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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, May 4, 2011. Please remember to turn off your Cell phones or put them on vibrate. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, please fill out a speaker card located on the table by the door on the parking validation table at the back, and 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. For example, 4.A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make up to a five-minute presentation. The chair will call out names on the submitted speaker card in the order received. As your name is called, please line up in front of the microphone at the front of chambers. Each speaker will have up to two minutes. After the 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 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 has 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 only advisory to the city council. The City Council will hold public hearings on these items. Roll call. Let the record reflect that all Commissioners are here with the exception of Commissioner Platten, and Abelite. El 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 either to proceed with the remaining agendized items past 11:00 p.m, continue this hearing to a later date, or To defer the remaining items to the next regularly scheduled Planning Commission

meeting date. The decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. There are currently no items on the deferral list. Staff.

>> Staff has no recommended deferrals.

>> Commissioner Jensen: Thank you. Consent calendar. The consent calendar items are considered to be routine and Will be adopted by a single 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 on one of These items individually, please come to the podium at this time. Consent calendar. There is one item current listed on the consent calendar. CP11-011. Conditional use permit to allow for the continued operation of an existing drinking establishment with late night use until 2:00 a.m. including an Outdoor patio on a .10 gross acre Site in the D.C. downed core zoning district located on the West side of South first street. Approximately 280 feet southerly of East San Carlos street. Staff.

>> Staff has no additional reports.

>> Commissioner Jensen: Thank you staph. Is there a motion from the commission? Thank you, there is a motion and second. Would you care to speak to your motion?

>> Commissioner Kamkar: No.

>> Commissioner Jensen: All those in favor? Thank you. Any opposed? Thank you very much and that passes unanimously. 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 agendas for public hearing time management purposes. Tonight 3.A. City's proposed 2012-2016

capital improvement program. Approval of the Planning Commission's report to the City Council transmitting comments and recommending adoption of the proposed 2012-2016 capital improvement program. CIP. Staff.

>> Thank you, chairperson Jensen. Immediately prior to this public hearing the Planning Commission conducted its annual study session on the city's proposed capital improvement program or CIP. This study session was noticed as a public meeting however no citizens chose to attend. City charters which states that the commission shall have authority to make recommendations to the city council respecting capital improvement programs. The CIP implements the goals and policies of the City's general plan and general plan consistency is an important consideration in the commission's review of the CIP. The study session included a presentation by staff from the City Manager's budget office, an active commission discussion occurred with representatives from the city departments. The CIP is organized around six city service areas or CSAs, along with 14 capital programs. This year discussion at the study session included the following capital programs: The water pollution control and water utility system capital programs within the environmental and utility services CSA, the parks and community facilities capital program within the neighborhood services CSA, the Public Safety capital program, the airport and also, the traffic capital programs within the transportation and aviation services CSA. At this time, staff asks that the Planning Commission present a verbal summary of their recommendations to the city council on the CIP. These recommendations will then be incorporated into a written addendum to the manager's budget proposal and transmitted to the council for consideration. This concludes this staff report.

>> Commissioner Jensen: Commissioners, for the discussion that we had at the study session, if you would care to put your comments on the public record in reference to the items that you raised during the discussion, this would be the appropriate time to do that. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I note a couple of questions that I was interested in is, when the completed projects are not put into service, you know because of the savings that can be realized, I guess the question was, can their reuse be private, private sector be a viable alternative in -- you know to raise revenues? That was one question. And that was specifically for Bascom community centers and the library. And

then, the other item of my concern was the sports field. I wanted to know when and where were they being planned for. Yeah, that's it. So those were the two.

>> Laurel Prevetti: Thank you, commissioner. If I may Madam Chair, just for the benefit of the public, those comments were provided at the study session and staff did indicate that there is a plan to do the reuse. But we will include the comment for the as yet two opened facilities so the council has the benefit of that comment. And then as far as the sports fields the parks and recreation staff indicated that several sites are still being considered for the baseball fields so there will be public meeting and public process for the public to facilitate which location makes the most sense and they are starting to narrow the considerations for the soccer stadium and the proposal for the FMC site across from the airport on Coleman. As far as the comment for the council, I don't know if there was a specific comment that you wanted to make with respect to the sports field.

>> Commissioner Kamkar: No, I was just recalling the conversation that took place. That what is the whole purpose of my comment. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: So I have to go every question I asked earlier because I was asking a lot of questions. Is that correct?

>> Commissioner Jensen: If you would like to put those in the form of comments.

>> Commissioner Bit-Badal: Comments, okay. My comments were regarding LED lighting, fire apparatus equipment, what happens to the ones that are being replaced, public art aspect of water pollution control plant. Actually I'm going to add to it, that I would like it to be not just a regular art, because although we are having 10,000 visitors to the site, it's not like a library or other projects. So if they can utilize the public art and utility aspect of it, such as the -- you know, they can put it in the building in a way that it's not a stand-alone art. Streets and traffic development fees, I had a question about use it or lose it policy that we have at the end of five

years. Actually my question is, is that a state law or that a city law? That is one thing that I did not -- I wasn't clear on. And the next question was contingencies. It was stated that 90% of the time our projects meet the stated budget and I was wondering if the contingency fees are included or they're separate. Pavement maintenance. I'm really concerned about the lack of maintenance in our pavement, in our street pavements. I sure hope the city will aggressively pursue grants and other measures to maintain the roads. Most people use them. It's something that it's costing taxpayers more money on daily basis. And I wanted to know how we're comparing to other cities in terms of applying for grants, and also, receiving grants. Also has the staff layoffs affected our ability to pursue for grants. Because if you don't have the staff, then we don't have the resources. Those were basic questions I asked. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. Commissioner Kline.

>> Commissioner Kline: I can only remember one main question. Maybe there was more. The one specific question was of the 1.754 -- 1.7 billion dollars in the CIP for the next five years, what specifically is dedicated to the maintenance of roads and repair of roads. And although there was a little confusion that number came back at \$78 million which I believe is less than 1%, dramatically less than 1% of our entire CIP package. I think I made a just comment that 22% is dedicated to the airport.

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

>> Commissioner Cahan: Thank you, Madam Chair. Two of the questions that I had led back to last year's discussion. One being: If there was research being done into any lead that might potentially be in artificial turf that would be used in the indoor soccer areas. And I was assured that that has been investigated and is an ongoing issue that staff is taking very seriously. And another question I had was, last year there was some pilot programs with food composting and I wanted to get an update on where those stand, and urge the city to continue those, should they deem successful. And then I had some questions about the South San José substation deferral, and the cost of that deferral, the savings, and the cost of not opening that office. So transportation cost, and the patrol time going back and forth from the main office down there. And I hope that we are able to open

that, as soon as possible, there are environmental reasons, there's the cost of transportation, as well as providing peace of mind for the people in that area, that there is a substation there for them. And got some estimations on when that might be able to happen but apparently there are a lot of triggers that need to occur for that. And also asked about the public art deferral at the airport, the reasons for that, and the triggers that need to happen, to get the public art back on track. So that we can have that there. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Cahan. And going off of Commissioner Cahan's inquiry into the triggers for the artwork one of those triggers is reaching an airport capacity 2012.2 million passengers and I asked when was the last time we saw that and it had been prior to 2001 where we saw 14 million and we are currently at roughly 8 million passengers a year so we have some way to go before we reach that trigger. I also inquired about the couplet conversions for the couplets downtown. Julian has recently been converted, St. James is under way, 10th and 11th are on the list but there's currently no funding for that. I asked for a rough completion date for the water pollution control plant. It's an amazing project. I know I've said this before, if you haven't had a chance to tour the plant or visit the plant facilities or go online and look at what they're doing, it's an amazing project. And there are some projects currently underway, and they are working on the master plan for the remaining projects. I also asked about extension of the purple pipes throughout the City of San José. A number of jurisdictions in the nation have been able to save significantly on their water costs by pushing purple pipes which are the use of recycled water for nonpotable uses. It would support our Green Vision, increase our water savings, long term residential cost savings, allow us to have continued growth within the City of San José without significantly increasing our use of potable water. And I think that was about it from my comments. Any other comments from the commission? Okay. Seeing none, is there a motion?

>> Laurel Prevetti: I may Madam Chair.

>> Commissioner Jensen: Director.

>> Laurel Prevetti: It would be useful if the commission made a comment about this proposed CIP relative to the general plan, since under the charter you are asked to ensure that it is consistent with the existing general plan. Thank you.

>> Commissioner Jensen: If the maker of the motion would comment on that at the time that they're making that motion. He Commissioner Kline.

>> Commissioner Kline: I was actually going to ask legal for an opinion on this. I'm a little confused what we're asking for. Last year I was too much of a newbie to actually explain myself properly, probably. There are three things going on. One is basically I think the charter says is it consistent with the general plan, and I think that's where a motion to actually approve it is consistent, so it's not comment, it's an actual motion to approve it. And then we have here in our document tonight, staff recommendation, city council adoption of the proposed -- to recommend as recommended by staff. I'm not sure how that connects back to the charter. But that's okay. And then in the packet we had another comment that really refers to our authority to recommend improvements to the general plan. Which is pretty cool, which I like, like to have that. So I guess what the item is here just to be clear is that we're basically saying this general plan is -- this CIP is consistent with the 2020 general plan, and consistent means, gosh, you know I'm running out of juice here. Consistent probably means it's supportive of the general plan, it helps implement the general plan, it is something that is not inconsistent with the general plan and all the above. I believe that's what we're trying to do here and if that's true this should be an interesting conversation. Instead of a quick conversation.

>> So the short answer to your question is yes. Pursuant to the city charter, the commission's charge is to review the capital improvement program and make a determination on consistency with the general plan. In addition to the consistency determination, the commission also is more broadly being asked to make a recommendation on the community improvement program. So an example of that, I know in years past, there have been comments from the Planning Commission that a great deal of traffic infrastructure improvements were being planned for one area, but yet, the commission had been seeing that there was a great deal of development occurring in a different area. So one of the comments that the Planning Commission had was, is that -- to have the council take a look at,

is that the appropriate allocation of the funds, when the commission -- it was perceived by the commission that a great deal of development was going on in a different area. So -- and then as to your third comment, again, the answer to your question is yes. The types of consistency analyses you'd want to be making is, does the CIP further the major strategies, goals, policies overall that are contained in the general plan. So actually, your summary was very comprehensive and very accurate.

>> Commissioner Jensen: Commissioner Kline.

>> Commissioner Kline: Up with another question, and the question is, what measurement, what matrix do we use to judge whether this CIP is actually consistent and helps implement the goals of the 2020 general plan? And every time I read the general 2020 plan, I like it, it's a great general plan. I think it hits the major really red flags that were appearing in 1990. It really put up the train is going off a cliff, and you have to fix it, and these are the things you should do to fix it. Specifically, jobs versus housing imbalance, the ratio of jobs versus residents. There's a great chart in there that's very specific that says here Santa Clara at 2.05, here's Sunnyvale at 1.95, here is Mountain View at 1.65, and here is San José at .78. Okay, .78. If we don't correct that we're going to have a financial emergency in our hands that's monumental in nature and these are the things you should do to correct it and actually outlines what you should do to correct it. And the CIP is the actual way of actually implementing those corrections. The question to me in the last five years has the CIP been successful, in a matrix format, a measurable format. We can't measure it, we just have to measure it. Can we measure how successful the last five years have been? And can we predict, in this CIP if we are going to be any more successful in the next five years following these particular investments in our community? And my guess is, the last five years has been unsuccessful because the main matrix being used in the general plan is the jobs-housing imbalance, the .78 number. And although there might have been minute changes in that number generally we have been unsuccessful. And is this CIP going to change that? I've got a funny feeling the answer is no. That's it.

>> Commissioner Jensen: Thank you, Commissioner Kline. Staff, would you like to comment on that? There had been a provision of information regarding the status of the CIP provided to the commission early this year and perhaps you'd like to go through that a bit, review it.

>> So in early March, staff did provide a document that was circulated at the time to the city council which was the citywide capital improvement program annual status report. This is a document that is provided by our Public Works department and is a very comprehensive assessment of the status of projects that had been discussed in the prior CIP. And just kind of where they're at, of those that have been completed, when they were completed, so that's sort of our best mechanism for a backwards look for success of implementation of the CIP.

>> Laurel Prevetti: Commissioner Kline, however, if I may, Madam Chair.

>> Commissioner Jensen: Please.

>> Laurel Prevetti: Does raise some really important issues around having a measurable general plan and how we can get better metrics to ensure that there is a linkage where we're investing and the results related to it. So to date, the city has been focused on two metrics, on time, on budget, consistent with Commissioner Bit-Badal's concern about contingency and, you know, making sure that we are falling within our budget, both of time and of money. The major metric both in the 2020 plan and then the proposed 2040 is going to be job growth. So there's not always a direct linkage because, of course, we're still dealing with the economic, the global and regional economic phenomenon that did result in job loss. To so the question might also be posed, are we making those strategic infrastructure investments in the job-growth areas to help attract more jobs to San José? And that's a different way of looking at the CIP, than we have to date. So I think -- and again, that was part of the introductory comment I made at the beginning of the study session, that as we get ready for next year and coming this fall, those are the kinds of questions we really need to be asking ourselves. What can the city do with its limited money to move the needle on job growth, job attraction, job retention, et cetera. So I think you know probably for a variety of reasons, even beyond the CIP, we haven't seen that job growth yet. But I think the commission is very astute to be thinking about the larger policy objects that the city has and how we can make sure we are in fact on track to meeting them. Another metric that the commission might be interested in is related to the Green Vision where we have very specific quantitative goals, certain amount of LED street lights to be implemented, certain amount of miles of trails, et cetera. So that in the future those would be some good metrics to really look at. There

is a Green Vision status report that council approved about a month or so ago. But it really was looking at our past accomplishments as opposed to looking at the proposed CIP. Again, are we moving the needle towards meeting those Green Vision goals. So commission's points are very good.

>> Commissioner Jensen: Thank you, director. And just to lend to that. I think the commissioner's question is really good in terms of one of the perceived major goals of the general plan, which is improving our jobs-housing imbalance. But I'm not sure the capital improvement project or the capital improvement plan is the place where we would be making those changes. I think that might come more out of the other budgets which are used to help attract businesses. And if the director would correct me if I'm wrong, the CIP is going to help us in terms of measurability with the general plan in terms of our infrastructure, compliance with the goals and strategies with our Green Vision, keeping our open space, and parks, and so forth. Am I in the ballpark?

>> Laurel Prevetti: Yes, and I think parks and some of these other hard infrastructure pieces are definitely a part of it. But to the extent there is that indirect benefit that might lend to attracting companies to save some of our key employment areas, I think having a sense about those economics is a good one. And just to add. I think I'm hearing, perhaps, the germ of perhaps a future study session, where we can really look at population, demographic and economic trends, to help inform the commission, and you can benefit from that information as you consider not only the CIP, but also, other decisions that come before you. So we can discuss that later this evening, if you wish.

>> Commissioner Jensen: I think that would be a great idea director. Those of us who are on the envision 2040 task force have had the opportunity to hear some of those discussions about what it takes to attract businesses to come to San José and what they find, what aspects of the general plan that may be directly beneficial to having them brought here, and perhaps it is an excellent time to provide that same information to the rest of the commission. I would like to ask counsel to refer us directly to what our specific responsibilities are within the charter.

>> Thank you, Madam Chair. Pursuant to section 1203 which is entitled action on the capital program which is within the San José city charter, the charter does require that a copy of the capital program be provided to the Planning Commission, and that the Planning Commission hold a hearing on it at least ten days prior to the time fixed for council to hold its public hearing to hold its public hearing on the program. I wanted to note for the commission that the commission is required to set forth a written report setting forth its findings and recommendations regarding the capital improvement program overall. Additionally I wanted to highlight for the commission that the city charter provides that the Planning Commission in its report may recommend such additions, deletions or other amendments as it deems desirable to the capital improvement program. But if the Planning Commission does that then it says that any capital improvements different from or additional to those prepared by the City Manager, the commission must set forth in its report the estimated costs of its alternative proposals. And the manner in which it proposes to fund those alternative proposals. So I just wanted to highlight that language in the city charter for you.

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

>> Commissioner Kamkar: Thank you, Madam Chair. I'm prepared to make a motion.

>> Commissioner Jensen: Thank you.

>> Commissioner Kamkar: I wanted to recommend to the city council the adoption of the proposed 2012 to 2016 capital improvement program as recommended by staff.

>> Commissioner Jensen: There is a motion and second. Would you like to speak to your motion?

>> Commissioner Kamkar: Not really. I think we've talked about it enough, and you know, the public has a chance to take a look at it, they going to have another chance when the city council considers it so I think this is pretty nicely vetted.

>> Commissioner Jensen: Thank you. And may I assume that within your motion is a finding that the CIP is consistent with the general plan?

>> Commissioner Kamkar: Yes, thank you, yes, it is.

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

>> Commissioner Kline: I'm going to support that motion but I'd like to offer a friendly amendment or a substitute motion that is identical to his motion but adds to the Planning Commission highly recommends with utmost urgency that the priorities of road maintenance and repair is put at the highest possible category in the city council's planning for the future. Since the lack of maintaining roads is a multiplying factor of 4 to 6 and sometimes 8, giving you know lack of repair, the cost structure is absolutely enormous. So we're looking at \$400 million, that could easily be \$1 billion, just in a few years, and even \$4 billion 10 years after, if this line of investment continues. So it is critical that we raise the investment from our roads and infrastructure from the roads .4%, .04%, something like that, to something a little bit reasonable so we at least stop digging a hole deeper and at least maintain our backlog as advertise. I think that is a has to be here, because CIP has to be a critical part of a city of this size is its roads infrastructure. We can't go on this way. We really have to bring this up to a higher degree than this CIP is presented. Friendly motion.

>> Commissioner Jensen: Thank you, Commissioner Kline. That's a friendly amendment, is that accepted by the America of the motion?

>> Commissioner Kamkar: I think that's reasonable, I will accept that.

>> Commissioner Jensen: And to the seconder?

>> Commissioner Bit-Badal: Absolutely. That's a concern that I also echoed during the study session, and also during the public hearing. Thank you for that.

>> Commissioner Jensen: Thank you. And I would agree that making sure our roadways are safe and passible and we don't have gaping potholes sucking small vehicles and children into them is critical. I think it needs to be balanced with the multiple other infrastructure items that are also on our backlog. So there is a motion and a second. May we vote by light? And that motion passes unanimously, with Commissioner Abelite absent and for the record, let it be known that Commissioner Platten did arrive during the discussion. Thank you. Moving on, to item 3B. SP 11-001. Appeal of the planning director's decision to approve a special use permit to allow for late night operation until 2:00 In the morning for a retail establishment/convenience store In an existing approximately 2673 square foot tenant space on a .08 gross acre site in the downtown core zoning district located on the Northwest corner of East Santa Clara and North 2nd street. Staff.

>> Thank you. As you mentioned, this is a special use permit to allow for late-night operation of a use that otherwise would be permitted in the zoning district, a retail establishment. The original request that came in was for 24-hour operation and offsale of alcohol. The applicant at their will amended the application to withdraw the request for off-sale of alcohol. We did have a hearing on this in front of the director, in March. And took action on this request for late-night operation but limited it to 6:00 a.m. to 2:00 a.m., seven days a week. After that action, there was an appeal filed within the required date to -- by an adjacent commercial establishment operator. And so that's what you have before you. Planning staff continues to recommend support of the late-night operation until 2:00 a.m., seven days a week as we are looking to support businesses, to stay open past midnight, to continue to lend some viability to late -- other late-night uses in the downtown core area. The limitation to 2:00 a.m. still stays as part of our recommendation, and again, just to reiterate, there is no offsale of alcohol included with this proposal. That concludes staff report.

>> Commissioner Jensen: Thank you staff. And at this time I have no speaker cards but I'm going to ask if the applicant is here. I'm sorry, if we -- we'll have the appellant first and then the applicant. My apologies. Is the appellant here? And if you would like to speak, you may have up to five minutes to make a presentation. There are speaker cards right down here. If you would like to fill one out. And then just give it to staff and they'll make sure that we get it. And I don't see the appellant indicating a -- you will have an additional five-minute opportunity

after public hearing. If you would like to speak at that time. So if the appellant is not interested in speaking if the applicant would like to come forward and you may have up to five minutes to make a presentation. And if you would introduce yourself when you come forward.

>> Sure. Good evening, nice to meet you all. It's nice to speak about 7Eleven's interest in the subject property. After a detailed study of demographics of the city and local taste profiles of customers and new product offering by 7Eleven that consists of fresh food, 7Eleven signed a lease to occupy 2700 square feet approximately of the tenant space in this location. And I believe that 7Eleven will best serve the ever exchanging needs and underserved needs of the customer in this location and Downtown San José. I'm requesting that you uphold the director of planning decision and approve the proposed special use permit. 7Eleven has been consistent with their goals, first and foremost are a good neighbor, responsible corporate citizen. They're planning to provide 35 linear feet of fresh food, sourced locally at this location, generating tax revenues, creating employment, and encouraging entrepreneurship and fostering business owners to invest in their communities. This subject property has been vacant for many years. As all of us know. And with the current financial crisis, only big chain or not moms and pops they have necessary capital to commit and open a store. 7Eleven's model fits well with the available square footage and is consistent and complimentary to the existing uses and they possess enough capital to operate and they have corporate responsibility to open a neighborhood-oriented store. With the coordination with the planning staff, and San José downtown business association we decided to scale down on the proposal and we are not asking for offsale alcohol, and 24 hours, and I'm also excited to share with you that this is going to be the first store in Northern California in the redevelopment zone and I know that affordability and access to fresh foods are extremely important goals in the Redevelopment Agency area. 7Eleven is also committed to remodel the existing stores in the City of San José, and success of this project is going to ensure the planned ones throughout the Bay Area in the redevelopment areas. And in closing, I just would like to thank the entire city staff team for their time and efforts in reviewing this project and I'm joined here by senior representative from 7Eleven and we are here to answer any questions you might have. Thank you very much.

>> Commissioner Jensen: Thank you. And may I ask you, my apologies, I didn't note your name. When you introduced yourself.

>> Tina Arbisher.

>> Commissioner Jensen: And we do have questions from the commissioners Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I do have questions to ask. This is a store that is going to be owned by the company or it's going to be a franchise?

>> It's going to be a franchise.

>> Commissioner Bit-Badal: Franchise. My next question is, how many -- well it's going to be franchise. So how many 7Eleven stores do not sell alcohol onsite, what percentage or numbers?

>> Can I probably answer that best. My name is Dennis Daly and I'm a senior real estate rep for 7Eleven. I appreciate the time you're giving us tonight. We have many stores in downtown San Francisco that do not have beer and wine license. That's where we've gained some of our experience in urban typesetting. So in Northern California we probably have eight or ten stores that do not have beer and wine licenses at this point.

>> Commissioner Bit-Badal: Out of how many stores in Northern California?

>> I have about 400 in the greater Bay Area including Sacramento and places like that.

>> Commissioner Bit-Badal: Do you have any intentions of selling alcohol on this site in the future, is that something that you're going to be open to, or you are definitely going to sell alcohol ever on this site?

>> We have worked with the downtown business association and gratefully they have supported us but they haven't supported us this time for alcohol. And if the police or the downtown business association wouldn't support us, then we wouldn't try to get this type 20 license. But I would, you know, in all honesty, if -- it's \$186,000

in sales for us on average in the South Bay, with beer and wine. And it would help our business picture tremendously.

>> Commissioner Bit-Badal: Thank you.

>> Commissioner Jensen: Thank you. And I have a couple of questions myself. You indicated that you plan on providing fresh food. Can you tell us, because we've spoken with 7Eleven and during past applications regarding fresh food. Can you tell us what that fresh food consists of?

>> We have a wide array of products, but fresh food, briefly we have -- we make sandwiches fresh every day in San José, we make doughnuts fresh every day in Oakland. We have what's called a combined distribution center in Union City and we ship out to 400 stores in northern California every day fresh product to those stores. And that allows the stores to control their inventory and to stay in stock better what's needed. For instance we haven't advertised it, and I hope we can in the future, we have the freshest milk of anyone in the industry because we ship it in every night. Sandwiches, we get fresh fruit out of the Fresno area, sanger, fresh fruit and cut fruit, we get salads out of Taylor farms, in Salinas. We get Sushi made fresh every day that's shipped to us from Modesto. Sushi in Modesto. We get bananas fresh out of Oakland every day. We have celery and carrots and condiment type products like that in single-serve containers. Of course we have yogurts and you know we have if you want to count them as fresh food, we have Deli meats and eggs. We're always looking to expand our fresh a food assortment. And we react. We want to be the best store in the neighborhood we're in. If the customers express a desire for us to go in a certain direction for us to be the best store in the neighborhood and to support our guests and our customers, we'll do everything in our power to try to get the products they want.

>> Commissioner Jensen: Thank you. So if I understand correctly aside from the bananas and uncut fruit and some carrots and celery, everything else is packaged goods?

>> Well, it -- we have doughnuts, fresh doughnuts come in every day. We have -- but we have a wide variety of fruits and you know, we have anywhere from five to ten different assortments of fruits.

>> Commissioner Jensen: Like a grocery store format where somebody picks one up and wants to buy three and get weighed and you walk out with a bag of oranges?

>> No we have typically a single cell container prices.

>> Commissioner Jensen: Thank you. Does the proposed proprietor of this particular franchise have other franchises in Downtown San José?

>> We haven't put the site up yet for franchising because we're waiting to get determination on this last step we need to take. But we are going to try to find a franchisee who has experience running a 7Eleven store number 1 and has superb execution in relation to food service needs and cleanliness.

>> Commissioner Jensen: Okay well so as a downtown resident and someone who has had the opportunity to visit a number of our downtown 7Elevens there is a bit of a discrepancy between how some of them are kept and how others of them are kept. The one that is a shining example of 7Eleven is the one over at 11th and San Carlos I believe, the one that is by the Naglee park garage, the shining example of what a 7Eleven is and I hope you'll find a proprietor who will meet those standards.

>> And we'll do everything we can to do that. We have made a big push towards improving the cleanliness in our stores and the executing in funding it. In fact we have taken about 10% of our labor from what we called the field consultant level, and put them into customer service and cleanliness representatives, and they're working with the stores every day, day in day out to improve in those categories. So we see it as a need. And execution at our stores does vary but we're trying to raise the bar every day. And I promise that you.

>> Commissioner Jensen: Thank you. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. In your discussion about the types of foods, fresh food items that you have, I didn't hear any indication of providing healthier choices. As a city we're concerned about our citizens and a healthy lifestyle, which is why I work on our trails and bike paths and such and part of that is the food opportunities. And certainly if you're doing sandwiches you could provide the wheat bread, sour dough bread which is much healthier than a plain white bread, organic fruits and vegetables, your fresh milk could be organic milk and there is always marketing of this is a fresher option. And I've heard, you've been here before and we've discussed this and the conversation was, if the neighborhood asks for it then you'll deliver it. But there's -- the neighborhood might not know that and I think perhaps, if you start delivering it, then you'll see that they want it. And that there's more of a demand. There are a lot of places that have organic, in the grocery stores, and those have been successful grocery stores, Safeway has certainly increased its organic options exponentially over the years. And that just shows me that there is a demand for that, for a healthier lifestyle. So I hope you continue to consider that as you're improving your stores.

>> Commissioner Cahan, actually we have had some conversations on this and I appreciate your input and we are moving in that direction. We have a healthy lifestyle format, as a matter of fact, and we have many sandwiches we are offering on wheat breads in 300 to 400 calories, and our organic business is growing and we don't want to be left behind. But I will admit we haven't taken the forefront on it. But I agree with you we need to be moving in that direction.

>> Commissioner Cahan: Thank you.

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

>> Commissioner Kamkar: Thank you, Madam Chair. First of all, welcome. You know, we like to see 7Elevens you know and they're responsible corporate users you know to our downtown. We need the jobs, we need the income. I want to be clear about a few things. You started your application with a 24-hour, and then you scaled it back to meet the community concerns and needs is that correct?

>> That's correct. So what we did was, we applied for C.U.P. for offsale of alcohol and 24 hours. And we worked closely with the Planning Department and we met also with the San José downtown business association, we heard their concerns and comments, and we would like to move forward with opening the store in Downtown San José, and meet the underserved needs of the customer in that area but we also took into consideration the concerns they had as it relates to alcohol and 24 hours.

>> Commissioner Kamkar: Right and that was going to be my second question, is you originally wanted to get the alcohol license because of the income it brings but then when you heard the community you are responding in kind.

>> Yes.

>> Commissioner Kamkar: So the permit as approved by the director did not include alcohol at this time.

>> Right.

>> Commissioner Kamkar: In the future if the demand for it increases you can I guess make an application for it. And so currently you are going -- you are asking for 2:00 a.m. closing time and no alcohol, you know at this time?

>> Yes.

>> Commissioner Kamkar: Okay. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. There are no additional speaker lights. After public comment and if the applicant elects to come up you will also have an opportunity to speak at the end. Thank you. We have one speaker card, Jeffrey, and I can't pronounce your last name so if you would introduce yourself when you come down and you'll have up to two minutes to speak.

>> Hi, good afternoon. I'm Jeffrey Tan, our company is located at 65 north second street. It's very close to 7Eleven's planned store. So why I come here, because we have a large parking lot in front of our office. And I still remember, last year there was a night club through there, on second street and Santa Clara. Every night it's very crowded on our secure -- a lot of police cars comes to our parking lot only because those people who drink alcohol. And after they moved out, our parking lot suddenly become very silent in the evening and feel it's quite safe. Now when 7Eleven come to us, come to this place, they don't have parking lot and most people will park their car into our parking lot because it's late night, it's free and we don't have any equipment to block them away. That's why during late-night, they will drink alcohol or park their cars in our parking lot, it will make our community lot much unsafer than before that's our major concern. And during late night it is kind of Safeway, they only close their store at I guess 9:00 or 10:00. But 7Eleven they can open it until 2:00, I think most major concern is just our parking lot and also the neighbor. Because of some homeless guy also hang around there, and also, especially, each morning, when people may -- those consumers from 7Eleven they just dump a lot of garbage there, especially some glass, it's very unsafe for -- even for the worker on the street. Yes.

>> Commissioner Jensen: Thank you, Mr. Tan. We do have a question for you from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I hear your concern and I understand it. One thing that I don't quite understand the connection. They are not applying for alcohol license. So whoever is drinking the alcohol, it's not being bought from their store. So I don't quite understand --

>> Yeah, even if the license if they have late-night, people, they are consumers just parking our -- in our place, and they just consume a lot of food from there. And then they just dump, and a lot of garbage in our parking lot. So who will pay for those -- those garbage collection fees?

>> Commissioner Kamkar: Yes.

>> And also the cleaning. I still reason, each Monday afternoon, our neighbor, they hose -- the church, they hold some church event there and as those guests gone, a lot of garbage we need to clean every Tuesday morning. And now we have 7Eleven here, I don't know how many consumers they have and we will pay more money and more effort to clean our parking lot.

>> Commissioner Kamkar: So you rather see the empty -- the space stay empty than a new business comes in and helps with the viability of that downtown?

>> We prefer, but if -- but if they have their own parking lot then it's fine. But as it is right now, you can obviously find their customer will 100% if they drive a car they just park in our parking lot. Because it's one way and either they park there or they go to 7Eleven and they go back to consume their food, down to their garbage, causing more garbage in our parking lot than they went away.

>> Commissioner Kamkar: Thank you.

>> Commissioner Jensen: Thank you. And I have one other speaker card. Tony Michelle. And if you would like to come down and introduce yourself. And you will also have up to two minutes.

>> Hi. Good afternoon. I'm walking on a bad knee. And I am here because I want to help Manuel. And he's a business owner. And he's trying, you know, like everybody else to pay the bills, you know, like I pay my bills, my metro PCS because I cannot pay AT&T. I am not Donald Trump. As I listen to, you know, this gentleman, Jeff, Jeffrey tan, it gives me an opportunity not to just think of the store over there, but to think of a lot of people that are trying to sleep, and do their reports, you know, their English 1A. I tutor a lot of Vietnamese people and Pakistanians and Mexicans that wanted to polish their English just like I did. When I do I did, it's like I'm trying to be British. So we all come here and we work and we try to go to sleep but as Jeffrey tan said, there is a lot of noise and garbage. And sometimes I'm walk through the streets of San José, and I'm breathing or trying to breathe by the Lido club, by that alley between 1st where Ross is at and 2nd. And then I cannot breathe anymore because there's a lot of urine from all these homeless people that are not disciplined or have willpower to look at

the beer and just look the other way. Look at the tequila or whatever it is, and just look the other way. you know, I take a shower every day, but if this guy, Mr. Whatever his name is, if he says he has 400 stores in San Francisco, is that what you said?

>> No, I said 400 stores in Northern California.

>> Thank you very much. I'm going to pretend that I'm Perry Mason.

>> Commissioner Jensen: I'm sorry, your time is up.

>> He doesn't need a store here because he's got 400 in the whole Bay Area and he should think about people that are complaining about garbage and urine and the other crowd that doesn't shower.

>> Commissioner Jensen: Thank you. Thank you very much. So if the applicant would like, you may have up to an additional five minutes to -- okay, thank you. If the appellant would like you may have up to five minutes as well, to make any presentation or discussion that would you like. And it doesn't like the appellant is interested in speaking, either. So is there a motion to close public hearing? Commissioner Cahan.

>> Commissioner Kline: Second.

>> Commissioner Jensen: All those in favor? Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I got ahead of myself there. I would like to make a motion to uphold the planning director's decision to approve a special use permit to allow for late night operation until 2:00 a.m. for a retail establishment/convenience store In an existing approximately 2673 square foot tenant space on a .08 gross acre site in the D.C. downtown core zoning district as recommended by staff.

>> Commissioner Jensen: Thank you. There is a motion and second. Commissioner Cahan would you like to speak to your motion? Okay. Thank you. So I will be supporting the motion. But I have a couple of requests for our esteemed representatives of 7Eleven. There is a wide diversity in care being taken in the 7Elevens with which I'm familiar in the downtown area. Our downtown core is precious to us. And we are appreciative of a business that is interested in coming in and setting up shop in the downtown area and helping us to progress the ideals of having a late-night city where people can go to pick up prepackaged foods in the evening, after they've been out and perhaps walk home, or have a brief picnic, or you know, get a protein shake or something. That's very nice thing to have more eyes on the street. I'm very grateful that you are moving into the Dr. U building, that is a gorgeous building. I've watched it for a very long time and it's very nice to see it fully restored and I'm glad to see somebody moving into it. But I hope you will really take care with the proprietor that moves in and, in consideration of fresh food, we've had the conversation regarding fresh food previously. Personally, I don't find single service, single unit priced fruits to -- and packaged foods to fall into that category. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Hi, Madam Chair. I was wondering if I could ask a question of staff during this time. I guess I can. My question is, what would be the process if they decided to change their mind, they wanted to sell alcohol on offsite? Would it come back to us or would it just go through the Planning Department?

>> Before it was actually a special use permit and that's because there is no offsale of alcohol involved with this request. Offsale of alcohol anywhere in the city requires a conditional use permit. So really, what's before you is a -- simply a use permit for late-night operation for a retail establishment, whether it's 7Eleven or whether it's a convenient market similar to what the appellant runs, or anybody. So there is no tie to the people up here representing the retail establishment. We don't use any of that in consideration of our request, whether it's 7Eleven, convenience market run by the appellant, or by anyone else in the downtown. So really, this proposal is simply the late-night operation of a small-scale retail establishment.

>> Commissioner Bit-Badal: So it will come back for an approval --

>> As a conditional use permit.

>> Commissioner Bit-Badal: As a conditional use permit. Thank you. I will support the motion as well, because of that reason. I definitely will not support offsale of alcohol on that site. I worked quite a bit in that area, in attracting businesses, and all you have to do is walk that area for ten minutes, and you'll see that it's really prime area for drug dealing and lots of activities that we do not want to see in our downtown. And as someone who is really an advocate of our downtown, I definitely do not want to see overconcentration of offsale of alcohol. And having the business, the way you presented it today with fresh fruit and trying to be responsible, and I hope you will really, as a corporate owner, not just as a franchisee, having your franchisee take care of it, having the name of 7Eleven at that corner I sure hope you would pay a visit once a month to see how they're doing and how things are going. Because seeing it in person really makes a difference and most likely will affect your future, the future of that store, as well. With that, thank you.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. Commissioner Kline.

>> Commissioner Kline: Well I'm going to support this motion too and I really want to congratulate 7Eleven for taking this risk, it is a risk even though it is a franchise. I was actually a paper boy when I was eight, nine years old in that section, in front of that store and I sold newspapers and shined shoes. I remember in that corner, 1966, 67, it was dirty, it was vibrant, it was exciting. This is an urban core environment. This is not an office complex down on first street someplace. What is missing here is people, and people with jobs, people who do things, people who walk in and out of stores, people who buy a cup of coffee, people that actually move around, I mean, that's what's going to change downtown, businesses like yours. And I'm not going to tell you how to run your business, you know how to run your business. You will take care of this I'm sure you will and the fact that you actually listened to the downtown association, I'm impressed. I'm excited about this change. The biggest change the smell factor are companies like you. That will change the smell factor. I'm extremely, extremely happy to see you down there and I just can't believe that you're taking this risk but I'm really happy you are.

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

>> Commissioner Kamkar: Thank you, Madam Chair. Likewise, I think you guys have lit the jackpot with your location, you know. But that could also mean that if you don't do it right, then, you know, you'll be sticking out like a sore thumb, you know. So you got to take care. And also, the gentleman that spoke, you know, about his concerns about possible trash or whatever, I would love to see him proved wrong. I want to make sure you operate this store, franchisee operates this store in a way that he will come back and say you know what, I was wrong, my predictions were wrong. You have a wonderful opportunity and again, welcome to downtown, I'll be supporting the motion too.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. Seeing no further speaker lights may we vote by light, please? And that motion passes unanimously. With Commissioner Abelite absent. And before we move on to the next item of business for the commissioners who are here, the sharks were trailing, but they have now tied it up! So we have a sharks watcher keeping me apprised of what's going on. Petitions and communications. Public comments to the planning commission on nonagendized items. 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 options: Responding to statements made or questions posed by members of The milk, requesting staff To report back on a matter at a subsequent meeting, or directing staff to place the item on a future agenda. I do not have any speaker cards, and I don't see anyone available to speak. Referrals from city council, boards, commissions or other agencies.

>> Laurel Prevetti: There are none.

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

>> Laurel Prevetti: There have not been any significant land use items since the last commission meeting.

>> Commissioner Jensen: Thank you. Commissioners reports from committees. Norman Y. Mineta San José international airport noise advisory committee. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. There is a meeting scheduled for Monday so I hope to have a report for you next week.

>> Commissioner Jensen: Thank you very much. Envision San José 2040 general plan update process, Commissioner Kamkar.

>> Commissioner Kamkar: We are not scheduling any meetings until September, I believe, or is it June? June.

>> Commissioner Jensen: Thank you very much. Commissioner Kamkar. Review and approve the synopsis from 4-20-11. Is there a motion?

>> Commissioner Kline: So move to approve.

>> Commissioner Jensen: There is a motion. Is in a second? All those in favor, thank you. Subcommittee formation, reports and outstanding business. Are there any reports from our subcommittees? Seeing none, commission calendar and study session. The director raised a potential for having a study session related to what the movers and drivers were, bringing new business to San José. And what new business was looking for, as being part of San José. It's -- and the demographics. That's been a presentation that's been provided to the envision 2040 task force. It was very interesting. We had the preeminent Kim Walesh providing a significant portion of that, and I, for one, would love to make a recommendation that we have that at an upcoming study session if that's available.

>> Laurel Prevetti: Yes, thank you, Madam Chair. On your agenda, page 7, is the Planning Commission meeting schedule. We do not have a study session scheduled for the duration of the calendar year. So there are ample opportunities. You have a very busy May, so I would discourage a study session, beyond what we've done this evening. But to the extent you are interested in doing one in the summer months, we would certainly bring appropriate staff. We are starting to get the results of the 2010 census and that may also be of interest to you just

to understand how San José has really changed in the last ten years, and where we're headed. So it's really the will of the commission in terms of when you would like that conversation. Thank you.

>> Commissioner Jensen: Thank you, director. Just on a personal note I would love it if we could have that sometime in June, and if you could let us know if a June meeting would be available.

>> Laurel Prevetti: We will consult with our colleagues in other city departments and next week we will have a recommendation for a specific date.

>> Commissioner Jensen: Wonderful, thank you very much. Commissioner Kline.

>> Commissioner Kline: Relating to study says, I would like to ask staff, what would be the recommendation or the procedure for changing the bylaws where we have to have a majority to actually have a study session? It's my understanding that most Planning Commissions don't have that requirement, it does cause issues even for offsites and that it was put in sort of at the last minute when some bylaw change I believed. What would be the procedure to actually go and review that process so that we do have a study session with a great speaker appears and only three people show up, it would be nice to hear him anyway.

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

>> That change would be fairly short, so I don't think it needs a subcommittee. If you wanted to have it put on any particular Planning Commission agenda I could have it for to you review, it will be in your packet and the commission can take action on it. Obviously you can't do anything about it tonight but you can have it come back at any Planning Commission that you desire.

>> Commissioner Kline: Would it being too much to ask, I know this is a way lot of work but it is my understanding that most Planning Commissions don't do it the way we do, I'm pretty sure, but I just want to make sure.

>> I don't know the answer to that, so I haven't taken that survey. But if it's the will of this commission, like I said the change is -- if I'm understanding you correctly, which is a quorum constitutes 4 to transact other business with the exception of conducting a study session or --

>> Commissioner Kline: Offsite.

>> Right. Again, it is one sentence, I can bring it back --

>> Commissioner Kline: I'd like to bring it back and again I only have experience in two cities and neither one have this rule so bring it back and let's discuss it.

>> Commissioner Jensen: Thank you, Commissioner Kline. I'm not sure it's relevant whether other cities do or do not have it. It's entirely the will of this commission, as long as it's not in violation of the Brown Act or our ability to be able to conduct business and in the event we ever conduct business at a study session that might be the occasion in which we might have to consider.

>> Right. And so I don't -- can I only think of a couple of instances where we've had the study session and we've actually also agenda'd it as a Planning Commission meeting because you wanted to take action. So again if it's just a study session, just informational, educational, which has been the practice of this commission, and that's again you don't have to make your decision now. All you'd be saying is would somebody put that on a Planning Commission agenda and it will appear and you can consider it.

>> Commissioner Jensen: Thank you, so Commissioner Kline, if you would like to take the lead, and perhaps make a proposal, at a future commission meeting, as to what the language would be, and let staff know in advance so that they can actually put it on the agenda, that would be great.

>> Commissioner Kline: Great, no problem, thank you.

>> Commissioner Jensen: Thank you. And I believe that concludes our business for this evening. Thank you very much. And have a good evening. We'll see you next week.