, I believe. But given the citywide nature and the hundred or plus landmarks, we did not have the resources to do individual property owner notification of every landmark. Once, you know, and as you've heard you know, our ability to do proactive historic preservation has been cut in our current budget. So we will do our best to inform property owners, if the council should approve the ordinance. But it will probably be in a more passive form in terms of information available on the Website, et cetera.

>> Commissioner Bitbadal: Thank you.

>> Commissioner Jensen: Thank you, Commissioner Bitbadal. I also have a few questions, and I would like to thank staff very much for providing us with the documentation that shows the changes that were made. It makes it so easy for us to look and see what those changes are. I'm very grateful for that, thank you. As well as for the thoroughness and thoughtfulness for which you've done this. So help -- I think this goes to Commissioner Kline's original question is, I'd like to better understand examples of the specific problems that we're trying to address

here. If you could help us out with some examples, where either the property owner's hands have been tied or the process has been gummed up and that this will help to solve that problem, I would appreciate that.

>> Laurel Prevetti: I will start and Jeannie probably has some specific examples. Again, because we don't have an ability to consider nonenumerated uses other than the PD zoning approach, it is not that there's a problem we're trying to solve, aside from -- really the larger problem is how do we create opportunities, economically viable opportunities for our designated city landmark structures. So that's really the goal. So I don't know if I'd characterize it so much as a problem, as how much could we further those preservation objectives. So staff gave it a best shot based on the input we got from the landmarks commission and others in terms of an approach. We do know that in the current economy, and for financing and other reasons that we do have buildings that are vacant. And we have unfortunately lost historic resources recently. And we really want to make sure that, if there's anything we can do from a regulatory standpoint, to prevent that from happening, this seemed to be a step in that direction. I don't know, Jeannie if you have other specific --

>> Well, again I think you know we've had long standing policy in our general plan to support the reuse of historic structures. But we basically constrained ourselves to using the PD zoning process. So this I think is, you know, our next step at how to better structure regulations to implement that general plan policy. You know, why do we need to tailor a zoning to each specific historic site if we can you know consider the appropriate uses through a different mechanism that's less burdensome on the property owner. So what resources they may have to put into that historic reuse of that historic structure can be better used in actually putting it into that structure as opposed to putting it into a process to get to a point to then reuse that structure.

>> Commissioner Jensen: Thank you. Thank you, staff. And then I have another question. And this goes to a definition of how do we define compatible use, where in our either our zoning codes or the -- any of the city documentation do we define compatible use?

>> Laurel Prevetti: I don't believe we define it. Because obviously the context especially for a city as complex and diverse as San José is going to be really tailored to the site-specific circumstances. So -- and that's really the

purpose of having discretionary permits and having public hearings, is that we are able to take the facts about the immediate surroundings and about the property itself, and be able to apply good planning principles, our general plan, our whole body of policy and guidelines to those specific thoughts. And then the hearing body would make the appropriate decision. So again it's really on a case-by-case basis. And I think particularly for those few city landmarks we want to make sure we have that ability. I do want to point out as we were talking about clarifying the table, when you see a dash in the table, that basically means that that use is not allowed. So with the -- whether it's the special use permit in the nonresidential or a conditional use in the residential, this provides the ability for those nonpermitted uses to be considered for historic landmarks. So staff just wanted to make that clear to the commission, that this -- that's probably the best way of uncovering what those new ideas might be. So just to be very explicit about it.

>> Commissioner Jensen: Okay, so to back up to part of the earlier conversation, I thought that one of the items for the commercial district was that if a use was not permitted, then it would simply be not permitted. And what I'm hearing you say is that items -- uses that are not permitted are in fact going to be potentially permitted with either the special use permit or the conditional use permit, or the historic landmark.

>> And I think again going back to our discussion, we can currently consider that. But it's through a PD zoning process because we have general plan policies which encourage the reuse of historic structures. So currently if your historic landmark structure and you're located in a zoning district and you want a use to go in there that's not permitted your option is to come in through a rezoning and we'd have to find conformance with our general plan. And we could find those on the various policies through reuse of historic structures. So again, this proposed amendment is to basically give us the ability to go from requiring a PD zoning to consider changes in the allowable uses for that site, to a discretionary permit process. And I think we are recommending something different for the residential districts versus the commercial, industrial and downtown. We do put a little bit of a limitation on residential districts to say that, you know, through the C.U.P. if you're in a historic structure we could consider uses that would be permitted in conditional and any other residential district and permitted or conditional in the CP district. So there is, I think, a little bit of a reining in of the range of uses we're setting ourselves up to be

able to consider, for reuse of historic structures in the residential districts. But opening it wide-up in the commercial, industrial and downtown districts.

>> Commissioner Jensen: Okay, so in reading --

>> That's 20.80.2120.

>> Commissioner Jensen: Correct and so that's where I am on item A, it says such additional uses shall be limited to permitted and conditional uses of any other residential district, and permitted or conditional uses of the CP, commercial, pedestrian district, except vehicle related uses. So I do not read that to say that items that are not permitted can be permitted with this use permit.

>> Okay. And if I can explain. Let's say we have a historic structure that's located in an R-1 residential district. You're limited to the use of that to single-family. Let's say it's a huge home. And you might want to be able to consider using it as a two-family or a multiple family. Because right now, you're not permitted, you'd have to come in through a PD zoning to tailor a use for that. Since that ordinance, a two-family or multiple family is a use that is either permitted or conditional in another residential district we would be allowed to consider that through the C.U.P. Also, another example would be that, let's say, it's on a corner, and it's adjacent to a commercial district and perhaps an office use could be somebody wants to come in and put some office in that. Because that's a permitted or a conditional use in the CP district we would be allowed to consider that through a conditional use permit. So those are the examples that --

>> Commissioner Jensen: I see that counsel has a comment.

>> Just to give you an example of a visual representation as the director was alluding to if you look at page 3 of the ordinance you see a table that's part of the let's say residential district and the scenario that Ms. Hamilton was referring to is in the second line where it says secondary dwelling. And you see in R-2, RM, RMH or you can look anywhere in the table. Let's say you are in an R-1 district and you want to take a very large historic structure and

do a multiple dwelling. You see R-1 multiple dwelling, you see a dash, it's not allowed. So under this ordinance, we now could consider a multiple dwelling in an R-1 district so long as it's a historic structure but it would be subject to a conditional use permit that would come to this body for review. And then is appealable to the city council ultimately. So that -- I'm just saying as alluded to by the director earlier, the chart in a sense gives you a visual representation if you look at where all the dashes are in the chart, where currently those uses could not be allowed in that particular zoning district. Even in the residential zoning district which says you can consider uses that are conditional or permitted in other residential zoning districts. So for example, again, you're in R-1 and you'd like to do a guest house. Well, that's not permitted in R-1 but because it is a conditional use in RM it now can be considered if it's an historic structure. So it broadens the uses of historic structures in an effort to get those structures used. And this sort of gives you a visual representation of what might be proposed.

>> Commissioner Jensen: Thank you, staff and I see the director has something to add as well. No, okay. So I'm looking here for an example of something that is not permitted because I want to make sure that I understand, because I think I heard two different things this evening. One was that if something was not permitted, that it was simply not permitted. And the other was, that if it was not permitted it could be considered permitted under the changed rules.

>> You did hear both but it was explanations for different things. So Commissioner Kline asked what's the current situation. And there the response was if it's not permitted it's not permitted so that's why you heard that, because it was the explanation of what was the situation today. There may be a process but it's very cumbersome and very expensive. So in terms of what happens today, if it's not permitted it's not permitted without actually going and rezoning the property. And then, the other explanation was, it may not be permitted but it could be allowed. That's the scenario that we just went through in the table.

>> Commissioner Jensen: Okay. So under the residential designation. We have under 4 facilities that exceed noise or air standards is not permitted in any of the residential districts. So I'm going to assume then, that means it is still not permitted in a historic landmark.

>> Laurel Prevetti: Under the proposed ordinance it could be considered with a conditional use permit. Again, staff --

>> Commissioner Jensen: But it's not permitted in any residential district.

>> Right, that's sort of a nuance. In the residential it has to be allowed in some residential.

>> Laurel Prevetti: Then it would not be allowed in the case of the historic use either.

>> Commissioner Jensen: Okay, thank you. And then the issue of parking. When you are looking at reuse of a building in a residential district, I understand the need to ensure that we have viable businesses, but if there is no parking, or if it's in a permit parking neighborhood, or if that business would impact the parking negatively, is parking something that we can take into consideration and are they going to be required to provide sufficient offstreet parking?

>> Laurel Prevetti: Well, parking in San José is one of those issues that, again, we deal with quite a bit. You know we are moving to a place where we're trying to create more flexibility, so that people are using other forms of transportation and not just the car. And again, it's not a blanket permission to, you know, have a different parking requirement. It just provides the ability to consider a different parking requirement. And there is -- and again, it's a discretion. So the applicant may have one proposal, staff may have something else and through the process, we would determine what the appropriate parking would be. So it's not that there would be no offstreet parking, it would really be that there's a process to consider an appropriate parking requirement. And as with all of our permits, again, there would be opportunity for the neighbors to come forward with concerns, or other facts, to be part of the record. If it is a permitted parking area, that might have other constraints. So we might have to look at the available parking inventory in that context. So again, it just gives us the ability because, again, a lot of our historic buildings were built at a time before we were a suburb and before people had multiple cars per household. So how do we recognize that the physical constraints of a landmark site might not be able to accommodate all of the typical parking that would be required for the use? So again, you know, we would have to

be handling that on a case-by-case basis. But there's a process and there's discretion. And we can always say no. So that's the other piece that I want to remind the commission. That when and if you do see these C.U.Ps, don't -- you don't have to say yes. You could add additional conditions, other performance measures, so we can use the permit vehicle itself as a way to make sure we have the necessary protections that I know all of you care about for our community.

>> Commissioner Jensen: Thank you. And I raise it because in many of our, as you pointed out, many of our historic homes that are in residential districts, are in neighborhoods that are heavily impacted with respect to parking. And I would hate to see us put a business in jeopardy by putting it into an area where there really was no available parking and it was the type of business that needed parking to be available. And I'd hate to see us just handicapping people and not being mindful of both the business and the neighborhood. So I have no additional speaker lights. So I gather nobody has any additional questions or comments for staff. That being the case, is there a motion?

>> Commissioner Kline: There is no public comments on this?

>> Commissioner Jensen: There is no public comment.

>> Commissioner Kline: I'll get the ball rolling, I'll move staff recommendation.

>> Commissioner Jensen: Would you like to make the amendment?

>> Commissioner Kline: Just clarify that in the motion.

>> Commissioner Jensen: Can we clarify what that amendment is? Counsel, perhaps you can --

>> Thank you, Madam Chair. It would be to include an amendment that only uses that are not enumerated would be considered with a special use permit. And as a reminder to the commission, that -- there wasn't an intent to

put every C on those charts and make them Ss. So where there's a conditional use permit required that would remain. So it's only nonenumerated uses that would be subject to the special use permit.

>> Commissioner Jensen: Thank you. Is there a second?

>> Second.

>> Commissioner Kline: And I'll follow up with a comment.

>> Commissioner Jensen: Thank you.

>> Commissioner Kline: Some of the most successful neighborhoods and commercial districts available in the United States and some of the most successful ones that have actually survived the downturn recently would never be created in our existing zoning ordinances, as a matter of fact they would not be allowed at all because of the over zealous zoning that became the fad for the last 30, 40 years, basically strict zoning to separate uses and Palo Alto, Willow Glen, the Alameda, downtown Los Altos, the list goes on that could not be done today or extremely difficult today without going through a lot of hoops. So we're moving gradually back to a mixed use, much more flexible environment where cars are not the dominant factor in designing your neighborhood or your business district, that the person is or the bike is or the public transit is. And this is a movement towards that direction. So I'm 100% supportive of this. I am a little concerned with the two separations between residential and commercial. But as I understand the process today, it's more of a nitpicking a little bit, to a certain degree, most of these things wouldn't go through either of these mechanisms. They go through a PD and that process would be determining this. I'm pretty much in favor of this and I will be supportive of it.

>> Commissioner Jensen: Thank you, Commissioner Kline. I see no further speaker lights so if we could vote by light, please. And that motion passes unanimously. With commissioners Cahan and Platten absent. Thank you. Moving on to item B. CP09-014. Conditional use permit to construct an approximately 6,000 square foot addition to an existing movie theater and to allow operation past midnight on a 2.9 gross acre site in the CN

neighborhood commercial zoning district located in the west side of Almaden expressway approximately 1100 feet South of Curtner avenue. Staff.

>> Thank you. As presented in the staff report many this is a conditional use permit to allow for expansion of a existing movie theater. Currently they have five movie screens, this is out off Almaden expressway near Curtner. They want to expand to add two additional screens, but as part of that plan they are going to be revamping their seating to a stadium-style seating. So really there's square footage expansion and additional screens, but with the reversion or conversion to stadium-style seating, we're not adding additional seats, so therefore there is not an impact on the parking. Again, you know, it's I think adding additional opportunity out at this commercial center, to draw people to it, which might also then further an opportunity for, you know, more occupancy to happen out there. We recommend approval of this and if there are any questions from the commission I'm here to answer them.

>> Commissioner Jensen: Thank you, staff. Is the applicant here? Thank you. Mr. Kovalik, you have up to five minutes to speak on this item. If you would like to come forward? If you would come forward to the podium? We canned ask you questions if you are in the audience. Please just introduce yourself and then we can ask the commission if they have any questions for you.

>> Hello, my name is Joe Kovalik. I'm with maple leaf investment. I represent the ownership of the shopping center, Paul Gonsky is with me who represents the feeder operator.

>> Commissioner Jensen: Okay, any questions for the applicant? All right, no questions. Motion to close public hearing? Second? All those in favor, please say aye. Thank you. Staff. Anything to add?

>> Staff has no additional comments, just if there are any questions, I'm available.

>> Commissioner Jensen: Okay, great, thank you. Any questions or comments or discussion from the commission? Thank you, Commissioner Kline. Commissioner Kline, please remember to turn on your microphone.

>> Commissioner Kline: Thank you. Move staff recommendation.

>> Commissioner Jensen: Thank you. Is there a second? We have a motion and second. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you. I actually wanted to make a comment. I wanted to recommend also having healthy snacks available at your fine facility. Thank you.

>> Commissioner Jensen: Sounds like a faithful customer over here so healthy snacks. Thank you very much. No further questions or comments from the commission. May we vote by light, please. And that passes unanimously. With commissioners Platten and Cahan absent. Thank you very much. And that closes the public hearing portion of the commission meeting. On to petitions and communications. Public comments to the commission on nonagendized item. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to three minutes. The commission cannot take any formal action without the item being properly noticed or placed on the agenda. in response to public comment the commission is limited to the following three items. responding to statements made or questions made by the public or requesting staff to report back on matters at a subsequent meeting or requesting staff to place the item on a future agenda. Do we have any speaker cards for this? No. Okay. Referrals from city council, boards, commissions or other agencies.

>> Laurel Prevetti: None.

>> Commissioner Jensen: Thank you. Good and welfare, report from city council.

>> Laurel Prevetti: There is no report, as the city council has been on recess. I did want to just bring to the commission's attention that the ordinance that you just heard will be before the city council on August 10th, in the afternoon. And then the land use items that you heard in June and some of the ones in July will be heard by the council on August 17th. Thank you.

>> Commissioner Jensen: Thank you very much, director. Commissioners reports from committees. Norman Y. Mineta San José international airport noise advisory committee. Commissioner Cahan is absent and I am going to speculate that perhaps that commission has not met, that committee has not met. Envision 2040 general plan update process, Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair we have not had a meeting this month. We will be meeting next in I believe late September. Thank you.

>> Commissioner Jensen: Thank you. Review and approve synopsis from June 21st, 2010 and July 14th, 2010. Commissioner Abelite.

>> Commissioner Abelite: Yes I would like to approve the commission synopsis for June 21, 2010, I wasn't there but I watched the tapes, I think there was an error with regard to Mr. Zito's attendance so I think the voting should be amended to show 4-0-3 as it relates to D-2010-001. I would like to make a motion for approval.

>> Commissioner Jensen: I would like to ask formal confirmation from commissioners Abelite and Bitbadal that you have been able to reconstitute yourselves on that particular meeting since you were not here at the time.

>> Commissioner Bitbadal: That's correct.

>> Commissioner Abelite: That's correct.

>> Commissioner Jensen: Thank you very much. Thank you for those changes. The roll call present will be amended to reflect that commissioner Zito was not here, and the voting for 3A and 3B will be reflected to show 4.0.3 on each those items. Thank you. Motion to approve has been made. Second, and all those in favor, please say aye. Thank you. And on the matter of the Planning Commission hearing of July 14th? I note that there needs to be a change on item 3A, which under the voting record, needs to reflect a 5-0-1-1 since Commissioner Abelite was abstaining from that item and Commissioner Platten was absent. Aside from that, are there any other comments on the July 14? If not may I have a motion?

>> Commissioner Abelite: I'll make a motion to approve the synopsis of the July 14th meeting with that amendment.

>> Commissioner Jensen: Thank you, second?

>> Second.

>> Commissioner Jensen: There's a motion and second. All those in favor please say aye. Thank you. That passes unanimously. On both those items. Thank you very much. Subcommittee reports and outstanding business. I don't know that we currently have any subcommittees. Staff. Okay. I'm getting nothing from staff. And for the commission's benefit, the item that we had on the previous agenda, calendar and study sessions, is going to be a regular item on our good and welfare section. It was inadvertently left out this time, my apologies for that. So if you have thoughts and ideas on what you would like to see as a study session for the commission, please feel free to bring it up at that time, at our next meeting or any future meeting. There is no further business. And so this meeting is adjourned. Thank you. [7:35 p.m.]