The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

>> Now to begin our regularly scheduled commission meeting. Good evening. My name is Hope Cahan 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 27, 2011. Please remember to turn off your cell phones. Parking ticket validation machine is just over there underneath the camera. If you want to address the commission, fill out a speaker card located also on that table where the parking validation is. Deposit the completed card in the basket near the planning technician, at the end of the right -- my right of this horseshoe. Please include the agenda item number, not the file number, for reference. For example, you would put 4a, not pd06-023. 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 cards in the order received. As your name is called, line up in front of the microphone at the front of the our horseshoe here. Each speaker will have two minutes, and we have an unprecedented timer since we are in a different room. You will hear a little ding that will go off at the end ever the two minutes instead of the computerized screen. 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 commissioners' 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. Let the record show that all of the commissioners are present except Commissioner Platten. Deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard on the matter of deferral. A list of staff-recommended deferrals is on the staff table. If you want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the planning commission and be sensitive to the length of hearing, the planning commission may determine either to proceed with the remaining agenda 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. Staff?

>> Staff has no recommended deferrals at this time.

>> Are there any comment cards or public -- so we'll move on to consent calendar. The can sent calendar items are considered to be routine and will be adopted by one -- 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 up to the podium at this time. Staff?
>> Staff has no additions to the consent calendar.

>> We have a motion to move consent. And a second. All in favor, say aye. Any opposed? Motion passes. Public hearing. Generally the public hearing items are considered by the planning commission in it the order taken in 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. Tr11-023, an appeal of the director of planning's decision. Staff?

>> Thank you, madam chair. The item before you is a tree removal permit are, file number tr11-023. This is appeal of the planning director's decision to approve a tree removal permit that would allow the removal of five Monterey pine trees measuring from 85 inches in circumference up to 110 inches in circumference for property located on Hampton drive in san Jose. Staff reviewed the appeal presented by the neighbor, and in your written staff report is a response to the different issues that the appellant has raised. In addition, we received several labor reports from the applicant that helped us understand the actual conditions of the trees and we do know that these trees have pitch canker as well as beetles and a moth that has come into some of the trees. With this information, staff is recommending the approval of the tree removal permit. We will be requiring replacement trees within 30 days of the tree removal. That way, the city does maintain its urban forest. We do want to thank the appellant and the neighbors for their interest in maintaining that urban forest. But we believe that safely removing these trees, as indicated by the certified arborist, is really in the best interest of the city in planting with healthy species would really enable the city to meet its tree goals. That concludes staff's presentation. Thank you.

>> Thank you. Because this is an appeal of the director of planning's decision, it's a little bit different than our usual items. There will be five minutes for the appellant, then five minutes for the applicant, then we'll have any public testimony, and then five minutes for the applicant and then a remaining five minutes for the appellant. So the appellant, Oscar Siguardo. Let me get my timer going before you begin.

>> Good evening.

>> Hold on just a moment. Appreciate your patience. Okay.

>> I am owner of 6762 Hampton drive. First of all, I'd like to thank all of you for taking part of your personal quality time to pay attention to this matter. I am especially grateful also to the very thorough evaluation and assessment of our appeal by laurel palette. We are truly grateful, and we feel proud to see our city paying this level of attention to environmental matters. This is completely different feeling than the one I had on march 29th. That morning the tree removal company was ready to take down all of these five trees with all the people and all the tools in the premises of 6766 Hampton drive. We talked to the manager responsible for this company and he indicated that they did not need a permit because they had a verbal green light from the city planning staff. We called a few minutes later the planning department, and a couple of hours later the code enforcement inspector James John was in the premises. He immediately stopped all activities, again, regarding cutting down these five pine trees, and he requested that a permit application should be submitted. We would also like to thank our neighbors, Karen and David Matsumoto who in response to our appeal to produce an independent arborist report, information about each tree about their health and viability, they indeed provided the report, which indeed meets these requirements. This report is in big contrast to the report that was presented the may 25th public hearing. This report was insufficient

and what we did is we share this report with Rhonda berry and Christian Bonner. They are CEO and head arborist respectively of our city forest. The head arborist stated that just labeling the health of these trees as poor was insufficient without further qualification and here states and I quote, in an e-mail sent to me, the mere presence of the pathogen does not doom the tree to be imminently at risk of mortality. The arbor report only labels the health of three of these trees as poor and also states, I quote, not all infected trees become severely diseased and some even recover. A supposition I cannot agree more. If I have a patient with a fungal nail infection, I would not decide just for that situation to amputate their fingertip. Finally, I would like to say that we are very sad and disappointed. We accept the recommendation to remove these trees and having informed all of the neighbors, some of them here with us. We hope now that our city will realize that allowing the removal of Monterey trees in San Jose should not be based exclusively on the identification of pitch canker and bark beetles. As residents, we are not experts in trees. When we see vibrant and beautiful trees like these five pine trees, we expect that the city is going to think about them, to evaluate them thoroughly, and also to give them a fair chance to survive. Finally, let me suggest that our city considers as a benchmark san Francisco. San Francisco has in one of their web pages for the department of public works two web pages exclusively dedicated to pitch canker. They are giving recommendations to the san Francisco residents on how to identify and deal with the disease. I think this is a very good example.

>> Thank you. Your time is up. Are there any questions from the commission? Thank you. You will have another five minutes after public testimony. Okay. We have the applicant, David Matsu Moto. Okay. Thank you.

>> I'm Dave Matsumoto. My property address is 6766 Hampton Drive. It's certainly not easy being on new on the block, especially because we haven't moved in and are in dispute. These trees are loved by the adjacent property owners. It is clearly an emotional issue for them. While Karen and I understand their feelings, we need to consider our needs and protect our family. If the trees present a significant risk to property damage or public injury we need to remove them before such an event to occur, both to prevent guilt and a lawsuit. We did not grant permission to the neighbors to have an ISA-certified arborist to restore it because we already had it. The report advised we remove all five trees. Our neighbors criticized the arborist, accused them of taking blatantly underexposed photos, accused us of illegally removing the trees. As all five trees have health and structural issues and pose a risk, we do not feel that leaving any of them was an option. Despite this, we did take into consideration all of the neighbors' comments and created our own action plan which I will describe. On June 13th, laurel Kelly an independent ISA-certified arborist visited the property to individually assess each tree. Her evaluation contained a high level of detail. We were still curious about the possibility of treating the trees even though don said there wasn't any known cure. After perfect using the web site of the pine pitch canker web site and others, I decided to reach out to professor tom Gordon, the expert in the canker disease. He confirmed there are no known treatments. Laurel Kelly mentions this in her addendum as she also contacted him. Professor Gordon referred me to dr. Larry Costello, a well-known and respected researcher on the ISA science and research committee, ISA board-certified arborist test committee. I was able to schedule time with Dr. Costello who visited the property to assess the health and general structural integrity of our pine trees. He identified serious structural issues with all five and recommended that they be replaced with a suitable species. Although we had more expert information to support

the replacement of the pine trees we hadn't yet addressed the neighbors' concerns regarding shade, privacy and support of wildlife. So we took a trip to the tree farm just north of Santa Rosa. Our goal was to determine whether or not the city requirement of replacement trees would satisfy any of these requirements. We really wanted to find trees that when planted are already between 10 and 15 feet in height. We also needed to keep in mind that PG&E guidelines say trees near power lines need to be shorter than 25 feet. We have the list of recommended trees but while at the tree farm we looked at the database that includes p much more information about the species, which includes much information. From our visit, we concluded that while it's technically possible to satisfy the privacy screen with one or two p types of trees that come in 15-gallon containers it's more likely we'll need to upgrade to 24 inch or 36 inch trees to fulfill most if not all the requests. Therefore we are more than willing to go beyond the city's requirement and plant larger trees which of course are significantly more expensive to purchase, transport and plant. We will also commit to Atlanta planting a minimum of five replacement trees and opt oust the alternate path otherwise allowing us to skip the planting of two trees for a $300 per tree donation. Our selective trees would start at 10 to 15 feet with an average grown rate of 1 to 3 feet per season. It will not be long before we can provide healthy trees with full foliage. I have a preliminary draft of our landscaping designs. This page here shows the proposed location of the five replacement trees. But in addition for the Capaloni residence, we are proposing we add trees to this -- over here. So, in conclusion, I'd like to thank the planning commission members for listening to my argument. While we realize there is an emotional component to your decision, we do hope you will take our safety concerns seriously as well as acknowledge we have done our due diligence in addressing many, many, if not all, of our neighbors' concerns regarding the replacement of our five pine trees. Thank you.

>> Thank you. Commissioners, are there any questions? Commissioner Bit-Badal.

>> Thank you. If you could come back, Mr. Matsu Moto. Commissioner Bit-Badal has a question for you.

>> Thank you thank you for your proposal and doing further research on this. I was wondering how come you're not going with 48-inch box.

>> I actually haven't seen a 48-inch box. I didn't realize they were available. At the urban tree farm the largest we saw was a 36 inch. One of the issues with 48 inch -- I imagine it's extremely expensive, but you have to dig a very large hole and there's probably not a lot of room in that area as it stands right now.

>> And how high is a 36 inch box?

>> I have pictures. While we were there, we took pictures with a tape measure and then calculated my height with my arm up plus the tape measure. What I saw was a 36 inch tree, 24 to 36 inch box, probably like12 1/2 feet was the average starting height.

>> And would you mind if you share the proposal you were talking about, the map if you can pass that around.

>> Yeah. Sure.

>> Also, one of the issues is the neighbors living behind your home. Oh, by the way, in terms of doing -- I did a site visit, by the way, to your next door neighbor's house. I've been to your lot before so I was familiar with your backyard, but I wanted to see the effects of these trees from your neighbors' house. I went to the side neighbor's house, which is the appellant. And I wanted to know how many trees you're planting in the back to give the existing shade to your neighbor in the back. The one across the creek.

>> Well, the plan there will show where we are planning on putting the trees. So there would be, I believe, three in the back and then two on the side.

>> And with the --

>> They're very close to the original locations of the trees. We can't plant directly on the same location as the existing trees but we're just going off to the side a little bit.

>> So the three are in the back then.

>> Yes.

>> Great. Thank you.

>> Commissioner Kamkar.

>> Thank you. The question I have, have the neighbors, complaining neighbors, offered part of their yard as the planting site or offered to --

>> Planting the trees?

>> Yeah. Plant their own trees or help you with the extra cost that you're going to.

>> Yes. They've been very nice about -- they've proposed that they help us pay for the pruning of the tree that's immediately -- currently and immediately adjacent to --

>> What about the replanting? My question is, you're going above and beyond --

>> But this is the first they've ever heard of that.

>> I see. Thank you.

>> Any other questions? Thank you. You will have another five minutes after public comment. Okay, we will begin public comment and those will be a two-minute time frame. Karen Matsumoto? After that will be peter smith if I could just have are you line up on the side. Then dean. When you begin, if you would state your name. Timer is ready. Thank you.

>> My name is Karen Matsumoto. I'm the owner of 6766 HhhHHampton Drive. An article was published using information collected from the California tree failure program database. It started in 1987. In the article, it states the following. Close to 60% of modern pine reports in it the database were limb failures and most of these were considered to be a structural defect called heavy lateral limbs. Heavy lateral limbs were associated with 75% of all branch failures. Dr. Costello was one of the co-authors of that article, and he made a site visit to our property recently. And he wrote a letter to us. In his letter he wrote the following --at least two of the three trees have long and heavy lateral limbs that have a relatively high potential for structural failure. From the database, this is the most common failure type for Monterey Pine. It is difficult to predict whether these limbs will fail, but it is a condition that should not be ignored. As a mother, I have always felt about the safety of all those around me. If our trees cannot be replaced, I would live in fear every day, especially on windy and stormy days. We are landscaping the backyard for our three young boys to enjoy and they are going to be out there every day playing. I don't want to worry about something happening to them. The reports point to so many flaws with them I would also worry about others within striking distance of those tall trees. I hope the neighbors recognize that we only want what is best for everyone when we applied for the permit to replace those trees. And we're doing our best to make everyone happy. Most of the letters from our neighbors predate the report from laurel Kelly and dr. Costello. Do they still feel attached to the trees?

>> Thank you. Your time is up. If you'll wait just a moment, are there any commissioners with questions? No questions. Thank you. Mar. Smith? Let me just get the timer going and I'll have you introduce yourself. Okay.

>> I am Peter Smith friends of the Matsumotos, and I'm here to ask you to support the original applicant for tree removal and deny the appeal. I had something else I wanted to talk about, but I just wanted to say as many of you know my day job, I do land development work. I've never seen anybody do as much research on tree removal as they did. I'm really impress a red I might get some of the names of people for future projects. I think they really did a good job on researching the problems with the trees and getting second and third opinions on the condition of the trees. I think that really supports their original tree removal application. I also found -- it didn't print very well so I'll pass it around -- there were four other tree removal permits in the last few years in the general area, all for Monterey Pines. There's many more but four for Monterey Pines. They were all approved. One in particular on Bose Lane removed nine trees, it was the same issue with power line conflicts and they were poorly timed so they were all approved to be removed. I would ask you to support their original application. Thank you.

>> Thank you. Commissioners, any questions? Thank you very much. And Dean Bibentso? Okay. Mar. Matsumoto, you may have another five minutes. If you would like another five minutes. Mar. Matsumoto? No. Okay. And Seguardo, you may also have another five minutes if you would like. Okay.

>> I would just like to reiterate how grateful we are to Karen and David Matsumoto. After hearing everybody that they've been doing besides and beyond the report that we show, I think that we are deeply grateful to everything that they are doing. We are just looking forward to having a very good relationship, a neighborhood. We're going to share a fence. We're going to listen to our kids play around. I'm really looking forward to having this opportunity to meet them and to have a better relationship. I would also like to clarify that we in no moment have thought that they did anything illegal in terms of what I described that happened on march29th. It was simply that the tree removal company got a green light it from the city planning staff, which has nothing to do with them doing anything that was not correct and unright. Thank you very much.

>> Thank you. I will entertain a motion to close public comment.

>> So moved.

>> Motion and a second. All in favor? Any opposed? Motion passes. Staff?

>> Thank you. Really appreciate the sentiment of both the appellant and the applicant with respect to this tree removal and the additional research that the Matsumotos have done with respect to possible replacement trees. Staff in our experience as attractive as the box trees would be in terms of getting that immediate impact for a larger tree, it's been our experience that in backyard contexts the smaller trees, the 15-gallon trees, actually perform a little bit better. So we would respectfully ask that you consider that very carefully because we certainly want the impact, but we also want the long-term longevity of the trees. So that's why in the original tree removal permit we had asked for 15-gallon trees. That's really the only additional comment and we look forward to the commission's deliberation. Thank you.

>> Commissioner Bit-Badal?

>> I would like to put a motion forward to approve director of planning's decision for tree removal permit to allow the removal of five Monterey Pine trees measuring 110, 85, 96, 96 and 86 inches in circumference located in the rear yard of the single family residence in the r-1-8 single family residence zoning district located on the east side of Hampton Drive, 290 feet southerly of Landerwood Lane. With the additional mitigation of the property owner to plant five trees in 36 inch boxes and no in lieu fees to be paid to the city.

>> Second?

>> Seeing no second, that motion does not go any further. Commissioner Kline?

>> I move the motion to approve --

>> We have a motion and a second. Any discussion?

>> I just want to say I do concur. I think the younger the trees that come out of the 15-gallon system is much more vibrant and healthy, given health and care. I think in the long run, which isn't that far out, you'll do much better on performance. That's why I didn't second your motion. I concur with Commissioner Kline.

>> Having years in Saratoga, which is probably the most friendly tree community in this valley by no stretch of imagination, we took 30 years to change our ordinance, tree ordinance, by two paragraphs. That's how -- it's just very, very conservative. I agree 100%. The 15-gallon does in the longer-term bear out. You don't really want to plant a large tree and have it loss and then try to force new planting. I agree with staff on that.

>> I would like to remind the commissioners to speak right into the microphone. Thank you. Commissioner Jensen?

>> Thank you, madam chair. I would like to first thank both the Matsumotos and Dr. Saguardo for their phenomenal work and cooperation with each other after the initial stumbling block of imminent demise of trees created a tiny rift between the two families. It's always nice to see two families who are on opposite sides of the fence, as it were, coming together toward the end and agreeing on things and looking forward to working together. And I know that they'll have many years of a happy, long relationship once they get past this little hurdle. I completely understand and support the doctor's request not to take the trees down, and I'm very impressed with the work that he's done in trying to find alternatives to helping combat the diseases and the infestation that was found in the trees and with the Matsumotos' similar work on trying to find expertise to support dr. Saguardo's findings but unable to do so. I was told a long time ago when you first move into a new home you should give yourself a year to listen to the property and listen to the house. I know it sounds new agey and I'm not new agey, to acquaint yourself with your home and what its needs were before making any changes. While I respect the Matsumotos' desire to get everything done before they actually move in, this might have been a great opportunity to get to move in and meet your neighbors before actually initiating a tree demise. I'm going to be supporting this motion, and I also think, like Commissioners Abeit and Kline, that a smaller tree is likely to be more vibrant and have a better chance of survival. My recommendation would be that the Matsumotos reach out to our city forest who has a very long history of planting trees in San Jose to find out what the optimal trees might be for the area that they're working in. I'm very impressed that you went all the way up to Fulton, but it would be great to work with a local organization who has experience planting in san Jose. They can also give you a feel for what trees might possibly be able to go in safely in a larger size initially and what might be a faster growing tree and things that would be more supportive. But I'm really impressed with the work that the two of you have done to overcome the problem that you started out with. Thank you.

>> Commissioner Bit-Badal.

>> Thank you, madam chair. The original motion I put forward was really a compromise that neighbors had already agreed to, and I thought it would work out really well. I have talked to a landscape architect and also before actually I came to this meeting I talked to landscape architects and also another arborist and they both had agreed 36 inches would be fine, would have met the backyard neighbors' needs as well and would have been something that really would have worked out for everybody. As we all know, 15 inch trees take a long time to grow. It would take many, many years and I'm afraid many people would be moving out of the area before they see the benefits of those trees. It takes really five years for the 15 gallon trees -- excuse me. I said 15 inches before, 15 gallon trees. It takes five years to see the environmental benefits of these trees. For the first five years they need a lot of maintain. Actually, I know all of this because I was going to do my thesis on tree planting and urban forestry. So I've done a lot of research in my past life on this. With that, I really want to thank both the appellant and the property owner. I do have a message for mar. Matsumoto and his wife. Of course, welcome to the neighborhood, but also you have eight more people to invite to your housewarming party and those are the people who have written letters here. That would be the best way to welcome yourself to a new neighborhood. The reason for that is you're building a gorgeous home and I know it will be perfect for your three kids and they're going to have a great time. But if they're getting out there and not enjoying their neighborhood, it's not going to be a great home. With that, I again encourage you to work with your neighbors and really talk about what kind of shading system they want to see. I know the city right now looks like the direction is for 15 gallon, but that doesn't mean in the future you cannot plant larger trees. This is a requirement we're putting in right now. Your yard is large enough to sustain more trees. So, again, with that I will ask you to work with them. I want to thank everybody who's been here. Thank you.

>> So I do also commend the Matsumotos for the detailed work they have done on this and I think Commissioner Jensen's suggestion of contacting our city forest is a great one. With this motion, you are not limited to planting a 15 inch so you may go larger if you choose to do so, and I think our city forest would be able to really advise you well. They came out to our neighborhood and helped us with the tree planting. They helped us pick out trees. They helped us plant the trees. And they helped us create a plan for maintaining them. So they are very, very helpful and they do know this area very well. So I definitely agree with that. Commissioner Bit-Badal?

>> I talk quite a bit to mar. And Mrs. Matsumoto. I forgot to thank the other family for allowing me to come to their backyard yesterday after work. Again, thank you for letting me see the project in person.

>> And it sounds like your neighborhood is going to be a great one and you guys will -- it sounds as though the neighbors will be supportive of you and I'm happy that they came out here and showed support, even though they were countering what you were doing. So with that I'd like to take a vote on the motion. All in favor? Any opposed? Motion passes. Thank you. The next item is cp11-039, a conditional use permit. Staff?

>> Thank you, madam chair. [inaudible] -- associated with a public eating establishment with no after hours use on a 0.04 gross acre site in the cp congressional zoning district located on the south side of willow street just west of Lincoln avenue. Staff is recommending approval of the drinking establishment use and is supportive of attracting new businesses to the willow glen neighborhood business --. Staff and applicant worked together to resolve a number of issues in this application in a short time frame and one disagreement did remain. That is regarding the disposition of the recessed front entry way. Staff's analysis and recommendation for preservation of the existing presuccessed entryway is included in the staff report, and I'd like to call to your attention a number of e-mails that were received. Staff received approximately 35 e-mails on the project. The planning commissioner should have received those via e-mail over the past few days. And a number of them are also provided in the handout you received tonight. All but two of those comments were in support of the project. The two comments that were not in support of the project cited parking and traffic concerns. The majority of those also were supportive of the removal of the existing recessed entry onto willow street to increase the viability of the restaurant use through additional seating capacity. The applicant also provided additional documentation and that was in support of removing the recessed entryway. The applicant's comments should have been received by e-mail and a copy is included as the first set of documents in your handout tonight. The applicant's primary argue mgt is the loss of associated with the preservation of the recess and the potential impact to the restaurant's revenue as a result of those fewer seats. Staff is available if you have any questions, and this concludes the staff report.

>> Thank you. I'll first call the applicant, Michael McKay.

>> Before we start, since there's no visual, I want to at least have an exhibit the commissioners could have. That's also included in the packet that was distributed to you. It's the second item in there.

>> Okay. If you'll state your name, then you may begin.

>> Good evening, madam chair, planning commissioners. My name is Jim stump. I'm the applicant and proprietor of the table. I'm joined by Michael McKay here, hopefully my future landlord. I'm a small business owner and chef by training. I've worked in the food industry for over 30 years. As you know, it's a very competitive industry and most restaurants fail in the first year. It takes a lot of planning and marketing to get customers in the door. It takes a strong customer service, a delicious product and something unique to bring them back. Our restaurant will be small and intentionally is located in the idealist location. It will get even better as restaurants and buildings come up around it. I'm excited to be part of willow glen's future and proud of its legacy. To make the table unique, I brought in the concept of a community tables placed for a neighborhood to gather, strangers to meet and families to gather for grandpa's 70th birthday. The 18 seat table is our signature. I imagine looking through the walls of willow street at a long table strewn with happy faces. I can't wait to see all this happen. I'm not Chevy's or chili's. While they provide a popular service to the masses, I do not have access to that money. I have gathered investors, convinced a bank to back me and I've signed with a landlord who believes in me. I will put my reputation on the line and they have my commitment to make the best restaurant I have done in my life. We've known for weeks that keeping the recessed entry would kill the deal. We've been clear with that. Every seat counts in the restaurant business. This

eliminates the community table and rewrites the business plan forcing me elsewhere. We will serve lunch and dinner. We'll have a great menu with lobster rolls, killer cheeseburger and chocolate cake. We'll have breakfast on the weekends with items you won't find anywhere else in willow glen.

>> Thank you. Your time is up.

>> In general, we are not seeking late night hours. We're not looking to have a party scene and we're not demolishing the building. We want to serve great food after 10:00 p.m., provide a high-quality alternative. Please approve our cp application.

>> As evidenced by dozens of letters by the community and hundreds of blog and Facebook comments, Jim stump coming to willow glen is as exciting as we thought it would be. There's only one disconnect with staff, a condition to keep the recessed entry. We analyzed it thoroughly. We showed how and why it was unworkable and asked staff to remove it. Staff felt it would be better to have the planning commission decide as they said you represent the community. We understand that staff is not going to fall on its sword for this issue, but wanted to raise the issue and allow the commission to make the call. The subject building and the neighbors, for that matter, are not listed on any historic resource inventory. Staff admits this and in their evaluation they're not using it in their position. So, while not required to do so, we hired historic expert bonnie Bamberg. She states, the rationale to retain the recessed entry is without merit because the building is not historically significant. Fortunately the staff report agrees with that conclusion. There is no logic to keep an element that ties the building to its past use if the building or the uses are not significant. That should end the story. 60-plus square feet of dining area lost, 12 to 15 seats eliminated. The signature community table goes away from that wonderful front window. This condition affects us economically, functionally and aesthetically. As Jim has told us, there's no choice for him here. If the recessed entry is to remain, the deal is dead for the reasons shared with you this evening and in our July 24th letter. We have a great opportunity for investment here, for a vacant building to be vibrant again, for an entrepreneur to share his gift. We are urging you to help us move forward on the next step and help us set the table. Thank you and we're here to answer any questions.

>> Thank you. We do have some questions. Commissioner Jensen.

>> Thank you, madam chair. Mar. Stump, first, thank you for putting up another restaurant. I'm sorry it's not back in my neighborhood, but I suppose I could schlep to willow glen. It looks like what you're doing is slighting the recessed entry down, if I am reading the drawing correctly? No. It's a flat --

>> No. We're basically, if you look at the yellow highlight, and you tie --

>> You're flattening that out, right. But the other one looks as though it's recessed.

>> We're required to have a second exit for the restaurant due to essentially the area. So we're putting an exit only door to the right there.

>> Ah, okay. Thank you.

>> That was not our first choice, by the way. Second exit came a couple of weeks ago.

>> Commissioners, any other questions? You will have another five minutes at the end, after public comment. Thank you. I'm going to read the next three names. If you'll come and line up, mark, end Davis, and Angelique shepherd. Just a moment while I get our timer going. Okay.

>> Thank you. I am mark, the contractor for the restaurant. I brought on a design team to design this space as well as the exterior facade, a credited architect out of san Francisco who does historical buildings which this is not and he also does restaurants and commercial establishments. The one thing that I haven't heard mentioned is that this is currently two tenant spaces that you can see from the existing photo. This is no longer the entry so I don't think it should suggest entry. The entry is now on the Lincoln avenue side where the entry to the coin shop is. So I think it's not only a detriment to the business but a detriment to the facade to have a conflicted area that suggests entry when it's not entry. The entry is on Lincoln avenue. So I urge you to take a look at the architect's design. He's done his job and I've been working with this person for a long time, including my in-house team, to come up with this facade which the owners desire. They also desire to have the entry on the Lincoln avenue side for obvious reasons. Therefore, I recommend you allow them to flatten out the front of this building so it does not suggest entry when in fact it's not the entry. Thank you.

>> Thank you. If you'll wait just a moment so I can see if the commissioner has have any questions. Commissioner Abelite.

>> On the exterior facade it says EPI wood siding. What is that?

>> It's a type of -- it's like mahogany.

>> Kind of rich coloring? Like a stain?

>> Very rich.

>> Thank you.

>> Any other questions? Yes, Commissioner Kline.

>> Mark, if we forced the pushback, I guess, which I really am not a big fan of because they tend to collect dirt and leaves and all kinds of --

>> And vagrants.

>> A few from time to time. What architect you'll mitigation would you suggest to help that?

>> Well, I think that if you take a look at the facade, I think that the architecture of the building is changing. They're getting rid of -- I've climbed up on top of the building. All this stuff you're seeing by the way is foam. It was done in a time when there was probably a facade program going on where they put a bunch of foam on these buildings to try to make them look better. But as you know from all of these buildings it's falling apart. So I think the mitigation is actually done, norm, in that we've done the EPI front. We've made this a bit more contemporary in style. I think the fact that we don't want to conflict where the entry's, I think we've done that on the former dick's coin shop side. So I don't have any further recommendations to mitigate that because I think the job is done pretty well here.

>> Okay. Thank you.

>> No other questions? Thank you very much.

>> Thank you.

>> Mar. Davis? Let me get the timer going. Hold on. Okay.

>> Thank you. Madam chair and planning commission, I'm a CPA in downtown san Jose. I'm the one who helped prepare the business plan, and the business plan is based on the theme that is the community table. It's based on the number of seats, as they said earlier on. If we start taking away the seats, it's not going to work with the whole projection and how everything is supposed to work. I'm a frequent diner downtown I work downtown san Jose. I go to willow glen to eat four to five days a week for lunch, two to three nights a week for dinner. I'm looking forward to -- I was excited to hear about the table and even though I was involved in the project, it's a great opportunity. And I'm a prospective investor in the project, too. He's put a lot of effort into it. I'd like to see it go forward as is, not with the recessed doorway, obviously. My only other comment based on that is, with the projections as is, it needs to happen that way. But from a fellow citizen looking at what's going on across the street when I go through willow glen, to see this door way be the issue for this restaurant, that doesn't make sense to me. That's me.

>> Okay. Thank you. Commissioners, any questions? Thank you very much. Ms. Sheppard, before you begin, I'm going to call the next three names. Yvonne lee, brain Nichols, and Winston jibe. Just one moment.

>> I read about the table last week and I was very excited. My family and I frequent willow glen. To have someone like Jim stump put his name on a project made us very excited. He's a brand in himself. We frequent the Los

Gatos company both downtown and in Los Gatos. It would be nice to have something with his high standard and the quality he brings to each of his projects, to be in willow glen. I hope that you allow this conditional use permit. I hope you allow the removal of this recessed entryway so he can be a viable businessperson and enrich the community. Because he touches every single community that he's in. Everyone knows his name. He's respected. And I think that it would be a great benefit to our community. Thank you.

>> Thank you. Commissioners, any questions? Thank you very much. Yvonne lee?

>> Hi. My name is Yvonne lee. I'm sure you received my letter, but I've had the privilege to work both for and with Jim stump for over 20 years. I highly respect him. He has taught me a lot over the years in this business. I even tried to get out of the business and I got pulled back in. So I believe what he's doing here is going to be remarkable. So I do support the conditional use permit and I am asking to have the entryway removed.

>> Thank you. Any questions?

>> Brain Nicholas?

>> Madam chair, commissioner members, thank you so much for the time. I'm actually coming to you --

>> If I could have you state your name.

>> Yes. So sorry. Brain Nicholas. I'm coming to you with someone who has a vested interest in this. I have the potential and intention to be partner with mar. Stump. As a young man who's now been here nine years in this area but northern California born and raised, I feel very proud to call this area my home now. What I've found is that there seems to be a lack of true community places, community restaurants that really give a sense of place and sense of belonging in a neighborhood. I think willow glen has had a lot of those establishments for a long time and we'd be proud to add ourselves to that same contingent of groups there. You know, as potential small business owner as we've already stated, mar. Stump stated as well, the need to maximize our space is so critical so we can try and maximize the business that we get to stay in business. As you know, as he already mentioned, so many restaurants fail after one year and no one wants to see a restaurant come in and then leave. Because that not only is a detriment or a problem for the business owner, the person who has these high aspirations but also for the community that wants to see a thriving place, a thriving business. What I think we're talking about is not just a restaurant that's going to be a place for someone to go and grab a quick bite to eat. It will be a place for people to meet, to mingle, for people really to connect. Again, that sense of community and it strengthens the willow glen neighborhood. That's really what we're excited about doing. We hope that you approve our proposal as stated.

>> Thank you. Commissioners, any questions? Thank you very much.

>> Thank you very much.

>> Mar. Jeb? If you would wait just one moment. Our final speaker on this is Chris Shum. If you could line up after mar. Jeb.

>> Hi. Winston Jeb. I'm just a neighborhood property owner, I was reminiscing just now thinking it was about $20 years ago we bought our first property behind this place on Caolyn Avenue. Now we live on Lupton. Last Friday night Katy my wife and I went to dinner and we have that little opa, Greek restaurant. When I'm speaking to you right now, there's into the a lot of -- not a lot of options down there. I've just got to appeal to you guys. Along what another gentleman said, we have a fabulous monster facility going in, but I've known Jim since I actually came to the community when I attended Santa Clara about 20 years ago. I've been able to see and watch what he's been able to develop and I just feel so honored and privileged that he and McKay here have gotten together to make this happen. It's exciting for our community. I want to speak to it. This seems like a minor, minor issue in the big picture, thinking how so many people in our neighborhood are going to enjoy and love this. So I just want to appeal to you to please give it very serious thought and p open your heart for it. I'd appreciate it. That's it.

>> Thank you. Any questions? Thank you very much. If you would state your name.

>> Sure. Madam chairwoman, commission, I'm Christopher Shum, a 45-year resident of willow glen. I think I bought my second bike from the premises here when it was a bike shop. And I think the bottom line is, we all know it's a fantastic operator, very responsible developer, they own a substantial portion of the block. They aren't going to do anything to the building that will devalue it or the community. I will say from personal experience having walked by and in and out of that building for 45 years, the facade that exists now has absolutely no historical significance or architectural existence. Frankly, it looks a little phony baloney. I can't think any changes won't be a substantial improvement. Having a recessed doorway is silly. That's going to be more of a thoroughfare once Lou's village corner gets p developed and there's a parking lot there, too. It's probably even in the interest of public safety, efficiency and cleanliness's to have that facade squared off. I have no financial interest in this project. I'm actually here in on another matter tonight, but I would support the proposal that the developer and owner submitted. Thank you.

>> Thank you. Questions from the commission? Thank you. Okay, so mar. Stump and mar. Macaulay, you may have another five minutes if you would like.

>> I just want to thank you for your time and hope you approve the CPU for us.

>> Any other questions from the commission? Do I have a motion?

>> Second.

>> A motion to close public comment and a second. All in favor? Any opposed? Abstaining? Motion passes. Commissioner Bit-Badal, did you -- I saw your hand go up. Oh, yes, thank you. Staff?

>> Thank you. Staff is available for any questions.

>> Thank you very much. Commissioner Bit-Badal.

>> Thank you, madam chair. I'm very familiar with that area because I used to live in willow glen. I didn't purchase any coins or bikes unfortunately, but I wanted to put a motion forward to approve the conditional use permit for the proposed project with the condition without the existing recessed entrance and approve it as designed by the applicant.

>> Second.

>> I have a motion and a second. Would you like to talk to your motion?

>> Yes, absolutely. Well, of course, the proposed tenant and also the property owners are experienced both in management and also running a business. In addition to that, something that nobody really talked about is, as a patron, you want to sit by the window and look outside, and you would be really killing the prime seating area for a restaurant. People want to sit and look outside and enjoy the neighborhood, see their friends and neighbors walk by. So in addition to, of course, losing potential seating and business, I think it would be really beneficial to patrons and residents to enjoy the front window, prime seating as we call it in the restaurant with that, I wish you much success. I'm wondering when it will be open, but you can't say it because public comment is closed. Hopefully it will be a very successful business for not only willow glen but the whole city of san Jose.

>> Commissioner Kline, would you like to speak to your second? No, okay. Commissioner Jensen.

>> Thank you. I will be supporting this motion but reluctantly. Here's why. I'm sorry to hear everyone say that this lovely art deco style facade is unattractive, unappealing, and useless and irrelevant because I think deco work is really quite lovely. And if this was one of the redevelopment projects facade improvements, I would say three cheers because it's one of the best ones I've seen. I think that a recessed entry into a restaurant is quite common, doesn't do anything to damage the seating arrangements. I think that it would be entirely possible to rearrange the seating in the restaurant to accommodate the very thoughtfully designed community table in another location, also looking out windows if possible, but I hear what the applicant is saying. I'm sorry to see the facade go personally, but I have faith that mar. Mulkahey will assure that what appears to be nothing but a blank wall with a number of horizontal and vertical lines actually turns out to be a very attractive front facade because mar. Mulkahey has done a wonderful job of renewing Lincoln avenue. I'm going to see if we can't move him to north side.

>> Commissioner Kamkar.

>> Thank you, madam chair. I will also be supporting the motion. You know, I have faith in both mar. Mulkahey, mar. Stump as well as dean. Their finished project I think is going to turn out just right. Thank you.

>> Okay. I will also be supporting the motion. I'm excited to have a new restaurant going in around my neighborhood. I look forward to visiting that when it's completed. And, with that, I will take a vote on our motion. All in favor? Any opposed abstaining? Motion passes. Moving on to da08-004, consideration of an ordinance. Staff?

>> Thank you, madam chair. I will provide that summary since it's an ordinance to approve a development agreement with Cisco technology. The original development agreement was entered into by the city years ago and there were a couple of elements that were important at that time. One of course is retaining one of our premier employers in the city of san Jose, and that's Cisco systems, Cisco technology, their affiliate. And years ago when it was entered into the two concerns were that Cisco stay here and grow, which is what they've done, and originally it was envisioned to be a much larger campus. But you can imagine with the economy things have scaled back a little bit. Cisco has built over almost 400,000 square feet of buildings out there. I think it's around 376,000 square feet. And so at this point in time we wanted to revisit the development agreement and recommend an amendment because the original development agreement had recommended that this property be developed with at least half of the total square footage by I think it was around 2012. So we wanted to note that Cisco systems and its affiliates have performed and built 376,000 square feet and so we wanted to recommend approval of the requirement that they build the entire amount that was originally envisioned. So that is what this amendment would do. And if you have any questions, I'm available to answer any you might have.

>> Thank you.

>> And I see we do have representatives from the office of economic development as well as Cisco technology inc., you have any questions of the applicant or --

>> Margo Braddish?

>> Good evening. My name is Margo Braddish of Cox Castle and Nicholson. We represent Cisco on real estate and development issues in silicon valley including this application. I'd like to first thank mayor reed and the council for their leadership in June in requesting that the professional staff bring forward this amendment for consideration. I also want to thank and commend the professional staff in the office of economic development, the planning department and the city attorney's office at all levels for their collaboration with the company in this process and generally. As you know, Cisco has been a strong and committed partner with the city from a business, education, community, and cultural perspective for many, many years. The requested amendment would deem the 2012 square footage condition satisfied and would allow Cisco to maintain both the certainty and flexibility regarding its real estate, which is essential to respond to business needs as they arise. Again, we request that you recommend

approval of the development agreement amendment and both appreciate and concur with the professional staff's recommendation for approval. Thank you for your consideration and on behalf of Cisco, we look forward to continuing our partnership with the city of san José.

>> Thank you. Commissioners, any questions? We do not have any speaker cards for this.

>> Motion to close public hearing.

>> Motion and a second. All in favor? Any opposed? Abstaining? Motion passes. Commissioner Jensen?

>> Yes. I am prepared to make a motion, thank you. Consider the reuse of an in accordance to approve an amendment to a development agreement with Cisco technology inc. To remove a requirement that one-half of the square footage entitled be constructed -- the subject property within 12 years of the executed date of the agreement as recommended by staff.

>> We have a motion and a second. Commissioner Jensen, would you like to speak to your motion?

>> Briefly, yes. First I'd like to thank Cisco. I have a number of friends who work there. It's nice to know some downtown neighbors have the opportunity to ride their bicycles relatively short distances to work. And the economy is a disaster so I completely understand Cisco not wanting to expand at the moment. And I'm just going to put in a plug that when Cisco does expand, rather than having those horrendous surfaced parking lot that I know they've been beaten over the head for before that they go to parking garages and significantly increase the alternative transportation possibilities for their employees. Thank you.

>> Commissioner Bit-Badal, would you like to speak to your second? Any other commissioner? I'm thankful that Cisco supports an Jose and I'm glad that we have the opportunity to help support you with this motion. I'll be supporting it. With that, I'll take a vote on the motion. All in favor? Any opposed or abstaining? Motion passes. Thank you.

>> For the next three items, I'd like to open public comment for all three. Then we will discuss them individually once that is closed, if the commission decides to do so. So we will be opening for da11-001, pdcs 11-006 and pdc11-007 staff?

>> Thank you. This is an amendment to development agreement which also requires the need to do some rezoning. The purpose of the amendment is really to modify language related to park land dedication, acquisition, development, maintenance, that was included in the earlier agreement, park land agreement, development agreement, and then more specific language in the previous rezoning that were adopted and applied for in '07 and '08. So it really is, again, although it's a big package of stuff, these are already entitled projects for up to 998 multifamily units, really all that's changing is park land agreement relative to the whole dedication development and

maintenance program for this parkland. The rezoning are really just more to then reflect that new language change. And should these go through, then we would have to re-entitle through the plan development permits. And my understanding is these developments are actually going to be looking to get under construction in fall. So staff is excited to put these forward and are available to answer any questions, should you have any.

>> Commissioner Kline?

>> I have a quick question. Is this something we'll see more often, the features as parkland as community developers, maintenance of those parks will become more of a standard mitigation measure, if we he request call it that.

>> Whether are you see it in the planning entitlement or it's morphed into the parkland agreements, which we don't necessarily see these, we did recently have a rezoning that went straight to council because unfortunately, you know, a few years back we got maybe a little too specific relative to some zoning language and amounts of monies and, you know, the purpose of those monies or efforts. So I think what we're really going to be looking to do is craft the zoning provisions more appropriately so that, as economic times change or city positions change, there's the flexibility afforded so that modifications to agreements can be done without this sort of processing needed to go on.

>> Thanks.

>> Okay. We have mar. Shanauer here. You'll have five minutes. I was trying to give you 15.

>> I can't talk that long.

>> We'll give you five minutes for your discussion.

>> Good evening, chair Cahan, members of the commission. My name is Eric s had Hanauer were present equity in this application. You are a amendment as well as a minor amendment to two of our already approved zonings. They really are minor, and it's really a cooperative effort with the city departments to come forward with a park project that will benefit the public. And to explain the change simply, when we negotiated our agreement back if December of 2007, we agreed that we would make a $4.5 million contribution above and beyond the requirements of the project. That was the significant public benefit in our development agreement. That $4.5 million was broken down with $3 million being far capital improvements and $1.5 million being for maintenance over a period of time. Since that agreement was approved, the parks department decided that they would prefer to have artificial turf soccer fields on our community park, and artificial turf fields cost more money to install but take less money in maintenance over time. So we agreed that we would accelerate $500,000 of our maintenance money and put it into the capital p improvements in the park. So that's really what these amendments do, allow us to shift maintenance money into capital improvements so that the park can get built. That's basically the amendment. So

we hope that you'll approve it so that we can pull building permits in august and get all of the project moving forward. Thank you.

>> Thank you. Commissioners? Any questions? Okay, we have no speaker cards on this item. I'll entertain a motion. Motion and a second. All in favor? Any opposed or abstaining? All right, the motion passes.

>> Commissioner Kline?

>> To get things rolling, I'll make a motion to approve as to staff.

>> second.

>> I apologize. I forgot staff. We have a motion and second. Commissioner Kline, would you like to speak to your motion? Commissioner Abelite to your second? No? Commissioner Jensen.

>> I'm making the most of my last meeting. I'm disappointed that the parks department is requesting to artificial turf soccer fields. I'm very disappointed in that. I am supporting this motion. I think it's a wonderful thing to be able to open a park and give us more parkland and get it going immediately. But I'm deeply saddened that the use of artificial turf is happening. Thank you.

>> Commissioner Kamkar.

>> Thank you, madam chair. I will also be supporting the motion, but I do also have an issue with artificial turf in the sense that during winter months, you know, they get the rain are and so they sort of get washed off from contaminants. But in summer months when there's no rain, if a player falls down and injures themselves, a small amount of blood is drawn, next person that falls in the same spot shares that because that doesn't get washed off. There's no sprinkling action or there's no cleaning action. So I wish the parks department, you know, takes that into consideration. Maybe install sprinkling in the facility, you know, just as a washing off measure. Otherwise, I will support the motion, too. Thank you.

>> I too am very concerned about the artificial turf. Staff, is there any recommendation that we can make as a commission to change that portion? I mean, I think -- side of your motion relative to the land use issues you could discuss if you wanted to pass off that position relative to that. You know, again, we don't play a role in the park planning process. Maybe it's something at a later date when you meet with the park commission, something that you would want to agendaize and discuss. But relative to the specific item, it's really not an area that is within your purview a.

>> So I assume it's also not within our purview to request there's shade provided over the play structures. I was also disturbed that there was discussion of shade over the seating area but none over the play structure.

>> Again, the parks planning process, that's a separate process. It does involve public outreach and involvement so it's not the purview of the planning commission. Again, I would think that, to the extent that you have an interest in how parks are planned, that may be an item to talk about when you have your joint sessions with the parks commission to get a better understanding and maybe give, you know, your input at that time.

>> Thank you. Commissioner Kline.

>> You know, the idea of artificial turf being a health issue or artificial turf being an environmental issue comes up a lot. It is going to come up more and more in the future and something that the planning commission may want to educate ourselves on when we see these again. There are both sides of that story in the argument that you go to the press or to the web, extensive, extensive research on it. Whether it's environmentally more friendly to cut grass with lawn mowers and gas engines every two weeks or water every two weeks versus the side effects of installing artificial grass. It is a complex argument, something we may want to take a small study session in to get educated on in the future.

>> Thank you. Commissioner Jensen.

>> While there is a motion on the table, I would like to thank you, madam chair, for raising the issue of what it is we could and couldn't make recommendations on. I'd like to make a friendly amendment that we do send a message along to the parks commission expressing our concern about the installation of artificial turf and the complete lack of trees. I agree with you completely. It's irresponsible not to include trees in san Jose, for crying out loud. Thank you.

>> The maker of the motion and seconder agree with the friendly amendment?

>> Am I the first or seconder? I disagree. I fully agree with the intent, but I think as part of the planning of a park the whole process, as I understand, going through in planning parks in the city, I think that's the most appropriate place to do it. I don't think this is an appropriate place to bring that issue up as part of this approval cycle. I 100% am for artificial turf. Environmentally they're a lot more sound than wasting gas and engines and noise and fumes and the wasted water going into grass. Artificial turf can be a very pro-environmental stance. I disagree. I don't think there's a health issue with blood on grass because we know how fast blood breaks down in the sun, especially in the summer months. There's no issue there to me. So I'd like to approve the motion as I recommended it.

>> Commissioner Bit-Badal.

>> I was wondering if I could ask a question of staff. Great. I was wondering, it says there are opportunities to fund the construction of the five-acre community park. Has staff started exploring or do we know how much it's going to

cost in today's market? Is this going to be developed by city employees or contracted out? You don't have any of those answers?

>> As planning staff I don't have any of those answers and whether or not the applicant has it in their workings with the parks department I don't know.

>> Thank you.

>> If we would like to make a motion to reopen public comment just for that particular item, I would entertain that motion.

>> So moved.

>> We have a motion and second. All in favor? Any opposed or abstaining? Okay.

>> There are two parks associated with our development, a five-acre and one acre park. The total park improvement costs are $5.5 million, I believe. And the delta between what we are contributing and the total budget is being provided by other parks' funds. So our project will build the park, but a portion of the funding comes from other park funds rather than our project, pulled from other north san Jose projects, which is the norm. The department accumulates fees from several projects.

>> And what was that portion? Do you know?

>> I don't remember.

>> Do you know the monetary portion?

>> Well, we're contributing 3.5 million through this agreement, and I believe the total budget is 5.5 for capital improvement. So that would be 2 million, I believe, if I'm remembering it right. But the delta is being made up by park funds from other projects.

>> Thank you.

>> Okay. Without the friendly amendment, I will not be able to support this motion. And I absolutely want to see a park and I'm pro park. I know mar. Shaneauer wants to work on improving our city and does so on a daily basis. I absolutely am concerned with the fact that we do not provide shading over a play structure. I have continued to discuss this. I'm continually upset that that's where the projects have the lack of shade. I don't understand it. We have the ability to do it. We have the know-how. And we don't provide that. Additionally, with the artificial turf,

there are the risks of lead, potential lead, and that is a serious health concern. So without providing our feedback, I won't be able to support the motion. Yes?

>> I just want to make notation in terms of what the commission is actually acting on, which is the amendment to the development agreement and the rezoning. And I also wanted to clarify for the commission because there seems to be some discussion about coming to a consensus on what your comments will be. You know, in the past there are different commissioners who have wanted to pass on comments, even when they were in the minority. And in the past the city council has said that they would be fine in the transmittal memos. I can't see the director from where you're sitting, but in the past the council has indicated they are fine hearing comments from members who are in the minority in identifying commissioner so-and-so had such-and-such concern. I wanted to note that because the issue being raised doesn't pertain to the item before you but it's something you feel strongly about. I'm not aware that the commission has to come to a consensus if you would like a comment forwarded to either the parks director or the city council for consideration. I just wanted to note that just because I hear the deliberation and there seems to be some misunderstanding that you need consensus on a comment that you would like transmitted. I just wanted to note that if you want that comment transmitted I believe you can request staff in their transmittal memo to please make that known and your fellow commissioners don't have to share that concern. You can still request that that comment be transmitted.

>> That is correct, madam chair. We typically do a transmittal memo of your deliberations to the council so, while I know the motion is certainly important to the commission, we also provide the other commentary that maybe didn't make it into the motion. So that way council has the full spirit of your conversation.

>> Thank you. Commissioner Jensen?

>> Thank you. And if the director or council could help me understand which of these three might be most relevant to the design, new design, of the park as opposed to the transition being proposed.

>> So probably the most relevant place for those types of comments would be in the development agreement because that's where the extraordinary benefit of the parks is really -- that discussion is occurring under that item. The two rezoning are really simply to pick up the revised park requirements, but the parkland agreement is actually an exhibit to the development agreement. So the development agreement would be the most appropriate place if you wanted to pass along comments. Again, I just wanted to note for the commission that the entire commission doesn't have to agree with the comment that the director has in the past forwarded particular comments from various commissioners.

>> Thank you, council. Given that, I will be joining the chair in not supporting the motion on item number da11-001. Because it's related to the design of the park.

>> Commissioner Kline.

>> You know, I am in so much favor of this park and I just think that I've already had my spiel and I know city council reads thoroughly our comments so well they probably got my impression already. I'm going to go ahead and change the motion to include the comments that they should have a shade tree and they should review the fact that they should do artificial turf because I think during that planning process those comments will come out and I think city council will listen to it and take that into consideration.

>> Thank you, Commissioner Kline.

>> So we have a motion. We have the friendly amendment of passing on our comments. We actually have clarification that we don't need to have the friendly amendment, but I appreciate that the maker of the motion and the seconder are willing to include that so that it does definitely go forward. And with that friendly amendment, I will be able to support the motion. So thank you. Any other comments? With that, I will take a vote. All in favor? Any opposed? Abstaining? Motion passes. Now we need a motion for pdc11-006. That was just for the first one, the first of the three.

>> We did three.

>> We heard public comment for all three and then we went to the very first one.

>> We had originally said one, two and three.

>> We did?

>> Yeah.

>> We did not catch that over here.

>> Sorry.

>> For the record, I think the director is indicating that it would be best to go ahead and take separate votes just so the record is clear about the commission action on each of the items.

>> Commissioner Kline?

>> Movement to approve 3b2 as recommended by staff. 3d1 is the --

>> So we have a motion for d2 and a second. Any discussion? All in favor? Opposed? Abstaining? Motion passes.

>> Make a motion for the approval of 3d3.

>> Motion? Second? Any discussion? All in favor? Any opposed or abstaining? Third motion passes. Okay. Now we're moving on to the medical marijuana collectives. Yeah?

>> Thank you, madam chair. This is the third meeting of the planning commission to discuss the proposed ordinance initiated by the city council and referred to you for your recommendation pertaining to land use and zoning recommendations associated with medical marijuana collectives. You held your first discussion and hearing on this in late June. You heard your second commentary as well as comments from staff from our attorney's office, police department and code enforcement on July 13th, took public testimony again, and then tonight we're looking forward to your recommendation regarding the council initiated ordinance. Just want to remind the commission that this is one piece of the medical marijuana collectives that's focused on the title 20 changes. The city council is considering allowing collectives in the commercial general, downtown primary, combined commercial industrial district as well as light industrial. There are several distance requirements in the ordinance before you tonight, including acknowledgement of state law that requires collectives to be 600 feet from public and private schools, 500 feet, this is per council's proposal, from child day care or churches with day care, substance abuse rehab centers or other collectives, 150 feet from residential uses and then the possibility of additional criteria for light industrial parcels. The council's motion also includes a zoning verification essentially a yes/no in terms of whether or not the collective meets those criteria. They would also be screened through a process that would be covered in a tandem ordinance that's not on the agenda tonight, and that's the title 6. For those commissioners who might be interested in -- with the council on that, that would be a separate discussion. We do have speaker cards this evening, and I did review the names. The vast majority of the speakers this evening have spoken at least at one if not at both of those meetings. So since you did close the public hearing last time, if there is the interest to hear additional testimony, including from people who have spoken before, that is your choice. This is an item that is scheduled for council consideration in august, so your recommendation is one that council is definitely looking forward to. We do have some additional staff resources if necessary in the audience, but really the item before you tonight is your recommendation. And that closes the planning director's comments. Just want to make sure to see if our city attorney has anything else to add this evening.

>> Thank you. No, not at this time.

>> So, as was stated, we have had public comment on this at two separate meetings, and that has been closed. So we as a commission are able to open public comment again if you would like, but it's not necessary. So I would look to the commission for what you would like to do with that. Commissioner Kline?

>> I would like to open up public comment, but since we've had two public comment hearings before, I'd like to keep it to one minute just to give us a delta of major concerns between the last meeting and this meeting, new information or something they missed they had a chance to talk to us. I know there's a lot of people here and I'd

hate to bring them out without being able to talk. So we can leave the public comment to one minute just to give us an update. That would be great.

>> Commissioner Jensen?

>> Thank you, madam chair. I won't be supporting that motion. I would make a friendly amendment which is that we allow people who have not previously spoken, if they should wish to speak, and allow them to have the regular two minutes. But the folks who have spoken to us already have spoken to us at two different meetings and have sent us numerous e-mails and a number of commissioners have met with them outside of the commission meetings on a more informal basis. I don't see there's a need to hear from the same people.

>> I don't believe that we formally have a motion on the table.

>> Then I'd like to make that motion.

>> Second.

>> We have a motion to hear from just new people for public comment for two minutes each. We have a second to that. Any further discussion?

>> Comment?

>> Yes, Commissioner Kline.

>> Can we have a comment from legal? Is that legal?

>> Since you've closed the public hearing, you don't have to -- right. So folks who were not able to attend one of the last two hearings.

>> Staff, are we able to decipher -- Commissioner Abelite.

>> I need to understand the motion once again. Are we excluding the one minute for people who have already spoken?

>> We're excluding the people who have already spoken. Anybody who hasn't spoken and they get the regular two minutes.

>> I did like Commissioner Kline's idea that if there was a delta between the last meeting and this meeting they should at least have an opportunity for one minute. I wouldn't support that motion.

>> Commissioner Bit-Badal.

>> Wow many speaker cards do we have?

>> We have one new speaker card.

>> One new one and nine repeats.

>> Because there's only nine, actually, ten total, and if they're speaking for one minute, if that motion would come forward later, I will not support a current motion on the table. I believe in open government and transparency. I don't want people to leave the meeting, they've been here almost two hours listening to other discussions. I think they deserve their minute.

>> So the motion on the table is to only allow new people to speak for two minutes. Any other discussion? All in favor? Opposed? The motion fails. Commissioner Kline.

>> Make a motion to allow any new member to speak for two minutes and existing member who have spoken before speak for one minute.

>> Second.

>> We have a motion and a second. Any discussion? All in favor? Any opposed? Abstaining? Motion passes. So, again, if you have previously spoken to us, the last two hearings, then you will just have one minute to speak. And if this is your first time, which we seem to only have one of you, then you will have two minutes to speak. And the one minute is on new information, correct, Commissioner Kline?

>> What they think is a delta between --

>> Whatever is the delta.

>> And the reason that is important is because the commission wants to give everyone an opportunity to speak, not the people who were here before extra time to speak. But you're saying they may have new information. So the goal of your motion is to provide a fair opportunity for everyone to speak.

>> Couldn't have said it better myself.

>> Thank you. I'm going to start with the person whom we have not heard from before, and that's William Esavato. You will have two minutes. If you'll just give me a moment to get that set up. And if you will introduce yourself, you may begin.

>> Yes. My name is William Espaseto. I'm an attorney. I represent one of the medical cannabis dispensers in san Jose. The simple fact of the matter is, we have concerns with the --limit of the medical dispensaries to ten. We don't think that's sufficient to address the needs of the patients here in san Jose. It could have unintended and unnecessary adverse impacts including traffic and parking issues. But for people who are also seriously ill, it could prevent them to access the dispensaries they currently do. A more practical and pragmatic approach would be not to include a cap but have a reasonable set of regulations to ensure that only those operators who are operating in accordance with state law be permitted. We also believe zoning should be permitted in a -- where other medical services offices are permitted. We believe that that would allow having it in different districts, the continued operation of relatively small and modest facilities that serve surrounding areas. We think that's a better approach and probably wouldn't attract attention of federal officials. We also think that there isn't really enough evidence tending to indicate the residential buffer is necessary. We understand that's probably one of the concerns, but there can be operating standards and requirements such as the conditional use permit that could address that or conditions of approval. And then lastly on-site cultivation, we don't believe that should be a requirement. It's definitely not something required under state law. Thank you.

>> Thank you. Commissioners, any questions? Thank you. Everyone else will have one minute. I will call out the first three. A. Salvador, Patrick Gogen and Stephen Oliver.

>> Good evening, planning commission. My name is ace. I'm the director of espy care on Hamilton. Some of the things I hope the commission takes into consideration, this is a medical use. We're in a zoning c.o. We believe it to be the correct use for medical facilities. We hope that the other thing you would include is based on zoning issues rather than use issues. There's a section 20-80-780 section b I'd like to see the change from use to zone. And lastly, if for some reason I'm unable to continue where I'm at, I'd like the ability to relocate. Given a certain amount of time, whether it be 180 days or something of that nature we've spoken about. Thank you very much.

>> Any questions from the commissioners? Thank you.

>> Good afternoon.

>> Hold on. Okay.

>> Good evening, madam chair, members of the commission. My name is Patrick Goggin. I did come to the June meeting. I want to reiterate this ought to be a merit based system, not a first come first served and also the consideration for a physical barrier exception to some of these proximity requirements and that be written into the ordinance. There is a mention that it could be included at the conditional use process, but I think it would be helpful

to give some guidance and indication that that is included in the ordinance, which would essentially allow for some of the proximity requirements to be abated if there is a physical barrier such as a major thoroughfare or a waterway or a bridge or something that would otherwise achieve the intent of the proximity requirement. Thank you.

>> Thank you. So what I'm going to do is I'm just going to look around when the speaker is done. Put your hand up if you want to say something. Mar. Oliver, before you begin I'm going to call the next three people. Sean Camburn, Jerry and Lauren Vasquez. Mar. Oliver?

>> Good evening, commissioners. I'm Stephen Oliver. My office is at 217060 alameda, next door to 2170 alameda where Amsterdam's garden is selling marijuana. I'm here to speak against this because, as I told you before, these places are a nuisance. There is crime and money associated with these places. And I think the city of san Jose and the residents of san José are going to be sorry that they're opening up the door to this. The cities of Los Gatos and Saratoga have recently decided against allowing these places. They are right, and the people of san José raising families deserve just as much a quality of life in san José as those residents do. Couple of years from now, we're all going to be sorry. Thank you.

>> Good evening. I'm speaking on behalf of the cannabis patients alliance. Thank you for the opportunity to speak. Since the last meeting we submitted our suggestions for changes to title 20 that would make it more patient friendly and meet the city's goals. I'd like to briefly run down the benefits of the changes we're proposing. It prevents a major disruption for patients, helps to keep dispensaries small, responsive to patient needs and nonprofit. Helps access by allowing locations throughout the city, keeps the over $300,000 per month in extra revenue flowing, saves money by the application process, saves money to make it easy to identify and close irresponsible operators, awards permits on proven merit instead of time stamps or empty promises allows for a cap. And gets patients an opportunity to purchase equipment and supplies at lower cost from knowledgeable providers. Thank you very much.

>> Thank you.

>> Thank you, madam chair, Jerry Strangin representing mc had-3. I've talked to you separately I think twice. Appreciate very much the time and effort all of you have put into this issue. I just passed out an exhibit. The only new point I want to make in this exhibit is, we want an opportunity to be able to make an application. We think it should be a competitive-based process. We talked about that before. You look at this exhibit. Right now of all the collectives in san José, under the existing staff recommendation, five would be allowed to make an application. If you take our recommendations by expanding the zoning areas but concentrate on the sensitive receptors, which we think are important, you get up to about 30. Those are the ones qualified to make an application. That's all we're asking for. We want an opportunity to demonstrate that we can be at mc-3 the best operators in the city. Thank you for your consideration. Thank you.

>> Thank you. We're going to call the next three names. Kim Ku, Nicole Bach and Gregory Bach.

>> Hello. My name is Lauren Vasquez. I'm a medical cannabis patient a voter and attorney. I'd like to address my comment to the city attorney's office following up on the concerns this that I have not received any response regarding the prohibition on the sales of any products and requiring a zoning certificate for more than one patient cultivating in their own residence. I'd like to see both of those removed because they're unfair and we've already gone through this issue with the city's attorney's office and that was removed from title 6 but remains in title 20.

>> If it's all right, madam chair, we issued a supplemental memo that was available for tonight's meeting, and it linked onto the agenda. And it goes point by point through some of those items that you mentioned two weeks ago, so it does identify the changes that are coming to title 20 to address those very same concerns. So that memorandum is available on the public record.

>> Thank you very much.

>> Thank you.

>> Hello. My name is Kim Ku, and I'm speaking on behalf of Americans for safe access. I want to thank you guys for offering us the time to come and speak. I just want to say a couple of things. I really hope that you guys consider increasing the number of collectives to at least 50. San José is a large city. You have a lot of cities around here where patients need to come into city to get their medicines because they don't have access in their local areas. Another thing I wanted to point out is Oakland just implemented an additional four collectives and in the process they're doing a test system. So they actually test people so they test them on sb-420 and proposition 215. They go by a point system. So if you have all of your legal documentation in order, you get so many points, if you pay taxes you get points, if you pass the test you get so many points. So the person who gets the most points is the person who gets the permit.

>> Thank you.

>> I just wanted to add that.

>> Thank you very much. Ms. Bach?

>> Good evening. My name is Nicole Bach. I am not only here as a collective owner, I've actually had the opportunity to meet and start working with the cp alliance. I think it is absolutely critical that the commissioners be able to go through this. Not only is it patient friendly, it does allow for the best collectives and the best operators to operate here in the san José area. That's a win-win. These are here. There is a demand. It's important, though, that we set a good example and the city of san José show that not only are they working with the cannabis community but they're trying to make it the best. We get people from around the bay area and the peninsula. It's vital that these are run properly and not only are patients' needs met but the community is happy as well. So like I

said, the cp alliance was able to e-mail and give out hard copies. It's patient friendly. It should work for the city. And it should work for collective owners that know they're doing it properly and being compensate to patients. Thank you.

>> Thank you. Mar. Bach, before you begin I'm going to call two other speakers. Jim Higgins and Matthew Senna. Mar. Bach?

>> Good evening. Thank you to the planning commission. I know it's late. We appreciate your time and energy. You guys have a fantastic job.

>> If you would just state your name for the record.

>> I'm sorry. Greg Bach. We are a member of the cannabis patients alliance, as my daughter stated. I think what they sent to you is some of their comments on title 20. We would appreciate are you look at those. I think it's a great solution to some of the issues going up. I want to focus on as far as safe and affordable access is we would like to see the number increase the number of collectives. The issue is again for patients to have access to their medicine. We think the cap of ten just won't do. I think if you look at the back of the document we have data that shows the traffic and I think we put this back into what we discussed last time as an environmental document issue. So, again, I appreciate your time, and if you could look at that document we'd really appreciate it. Thank you very much.

>> Thank you. Mar. Higgins.

>> My name is Matthew Sena, director of silicon valley Americans for safe access. Spoke with you a couple of times so I'll make mine super quick. We would just like the number raised to 50. With the population in san José and the surrounding cities, definitely need to have more facilities available for our sick and suffering patients who need to travel short distances to be able to access their medicine. So please, once again, a cap of 50 or more, please, for our patients. You're doing us a good service by doing that. Thank you.

>> Thank you. So, mar. Higgins, are you still here? Okay.

>> I know -- my name -- [inaudible] I know this is self-serving, but the idea is zoning surrounding our building. The original zone for our building was -- and through the permit process I think -- can. You can see that there is no neighborhood anywhere near us. I know you guys have opted to go to the zoning process.

>> We need you to speak into the microphone.

>> Sorry. I know that using the zoning process is an easier way to look at things. What I'm hoping for is that you will look beyond that and go to a merit-based system. If you look at the picture that I brought in, it's clearer that

we're not anywhere near our neighborhood and I'm sure we're not the only ones. So I'm hoping a little more energy will be put into the research of each of the collectives. We've been open since November of 2009 and we serve just under 5,000 patients now. It's been really, really difficult to run a collective properly through a nonprofit type of basis. We put a lot of energy and time into it, and we would like a little more consideration. And I'm sure there's others as well. That's it.

>> Mar. Higgins, we might want to refer to your picture so if you don't mind putting it somewhere where we can see it while we're deliberating.

>> Sure.

>> We have additional names who have not spoken before. So I will call you up two minutes. Samuel person, Dave Hodges, Chris Shum. I'll just call the four, Shane Capania.

>> My name is Danielle person. I passed out information on how we're educating the greater san José citizens. That hopefully will help you. I know the last time we were here there was a woman that spoke out about how to keep collectives away from the churches. I would ask that you would talk with some of the council members, Pete constant and a few others, because there are five other churches that are willing to stand up and have stood up for education within the city and they're helping support us as well. So there's a lot of people in the community that you have no idea that we're connected with. Thank you.

>> Thank you. Mar. Hodges?

>> Hi. I'm Dave Hodges.

>> If you'd are just hold on one moment. Okay.

>> I'm Dave Hodges. I represent a2c2, the all-American cannabis club. Just want to thank you for your time looking into this issue. I also wanted to make sure that you really took it serious that ten collectives is not enough. You know, we have kind of an out-of-control problem in san José where there's an estimated 130 but the problem is the have taken so long and in lieu of that we've got kind of the wild west. I'd like you to understand that the security concerns people have to do with the same issue, that what we're dealing with is completely unregulated, unsupervised, 130 businesses doing something unethical. So I just wanted to thank you for your time and ask you to take those into consideration.

>> Thank you. Mar. Shum?

>> Thank you. Good evening. I'm Christopher Shum. This is a herculean task. I came to the last meeting for the first time I've involved myself with this and done some research. And you guys are literally building a pyramid from

the bottom up. Couple of things I just wanted to share with you. I think accessibility is very important. Right now you're looking at restricting first floor use in the downtown area. Most of the buildings are built to have retail facilities on the first floor, and a lot of the people that need to visit these sites have mobility restrictions. I think that can be dealt with mitigating factor, frosted windows, signage control. All the things we do, for instance, with the tobacco ordinance. So a blanket restriction makes little sense. The other thing I heard you struggling with the issue about on-site growing. There's a really important reason to have regulation on growing because that is the open part of the loop and where illegality will come into it. One idea that I came up with -- maybe you've talked about this before -- is a dispensary essentially a retail location the right to operate a growing facility. And you can incentivize them through various increased fees to operate those facilities. They'll be solely operated by the dispensary, controlled by the dispensary if there's any inappropriate activities, the sanction will be against the dispensary. That may be a way that you can try to keep the growth facilities hire in san José where the jobs, real estate and other tax benefits to it. I think there's a lot of work to be done yet and I thank you for the intelligent analysis I've seen so far. Thank you.

>> Thank you. Mar. Cabana.

>> My name is jams cabana. I don't know anybody who likes to speak after mar. Shum. I'll give it my best. I own property on Hamilton avenue, an existing medical use building, has been for some time. I'm here to encourage the commission to consider the existing medical uses for cannabis dispensaries. The situation that we're in is, we have a tenant that's been doing a good job there, and the medical use offers I think the accessibility to medical patients along with increased parking requirement and also the neighborhoods are going to be accustomed to patients coming and going for medical visits. So if you would consider medical use in various types of zonings, that would be great. Our particular zoning is c.o., but I believe there are various types of zonings that have medical use associated with them. Thank you.

>> Thank you.

>> Okay. And we might have one more speaker. Okay. Are there any more cards? Any more speaker calling all speakers. Going once, going twice? Okay. We're just determining your timeframe. Is this your first time here?

>> First time I've spoken.

>> Great. We'll give you two minutes. Mar. Irving, come up and introduce yourself. You may have two minutes.

>> Good evening. My name is Donald Irving. I represent Sevcs inc. They call me papa don. It takes 2.2 pounds of carbon imprint to produce 1 pound of indoor-grown medical cannabis. Thank you for your time.

>> Thank you. That was our final speaker.

>> Motion to close public hearing.

>> And a second. All in favor? Any opposed? Abstaining? Motion passes. Would like to remind the commission that we do have representatives from our police here, if you have any questions. They are considered part of staff and so we can ask them as we're deliberating as well as code enforcement. I believe that the best way to handle discussing this is to take things piece by piece. That way we can go through and hopefully get some things passed. I don't know if we'll have agreement on everything. And so my first idea of breakdown was just discuss cultivation as a separate issue from distance as a separate issue from districts, separate issue from process for approval, the number and the zoning verification.

>> I just wanted to note for the commission that two of those items I think are overlapping in connection with the purview of the commission. I think it's a great idea. The process for approvals as far as the planning commission is concerned is a discussion on the zoning certificate versus the -- How the particular operators are selected is not a land use issue. So I wasn't sure if process for approval meant how first come, first served basis, merit based, the process for approval. Again, that's in title 6. In terms of who the operators are, in that's a title 6 issue. Whether it's a C.U.P. Or a zoning certificate process in terms of where they can be located, that is within the purview of the planning commission. I just wanted to note that item number 4 and item number 6 from the planning commission standpoint are one in the same.

>> So for the process for approval in the sense of whether it's a merit-based system, a lottery system, is that something that we can make a recommendation for?

>> Again, going back to one of the early slides, who versus where, who is the purview of the police department and the title 6 regulations. Where is the purview of this planning commission. So how the who's get selected is not within the purview of the planning commission. That's why I noted -- I wasn't quite sure what item number 4 on the list was getting at so I thought I would highlight from the planning commission standpoint the process for approval really is a discussion on C.U.P. Versus zoning certificate.

>> But could we make a recommendation on the who? Not making a specific motion but making a recommendation as commissioners.

>> So that falls into can we ask the parks commission to put more trees, can we ask code enforcement to please take note of our concerns on x, y, or z. Again, not the purview of the planning commission. I don't know how much you want to spend your time on issues that aren't within your purview. But, again, I know that the director is always happy to forward along comments you may have that are on items that are not within your purview.

>> Thank you for that clarification.

>> Thank you.

>> Okay. So I think everyone has a good understanding of that. Commissioner Jensen.

>> Yes. I'd like to reflect back on what we were asked at the initial meeting, which was we were asked for our thoughts and our ideas and our recommendations. And I would hope that we would reflect broadly because our responsibility is to the citizens of san José. And while things may be in title6 not directly appropriate or applicable to land use issues, they do, in spite of that, have are a direct implication and effect on land use. So I agree with chair Cahan that we should compile a list of those things that may not be appropriate for title 20 but that we have some thoughts we would like to share with the council.

>> Is your recommendation, Commissioner Jensen, to include those within different motions or as a finalized discussion after we've made --

>> I think a single finalized discussion with all of our points would be most appropriate, and staff can neatly outline those items which are specific land use items and those items which are things which we feel relate to land use but are not specifically within title 20. And I'd like to kick it off with one of those title 6 items. I'd like to thank the police officers for coming here tonight and bringing family with them. Always good for the little ones to -- yes, I know. We see you and we're very happy you're here with us. I think this is one of those issues where having a merit-based process is absolutely critical to the success of a safe and healthy ordinance for medical marijuana. I recognize that not all commissioners may be familiar with the proliferation of poorly run facilities, but I live in the downtown and they are popping up all over the place and we're having a lot of problems with them. So I heartily support a merit-based system.

>> Thank you, Commissioner Jensen. I think what we'll do is take your comment and include that at the end. We'll get additional comments from the other commissioners.

>> How about I just launch then on all of my comments? You said you wanted to go point by point? And one of those -- was merit-based versus --

>> I was hoping we could go point by point on things we could vote on first.

>> Okay.

>> Then we'll do a finalized, here are our additional comments. I would entertain a motion to begin with cultivation because think that that has influence on other things. Commissioner Jensen?

>> I'd make a motion that cultivation not be required on-site but it be required in the city of san José with a direct relationship to the dispensary.

>> And I would just add that the whole issue of cultivation is really more of a title 6 issue. It was acknowledged in the title20 as being allowed. Title 20 as currently drafted says that it's allowed, it's not required. So I would suggest that any discussion of cultivation be put in that same category as the approval process.

>> That being said, perhaps I would entertain a motion about zoning and we can of course include some discussion about cultivation should we deem it appropriate. Commissioner Kline.

>> I find it difficult not to talk about cultivation. If you're going to say in one title 20 that it's allowed and then in title 6 say, no, you have to have it on campus, that has a major impact on zoning. You can't separate those. If we provide farming, which it is basically, in a zone area, we have to know it's going to be required in zone areas. The idea of splitting them apart is illogical, irrational. I don't care how you go about it, it's just wrong. So you have to include it. Otherwise, we can't make the decision on zoning. They're tied together, right? This is a farming operation, right? So we're going to -- unless you're saying that we're setting us up to fail, which I hope not. We have to -- you're going to enforce farming in little pots in a closet in an office building, then say it. Don't go about it in a backward way. Just be clear and straightforward. So I think we have to make a motion that our recommendation to city council will be to allow off-site cultivation. And reading what the voters approved, it's a cooperative of people joining together to bring their homegrown marijuana basically into a collective for resale or reuse. That's what the law says. To say you're forcing them to grow on a plant is really not the intent of what the public approves. So I am absolutely for -- let's make the motion and let the city council ignore it if they want to.

>> Okay. So --

>> I would second the motion.

>> I happily made a motion. I hear a second.

>> I hear a motion. I hear a second.

>> Commissioner Kamkar.

>> Thank you, madam chair. I did visit one of the dispensaries, and, you know, I was pretty naive as to the whole process and the whole issue of medical cannabis. What I learned was there's different grades, there's different types, you know, flavors if you will, that it takes different people to grow these specialty items. One person cannot master them all or one entity can't master them all. So I wholeheartedly share the implement of both my colleagues Commissioner Jensen and Commissioner Kline that we can't force that upon one entity, you know. It's got to be a collective. It's got to be different minds rather than one mind working on this. So, you know, I support the motion, and to make the process successful I support a motion.

>> Thank you. Commissioner Bit-Badal.

>> I do have a question.

>> As staff has reminded us, we are not discussing at this point whether or not we are going to be opening it up to patients outside the city of san José. We have a million people in this city. We probably have enough people who are ill to care for ourselves. I think it's when you expand the range of growing that you start to get into some of the potential legal issues and criminal issues. So I just think keeping it home -- this is a trial run. We're doing a test here. We can always change it later once the process has proven itself.

>> Still deciding if I want to support a motion, but I will make my comments. I believe that definitely we should give collective -- or medical cannabis organizations the option to grow on-site and/or off-site. The reason is, over the last month and a half we've been hearing and reading letters and I've actually personally done two on-site visits, just as mar. Kamkar said, it really was eye-opening because I had a different image and perception and you walk out learning new things. It's really important for us to educate ourselves as this is the direction coming from the city council. Eye-opening. For me, I appreciated listening from our police department. I respect their opinion and their perspective and their experience. For me it's a safety issue. First of all, I don't want collectives to be huge or large in size, the buildings. I don't want them to be like Costco or massive buildings. If we are forcing collectives to grow on-site, that's the first thing that will happen. You're going to have mega collective sizes out there. And I want them to blend in whichever zoning they're going to be located. Second item is safety issue, both for those who are providing the service and for those who are receiving the service. And those who are living or working, actually working close to the collectives. I want to make sure that they're not being targeted by criminated as criminals by providing large sums of highly -- high-priced commodity. So for those reasons and also for energy and efficiency -- that's why I was asking commissioner why she was requesting for the collectives -- for the patients to grow in the city of san José. Because it really causes a lot of energy, requires a lot of energy. And I would not have understood the gravity of it unless I had visited a site that cultivates. And that specifically I chose that site because it cultivates on-site. And walking into that room, feeling the heat and just imagining walking into a large building utilizing so much energy, it definitely is not good for the environment and for the city of san José. So, for that reason, I do support the on-site and off-site. I'm just not for sure about the specific part of the motion yet.

>> Can I get clarification, Commissioner Jensen said that there's still discussion about whether these cannabis clubs will be providing for those outside of san José. It was my understanding that a business is open to whomever is eligible to go to that business regardless of whether they live in san José or not.

>> Maybe staff could clarify because I believe staff said at two of our meetings that that was still a point for discussion.

>> I thought you said you'd be limited to people growing, the cultivation would be in san José.

>> Correct.

>> Not selling.

>> But Commissioner Bit-Badal was saying she didn't see a reason why we should limit growing to the city of san José.

>> Oh, I understand. I thought the chair was indicating that --

>> She's referring to my comment that staff had informed us we hadn't yet determined whether or not we'd be selling to people outside of san José.

>> Because if in fact the only members are able to be from san José, then it would make sense to only allow them to grow in san José because you are limited as a member by the state law of how much you can grow, it's my understanding. So I wanted clarification on whether we were limiting membership or potentially limiting membership to residents of san José only. Yes?

>> As far as I know, we're not in any way regulating who the members are at all.

>> Okay. Commissioner Abelite.

>> I think the motion beautifully controls -- you need to have some level of control if you're going to do off-site cultivation. The only way that we can extend those controls in our own community is by exactly what that motion said. And the definition of a collective is where people all come together for the mutual benefit. And in some cases based on this motion, some people from are outside the city will benefit from people in the collective growing inside the city of san José. So I will support the motion. I think it's beautifully done, very thoughtful, and also if we don't go down the path of approving off-site cultivation, it's basically a poison pill for the whole program based on the attorney general's letters and the examples we may become. So I will support the motion. Thank you.

>> Similar to Commissioner Bit-Badal, I'm a bit torn by this motion. I do not believe that the clubs should be required to grow everything on-site. I have concerns as well about safety and the, as Commissioner Abelite mentioned, the federal issues of where they do not approve of large sites, they have even said that they will come and raid those sites. I think we're setting up the clubs to fail if we require them to grow everything on-site. And a big concern that I have is the electricity consumption all in one location and just looking at mar. Clopek's submittal for Medmar discussing the energy consumption and based on 20094 records of residential appliances that the equivalent would be of 257 residential homes worth of power in a location, I think that's a huge energy drain and a potential risk to our city. Additionally, many of the members come from outside of our city, which means that we are diversifying the energy consumption throughout the county and even broader. And so I'm torn because I think it's important that our police officers are supported and able to know where things are coming from as much as possible. However, I'm concerned about us taking energy consumption that is spread broadly and requiring it then

all to go to limited locations, causing a big drain. And with those concerns, I'm hesitant to support the motion, specifically on the issue of requiring san José growth. Commissioner Jensen.

>> So one thing is, the collectives did a very nice job of pointing out if they were required to grow on-site in an indoor facility, the amount of co2 that would be generated as well as the amount of energy that would be required, I took that to mean that they preferred off-site, exterior grow. I didn't take that to mean that they preferred off-site interior grow because my assumption was that they didn't intend to force somebody else to generate that carbon dioxide load or the energy load, but they were asking that they be given the opportunity to grow an agricultural crop in normal agricultural circumstances. We have a lot of farmland, and we have a lot of farmland that isn't currently being used. This may be a great opportunity to have a very high-value crop being grown locally.

>> Okay. We have legal who would like to jump in here.

>> I just wanted to clarify and remind the commission about the parameters of the ordinances and to remind you that there's absolutely nothing in the ordinances that requires indoor grow. There's absolutely nothing in the ordinance that requires Wal-mart-type facilities. There is absolutely nothing in the ordinance nor in the council direction thus far that mandates that the production levels that are currently occurring in the city must somehow be accommodated in the ten sites. So if the ordinances of one -- as one of the speakers noted, if the ordinances had been generated much more quickly, the production level would have been close to zero because as far as we knew there were no collectives operating. If the ordinances had come to you in 2009, I believe we had one or two. If the ordinances had come to you last year, I think they had proliferated to about 50 or 60. So at no point in time, I just wanted to let the commission know, has the council indicated that somehow the current level of cultivation that's occurring, whether it's legal or not legal, the council has never taken action to legalize this, that it somehow needs to be accommodated in the ten sites. So there are a lot of assumptions that are embedded within the correspondence that you're receiving, and I thought it would be important to note, as Commissioner Jensen alluded to, that there really is nothing in the ordinances that mandates Wal-marts, there's nothing in the ordinance that says a certain production level has to be come -- As a matter of fact, some people are anticipating that the level of production could go down because of the cap of ten. There's no assumption, there's no mandate about indoor grow, as Commissioner Jensen noted, she was making the assumption that there isn't a desire to push the electricity consumption elsewhere but rather that maybe there be an opportunity for a natural grow. I also would note for the commission, to the extent that it would be helpful to you, that nurseries right now growing things that are not medicinal marijuana are currently permitted uses in the commercial zone, just to give you another type of growing of other types of plants. And then I think as the director had noted earlier, at any point in time, if this is allowed as -- that someone comes in for an application, they'll have to comply with plumbing, electrical, building codes, whatever their activities are, if a great deal of electricity is required, they'll have to get the requisite electrical permits. So, again, I just wanted to remind the commission what's actually in the ordinance versus the assumptions that are being made in the correspondence you're receiving. Because the two aren't necessarily identical.

>> I've had the opportunity to visit four different sites to see a variety of 0 sizes, including a site that has hey school and cultivates and receives a lot of instruction on the cultivation and was told that medicinal marijuana, to have the highest quality, is grown indoors. So most of it is grown indoors, whether if it's on an eta facility or done so by the members. Because there are humidity issues, there are lighting issues, you need some of the plant -- some of the plants need18 hours of light every day, so there are a variety of things that require indoor growth because in san José we don't have the outdoor atmosphere for the wide variety of plant samples that are that meet the different medicinal needs. So I disagree with your assumption that they want outdoor grow. I think that they are expecting indoor growth with perhaps some outdoor growth. And I think the nurseries is a good example of absolutely they're growing, they have plants there. But we don't require a nursery to grow all of their plants on-site. Nurseries bring in plants from other locations to then sell.

>> You're correct. The on-site cultivation requirement isn't a land use issue. It is a control issue to ensure that we know where the product is coming from, because it can be produced illegally by, you know, criminals as the police had alluded to. So I noted the nurseries only for a similar use where you might have on-site grow, you might have the lights, you might have the same water consumption. But the on-site cultivation, you're correct, is a police issue. To the extent that it is occurring all over the city now and it's grown from zero facilities to we've heard 130-plus, 150-plus in the city of san José, I think one of the speakers eloquently put it so I won't be able to, businesses on the fringe of the law, sort of the wild west. To the extent that all of that is occurring right now and the sites you're visiting have the grow on-site and have taken you for tours, all of that energy consumption is going on right now. So I would imagine, with the ten grow sites, given that, again, I've never heard our council say that the goal is to accommodate the level are of production that happens to be occurring at the particular time that the ordinance comes forward for consideration. To the extent that the 150-plus facilities are operating right now, there's an argument that the overall energy consumption could actually be reduced with the adoption of this ordinance because, as one of the speakers noted, we'll finally have regulations in place that can give some structure to this.

>> So there is energy consumption going on to grow these plants whenever it may be that they're being grown, but that energy consumption is being spread out throughout the county and outside of the county and not all being isolated into a few locations causing potential energy surges, energy drains, and causing the issue of the federal mass growth issue. Commissioner Kline.

>> I just need to repeat the motion. I think the motion was just to clarify our recommendation that title 6 should allow off-site growing. I think that's the recommendation that we're making. That's the second, right?

>> Yes, within the city of san José.

>> That's all the motion was.

>> Not allowing members to grow outside the city of san José.

>> Right. But we weren't saying put it into a building or outside the building or massive. As a matter of fact, everything you said this motion actually supports, so distributing, keeping it the way it is, not centralizing it, it's part of the motion. It's simply our recommendation to the council to take out the have to grow on-site. That's it. Nothing else.

>> So I disagree because by saying it has to be grown in san José it's taking energy consumption that's currently occurring outside the county and putting it -- or outside of the city and putting it all into the city of san José.

>> I understand that, and only -- the reason for that is that if I present a card, I'm driving to a collective, I present a card that says I'm from my address at home and I'm growing this, the police officers of san José are going to take a look at that and verify it and actually go to the residence if they actually had to because it's within their jurisdiction and actually prove, yeah, you live there and you're growing it for this particular collective. If they lived in san Francisco, it might be tougher or tougher to do that you're actually a resident, tougher to prove that. I tend to agree with that.

>> Commissioner Jensen.

>> Thank you. The energy grid doesn't work as cleanly as you are implying in that energy consumption in san José does not affect solely an energy grid dedicated to the city of san José. Energy throughout the county comes from the same grid. We've all seen that when on the east coast there's a major energy failure in a grid, states, entire states, are without power, not simply limited and isolated in a small energy grid. So I think that's a little disingenuous. And co2 is not respectful of city borders so any co2 production that occurs in Sunnyvale or Los Gatos or anywhere else for the benefit of collectives here in the city of san José is not going to be respectful and stay polluting in Los Gatos or Saratoga, we all know the wind pattern comes from San Francisco, goes over 92 and into the San Joaquin valley. They've done air DNA tests. So our pollution comes from the north, moves south, and flows into the valley. The co2 is not going to be respectful of our area and the energy grid is not respectful of city boundaries either. So either way, assuming that they are forced, in fact, to only grow in a greenhouse environment, it's going to be throughout the collective energy grid in Santa Clara county and the tri-county area and all of the bay area county.

>> Mar. Abelite.

>> I have to talk about this power issue that we keep hearing about in all of the documentation and letters. As a commercial property -- I owner, I will tell you this is not as much power as people are alluding to, three phase, 208, 600 amps is what drives a grocery store. I guarantee you -- well, I can't guarantee you. I have a strong suspicion that that will handle two collectives, which is just a midsize grocery store or the shopping center that I run has 50 low-pressure sodium lights running in the parking lot. It's nothing. It's -- and loads adjust themselves naturally through and it's easy. In my opinion we're spending too much time talking about power and relating to spreading out the power to further jurisdictions is not. The power is going to be eaten up no matter where you put it. If people

are buying power locally in san José, that's great. I just wanted to comment on the power. I think it's way, way overtalked about.

>> Commissioner Bit-Badal?

>> I think these are really great arguments going back and forth here, that's why we're here, to make sure we're having thoughtful discussion about the power usage and really basing it on the facts we have received. Going into one of those collectives, they're using heat. We all know if you're using a hairdryer, it utilizes a lot more energy than let's say TV, right? We all would agree to that. And just imagine all that heat being in the room. So it's not the same as say lighting this room. You're really talking about generating a lot more energy. But, with that, I am leaning toward approving or supporting commissioner Jensen's motion not because I 100% believe in it respectfully, but because I believe that we need to start somewhere and maybe this is going to give better control for police officers and relieve some of their concerns. And at least we'll give a message to the city council that that having on-site cultivation proposal is not the only way to do it. We should have options. Thank you.

>> Commissioner Kline.

>> Can I call a question? Thank you.

>> You're making a motion to call the question.

>> Yes, a motion.

>> Is there a second? All in favor?

>> The reason are why is we've got a lot more to do here and it's going to take us, if we spend 40 minutes on what I consider is not what the city council asked us for and we have a lot of things city council did ask us for, we'll be here for a long time.

>> Well, I still want to make one final comment.

>> No. We're talking about a lot of thinks that aren't even part of this motion at the moment. The power grid really -- I mean, you can bring up the comments on the other items because they're all related.

>> The final comment that I want to make is that I would like to make a united front from the planning commission so I'll be supporting the motion for that reason.

>> I withdraw my motion.

>> We already voted on it.

>> I know. It doesn't matter.

>> So the motion on the table that Commissioner Jensen brought up, all in favor? Any opposed or abstaining? Motion passes. So I will entertain discussion on the zoning. Commissioner Kline.

>> I'd like to make a motion on the zoning. I think zoning is really the number one issue that we should be addressing here. It's the one that has the most to do with our responsibilities as planning commissioners. That's why I think Commissioner Jensen's motion was so important, that we really can't consider this without the knowledge that, are they going to be growing on or off or just on-site? I think that was a very good motion to start out with. I think the limitations of that is currently in there, they're somewhat nonsense cal. There are big zonings that don't make sense. Why isn't c.o. In if this is legal medical use and people are being treated medical distribution? Wouldn't c.o. Be a common place to put it? That would be one. So I would think that we start out with a list that would include mc-3's recommendation with h.i.c.p. I'm not really sure about cn. I know there are exceptions out there. The permit process may be able to handle that. I would probably exclude that. I think we talked about that last time. But also include c.o. And start there as a motion. More than welcome to -- then let's add or subtract from it. But start as that motion and see if we can get a list together that makes sense

>> Madam chair, can I ask for a clarification? The motion on the floor is to allow collectives in the three districts.

>> Include the exists ones, plus these.

>> Why don't we for the record list what all those are, commercial, general, downtown primary commercial, combined industrial commercial, light industrial, plus heavy industrial, commercial pedestrian and commercial office.

>> That's correct.

>> Thank you.

>> That was a motion.

>> I'll second that. [inaudible]

>> I think the staff did a better job.

>> Commercial general, commercial pedestrian, commercial office, heavy industrial, light industrial, combined industrial commercial and downtown primary commercial.

>> And I'd like to go with my second and make some slight modifications.

>> Just a moment. Mr. Kline, are you done speaking to your motion?

>> Yes, I am as a matter of fact.

>> Commissioner Jensen?

>> For commercial office, which is pointed out those are already in the area of medical facilities, if we could -- and I don't know if staff has the ability to do this -- require those be within 600 feet of an existing medical facility so it keeps in nature with being close to medical facilities.

>> We can add whatever recommendation you would like. The whole discussion of other distance requirements is another topic that the rules of the chair set forth sound like she wanted to handle that as a separate motion. But if you feel the c.o. Commercial office needs to have its own criterion before it's applied, that's up to the commission to decide that's your recommendation.

>> Thank you.

>> I would go along with that. That makes perfect sense.

>> So that was 600 feet --

>> An existing medical facility.

>> And if I could ask clarification. Medical facility, just to make sure we're talking -- we have consistent terms. Is that a hospital, an overnight clinic? Is that any dialysis center? What is a medical facility?

>> I think you guys have zoning that identities medical like hospital zoning and urgent care facilities. So within 600 feet of one of those types of facilities.

>> Commissioner Abelite.

>> I'd like to offer a friendly amendment that we include the i.p. Zoning as well. I think if you're already doing the light industrial and heavy industrial component I think --

>> I thought I did and that was a mistake of mine.

>> I listened several times. I know you referenced the mp-3 document.

>> It's in here.

>> There's a friendly amendment. The maker accepts it. Does the seconder accept it?

>> Yes. Commissioner Abelite.

>> Actually, having heard that, I think I need more clarification for the motion because the mc-3 document does reference commercial neighborhoods.

>> I took off the -- on purpose.

>> So cn is out. What did you do with cp?

>> Cp is in.

>> Cp's in. Okay.

>> And I do recognize the issues with -- hopefully we can address that at the processed level. There are exceptions you can make.

>> Okay. Commissioner Bit-Badal.

>> I do have a question to ask staff. Would you please give us examples of cp commercial pedestrian?

>> The commercial pedestrian district is the type of zoning district that you would see along Lincoln Avenue, San Carlos, the Alameda. So it's intended for very pedestrian-friendly types of places so it is -- sometimes it's very close to residential areas, but it is a place where you see a lot of neighborhood serving use for people of all ages.

>> And for clarification, the intent of the motion is that it would -- all of the distance requirements and other sensitive receptors would be taken into consideration.

>> Absolutely. Not changing any of that.

>> Commissioner Jensen?

>> Thank you, chair Cahan. That was exactly what I was going to ask. And my assumption is also the restriction on ground floor in those sorts of facilities similar to the downtown, no ground floor facilities.

>> We can discuss this particular one. I think ground floor in some of these zones would be appropriate. I'm not wedded to that concept, but I think some of the organizations I've seen make perfect sense being on the ground floor. Kind of like dentist office environment oftentimes are on ground floors. But I'm open to discussion.

>> So I should clarify, I'm thinking mainly of commercial pedestrian and commercial general, which are more the pedestrian zoned areas. Not the office.

>> Right. Right. So you would allow ground floor in those areas but not the office areas.

>> No. Allow it in the office but not in commercial pedestrian, not places where people are going to be doing their grocery shopping or walking into Starbucks and on the ground floor like the downtown area or Lincoln avenue but second floor facilities in those sorts of areas.

>> Right.

>> Staff?

>> I would suggest -- this is just for the commission's own deliberation -- that I think it would be useful to first identify which -- the where again, which zoning districts make the most sense and then come back and do a separate motion about how you would define pedestrian use. The councils had a definition that's in the draft ordinance. If you have refinements to that, I think that would probably be an easier way for you to sort through the issues.

>> Thank you, staff. I support that as well. So may I have clarification on the motion?

>> Staff has it written down.

>> I will try. The proposed zoning districts for medical marijuana collectives would be light industrial, heavy industrial, combined industrial commercial, commercial pedestrian, commercial office, commercial general, and downtown primary commercial. And ip. Thank you.

>> Commissioner Abelite.

>> And I'm trying to also get a handle on commercial neighborhood. I'm not proposing it, but we have a map that was given to us that, if all of mc-3's proposals came forward, you'd have it seems to me 35 collectives would survive this first pass. So I'm trying to figure out how much commercial neighborhood, cn, is in that number. I'm not particularly in favor of putting it in the cn district, but I do want to understand the impact of it. I don't know if staff has a handle on that at all. Could you also describe what commercial neighborhood means?

>> Sure. And maybe Jeanne can help me.

>> To give you an idea of the distance between c.o. And cn and pg, it's really the most restrictive to the least restrictive within our commercial districts. C.o. Is really just offices and, you know, the sort of uses that do not generate retail traffic at a large scale, you know. They're kind of sleepy serving offices, medical offices, those probably the greatest generator type from a person traffic standpoint. And the placement of those throughout the city are really immediately adjacent to neighborhoods because it's really a transition neighborhood also, you know. It can be historically adjacent to some of the medical areas, but that may just be by default. It could also be cn or ct if somebody came through with a rezoning. Then you have the cp, cn, and cg districts. And those districts, the only practical difference between them, from a use standpoint, is between the cp and the cn and cg. The cp, you're more limited when it comes to vehicle-related uses. Cn and cg pretty much have the vehicle-related uses. Sot practical difference between those three are really only cn and cp and it's related to vehicle-related uses such as drive-through and sale of vehicles, things like that. Then there's the setbacks within those, but from the use standpoint that's really the differences between those four zoning districts. As far as where you're going to find them distributed throughout the city, like I said, c.o. Historically has been used as that buffer district between the residential and more retail-oriented commercial. And the cp, cn and cg, those of you who remember the older zoning designations, we had c1, c2, and c3 so when we went through the zoning update back in 2001, practically speaking, the c1 district automatically took on the cp and historically the c1 districts were the ones that were really immediately adjacent to residential but the more retail nonoffice commercial districts, which is why you see them like the small corner strip areas or maybe even in some of the downtown you'll see some of that commercial is cp because previously it had been c-1. The cn district is probably the larger scale commercial areas that are on the larger collectors and, you know, arterial streets. The cg is what you'll find are regional shopping centers. The 100,000-square-foot-plus shopping centers. Some are cn, some are cg. They're kind of interchangeable. They're larger in size. And, yeah, you may have a residential backup to it, but because of the size of the district there's more of an opportunity to buffer the retail activity part of the districts where those uses sites from the residential. So that's the difference in our districts in a nutshell.

>> Thank you. Commissioner Jensen.

>> I'd like to ask what are neighborhood business districts zoned.

>> You know, right now we were successful in doing a council issue of rezoning of Lincoln avenue to the cp. That had a mix of c-1 and c-2 throughout it, but when we did the zoning code update we wanted to really apply that pedestrian commercial district because, again, we wanted to create a zoning district that was really related to that sort of environment. So there was a council initiated rezoning of the whole of Lincoln Avenue to cp. A few years later we were able to accomplish the same thing for a west San Carlos street, a good portion of it, again to kind of consistently zone it because it had a mix of the c-1 and c-2 previously so we did a lot of rezonings. It also had some li. And we also rezoned the willow street mbd portion and east of Guadalupe to cp. As you go down story

road, again, when you get further out, you have some cp going on there because you have some of Santa Clara are street, again, you may have a mix of cp and cn because of the previous zoning designations of c-1 and c-2.

>> And what is the Luna Park business district?

>> When you say Luna park --

>> It's the one out on 13th street.

>> I can't tell you off the top of my head. I'd have to pull it up on someone's iPhone or iPod. I could tell you if I pulled it up on a map.

>> Commissioner Abelite, did you have anything you wanted to add?

>> Well, I mean, having heard that, it almost seems like the commercials are almost indistinguishable really. So I suppose I wouldn't have -- when I heard commercial neighborhood I was connecting that to local neighborhoods and special little centers. It doesn't seem to be the case. I don't have a problem with the CNIF the maker wants to amend it, I don't have a problem.

>> It seems similar to the others and similar receptors will be taken into considerations of --

>> I move cn out because my impression of our last discussions was that there was some hesitance to put cn in. But it seems there's support for cn, I'll put it in. I have no problem with that.

>> Seconder agree with that? Okay. Any more discussion? Commissioner Ababelite, you look like you're on the verge of something.

>> Really what we have is a really in-depth title 20 document in front of us to approve, but we're really not approving that particular document. It almost seems like we're approving exception to the -- and then ultimately at the end of the night we'll probably be approving staff's recommendations with previous motions trumping exceptions within? Is that how we're going? Okay.

>> Right.

>> Thank you.

>> Yeah, I imagine you're right. We'll make a motion to accept this with the changes in our previous motions.

>> Okay. I'm ready to take a vote. All in favor say aye. Opposed? Abstaining? Motion passes. Okay. So I will entertain distance requirements. Commissioner Bit-Badal.

>> Thank you, madam chair. So now that we have discussed the zoning and I understand the original map we were given was based on two zoning options and it looks like a lot more zoning options available to collectives, I would like to move forward with the expansion of restriction to schools and child care centers. I've done extensive research on this. There are many, many communities that have expanded restrictions to sensitive areas, and of course as a mother of three I always put that into consideration when I'm thinking about these kind of issues. Such a state like Colorado, county of San Diego, long beach, Gilbert, Arizona, Dexter City, Washington township, Fresno county, Iona, city of San Diego and Boulder counties and I'm sure there were a lot more. That was just the scope of my research. That has -- these communities all have restrictions of 1,000 feet for schools and/or child care centers. To me it's really important to not only allow medical patients to be able to get their medication but also, because of what has been going on and because we're not really -- we're still in a gray zone as it comes to collectives, to protect our children and children who are going to child care centers or walking to school or going to school. I think we're better in the state of California. I always have thought San Jose is better than the state of California so I rarely go by what the state goes. I always think of them as the minimum threshold. With that, I would like to propose that the city of San Jose expand the distance to private and public schools 1,000feet and child care, churches with child care centers, community recreation centers, parks and libraries. And for substance abuse rehabilitation centers or other collectives to be within 500 feet and to increase the distance from residential 250 feet door to door. I know some people are going to say, oh, my goodness, my collective is out of this zone all of a sudden. But we have to keep in mind we have are 140 of them and we just expanded the commercial area, we just expanded the zoning. We don't truly -- we have to look at not specific business but what's best for our community as a whole. And I know that you will find sites that will accommodate these restrictions. What I'm telling you, this is what my motion is going to be because I believe it's best for you as well as our children, you're going to receive far fewer concerns and calls, much like what the code enforcement official said two weeks ago. Concerns were coming from families and children. If you're not too close to those sensitive areas, you're not going to be getting as many calls coming to the city councilor the mayor. So, with that, that is my motion. Again, as I stated, many, many other communities who have approved collectives have provided extra distance to the sensitive areas, and I hope that the planning commission will approve this.

>> May I get clarification on the 250 residential door to door? Do you mean access 250 feet measured by access way, pedestrian access way? Yes, that's correct.

>> We have a motion. Is there a second? We have a second to the motion. Only if you speak in your microphone. Just one moment. Commissioner Bit-Badal, are you finished?

>> Yes, I am.

>> With this round. Commissioner Kamkar.

>> Thank you, madam chair. I second that because I like the intent that she's trying to put out. I do have -- you know, I do have an amendment to -- a friendly amendment, if you will. One of the speakers talked about if they could propose a barrier that would give the same result as the distance does, could that barrier count as, you know, part of that? So let's say somebody is not 1,000 feet away, they're 900 feet away. Could the extra 100 feet be made up with an additional barrier that will make sure nobody comes over the fence or somehow? Would you be open to a friendly amendment like that?

>> First I want to ask staff, is such thing possible?

>> Again, these are your recommendations to the city council so it is possible, I think. From a practical standpoint, barriers are not created equal because many times they are permeable. So even if you say a freeway, if you were to look at collectives in and around the downtown, there are many ways to get under highway 87 and essentially cross that barrier quite readily. So even though the freeway is there, the 1,000 foot or whatever the distance would be would still be a pedestrian way that is able to easily cross. Same for rivers that have bridges, et cetera. So think carefully about that. And if you do decide to include a barrier, you might want to be very clear about specifically what is a barrier and then what type of -- how much of a reduction. Does it mean that the whole 1,000 feet or whatever is out the window, or you only reduce it by, you know, whatever the size of the barrier is, whatever your criterion are. Again, just think ahead to the staff in the permit center who are going to be needing to say yes or no. Yes or no. Clarity is really important here.

>> Makes sense. I actually meant that that become the department's call. So when they come to you and say, we're not within 1,000 feet. We're 900 feet, but everything else is perfect. Access, you know, electricity, everything else works. We're just 100 feet short. You know, can they somehow make that up? But if the department doesn't want to make that call, then I will withdraw my friendly amendment. Because I think it's becoming more confusing than we're trying to make it. Thank you.

>> Commissioner Jensen.

>> Thank you. And I'd like it to thank Commissioner Kamkar for withdrawing his friendly amendment because barriers mean so many things and we've already had the -- the planning department has already had challenges where one planning staff member thinks one thing is appropriate and somebody else doesn't. Then there's a big brawl whether it comes to the commission or the director's hearing or something. So thank you. I'm struggling with 1,000 feet. I totally get it, totally support it. But I'm struggling with it. And the reason for that is when we, in an attempt to keep our children safe from sexual predators, passed into law a similar distance in terms of residence, that law was overturned because it turned out there was basically nowhere they could live. So as much as I would like to see 1,000-foot barrier, I'd like to ask staff what that might do in terms of placement, if staff has magically developed a computer in the top of their head, and could maybe help us out with what that would mean.

>> I'm just seeing if I happen to have brought the maps that are actually available online on our web site where are we did do some initial analysis around the1,000 foot. And I apologize. It doesn't seem like I brought those with me tonight. When we did our analysis, we didn't have all of the exact same criteria that Commissioner Bit-Badal mentioned, but the 1,000 feet also included from residential. And it's really, you know, the 1,000 feet, it does limit. But you basically put every single zoning district into the available land for collectives so that's, you know, you'd really have to run those numbers. I don't know what those numbers look like. My sense is that we're still probably talking about thousands and thousands of parcels that would be eligible even with the 1,000. Again, it's that combination and the residential criterion is one that, because we have so much -- here in San Jose, it's that residential distance that's going to probably make the biggest difference in terms of eligible parcels.

>> Super. Thank you very much. With the chair's permission, I'd like to call the question now.

>> And the chair always has the prerogative to continue speaking even after somebody has made that request.

>> Thank you. I would like to honor the question that came to us from a speaker earlier about, if there is criteria put in that then makes their location no longer available location, will they have an opportunity to move.

>> Well, with all due respect, all of our collectives are illegal. None of them are allowed in the city of san Jose. We do not have zoning provisions today that recognize any of these operations. So, having said that, all of you may need to find another location. All of you will have to go through the process should the city council ultimately adopt an ordinance. So we should not be, quite honestly, paying attention to the existing locations. I know a lot of you have visited locations. But none of them have gone through any process, none of them have gone through building permits. They have not gotten electrical clearances, they have not gotten fire marshal clearances. So you have not seen legal operations.

>> Thank you for that clarification. Just a moment. Commissioner Bit-Badal.

>> Thank you, madam chair.

>> Excuse me. I did call the question.

>> I didn't get a second.

>> Second.

>> So we have called the question. There's a motion to call the question. All in favor of calling the question? Opposed 3-3. [inaudible] Commissioner Bit-Badal.

>> Thank you, madam chair. The reason -- actually, this is going to clarify your question, ms. Jensen. You know I have three kids whom I did not see tonight who are under the age of 6. But this is really important to me. Even if we're here until 12:00, it's okay. I wanted to say the reason I brought up the 1,000 feet, it's because on page 4 of our report, it states that in the light industrial parcels collectives cannot be within 1,000 feet of the business that uses and/or stores hazardous material. I feel that if we're protecting hazardous material, we're good enough to protect children who are in this room, a child that's in this room and the children who are living in San Jose. So that was basically the reason -- and also based on the research I did, for example, another city we have in the state of California provides 1500 feet of distance between high school and a collective because they see the importance of it. Also, if I understand it, the original proposal by city staff was 1,000 feet, if I'm not correct please let me know. But I understand that was the original proposal that was coming from staff. Basically, those are the reasons I put the motion forward. And I thank you for your time.

>> Commissioner Kline.

>> Well, I second the motion to close debate or call the question because I was very much in support of the motion. So I'm not sure what we're doing. I think there's a consensus to support the motion to a certain degree. But I do want to make one comment, that the 1,500 feet from hazardous material isn't to protect the material but the customers of the collective from the hazardous material. It's the other way around. I'm pretty much in favor of 1,000 feet. I think it's okay as long as we make it door to door. I think we're fine there. I think that the issue is the property lines, then it gets a little scarier because you start wiping outs large sections of the city because of distances fall into neighborhoods. But I think door to door would be a reasonable compromise there. I think we've done that before, door to door 1,000 feet. Staff? Sort of?

>> Yeah. And we would, again, just thinking about the practical, we would look at the pedestrian route. Sometimes door to door is not always easy to define. You know, property lines are a lot easier and we've seen this as we've been analyzing structures into our neighbors. But if this was the ultimate action of the city council, we would figure out a way of making it work.

>> The other question I have is, I have a hard time mapping the motion, but I think I agree with to the actual ordinance. Staff, is the motion clean enough to actually fit into where the numbers are here? Can we -- I'm concerned with it actually presenting something to city council that looks completely different than what they're asking us to comment on. So far we've done it by striking out numbers, cultivation yes/no, zoning these zones. Then we get the distances and it looks a little more fuzzy. That's all.

>> So what we would do in our memo is essentially give it to the council, probably in a side by side just so they could make the easy comparison. And again, this is why the council wanted to refer the item to all of you to get your comments. And it's okay to not agree with what was initiated.

>> So staff understanding the motion and --

>> Yes. And I think our attorney would like to add -- [inaudible]

>> It tracks the language of the ordinance pretty easily.

>> Commissioner Jensen.

>> Thank you, madam chair. I actually support the motion 1,000 feet in terms of a radius that create a significant ease of delineation for staff. When it's 250 feet door to door, that's relatively easy for staff. But 1,000 foot is a very difficult and, as staff mentioned, does that include permeable pedestrian corridors under 87 or across bridges or through a creek or any of those things. So I think 1,000 foot distance is just too difficult to do door to door. I wouldn't support a door to door and I think the commissioner's motion was on door it to door on residential but not necessarily door to door on the other items.

>> And I know we have the code enforcement official here. I've worked with him extensively in the past. I will tell you just from a practical perspective it's very difficult to measure that distance door to door. It makes it very difficult for a code enforcement officer who's trying to enforce to not be able to just look at a map and go boundary line to boundary line but to now have to come up with some mechanism, some device and go out there and walk door to door. It makes enforcement much more difficult. I don't know if you've come up with new methodology but in the past when we've worked together on issues the -- I'm sorry, Mr. Hammond. I didn't mean to make you come up. I was just noting for the commission the practical enforcement difficulties that it imposes when a code enforcement inspector can't refer to a map but has to actually go walk on a sidewalk and do a door to door analysis. I think the director noted we would try to make it work, but to the extent the commissioners have mentioned they're concerned about practical implications, it does make it more difficult for our code enforcement. Or our police officers. Whoever is trying to measure that distance. And when you come in for a planning certificate, a zoning certificate, to the extent that that ultimately is the process, if that's adopted, again, a planning inspector at a computer looking at a map trying to figure if they can check that box to have to measure door to door is going to make it much more difficult.

>> Commissioner Abelite.

>> I think I'm going to have a problem supporting the motion. I think we should understand and recognize that technically these are all patients that are seeking medicine. I think to push them out to 1,000 feet, you know, we're operating under the assumption these are all patients, people in need. I don't think they should be pushed out any further than maybe what state statute calls out, 600 feet. I actually like what staff had in place in general and so I won't be supporting the motion. I'm also afraid 1,000 feet is very overreaching -- not overreaching but it's a big reach. I suspect you're going to be knocking out a lot, a lot of opportune sites. Based on that, I won't be supporting it.

>> Commissioner Jensen.

>> Thank you, madam chair. Initially, that was why I raised the question that I did with staff about the practical implications for location, because I was also concerned, as you could tell from my question, about whether or not this would knock out 75% of the city, and the staff response that it would still leave thousands of available locations seemed to me to be sufficient. Again, I don't know if you have facilities popping up, you know, all over the place near where you live, but let me tell you it's not pleasant.

>> I'd like to get clarification if what's being said is that we would not be including a pedestrian access way at residential at the 250 feet. [inaudible]

>> Right. Part of the motion was that it was for residential 250 feet by pedestrian access way door to door, not by radius. But what staff just said seems to negate that so I want clarification on that particular aspect.

>> Well, we can move forward property line to property line -- [inaudible]

>> If I may?

>> Commissioner Kamkar.

>> We're talking about possibly two locations within a district, okay? So that's the direction that we seem to be going. And I guarantee you, you know, there are much more than two locations possible within a district, you know, that would meet 1,000 feet from one area, 250 feet from another area. So I don't think eliminating sites is the biggest issue. Now, I do understand if I were a collective and my location was already good I didn't want to move, you know, but I think collectives should be happy that it even gets a chance to be one of the 10 or 20 rather than go for the home run and have to move. So I think the distances that the commissioner puts out is a good compromise between our issues, you know, as to what distance you like to keep to sensitive receptacle versus, you know, getting your neighbors to be upset at you and calling code enforcement all the time. The 250 foot distance, you know, that Commissioner Bit-Badal mentioned, I think using the technology, google map, you could pretty quickly tell what the pedestrian route could actually be, tell it which way to measure for you.

>> Would you like to get code enforcement's input on that?

>> Yes. If you don't mind, I would like to ask that from the staff.

>> Thank you for the opportunity to be here. Michael Hammond, code enforcement official. As the director indicated, we'll certainly make this work and we'll certainly do the work behind the scenes to make sure we come up with a model that's clearly understandable by not only the applicants but our residents in terms of how the distance, whether it be door to door or parcel to parcel, is measured. Whatever this commission decides to

recommend to the council, working with the director of planning we'll certainly make this work. But the more clarity you put in terms of the conditions does make it easier for code enforcement officers to apply the law fairly as we investigate.

>> Thank you.

>> Thank you very much.

>> Thank you.

>> So do I have a second from Commissioner Kamkar -- an acceptance since you were the seconder of the motion to the change?

>> I was actually going to retract because of code enforcement's decision. I mean, they're the experts in the field and so are staff her so I will retract.

>> You know, I will say that, you know, in many of our current ordinances we do have a challenge when we have to measure a distance, and I will say that probably one of the better ones that we did was more recently, if you're located within 1,000 feet in one dimension, if you look on the map, we draw a radius and you're in it, you're required to do something. It's easy. Door to door, is it front door, is it back door, is it going on the way that most people would walk, or is it the shortcut and is it all of this stuff. It really -- to really define a door to door or another distance measurement other than just the plain do you fall within a radial circle, you're going to think you did it but then you're going to realize you didn't because people have multiple ways of traveling. They'll go over fences and say, but this is how everybody gets there. They'll go under barriers because they're going to get to the park and this and that. So, you know, yeah, of course we'll make whatever we're told to do work, but the reality is it's going to be much more difficult to make it work if we're going to have to, you know, understand thousands of different ways people travel to the same place. That's just my take on it, quite honestly.

>> So if the motion changes and it's radius to radius, then I won't be able to support it because I think that there are impenetrable barriers. I mean, look at getting across actually road and a barbed wire fence to the residential area is pretty much impractical, but from boundary to boundary it could cause an issue. And so I just wanted to put that out there for you. Commissioner Bit-Badal?

>> Thank you, madam chair. Starting to speak without being given permission. I wanted to restate to my fellow commissioners that these are recommendations we are making to the city council. We're not the final body. They are. There are a lot of times I may vote but look at the collective good. Please consider that.

>> What is the motion on the table?

>> There is none.

>> Thank you. Commissioner Abelite.

>> I'm still going to not be in favor of the motion, however I have a suggestion as it relates to the radius issue. Maybe it should be from the door of the commercial operation to the pl of the residential. That way you're not trying to determine path of travel, out of a house, out of a subdivision of apartments or anything like that. And the path of travel within the commercial segment of the collective is pretty well defined through commercial sidewalks and commercial pathways for pedestrians. So I still won't be -- I'm not in favor of the 1,000 foot radius component, but if you want to have clarity, maybe you would consider making that change.

>> Commissioner Kline.

>> I think I'm ready, but we'll see if everybody else is ready. Can we have a review of the actual motion to make sure everybody understands it? We read through I think page 5 we're talking about. So we just make the changes so when I vote I know what I'm voting for.

>> 1,000 feet from public and private schools consistent with state law.

>> We're talking about distance requirements, that sentence. Then 600 feet to 1,000 --

>> I'm just increasing it to 1,000. Much like many other cities. 1,000 feet from day care centers, churches with day care centers. That means not all churches. Community recreation centers, parks and libraries and for substance abuse/rehabilitation center and other collectives, 500 feet. And we have been discussing residential.

>> 150 feet from residential to 250 now?

>> Yes.

>> Nothing to do with walk ways or anything, pedestrian walkways are not part of that?

>> From door to door.

>> You say door to door.

>> Originally. That's still standing.

>> Still included in the motion.

>> Yes.

>> Thank you. I appreciate the clarification.

>> Commissioner Jensen.

>> Thank you. For our own enlightenment, I'd like to ask staff if they could let us know whether or not Commissioner Abelite's recommendation regarding path of travel would be helpful in making this clearer for determining what that door to door path might be.

>> As I recall, it was the option of measuring from the door of the -- the front door of the collective to the property line of the nearest residential as opposed to door to door.

>> That was my thought.

>> That would be easier, and I defer to council.

>> Would Commissioner Bit-Badal be willing to incorporate that?

>> Yes, I would.

>> I'd like counsel's response.

>> Let's put it into practice and if there's a collective and there's a door, pick a door, and there's a residential nearby, anything that does, say, measure from the door to whenever, another door or the property line, if a collective comes in and says, look, if you go this route it's 300 feet and a planner who's sitting at the computer says, yes, but if you do this, I measure it 240, it doesn't matter if the most common pathway is 300 feet so long as a planner who's administering this distance finds a distance that is accessible to the public that goes from the door to the property line or from the door to the other door, they're going to have to say that they're within -- they're going to have an argument. Again, as the director mentioned, the goal here is to make it, check the box. So it won't matter if you use the sidewalk it's 300 feet, if you go across the lawn that makes it 240, I can see the director will be calling, asking, well, we found a route that is 240 feet so guess what. I think to the extent I hear some of the deliberation to try to make it a little more lenient, I just wanted to note in some scenarios you'll be making it more restrictive. Because if a planner sits there and finds all you have to do is cut across the lawn, many people do and it's accessible to the public, they're going to say you're within 250 feet, even though if you use the sidewalk it might be 300. So just be cognizant of the fact that it actually could create problems.

>> And not all centers have sidewalks leading out of them. So, again, it's just going to be the shortest distance someone can travel around that commercial building on any paved surface that we would look at, because they have a right to travel on it.

>> Commissioner Kamkar.

>> Madam chair, you know, all those issues remain whether it's250 or 150. All those issues remain whether it's 500 or 1,000. So, you know, however we were going to measure the 500 we're going to measure the 1,000.

>> No. Actually, the ordinance is pretty explicit about measuring property line to property line as currently drafted.

>> So it's property line to property line was going to be 500, now it's going to be 1,000. So the same way that property line was going to measured. [inaudible] it's just the residential one you're concerned with.

>> Residential with discussion about door to door. Commissioner Bit-Badal, do you have anything you'd like to add?

>> No, I don't actually. I thought I put in an amendment, but I didn't.

>> I think she did.

>> Oh, you did?

>> Yeah. Modifying it from front door to property line.

>> I can suggest a way out.

>> Before we're able to discuss that, Commissioner Kamkar, do you agree with that amendment?

>> As a seconder, I would agree.

>> Commissioner Kline?

>> I think it's too hard. I can go 1,000 feet. Remember 1,000 feet is shorter than a football field. That's pretty small actually to tell you the truth, not very long. So I can go for 250 property line to property line and be okay with it. It's clean and forget the door to door or door to property line. It's clean. Staff can handle it. I think 250 from residential is great. I think where we really get involved is the process, how that's determined later on. Are there exceptions? Are there mitigations? Are there exceptions to that rule? That's more interesting. If there's never an

exception to the rule, then I would be against the whole thing and go back to the original staff report. But I'm okay with this if it's just 250, make it clean. I'd support that. Otherwise, it would be too complex.

>> Clarification. You said if there's not an exception to the rule then you're not okay with it.

>> Yeah. Everything in here --

>> Because I thought it was going to be a checkbox without exceptions and without an appeal process. Therefore, it's black and white.

>> We have another recommendation to make later on, which is the process. Are we going to make a recommendation on, is it pc? Is it by merit? Is it something else? If it's pc, there are mitigation exceptions to these rules. If it's checkbox, there are no exceptions. It's just check the box and no one gets -- so that matters to me. But as it is if we're just taking this in isolation, I can go with 250. I'm okay with that because it's not too complex, even though I agree with ed. I'd rather have the original staff report but for consistency and getting something to the council that moves forward, I'm okay with this if that was just changed clean.

>> Commissioner Kline, the audience was unable to hear you. So I will not be supporting the motion as it has been amended. I'm going to join Commissioner Abelite.

>> Okay.

>> Discussion? Everyone done with their discussion?

>> Yes.

>> Let's take a vote. All those in support.

>> Wait. Whoa, whoa.

>> Can I restate the motion so I know what we're voting on?

>> Please do.

>> So what you're discussing here are the proposed distance requirements, and Commissioner Bit-Badal's motion which was seconded by Commissioner Kamkar is, if I can borrow your sheet of paper, that it would be 1,000feet from public and private schools, which exceeds state law, 1,000 feet from child day care, churches with child day care, community recreation centers, parks or libraries, 500feet from substance abuse rehabilitation centers or another collective and 250 feet from a residential use.

>> And these are all property line to property line.

>> Yes.

>> With the exception of the friendly amendment that was the door of the collective to the property line.

>> No. That was withdrawn.

>> Right.

>> That's what I wanted to clarify.

>> So it's property line to property line for all except for the residential.

>> For all.

>> For all. Thank you.

>> All those in favor. Opposed. You have three in favor, three opposed.

>> So that motion does not pass.

>> Can I ask what the hang-up was for chair Cahan?

>> With the -- I think there's a great possibility that this is going to become a total check box opportunity for the clubs to get their club legalized. And with no opportunity to appeal. And by taking away any ability to factor in impenetrable barriers, then I would rather go with the smaller numbers to allow more opportunities for location.

>> So as Commissioner Kline pointed out, we are going to be discussing process and those other items in another part of our discussion. This was just a discussion on distance and didn't have anything to do with the process or whether, with all due respect, I think it was irrelevant for Commissioner Kline to raise the issue about exception since that's not what we were discussing here.

>> I still -- I stand by my intention of going to the smaller numbers that staff initially put forward. Commissioner Bit-Badal.

>> So I can put the same motion forward with the exception of residential and reducing it -- back to what was originally proposed by the city council, which was 150.

>> There is a possibility that we could move on to the discussion of how these are --

>> I can second that.

>> Okay.

>> Call the question. We've discussed it to death.

>> All those in favor? And opposed? [inaudible]

>> I need clarification. Are we voted on the call the question?

>> Call the question.

>> Aye.

>> So we're calling the question. Now we're going to vote on the motion. We're voting on the motion by Commissioner Bit-Badal which is 1,000 feet, 500 feet, and 150 feet. All in favor? Opposed?

>> Did that pass?

>> That did pass. That was 4-2.

>> So there is an item about the active pedestrian use, if you want to have any further -- okay.

>> So I will entertain discussion and motions on pedestrian use.

>> Can you clarify?

>> Do you have any definition you'd like to have, perhaps ground floor locations in certain districts? Commissioner Jensen?

>> Thank you. I would like to make a motion that commercial pedestrian, commercial general, commercial neighborhood not have ground floor facilities.

>> Yes, counsel.

>> Sorry. I just wanted to provide to you for your information at the last meeting you had requested the city manager's office to please check with the office of economic development if there was any input on this issue. The representative from our city manager's office wasn't able to be here this evening, but she did ask that the commission be informed that the downtown coordinator in the office of economic development said that he wasn't specifically aware of specific complaints because they wouldn't normally go to the office of economic development. But he did say that businesses located in the downtown entertainment zone did have concerns and have contacted councilmember Liccardo and that it's her understanding that, in turn, it was councilmember Liccardo who made a motion to include that no ground floor establishments in pedestrian areas such as downtown or in areas intended to have high pedestrian traffic, including but not limited to major shopping malls, that they not be permitted in the ground floor. So you had specifically asked her that question, and she wanted to provide you with a response.

>> Thank you. So if I didn't include the appropriate zoning in there, is that the dpi?

>> Downtown.

>> Okay. So including the dpi, then.

>> Second.

>> Clarification. You're eliminating any one-story buildings from all of those areas. Okay. Commissioner Kline?

>> Where would a ground floor be allowed? I guess that's the reverse. Of the remaining districts.

>> Heavy industrial, light industrial, commercial industrial, cic and the ip. And commercial office.

>> Commissioner Abelite.

>> It seems to me that motion wipes out a big portion of all of the zonings we just talked about. I mean, you're probably going to wipe out 70% of the opportunity sites with that. I mean, that seems on one hand you pass -- we pass the cpc and cg, cn and now with this particular motion we may have rendered most of it moot. So I don't think I could support it.

>> Most of our commercial districts have a number of two-story buildings if you go down Lincoln avenue. There's a number of two-story buildings on Lincoln avenue. Our neighborhood business districts have two-story buildings. There are many office buildings which, of course, can be on the ground floor but they have two story. Almost every building on Santa Clara street is a two-story or more. So I don't think it knocks out -- it may knock out a few, but I don't think it knocks out many. It knocks out some in strip malls certainly. Most strip malls are single story. But I'm not sure we want to put these facilities in our strip malls which are so heavily pedestrian anyway.

>> Commissioner Abelite.

>> And I don't want to assert that I'm seeing your perspective, but you have an allegiance to downtown and you live if a different environment compared to where I live in district 8. So there it's more I think a proliferation of single story commercial zoning districts and I think that's the overwhelming majority of the city. Anything on the periphery of downtown is going to be all single story retail uses. So, again, I can't support that motion because I thought the intent of us including cp, cn and cg was to include all of those things in my mind's eye. But I understand your perspective from downtown. There are a lot of opportunities in second floor.

>> And I think there are in other districts as well and in district 8 -- I'm going to get the name of this place wrong even though I've been there a million times -- that adorable little shopping area around the plaza whose name I can't know, most of those are all two story. Anybody help me out here with the name? Evergreen village.

>> I can't really think of any locations in my district.

>> All of Lincoln avenue.

>> That's not in my district.

>> Most of the development, commercial development, in council district 1 with the exception of, again, maybe one or two commercial buildings on Deandza boulevard are single story. We really have not supported the two-story retail development you see in southern California so I think Lisa is correct. In our neighborhood business districts, our older neighborhood business districts, where you had more the mixed use, ground floor commercial upper floor non-retail, you do find the two-story buildings. But outside of those areas, in the suburban, again, I could probably go through each council district and say, that one on Deandza boulevard, we did that across from valley fair and it's two stories. There's a reason we don't do a lot of them. We have a few in district 5, but the predominance of commercial development outside of our older neighborhood business districts and the downtown is single story in nature.

>> So let me ask --

>> Just from a factual standpoint.

>> Let me ask staff a question similar to what I asked earlier. If it included cn, cg, cp, and dpi, what effect would that have in terms of knocking out some ballpark estimate of areas of the city? No ground floor.

>> Well, again, I think -- Commissioner Abelite I think is correct in saying you've kind of negated the whole point of including those districts if you're now not going to allow the ground floor to be utilized when I would estimate even 80-plus percent of them are single story in nature. You can geographically locate the areas that are two story, and

it's -- and, again, counsel and assistant director -- can tell me to shut up. But maybe there's an opportunity where there's another -- use. I mean, again, we keep referring to the term "neighborhood business district." again, I don't know in envision 20.40 we're using the same term, but we have zoning districts we can use but then we have other identifiers that put another layer of character on those areas, from geographic standpoint. Not to belabor your discussions, but there may be an opportunity because, again, I hear Commissioner Jensen refer to the older neighborhood business districts that were developed at a time where there are two story or a mix of one and two story. And in reference to your question earlier, Luna park is cp. I looked it up.

>> Thank you.

>> Okay. So then -- and I'm glad you raised 20.40, envision 2040 because when that starts rolling out villages and hubs, those are all going to be multistory. Those won't be single story facilities. So every district is going to have a two-story area. But in the interest of getting out of here before midnight, I would like to amend my motion to have ground floor not allowed in commercial pedestrian and dpi downtown.

>> I can support that. Who was the seconder? Okay. Commissioner Abelite.

>> And I do support the idea. I thought it was great. And I do support protecting downtown and those sort of even Santana road type applications we're going to be doing village concepts along the transit corridors. So I do -- now I support your motion. I think that's the way it should go.

>> Okay. I think we're ready to vote on that motion. All in favor? Any opposed? Abstaining? Motion passes. Okay, I will entertain discussion on the number of clubs in the city. We've got legal.

>> I know this is a land use issue and so I'm not going to interfere with you. I just wanted to remind you that, although the cap absolutely is a land use issue and the council definitely wants to hear from you on it, unfortunately I see that the lieutenant had to leave. Originally I just want you to know that the cap was suggested not because of a land use issue, it was suggested because the city administration, the police department and all the most heavily affected departments of the city, were trying to ascertain from the get-go and ramping up how many of these facilities could they handle in terms of reviewing, registration. And I know we have other officers here. But I just wanted to note for you, yes, it is a land use issue so if you have land use comments I'm sure the council would want to hear those. I just wanted to remind you that the cap wasn't really a land use issue. The cap was, how many of these can we handle at the get-go. I don't know if the director wants to elaborate on that.

>> Just to acknowledge that lieutenant Fronte is in the audience in case you have clarifying questions. [inaudible]

>> Many promotions have taken place. I apologize.

>> Since the chair is out of the room for a few minutes, I will take on her duty, hopefully. I believe she was entertaining a motion or discussion on this item.

>> My original idea was to make a motion in the range of 30. But I understand from the last meeting and discussion that 30 might be a little bit of a stretch. It seems more like 20. I still think it should be more rather than less. I'm going to make a motion of 25as a compromise. The purpose of this is to implement -- I mean, we either say no in the city at all. I mean, Saratoga is a population of 30,000 people. It hasn't changed. In 1972 it was 30,000 people. Zoning issues in Saratoga are completely different than san Jose. 30,000 people is a fraction of 0one of our districts here. It's a completely different environment. Los Gatos is way fewer people. We've got to be careful comparing our capabilities or requirements versus other cities. We either say no or we allow it in such a way that it can be regulated and successful. It looks like we're allowing it. Therefore, it should be done in a way that's meaningful, can be regulated carefully, can be understood and even though this is a start I think 25 is pretty small as a start. How many liquor stores do we have here? We can go on and on. I refuse to believe if we regulate this properly that this is going to be a risk factor to our communities. The problem is now there's no regulation. Once we start regulating properly, I think we can reduce most of the bad elements out there. I think 25 is a good number to start out with. I can imagine that number will go up, not down. Start with that, see if I can get a second.

>> Commissioner Abelite?

>> I'll second the motion. That's exactly the number I had in my head. You know, part of the issue is staffing and police staffing. Soy read memos they had one sergeant and two officers assigned for a ten-unit -- for ten collective facilities. If you go to two and a half times that, you don't have to have another sergeant. If they all pay licensing fees, great, you have coverage. It relieves pressure on concentrations. It just does a lot of good. I support the motion.

>> I'd like to say no more than three in a district as part of that motion. I think two is too restrictive. I mean, we can go unlimited and they'll all be in one district, but I don't think that's realistic. I don't think city council will take that seriously as a comment.

>> The seconder of the motion, I accept. Three was also in my mind. 25 and 3 is exactly what I had many my mind.

>> So we have a motion and a second. Commissioner Jensen?

>> And I'd like to ask if this would be an appropriate place that we put a cap also on the total number of facilities per operator. There's been a number of people who have said, you know, if you make the number small then one person is going to come in and get all ten licenses and open up ten different facilities. So to alleviate that concern, would you be open to similarly putting a cap on the total -- I'd like to ask counsel how practical that might be.

>> I'm going to sound like a broken record. I apologize to the commission. So the commission is concerned with where, not who, and so whether the police decide that they want to limit how many each who can have, I just wanted to note for the commission that really the purview of the commission is the where. But you can send along your comments on the --

>> Thank you, counsel. You know us, we're not shy. I still think we should make a recommendation to have a limit on the total number per operator.

>> Commissioner Kline?

>> I made those comments the last couple of meetings. I think I was wrong because after I started reading through title 6, I think there is a limitation in title 6. I just can't find it now. There is actually a limitation that only one property owner can own one. I'm sure I read that in title 6. I could be wrong. But I think we need confirmation on that because I read through it and said, oh, there's a limitation on the number of -- a nonprofit can only have one open dispensary according to title 6,I believe. I just can't find it now.

>> Commissioner Kamkar?

>> These are cooperatives, right? These are not for-profit businesses. So I don't know if you can have owner of a nonprofit business.

>> That's a good point. Technically they wouldn't be -- everybody would be an owner, right? They're a collective.

>> Right.

>> I'm not aware, not to say that Commissioner Kline's recollection isn't accurate, it's just I don't have the most recent version of title 6 in front of me. So if the commission does desire to send along that type of comment, it could be along the lines of, if title 6 does not contain a provision that limits each collective to one site, then you could provide your recommendation on that element. Again, that's all about who's and not where's. [inaudible]

>> Obviously somebody has to clearly define what "ownership" means. That's beyond our ability.

>> Just to -- I want to make sure on the motion. The motion is to have a cap be 25, no more than 3 per council district. And if title 6 does not contain a restriction on how many sites a collective could have that the total number per collective should be limited. Then I didn't hear. To one? One per collective.

>> Commissioner Kamkar?

>> Thank you. I just did a quick math. So no more than three per district, right? So if you get, let's say, up to ten districts, each of them getting three, then you only have one more basically left for the two remaining districts.

>> There currently aren't any in nine.

>> Oh, there are.

>> I thought there weren't. Sorry.

>> So I just wanted to make sure that we understand that --

>> You don't see it the same way I do.

>> So I'm wondering if that would be an intention or maybe an unintended consequence, you know?

>> The intention of the motion is not to spread out to every single district. The intention of the motion is to not concentrate them all in one district. I'm not worried if a district doesn't have a collective. I'm worried that downtown might have 20 collectives.

>> Right.

>> Okay. With that clarification, then I would support the motion, too.

>> I think we're ready to vote on the motion. All in favor? Any opposed? We have passes it 5-1 with Commissioner Bit-Badal opposed. I will entertain discussion, motion on the process. And I will call on Commissioner Abelite.

>> As you all know, I floated a memo a couple of days ago so I'd like to offer that as a motion with the understanding that I want to strike the word "moratorium" based on --

>> For the public and the record --

>> I'll read it. So a document that I circulated a couple of days ago I'm submitting the following as a possible recommendation from the planning commissioner to the mayor and city council in regards to the selection of the best collective operators. Upon adoption of title 20, code enforcement and police and all other appropriate agencies can go through the process of verifying the collectives can or cannot operate. I can't use the word "moratorium." in addition, all operating collectives must obtain zoning verification from the zoning department within 30 days. All other collectives can now be closed. At the 60-day time frame, the city can post an application

online and any remaining collectives should then submit an application to the city manager's office and you limit this to the first 45 collectives that make application. This may further serve to disqualify and close more collectives. At this point, the remaining collectives would be permitted to operate within guidelines so long as they pay prorated monthly licensing fees and as soon as possible the city manager's office can then collect, conduct a ranking -- selection process which selects the 25 best operators and rfp application fees can be charged. That's my motion.

>> To clarify, a lot of what Commissioner Abelite just mentioned again goes to who and not where. The merit based system again would be commentary on nonland use issues, which again if the director wants to go ahead and include all of those comments, they can be included in the motion.

>> Motion and a second. Discussion? Commissioner Kline.

>> I'm going to support this motion. I think almost anything is better than what the council is supporting. -- counsel is suggesting. I'm coming up for review in another nine months. No. I think that's the logical, rational approach to things. You know, we could go through other processes, but I think they're all fraught with perils. And this one does make a lot of sense because of the history, the context, the fact that there's a whole bunch already there that are not going to disappear no matter how much people want them to disappear. They're just not. Legally, whatever. So I think it's a rational approach. I think the industry could probably get behind this in a very positive way and help organize it and publicize it and make it work, not only from the city's point of view but from their point of view. So I'm going to support this.

>> Commissioner Abelite.

>> And I do want to state that I came up with this motion on my own. I didn't do it with in cooperation with any other commissioners or discussions at all, nor with anybody in the public sector. So this is just me. Thank you. And also since we seem to be coming to a conclusion, I want to point out that I have toured Mr. Strange just gave me a tour of harbor side and I also was given tours by Doug Clopek of his facility. Those are the two facilities I visited.

>> Commissioner Bit-Badal.

>> So your motion speaks of an rfp process, correct?

>> Correct.

>> I know we're adding comments because this is really not something we're going to be voting on -- excuse me, madam chair -- but I wanted to add -- control, ventilation, safety measures and security. Those are the items I'd like to see in a future rfp. I think ventilation is important to make sure that -- I mean, I walked into these facilities and there's a very strong smell to it. I know you're laughing, but it's true. You want to make sure -- again, just like Mr.

Kamkar said, I felt like I was very naive. I was walking into these facilities, but you learn a lot. Anyhow, ventilation control for outside, safety measures. Again, just like any crime, as you deter it, to be safest in a neighborhood, what you do is deter crime and criminals. So by adding and requesting safety measures you're really deterring criminals coming and invading the facilities. And inventory control, of course. You want to make sure that the commodity is just being used for patients, not being misused.

>> Commissioner Abelite.

>> If that's a friendly amendment, I'll accept it. But I think there's a whole group of experts that could be brought in to create a full set of criteria to create the rfp and the pluses and minuses of how to run a collective. I'm happy to take that as a friendly amendment, but there will be a lot more people a lot smarter than us figuring out the rfp process to make it work. Thank you.

>> So was the friendly amendment accepted? The seconder?

>> Yes.

>> Any other discussion? Okay. All in favor? Any opposed? Abstaining? Okay. It passes we have two more issues. Zoning verification is one of the two remaining issues that we have not covered this evening.

>> The question was implied in Commissioner Abelite's motion about a zoning verification. I just want to confirm, since so much of that motion really had to do with the who and the selection process, that if the commission has any comments about zoning verification versus some other mechanism that we do get those comments or your recommendation. So if the commission's fine with zoning verification I would just ask that that be clear for the record so council has the benefit of your recommendation.

>> I'll make that motion.

>> I'll second it.

>> Any discussion? All in favor? Opposed? Abstaining? Passes. And the remaining issue, additional protections for light industrial land. Staff?

>> Thank you. The council, when they initiated the ordinance, asked us to think of some additional protections for light industrial lands and specifically for light industrial zoning districts. So staff thought of two. One was not allowing collectives within an enterprise zone, and the second was not within 1,000 feet of a business that uses or stores hazardous materials. As our written staff report, it went on to say we ended up not recommending or suggesting those to the city council, but they are in your staff report. And since you have actually expanded the number of zoning districts that are industrial and attract a lot of different business to San Jose, we just want to ask

the question, are you okay that there are no additional protections? You have added an additional protection for the commercial office. So just want to give you one more opportunity if there's anything more you want to add for heavy and light and industrial park.

>> I do have a question to ask. Originally I was under the assumption because it was due to economic development aspect, that's why we had it. And somebody said no, it's because we're protecting patients. Please clarify that because I know as economic development -- you look into protecting your precious land for those facilities. Please clarify.

>> From the council's conversation, it was all about protecting employment land. That was their primary concern. Their overarching concern about compassionate use and the patients had already been stated on the record. So as they drilled down onto the proposal, they were asking for some additional protections. Again, in the spirit of a zoning verification, yes/no, we had identified those two as criteria. In the supplemental memo that counsel had summarized for you, there are business retention impacts described in the supplement dated July 21st that were very similar to what counsel had mentioned to you about concerns about the effect of collectives within a business environment. And I know myself, having talked to business owners, that they are concerned about having collectives as neighbors. So those are real. They haven't come to your hearings, but they are out there. So if there are any additional protections and we can broaden this, madam chair, if you wish, beyond just the heavy industrials, there are other -- or any of the industrial zones, if there's any other criteria that you feel the council should consider, now would probably be a good time. So this could be a catch-all for any other comment.

>> Staff, I had lunch today in what I believe was light industrial, and it was closes to something that I think probably would be hazardous material. I'm quite sure it was less than 1,000 feet, and I've been to another location at previous times for meals that was also close to hazardous material less than 1,000 feet. So this includes that the clubs would be -- they had to be 1,000feet away from hazardous material, but it appears as though we allow people to eat outside near the hazardous material. So could I get clarification on that?

>> Jeanne may wish to assist me with this, but it's really more of what we want to do is not put pressure on those industrial businesses that use hazardous material. Sometimes it's the sequencing of who was there first. Jeanne, you want to add?

>> I mean, there are -- we do allow non-industrial uses in our industrial districts, but within parameters. Again, in our industrial park districts we allow somewhat we refer to as commercial support, but there's limitations on the square footage. So you will find it, but, again, because there's limitations relative to how much and where, it's not going to proliferate throughout the industrial park district. Same thing with respect to our light industrial and heavy industrial. From a public eating establishment, we may allow it, but there's a limitation on the size. Again, so they don't just pop up everywhere. As laurel said, there's a lot of existing stuff out there that may or may not be legitimate or may have been establishment before we really got into experiencing the pressures that we have been on our industrial land and put the regulations in place that limited the amount of non-industrial uses in the industrial

areas. The uses that tend to be more of a concern to the industrial users are the non-industrial uses that contain a more captive population such as a school or a day care where people, yeah, their initial choice is to go there, but they're there all daylong as opposed to you going for a sandwich for a half hour and then leaving and stuff like that. So the population movement within the non-industrial uses isn't as dynamic as kind of the more retail aspect. So the churches and the day cares and the institutional uses is where that's a larger concern. From the industrial users because they get pressure on their insurers or their other people. I mean, we just had a use this morning relocate and come to find out it was because there was one of these uses in their area so they felt the need to relocate because they were getting pressured from somebody else associated in their business to relocate. You will find them out there, but we do have restrictions on proliferation of non-industrial uses within the industrial districts in a variety of different ways.

>> My interpretation is that it will -- it's a checklist process and therefore it wouldn't -- the clubs would not have the opportunity that a restaurant would to get an exception.

>> Well, again, I think all the different areas that you're looking to regulate combined, by default, are going to limit the numbers in the industrial districts within the larger council districts. So I think what we're asking you is, do you feel the need for an additional restrictions to further protect those? Even though you've opened it p up to all these districts, you still said cap of 25 and no more than 3 in any one council district. Okay, well, where is most of our industrial lands? Council district 4, council district 2, council district 7 and 3. So, again, you know, there are already limitations, but do you feel the need for additional ones given the industrial land?

>> But part of that is the 1,000feet for hazardous material?

>> That was a proposal that staff came up with.

>> Okay.

>> The council just said, you figure it out, so that's what we came up with as an option. I think Jeanne said it really well. Given everything you've talked about tonight, is there -- are there any other criteria that you feel would further protect our employment lands, our industrial lands in particular, that you would like the council to consider as part of the --

>> I think one of the possibilities is using more of a static kind of identifier like an enterprise zone. If you do start to go any business that uses hazardous materials, even that's dynamic. Maybe at a certain time there are none within 1,000 feet, but then one moves in. So, again, if you are to consider, just like some of the other kind of thresholds or parameters, the more static it is I think the easier to administer and the better meeting the goal over a longer period of time as opposed to if you use something that's more dynamic. You may or may not, you know, really realize the goal.

>> So if we don't include the 1,000 feet then that won't be part of it. If we don't right now make a motion to include that.

>> Right.

>> Okay. We have five minutes until 11:00.

>> We're in the midst of discussing this item. The 11:00 is to discuss items after that. So we would be voting on whether or not to go through sections 4 through 6, not whether or not to complete this item.

>> Thank you. So we'll continue on for another four minutes and see where we are. Commissioner Kamkar.

>> Sure. So to answer the director's question, if there's any other additional -- to any of the districts, I think since we're only talking about 25 total sites, that I think we have enough protections in there at any given district and probably two collectives don't want to be next to each other either. So for those reasons I think we have enough safeguards in that we don't need additional ones. Just an observation.

>> Commissioner Jensen.

>> Thank you. As I was listening to staff talking about the reasons for protecting our industrial lands and protecting especially the less-attractive ones that have hazardous waste or have hazardous materials on-site, I actually came to the conclusion that we probably should input some recommendation for additional protections in those areas. I don't necessarily like having light industrial or heavy industrial areas knowing that there's a bunch of chemicals that could go boom at any given moment, but it's a fact of life that those businesses are necessary and it's a fact of life that we have a lot of those areas in San Jose. I'm not sure what the appropriate distance is so I'll just toss out for a starting point a motion to incorporate the staff recommendation as it stands just for the sake of discussion. Assuming I can get a second.

>> That was the 1,000 feet from hazardous materials?

>> Correct.

>> Does that include the -- collectives within a -- zone?

>> I'm sorry?

>> There's two points there. One says not allowing collectives within -- zone or --and not within 1,000 feet of businesses that uses or stores --

>> Yes.

>> So two recommendations. You combine both of them.

>> Yes.

>> I can go for that.

>> I think the other limitation probably would take care of it, but I think it's a -- whatever we can do to light industrial lands at this point we should do it because I have another view of it. We've converged so much of our industrial land to housing we need keep as much as possible. It's a symptom -- it's like when you put an airport, it's there and no housing is around it. Pretty soon the pressure is to close the airport. What this is about is relieving pressure from those light industrials so they feel like they're not being threatened by anything.

>> Commissioner Abelite.

>> Is this limit a red to light industrial only?

>> Yes.

>> Any other discussion? Okay. All in favor? Opposed? If a restaurant can be there, then a club can be there. Okay. So that concludes --

>> I actually --

>> Commissioner Jensen.

>> Thank you. So there there's been discussion and I've raised my issues about rheumatoid and my mother and folks have been kind in helping me to identify alternative mechanisms that don't include having to smoke or cook or things like that, things such as -- and pills and ancillary medical products that would be alternative medical delivery systems. And I'd like to see us make a recommendation to council that we incorporate that, and industry seemed pretty confident that the staff recommendations or original council recommendations precluded those alternate delivery systems and that it was simply ail baggy full of green materials. So I would like to see us include those alternative mechanisms of delivery, such as balms, salves, lotions, sprays, pills, whatever those sorts of things are.

>> Do I have a second?

>> Second.

>> Any discussion? Commissioner Abelite.

>> I suspect subject to maybe county health department as it relates to pills and things like that. I mean, there's got to be some oversight if you're going down that road, I think. I mean, I won't make that a friendly amendment, but just as commentary.

>> As a seconder, there is a lot missing from this ordinance and regulation of marijuana use. The state law is not nearly complete and there has to be a lot of work. I view this as 2% of 100% effort. A lot has to go on to really regulate this. We're just kind of peeling off the paint a little bit right now. There's going to be a lot of pressure to get this done in the next ten years.

>> Any other discussion? All in favor? Any opposed? Abstaining? Okay.

>> I'm ready to make a motion.

>> Commissioner Jensen?

>> I'd like to move that we consider the negative declaration file number pp11-0039 in accordance with seek -- amending title 1 of the municipal code by amending I'm going to go with Commissioner Kline on this one, various sections discussed here to exempt a lawful marijuana medicinal -- chapters and sections of those codes to establish land use regulations pertaining to medical marijuana collectives and establish related zoning verification certificate process, including those items we voted on this evening, that include requirements -- not requiring yon sight grow but requiring grow in San Jose, allowing zoning on cn, cg, cp, without neighborhood business districts, c.o. Within 600 feet of a medical facility, h.i., li, dcl and ip, the distance recommendations to sensitive receptors that were made, the discussion on ground floor use not allowed in cp and dpi, the cap of 25 total collectives with no more than 3 per council district, the very thoughtful, thorough process, discussion, motion provided by Commissioner Abelite, zoning verification, the additional protections regarding enterprise zones and 1,000 feet of hazardous materials in the alternative delivery mechanism.

>> Is there a second? Any discussion?

>> I just want to make --

>> Sorry.

>> Commissioner Kline.

>> I was very impressed. You're going to make a great graduate student. I want to make sure the summary was a summary motion and that the actual motions that we passed is actually what's going to be taken care. I was very impressed. Great job.

>> Counsel? [inaudible]

>> Everything you noted comports with my notes. The only thing I didn't have in my notes is that you were recommending cn. I had a note that you had discussion and you took out cn.

>> Ee put it back in.

>> Okay. I just wanted to make sure. Thanks.

>> Any other discussion? All in favor? Opposed? Abstaining? Motion passes. [applause] we are done with our business. I recommend we just whip through the end here and -- petitions and communications, public comments to the planning commission on -- 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 and placed on agenda. In response to public comment, the planning commission is limited to the following options. Responding to statements made or questions posed by members of the public or requesting staff to report back at a subsequent meeting or directing staff to place the item on a future agenda. Any petitions in communications? Seeing none, referrals from city council, boards commissions or other agencies.

>> We have none.

>> Good and welfare? Report from city council?

>> Council is still on recess report.

>> Commissioner's report from committees? Norm -- San Jose international airport advisory committee did not meet, San Jose 2040 general plan update process. Commissioner Kamkar?

>> We have not met. Our next meeting is scheduled for august.

>> Review and approve snap sister from 7/13/11.

>> Motion to approve.

>> Second.

>> All in favor? Opposed? Abstaining? Subcommittee formation reports and outstanding business? Commission calendar and study sessions. I would like to make a recommendation that when we have a park meeting and maybe sooner better than later that we include the artificial turf, maybe get an expert in the area as well as the shading issue over the play structures.

>> Great.

>> Great meeting.

>> May I have a motion to adjourn.

>> I want to say thank you so much for dividing. This is really the best way to go forward. Thank you.

>> Motion to adjourn.

>> Second.

>> I want to formally say thank you. It was an honor meeting you and serving with you. It was fun to develop the relationship.

>> Thank you.

>> We are adjourned.