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>> Commissioner Cahan: 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, April 25, 2012. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking ticket validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker cards in the order received. As your name is called, line up in front of the microphone at front of the chambers. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. And 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 public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's actions on rezoning, prezonings, general plan amendments and code amendments is only advisory to City Council. The City Council will hold public hearings on these items. Let the record reflect that all commissioners are present. Except for this evening, we do not have any deferral items listed. Have we had any additional deferral items come up, staff?

>> No, Madam Chair, no additional deferral items. Then we'll move on to separately. Staff.

>> Thank you, Madam Chair. Then we'll move on to consent calendar. Consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or the public to have an item removed from the consent calendar and considered separately. Staff.

>> Thank you, Madam Chair. Item 2 ACP 11-056 is a conditional use permit to allow an existing wireless communications and the project is exempt from CEQA and staff doesn't have additional staff report.

>> And staff, I know there was some earlier issues. Did all of that get settled out? And the antenna poles are going to be tide in the way that is not requesting to be make them conspicuous. So there aren't any issues that we're aware of.

>> Greatly, thank you. Commissioner Yob.

>> Motion to approve consent calendar.

>> Any opposed on abstaining? Motion is passed with all voting in favor. Public hearing items. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda, such as to accommodate significant public testimony or may defer discussion of items to later agendas for public hearing time management purposes. 3A, staff.

>> We have a PowerPoint we're trying to load here. We'll get started here in a second. Okay. Thank you Madam Chair. I'm rich Bucuma, senior planner dispatch Planning, Building, and Code Enforcement. I'd like to call your attention to some additional letters and e-mails that we received after the distribution of the staff report. I distributed those to you earlier this evening. I'll be providing a brief overview of established zoning amendments, in San José. these amendments are intended to implement direction provided to staff by the San José city council on August 30th, 2011, they identified an ordinance to address payday lending as one of their priority ordinances for the upcoming fiscal year. In addition in February the Silicon Valley community foundation awarded the City of San José a grant to provide support for research and analysis of the payday lending issues, as well as to -- as well as for the development of a payday lending ordinance for the City of San José. Currently payday lending is not defined in the zoning code. They are currently in the area of personal services and are by right in

the commercial zoning districts with the exception of CO commercial office. In the CO they fall in the category of alternative financial services. In California regulation of payday lending and businesses is primarily done at the state level, the California deferred deposit transaction law imposes a number of operational requirements on payday lenders, these include licensing requirements and a \$300 cap on the amount of the payday loan transaction. The city may be preempted by regulating the payday lending products themselves or imposing similar protection measures that impact payday lender business practices. San José is not alone in attempting to address the payday lending issue. A number of local jurisdictions throughout California as well as the nation have already or are in the process of developing regulations, on payday lending business. There's a lot of variation in how these jurisdictions address the problem, some advertise have imposed temporary moratoriums, placed limits on the number of payday lending establishments, required the issuance of use permits as well as instituted separation requirements from other payday lending facilities as well as separation requirements from other uses that are considered sensitive. In San José specifically according to the Department of Corporations records there are currently delay payday lenders or deferred deposit originators as they are also referred to. They are generally spread out of the city, there are one in each district districts 1, 5 and 7 having the most payday lending establishments 6 and district 8 having the fewest with one. However there are areas in San José where there are -- where payday lenders are in close proximity to one another. Those areas shown in red on the map are areas that have two or more payday lending businesses within a half mile radius. Staff has also determined that in San José there is a correlation within lower incomes. According to the data over 75 per of the payday lenders in San José are located in a low or moderately low income census tract in San José. So based on the review of issues related to payday lending, as well as a community meeting three provisions as the most practical and effective way of addressing the council's direction. Number 1 would be retain the existing zoning districts within which payday lending establishments could locate, these would be the downtown zoning districts and payday lending establishments will be designated as restricted land uses, they may occur in such designated districts as independent use, but only upon issuance of a zoning code verification certificate, in most cases this should be able to be signed off within one or two weeks upon a determination that the project complies with the zoning code provisions. We're also recommending that we require that new payday loan establishments be separated by at least 500 feet from other payday loan establishments. This 500 foot standard is a commonly used in the zoning ordinance as a appropriate distance between incompatible uses and in this case will help avoid further

concentration of payday lending businesses. It will also help preserve spaces for other neighborhood serving uses including traditional financial institutions that offer a wider variety of credit options and which are more affordable. Also the prevent concentration of payday lending establishments in lower income areas, locating in a very low income census tract or within 500 feet of such a census tract. This map shows the areas that would be affected. So in conclusion, staff is recommending that the Planning Commission recommend approval of these proposed ordinance changes to the city council. This concludes our comments.

>> Commissioner Cahan: Thank you. Because there is no specific applicant outside the city's work on this we will begin with the speaker cards, and I will call up people three people at a time. And you will have two minutes to present. For each speaker card. And make sure you state your name before your comment. My first three cards, Jamie Alvarado, and (saying names) would you please come up and line up before the podium. If you wait at the stairs and come up one at a time can you that would be fine.

>> Sorry, I'm not sure I was going to be called up so quickly. My name is Jaime Alvarado. We work with low income families the lows of the low income in San José. One of the things that we're always concerned about are efforts, to take advantage of poor folks in the City of San José, and particularly the folks in Mayfair there are a number of predatory payday lending organizations doing business. There are times when the business they conduct is of benefit to the community but there are times and it's intentional, there are times when they take advantage of the community. We know that you can't deal with the business aspect but you can deal with the land use. We would like to see greater distance required between the establishments. We would like to see check-cashing businessessing included in your definition of payday lending. We'd also like to see a cap right now on the number of payday lending institutions in our area. It seems to be a business that's growing and continues to take advantage of folks in our community. I think it's something that still needs more research and needs to be better understood by the city council. Also is you to get in line with the ordinances that have been passed. In other places across the state of California who are asking who go much further than the proposed ordinance as it stands right now. Thank you all so much.

>> Commissioner Cahan: Mr. Alvarado we have a question for you from customer Kamkar.

>> Thank you, madam chair. Who would be the typical customer for these payday lending services?

>> I couldn't answer that you know analysis, the entire industry. The folks that I know though are folks who typically do not -- are called unbanked people. People who don't have bank accounts.

>> Exactly, yeah.

>> Those are folks typically lower-income folks who get paid in cash or irregularly so when they do or they cannot come on a regular paycheck like most of us so in between very often they'll look to payday lending to get by. So in that sense it's a legitimate business that provides a benefit to folks. But then in the end if they are paying expensive fees then they've been taken advantage of.

>> Yes, that was basically the heart of my question as to the advent of electronic transfer and the debit cards and you know why wouldn't they just get a debit card but I see you point about.

>> Another point is folks who are unbanked are unfamiliar with banking procedures, right. They may not recognize as easy those who are regular banking customers when they are being taken vac of.

>> Commissioner Cahan: Thank you very much.

>> I'm Ken Hanks and I'm speaking on behalf of the advisory board of the council on aging and we fully support the proposed payday lending ordinance. That's all I have, thank you.

>> Commissioner Cahan: Thank you. Ms. Coats, before you start I'm going to call the next three names to line up. Wendy Corson, Marco Polo Cortez and Peter Sago.

>> Hi my name is Jen coats and I work for advance America. Our customers are satisfied with our services. I know this because I was personally a customer six years ago. I found myself in need of assistance. I went to advance America, I was treated with respect, I got the assistance I needed, I applied to work there, I have worked there for the past six years and I'm proud to say I can now help people that find themselves in the same situation I once was. I is that you oppose this amendment and you table and reconsider the amendments. Thank you.

>> Commissioner Cahan: We have a question for you from commissioner Kamkar.

>> Thank you, madam chair. Can I is you a cross section of your customers who would tiply use your services?

>> We have a wide variety. It could be from you know a restaurant worker to a bank worker. You know, as long as you have a bank account. And the income, we will help you out.

>> So if they don't have a bank account you wouldn't be able to help them out?

>> We do have to have a check, yes. So a bank account and a job and we will give you a help with the loan that you need.

>> So if they show up with a paycheck you know they don't have a bank account you wouldn't be able to help them?

>> Correct.

>> Thank you.

>> You're welcome.

>> Commissioner Cahan: I'd like to take a moment to remind everyone to tell your cell phones off, please. Thank you.

>> Good evening, my name is Wendy Corson I'm district manager for advance America city of San José and the impact this could have on our customers and our employees of payday lenders. We provide a valuable service to thousands of individuals who, without us, would have no other option when faced with a financial hardship such as car repairs or even medical needs. We help every type of customer on a daily basis including those who make minimum wage and those who bring home six figures. We are highly regulated by the Department of Corporations and we receive yearly audits that include 100% of the transactions that are included throughout the year. We require an open active checking account for every advance and a steady source of income and our fees are very comparable to the fee that a bank customer would receive if they bounced a check. Speaking as an employee of the industry, I can say that this regulation would cause a very large loss of jobs that would take away from our medical benefits that we provide to our children and would just contribute to the economic issues that are in place throughout the State of California and our nation. Thank you.

>> Commissioner Cahan: We do have a question for you from Commissioner Kamkar.

>> Thank you.

>> Thank you Madam Chair. .

>> It is just it is listed as an annual percentage rate on the truth and lending disclosures on the agreement, that the customer signs so they're fully aware of what they're being charged for every advance that they take.

>> And then when you say regulated does the state of California set a minimum and a maximum -- not a minimum butte maximum for these rates?

>> Correct, yes. In the state of California we are regulated on the amount that the customer can advance and did fee we can charge.

>> Thank you.

>> Thank you.

>> Commissioner Cahan: And we have a question from you from commissioner bit-Badal.

>> Thank you. You say this is going to cause loss of jobs. This is not stating that you are not going to be able to open anymore, it is just putting distance and such requirements. So can you please elaborate how it's going to affect job creation in the city?

>> It may not cause an immediate loss of jobs within the City of San José, but you know if there is a regulation placed on any new centers that might open that could potentially contribute to more jobs within the city, also, you know, in the past, putting a regulation on a zoning ordinance, has led to you know, closures of companies and that could potentially cause a job loss. Not an immediate loss but maybe in the future.

>> Commissioner Cahan: You also mentioned the loss of your medical benefits. I don't quite see how that would happen if your existing office was still in place. Could you explain that?

>> Only if there was a job loss.

>> Commissioner Cahan: Thank you.

>> Good evening, madam chairwoman and commissioner i'm here representing CFSA and CFSP. I'm here to continuance of this item. You should have a letter from Ms. Natasha Fuman in your backup material. She is state director of CFSA and CFSP. She states that our continued interest in working with this planning staff and

community. Before I reiterate the ambiguities and misinformation that was presented in your backup material. As was stated earlier you do need a job, you do need a paycheck. And you also need a checking account. So we're not giving loans just to anyone who comes off the street. We do verify the checking account. There's a flat fee of \$15. There's no interest fee, there is no accrued interest, it doesn't grow. You owe \$45 on a \$300 advance. A year from now two years from now five years from now that fee still remains the same. There is no accrued interest. There is this misinformation about a 2,000 percent interest rate on that. Lastly if you do not pay there is no small claims reporting, rather a small claims -- anyone taking small claims rather and also there's no credit bureau reporting as well. So again the worst that could ever happen to a customer is that they can never come back and get a loan and I just want to reiterate that, you can never come back and get a loan. So that's their only recourse. Now to the salient points of Ms. Fuman's letter, we have we also have concerns with the exemption for the payday lenders within 500 feet of one another and then the zoning code verification certificate and the ambiguities associated and unintended consequences as a result. Again we appreciate the ability to work with you and city staff and community and address and mitigate your concerns and we reiterate our request for continuance of this item. Thank you very much.

>> Commissioner Cahan: We do have a question for you from commissioner Kamkar.

>> Thank you, madam chair. The 45 dollar fee, how long can they hold onto that loan?

>> We encourage folks to come in within two to four weeks. We will work with you if you can't. We will create a payment plan. We have done that within 6 months.

>> Say they what rates would that translate into if it were --

>> I can't tell you off the top of my head what the exact interest rate is. It is \$255 and a \$45 fee so it comes up to a maximum of \$300.

>> Understand, quick calculation that is more than 100% interest rate per year. I know it's paid in three weeks but if you annualize that over one year, it seems to me that would be more than 100%.

>> If you're looking at a debt rate sir. But we're not charging an interest rate. It is a flat fee per every \$100 and it's regulated by the state of California that way.

>> I understand, thank you.

>> Commissioner Cahan: And I have a question for you from commissioner Yob.

>> You indicated you had an issue with the grandfather clause. Would you explain what you meant by that?

>> We want to clear up any ambiguity that any of the existing establishments, payday lenders would not be subject to this existing ordinance, they would be grandfathered in and not have to go out and relocate.

>> Thank you.

>> Commissioner Cahan: Commissioner Abelite has a question.

>> Where these locations may occur and how we zone it and not whether we should do this or not. That being said I still am now curious about your operation not your operation but if somebody has a \$300 loan, tell me again what is their maximum recourse that they would suffer if they strictly walked away from you? I think this is outside of our purview but since we opened the door I'm curious.

>> Very good question. There is no recourse from the industry. You just can never come back. I burp, the only recourse rather is that you cannot come back to that same place. And for example if it's advance America you can never come back to an advance America and get a payday loan.

>> And so you already said they don't go to collections, no collection fees attorneys.

>> No.

>> Thank you.

>> The small claims fee itself is equal to the amount of the loan.

>> Okay, thank you.

>> Commissioner Cahan: Thank you. We have no further questions. I will remind the audience one last time to turn your phones either to vibrate or off. And just before you begin I'm going to call the next three names. Elana Molina, Kaira Kazensus and Richard Alexander.

>> My name is Peter Sago, I'm a resident of San José, speaking to you on behalf of the senior organization at AARP. At the request of the state leadership which represents about 3 million California seniors. We congratulate San José for moving in this direction. It's an important social direction. It's good. But we do think that the proposed, that the staff proposal could be and should be strength bed. Now various speakers are going to suggest specific things here. I'll stick to two because I have a limited time. We think we should also cover check cashing outlets. They are equally as exploitive and we should note that the county is considering an ordinance next Tuesday before the Board of Supervisors and their ordinance will offer both. And in many occasions these entities are covered in the same location. So from a regulatory standpoint it amakes sense to do that. Secondly, we think the proposed 500 foot separation is not adequate. If you have looked at other cities that have already passed ordinances, most of them have chosen a thousand feet, East Palo Alto has a quarter of a mile. We don't think that's adequate. We would like to boost that up to a thousand feet pain more. Secondly, there should be separation between certain outlets and bars, liquor stores, community aspect maybe others too but that's the critical ones. Those are our main suggestions. Now I want to respond to a question you asked. The targets here are mostly low income people often of color. And can you see from the staff report that these places are

concentrated in low income neighborhoods. That's not an accident, that's the target. So it's one of the questions you asked. I'll stop there because I have limited time. Thank you.

>> Commissioner Cahan: We have no questions at this point, thank you so much. Good evening commissioners, my name is Lee Anna Molina. Statewide nonprofit financial justice organization advocating fair and equal access to banking credit and other financial communities of color. Prioritizing this study and ordinance and also participated in the community meeting back in March. We've worked with community are you groups and elected leaders in the cities of Oakland, San Francisco, oceanside and Sacramento as well as other jurisdictions on land use policies to address the overproliferation of both check cashers and payday lenders. CRC is part of the coalition of direct service agencies, advocates labor unions, people of faith secure and where residents are protected from predatory industries and have better financial opportunities. We're here this evening to support the ordinance to amend the city zoning codes to restrict the expansion of the payday loan industry, the ordinance that San José is proactively considering is a positive step to fulfilling the safe livable and vibrant community. It's important to recognize payday lending as a sensitive land use given the well documented financial dangers of repeated payday loan borrowing. These are not just typical personal services. Payday lenders aren't like local coffee shops or dry cleaners for example. These are businesses that rely on the predation of vulnerable communities and we are pleased with the staff's recommendation to prohibit payday lenders in low income census tracts. However, there are ways we would like to see the proposed ordinance strengthened which my colleague will speak to enacted in financial department of Corporations. There are 145 bank branches which means there are roughly one payday lender for every four banks in San José. There are more than enough payday lenders to meet the needs of San José residents and consumers. Taking steps to limit payday lending in San José will make the city a tool at its disposal to put some common sense boundaries around businesses that create financial hazards for individuals and families. Thank you for your consideration.

>> Commissioner Cahan: Thank you.

>> Hello, my name is Kira Kazansis law foundation of Silicon Valley here in San José. And I'm also a member and our organization is a member of the coalition against payday predators. I speak on behalf of 40 nonprofit

organizations that are endorsing members of cap which we call the coalition against payday lenders, and I speak on their behalf when I suggest that the ordinance as proposed is a very good start and we are very supportive of the item behind the ordinance. But we think San José could take a leadership role among cities in the state of California and propose a stronger ordinance. And the things -- some of the things we've already heard of include check cashing establishments, most if not all cities in the State of California that have regulated payday lending have also regulated check cashing state of California rather than 500 feet and we would like to see distance separations between payday lenders and other sensitive uses like bars lending store. We would like to see a numerical cap on payday money stores and require a special use permit so that permit applications come before this body before they are allowed to add another payday lending store to our neighborhoods. One way you know among the list of things I just mentioned that will solve many of these problems and be perhaps a cleaner way to address this is to put a cap on the numbers and that is the gold standard across the country. It's not something that cities in California have done yet. But many cities in other states have set a cap. And actually, what they do in order to make clear their feelings about payday lending and to control the growth of payday lending is they set caps that are lower than the number. And we think that's the gold standard and that's where San José should go. Set a cap make it lower and that means if any payday lenders --

>> Commissioner Cahan: We do have a question for you from commissioner Kamkar.

>> Thank you, madam chair. You seem very knowledgeable about that. One of your comments made me aware of house resolution 1909. Understand in the House of Representatives there's a resolution that is being talked about that take the control out of local places and make it a national just like the banking rules you know. And have you heard about that and you know do you know anything about that?

>> I'm embarrassed to say I don't know the number and I think Lione Molina may know the resolution you're talking about. I can tell you at the federal level the regulations one is for military members and their families. There is a 36% rate cap for payday lending for military members and their families.

>> Annualized rate?

>> Across the country. Yes, annualized interest rate so this is to be contrasted with 459 which the California law allows and which every payday lender hits. This is a difference, it's a giant difference. It hasn't yet been applied across the country. If it had I wouldn't be here today.

>> Good thank you.

>> Commissioner Cahan: And I have an additional question for you.

>> Yes.

>> Commissioner Cahan: I understand that your suggestion was the cap lower than the number of existing. And I'm wondering if you had a specific number that you would recommend.

>> You know, I'm hesitant to do that because to be honest, my number is probably quite a bit lower than would be palatable. But I would say that if you know looking at some of the very strong ordinances in other states, they're looking at something for one pay day lender per 35,000 or 40,000 peep. Ours is somewhere Arnold 1 per 20,000. I think if we got closer to that threshold, we would be in much better shape. And really what this does, it doesn't close any current payday lenders. People talk about jobs. That's an untruth and it's a misrepresentation. Because none would be closed. It's just not a part of this ordinance. What we're talking about is if this one does close, a new one doesn't reopen unless it's under the cap. And we have enough of them. It's very easy to get a payday loan and we want it to be easier to get a nonprofit and get financial assistance. We want it to be he easier for a different loan model to be created in San José. We are also working, our coalition is you see us here but half of our time is spent on working on getting those models up and running and trying to encourage the credit unions to give affordable small loan products, the banks to give affordable small loan products and making kind of space and giving information to penal so that they know about the existing alternatives and find it more convenient or at least equally convenient to go to something that has a much longer term of helping their family and then taking a loan for two weeks that is not \$300. That's \$255, that's the cash they

get to take home and they got to pay it back in two weeks and they don't have it. That's why buyers in California on average take out ten loans a year.

>> Commissioner Cahan: How close are you to a viable option in our area?

>> So there are several credit unions already that actually do offer loans. And we're about to loan and look for it please, it's a bus campaign that gives a phone number that says, you have a choice. And what we're trying to do is tell people then when they call 211 which is the United way number, can you go to this credit union, this credit union, this credit union, 18% loan, 36% loan. You know, sorry, ways to work has a car loan that's 6% interest if a person is low income and needs a car to get to work. Catholic charities has IDE savings accounts where you can save a little money and pull it out. Self help I think you'll hear from some of our social service providers about what they can do oop which is somewhat like a payday loan that requires a little more work sometimes requires a little more thought that sometimes requires saying no. We're not saying people will make a choice, they always will, they'll make a choice for themselves but we don't need to make it so incredibly easy to make a choice that is going to hurt their family in the end because that's all that's going to happen when they get to the debt cycle.

>> Commissioner Cahan: We have another question for you from Commissioner Kamkar.

>> Thank you, madam chair. Two speakers spoke before you that they need to have a bank account a job and a paycheck of course.

>> They don't have to have a bank account they have to have a check.

>> If they have a bank account and they have a paycheck am I wrong to thinking that the only reason they wouldn't deposit that check into that bank account for them to pull it out is because they don't want to report it? Because you know what other possibility?

>> No, sir, no, sir. There is a confusion between check cashing and payday lender. And they're often in the same store so it gets a little confusing. The unbanks uses check cashing and they pay a lot of money for check cashing. If you go to self help which is a credit union on the Eastside you can get a way cheaper check cashing product and it's way better for our community. That is check cashing, they are afraid of banks there are a lot of reasons why they are, they are intimidated up friendly it is not quick.

>> What about payday loans?

>> Payday loans, you have to be able to write a check, it is legal check cashing. I write a check that I know will bounce. Otherwise you would use the money. You have a check that is postdated, you give it to the lender they cash your check. So you have to have a bank account. That, and there is some confusion about that. It is true though that the folks who usually go to payday lenders, they definitely find that service more convenient than a bank. And some of our banks are now seeing that you know they can charge these extremely high interest rates, and some of them have now payday loan advances associated with their checking account. They're about 100% APR cheaper but they are still very, very expensive. We don't like those either but you all aren't deciding about those today.

>> Got it. Thank you for the explanation.

>> Thank you so much.

>> Commissioner Cahan: Thank you. I'm going to call the next three names. Almas Nigosh Alma Narvado and David Sharplo. Please line up.

>> My name is Ricky Alexander and I'm here tonight representing sacred heart community service. We are an anti-poverty organization that has the bold vision to create a community united to ensure that that every child and adult is free from poverty. We provide essential services to over 50,000 people annually. We also help people work towards self-sufficiency through education program assistance with the job search process, financial literacy

training, assistants with housing as well as leadership development. For some of our customers we are an organization of last resort. For never thought they need us for assistance. Commissioners, these very same families are payday users they are students, daughters, mothers, fathers trying to provide for their families or simply trying to get through school. We know this is an agency because we talk to their families about their payday experiences and have surveyed over 600 people individually. As I said we provide financial literacy. We walk with families to help them repair their credit after listen and try to provide alternatives when we hear that families have taken out payday loans in the past and regret the experience. We are doing our part. We are even engaging families in advocacy so they have the opportunity to make their voices and experiences known as you'll hear tonight. Tonight is what you're able to do. Knowing predatory practices happen in our own backyard what are you going to do about it? We firmly believe families should be given clear information from financial institutions. Anything less is immoral and irresponsible. Should families not be able to pay their monthly bills, any industry that steps up to pay take loans is amoral and needs to be limited. A strong ordinance that would place reasonable regulations on the payday industry is a step our city should take. Let's make San José a leader in this issue and join Los Altos and the county of Santa Clara in adopting strong curbs on this abusive industry.

>> Commissioner Cahan: Thank you.

>> Let's make San José healthier more vibrant --

>> Commissioner Cahan: Thank you. I have a question for you. Have you seen any of your clients come in payday lending place? We had a previous speaker say there was no reporting. I just wouldn't wanted to know what your experience was with that.

>> Payday loan establishments themselves do not check cycle of debt that this industry traps them in very well leads them to the destruction of their credit down the road. That's very common of what we've heard from our clients and customers.

>> Commissioner Cahan: When you say destruction of credit it is from them not having money and taking out money elsewhere, is that correct?

>> Yes, it's because they are unable to pay and the interest rate that continues to accrue it's just too high and that is something that they're unable to pay back within the two week repayment term so then it continues to accrue, a lot of people get set to debt collections and that will lead to ruining their credit.

>> Commissioner Cahan: So am I hearing you correctly that the payday lending that is sent people to debt collection?

>> Yes. Oftentimes just to add to that, the payday lenders will not offer installment plans or ways to pay back in increments. They will send to debt collectors who sometimes will demand the full amount, and oftentimes, we've heard from our clients have even raided the bank accounts of people once they receive a little bit of money, to take that money back and pay back the loan. And that really has hurt people. In one case, one gentleman his situation was that he really needed that money to get by and just buy food for the the week. And instead of allowing him to pay back in increments sacred heart asking for food services in addition to the job training and everything else we were working with him on.

>> Commissioner Cahan: We have another question for you from Commissioner Kline.

>> Just a little clarification on the cycle of debt. I understand there's limitations of \$300 et cetera. But on a cycle, do you see getting around those limitations and is that basically how a cycle occurs where they basically can try to gain, they're so desperate they are trying to gain in the system and really get into a enormous debt situation?

>> Exactly, is the fact that you can't take out an additional loan from the same payday lending establishment that gave you the first one. So then what people do to kind of get around that in desperate situations is go to a second one to try to pay off the first in many circumstances and then a third one to pay off the second and the first and it just spirals from there.

>> And are these institutions owned separately or combined in corporation?

>> So I think some of our other members from law foundation would speak more specifically to that but as far as I know it's the individual location the that the individual can't go back to..

>> Okay so they can actually go and shop around and go one block to the other?

>> Some of them are very close and especially within these low income census tracts and what happens is there are these two or three blocks away with the city study and so people have easily found them closely nearby so kind of dangerously convenient.

>> You can go to one store, get 250, go to the next store 250 and the next store get 250 and all of a sudden you have to pay that back in a very short period of time?

>> Yes.

>> Commissioner Cahan: Thank you very much.

>> Thank you.

>> Hi, my name is Evelyn Bonado. CTC, career depression in 2007 and I've been basically unemployed since then, circling with low income for years and then ending up in an abusive situation abandoned being unable to pay my rent. I ended up at payday loan's front doorstep in San car lows street on San José. I didn't feeling very desperate and I needed to come up with money to pay my rent and all I remember seeing on the door was easy loan terms in the window and without even knowing what I was doing or thinking too much about it I ended up inside the loan place asking for a loan. They asked me how much I wanted to borrow, I said at least 200 for at least one month, they made it exceptional service, I'm on Social Security, but I have a banks friend next time

they'd give me \$20 if I could go out and find a friend to bring. That month went by fast and the next month I was dealing with the same dilemma even worse, after months of struggle and stress I finally lost the battle and ended up in a homeless shelter my experience with these people was basically traumatizing because of my situation. Granted I knew it wasn't a great idea but I was desperate. I didn't have any family to turn to, basically recovering from a nervous break down at a dead end then you know how I felt and have felt for a very long time around this issue. It's been going on for a year now and I finally just recently got the debt paid off but I tell you I borrowed \$300, 45 interest on top of that per month and this has been going on over a year. So I've more than paid back the money. Life isn't easy when the chips are down and an unequal society of bandits than givers in sacred heart. If take advantage. Thank you.

>> Commissioner Cahan: Thank you for sharing your story with us.

>> Thank you.

>> Good evening, thank you. My name is Almaz, I'm the director of step out Silicon Valley and Catholic charities of Santa Clara County. Consumers seek out payday lenders because they have a need, and it's an immediate need, they don't have any other option. I think you just heard it from the person before me. They have no option because the system has not provided them the option. My suggestion to San José is that there is an incredible opportunity that you need to have, there are so many different communities you've heard from them. I do encourage you to try to teach all people to have microsaving. Microsaving is happening. Africa, Latin America and southeast Asian countries. I do not know why the ability the resources I do encourage for us to start to shift the talk from lending to saving. Whether they have a saving, they have an opportunity to be able to pick out some money, the \$300 that they go out to get \$250 of their own money. I think that's the most difficult thing that people are going through, and it's very difficult for them to seek. I talk about this because I see this happening at Catholic charities. And there's a tremendous financial literacy that's happening at the organization and many different organizations including sacred heart services and other community organizations in San José where they actually are encouraging individuals to save money so they can get and they have an individual saving account. I think this is the way we need to go, because we will continue to see people who need the money, in immediate need

and they will continue to go if you don't also have some kind of a cap on the 3838, in my opinion is too many of the payday lenders. I would rather see that there are another number, or a matching number of places where there's a microsaving or even a microlending, at a much lower rate. And there are some current unions providing that. But many of the people we serve have no knowledge of these organizations. So thank you and I hope you continue to work with us and we hope to work with you.

>> Commissioner Cahan: Thank you very much. Call the next three names. Shane virtue, Bob Preminger.

>> Ace alliance of Californians for community empowerment. We are a community organization made up of low and moderate income families of over 500 members living here in San José. We're here today because many of our members have taken out payday loans. One of our members who lives in the Washington neighborhood of San José couldn't be here today. She lost her job, as a result lost her health insurance, ended up having a stroke, and she went and got out a payday loan to pay for medicine and food. We feel like it's unfair for predatory payday lenders to take advantage of low income people when they are at their most vulnerable and desperate. We have also heard stories of our members being trapped in a cycle of debt when they are forced to take out loan after loan because they can't pay off the previous loan. We also think it is fair and reasonable for members of the community to weigh in on whether they want yet another predatory payday lender in their neighborhood, just like they might want to weigh in on whether or not they would want another liquor store in their neighborhood or another marijuana dispensary or adult bookstore down the street. So we urge you to support the antipayday lending ordinance. Thank you.

>> Commissioner Cahan: Thank you. We have a question for you. Question from Commissioner Kamkar for you.

>> Thank you, madam chair. My question is let's say people who use these establishments know what they're doing, okay? So they see the high rate, they go okay you know, it is what it is. If we limit their access to these, you know, what other options are we giving them? So I can understanding keeping the predators out, otherwise I don't think the predatory options will go way. What other options do they have?

>> There are other options out there. One of resource directory. It is not necessarily a loan, like a \$255 loan, but there's rental assistance money out there can there's places you can go and get food, there are places can you go and get clothes and things like that. We do think there needs to be alternative lower cost small dollar loan products. And so yeah, a number of the members of the coalition against predatory lenders have been working on finding you know, solutions. And alternatives to this and working with people in the credit union community and others.

>> Excellent. That's a good answer. I guess now the question becomes how do you educate so people know these options are available. Thank you.

>> Commissioner Cahan: Mr. Sharp and a custom his allies met with me and he only discussed what he presented at this very moment. Thank you.

>> My name is Shane Randolph virtue. I've received one of those credit loans and found, I took out 400, I had to pay back \$11750 back in 29. That was just too horrible to pay back. And why did I need the money? I needed gas to get to my job. And also, some food if I was hungry. So doing those notions, I could not like payday loaning services. I heard some really wonderful information. I plan to use it personally, I hope you all use it too. So therefore, I hope you do pass this ordinance.

>> Commissioner Cahan: Thank you.

>> Commissioners, my name is Steve Premenger, I work with work partnerships, U.S.A. I'm essentially a social worker. payday military personnel single parents and immigrants. Payday lenders specifically target working people. About 75% of payday loan borrowers in California have incomes, that come from a job. Working partnerships recommends that the city put a numerical cap of payday lending stores that lower the current amount of vendors out there. There is little redeeming about these establishments and we should not allow them to be replaced if they close.

>> Commissioner Cahan: Mr. Premenger we have a couple of questions for you. Before that I'll call the next three speakers. (saying names) thank you for allowing me to do that. Mr. Kamkar.

>> Thank you, madam chair. Should thoir 20, whatever the commission recommends to the city council. Do you support an additional recommendation that the new payday loans can go above this number if they voluntarily limit the interest they charge or interest they charge to something that's much more reasonable as an incentive you know for them to operate? What do you think about that?

>> I personally think that people in need of funds like this learn issues like financial literacy, become more skilled at finding appropriate vendors, that they work with credit unions, and other nonprofits, so that they get out of this cycle that has them coming back again and again. Again, I'm a social worker. I see janitors, hotel workers, construction workers, in-home support workers. They're barely making it as it is. And so they feel they have no choice. Having more choices, as well as a strong educational program, I think is a great antedote to this problem that we're discussing.

>> Okay, thank you.

>> Commissioner Cahan: Mr. Premenger, I know working partnerships does a lot of statistical analysis. I wonder if they came up with a recommendation of what the cap would be, if they would put a cap on it?

>> And they did not send a statistician today. We think San José have plenty of establishments now We think we could half the number and still have the service available for the people who haven't availed themselves of the opportunities to go elsewhere.

>> Commissioner Cahan: Thank you. We have another question. Commissioner Abelite.

>> I'm pretty concerned about instituting a cap based on some number that there's no science to. In my opinion, instituting a cap is just going to divert it to an underground oloan sharking industry and those people are going to be suffering anyway. Does your coalition have an opinion as to what I'm saying there, do you think that's true or not or --

>> Well I hope it isn't true and I think you hope it isn't true. The best way is for people to get educated, how to use money, use various services, whether they are more traditional loan opportunities working with credit unions and elevating their ability to understand how to use money how to hold on to money how to watch their purchases so -

>> I completely agree, I just -- I'm fearful of pushing these issues underground, and then it's not regulated at all, and it goes rampant. It's probably happening anyway.

>> Well, you're right, there's a huge underground economy which causes innumerable problems on all levels including funding to our school systems and elsewhere. So I think if it were to go in that direction that would only exacerbate the problem especially for those in need of critical services so they could get back on their feet again.

>> Okay, thank you.

>> My name is K D. Cherbo.

>> It's not a good deal the average borrower pays \$sen 93 for a \$325 loan, driving borrowers deeper into a cycle of debt and poverty. however it is a trap. Also accordingly to the center for responsible lending 99% of borrowers are repeat borrowers and 91% of borrowers have taken out five or more loans in a year. If opponents you take out every two weeks for the typicals 15 fee that results in over the course of a year a 390% APR. This is not compared to the 25% APR you see in credit cards or other things. It's not as I've shown the staff it drives people deeper into poverty and also have local government because people have less tax revenue for that to go into it. Can our opposition present data on how payday lending betters people's lives? I haven't seen it. I personally

have no ties to payday lending. I immediately heard about this trap designed at their moment of greatest need and it is been testified to tonight. Thus actions must be set in place to closely monitor this dangerous financial product. In the uncontrolled. I hope you can all can continue to lead other kinds by example as San José has done recently in other areas and I thank you for your time and please recommend the ordinance strongly including the caps to payday lending to city council. Thank you.

>> Commissioner Cahan: Thank you.

>> Hi, everyone I'm Karen Domas, I'm a citizen of San José and a volunteer for sacred heart. I've been a citizen for four years now I previous come from Ohio where there's some rigorous against payday lending right up the street from my home and I'm very concerned. I didn't have much knowledge about payday lending agencies until I heard about sacred heart and this ordinance and was quickly educated from the stories of people in the trouble that the payday lending agencies have really brought upon everyone. And you know I think that by allowing for this to increase we're really setting up our future for failure, where we're setting aside this easy, easy way out for children and the future of San José. And I really like to see a stop to the number that we're setting up our community to have. I'm really passionate about education on the payday lending. And you know I'd love to see this step taken. I think it's a great step in the right direction. I think that we should see something in the future in the way of education on options, alternative options to the payday lending some of which you know we've talked about and sacred heart is such a great place to get some of those options. And I think having that broadcast and post marked would be great just like we do on cigarettes. I think it would be great to do something similar for something like payday lending. So I appreciate you guys taking this ordinance into consideration and think that it really is a great step in the right direction. Thank you.

>> Commissioner Cahan: Thank you. Going to call the next 3 names. Rob walker, I'm sorry I'm seeing some repeats here so -- Christine Wasser, Anna Renoso.

>> That would be me.

>> Commissioner Cahan: That would be you. I don't know why we have all these repeats in here. Ann Marguerite.

>> Good evening. Anna with neighborhood services of Silicon Valley, we're a HUD approved nonprofit agency in the Silicon Valley home ownership among the prevention counseling. Or the many of the homeowners who are having financial trouble and distress, their issues are unfortunately deep and aggregated by payday lending. Oftentimes they've gone to a payday lender as a means to make the mortgage payment and later on that debt gets counted against them whether they try to apply for a modification. That compromises their financial viability. 72% of our people we counsel are in low income and low income neighborhoods. We definitely support the ordinance but feel it could be taxicab a step further, to include check cashing organizations. exhausted the payday lending they also go through check cashing as well which causes additional financial distress for them at times. Require a greater distance between them. Many times, homeowners do not have access to the information they feed, and therefore, go to whatever's nearest to them, in moments of desperation. We also feel that being able to require conditional or special use permit for new payday lending establishments. We feel that there is enough already as it was mentioned before to suffice the need of the residents. And many times, it's just getting them into financial distress. And the road to economic and financial recovery for many of these communities will take a lot longer than originally planned. If this continues. Thank you.

>> Commissioner Cahan: Thank you very much.

>> Hello, thanks for your time the. I am a small business owner. Have two stores. I've been writing down rebuttals to many of these things. I got up to point 13 and I realized I just needed a point zero to tell you why I opened my stores. I opened my stores to help people. My wife and I talked it over. We said you know, there's people, there's different socioeconomic stratas, some people I know write a check against a margin line. My parents sometimes when I was growing up had a line of credit on their house. One time my dad took the car down to the bank and got a loan against the car. This is in small town Wyoming. I found out wow, I'm young collegegrad, I can get a cash advance on that. Now I've got a more steady job my bank will give me a signature loan. I found out this socioeconomic strata, they're doing great to have a bank account open. That is an employment for a lot of my

customers I'm helping out. One of the things used here it's not a check. It's funny I'd love to tell you about the law, we get the audits, it's like the deferred deposit transaction law, we know that check kiting is a very bad thing. There's criminal penalties for writing a check when you know there's no money in the account. We know the State of California is hard core on bad checks. The minute you walk into my store one of my two stores and you say rob, I want to take out a payday advance? It's not a check. It's a deferred transaction instrument. There's no criminal penalties, if you know there's yes Rob we're doing good. And I take it into my pocket with my wife screaming at they about our college fund and say buddy here's \$260. You've been hearing \$250 a lot but the state of California regulates that number to \$255. You know what we do? I reached reach into my pocket and I say buddy it's tough buying this transaction from me, I know you don't want to be here, I know it sucks to be you, here's five more bucks, let's get this thing paid down. It wasn't two weeks ago I was behind the glass and I said to a guy hey if you only need \$150, don't be putting down \$250 on that thing. This is not good, you need to get out of that stuff. Another quick story I was at an ice cream social --

>> Commissioner Cahan: Your time is up.

>> Do you have any questions?

>> Commissioner Cahan: Looks like Commissioner Kamkar does have a question for you.

>> How would you feel if your kid uses her hard earned dollar or his hard earned dollar.

>> Very good question.

>> And you walk in and tell them you pay --

>> One of my tellers had a kid hitting the college age and he talked to me and he said rob, before I worked here you guys was evil. My kid just bounced a check for \$30. Do you know what he got nailed twice in two days? Bounce fees. And I've changed. I've actually told my wife I've got an 11 and 13-year-old at home. I told

both my boys you ever get ready to bounce that check and you know you're going to bounce it hey, take it like a man, get a payday advance, it's cheaper. It's two weeks. You get until their next paycheck, teachers, they get to their next monthly paycheck. What's the bank going to do for you? Bam bam.

>> Second question for you do you report people who don't pay you back?

>> Do I report them? That was one of the problems. You mentioned the credit destruction correct?

>> Right.

>> Okay. We have tried going to collections. It just doesn't work. The collections agencies, for \$300 they cannot add more fees. California deferred deposit transaction law says no adding fees so they just get a part of what they collect if anything. So they don't move very fast. I end up bringing them all back in house and calling them up. You're right we can't add fees to had a. I just talked to my manager we have someone who skipped out on us in 2005 just pay off. We got \$315. So talk about an APR, we're talking at least five, six years on a loan, had one guy go to United Arab Emirates, I said hey look like you're doing good now, he said yes let me wire that you money.

>> Commissioner Cahan: we have another question by commissioner bit Badal.

>> How is this ordinance going to affect your business? You have two businesses.

>> Yes, that's a good question. Freedman's is all about i'm afraid it would turn -- so one question is I don't know if this happens on lease renewals. So then it really is a job problem because if my lease renewal comes up and I'm within 500 feet, oops, sorry you have to move. I don't agree with the 500 yard ordinance you've already got somebody doing this here. He says yeah you can't come in here because I signed an agreement with him. So in item law we already have guys saying you're not going to be within 500, a thousand feet. Plus who wants to open

up a business across from the next guy. A lot of that is legacy, a lot of that is liquor source stores. I don't know if there ordinance as stated would actually put me out of business. If it does effect me onto reups equps.

>> You got your 38 start auction boys. That's not cool you know. I think there is a mathematical formula that truth be told I'd love to see all my customers go away. pay you back. I say I know it's tough. They walk in I look at their bank statements it says cable TV it says alcohol that oh guys if you wouldn't drink you'd be better, you vice president partying it's Friday night. Okay well I'm behind the glass helping you out, see you ya, see you in two weeks I hope.

>> Commissioner Cahan: It sounds like you have a lot of concern for your clients.

>> That's why I opened it.

>> Commissioner Cahan: And that's great and perhaps you might want to open up with some of the folks here who have some options for being able to display some information in your shop because I know you're a concerned business owner.

>> It would be great.

>> Commissioner Cahan: Thank you.

>> Good evening. My name is Christina. I'm a district manager for a company called check into cash. First of all I noticed the ends in other meetings before everybody was always focusing on the fact that we're predatorial and we're going towards people's low incomes. I've been in this business for seven years. I help everyone in every walk of life. I help everybody from business owners to schoolteachers to Social Security life option if life happens to them. Unfortunately, with our economy we've had a lot of people have had -- their credit has been destroyed because of losing houses and whatnot in their license. And you know our company does not require that you have -- we don't do a credit check so we don't require that you have credit so we're giving somebody a second

chance. Somebody who if you go to a bank I do understand that they do have loans and things like that. But if you go to a bank they're most likely going to help you if you only have no credit or good credit. They don't really shine to the people that have bad credit. And what is their alternative or where their alternative? Not only that but we encourage consumer responsibility. As he said the gentleman that spoke before knee, we encourage people step down, if you don't need it, don't take it. We want you to be able to pay us back. There's always going to be bad experiences in business. There's always going to be those customers who walked away with bad taste in their mouth. It's the same way you get your car repossessed. At a minimum you're going to go our company does have outside collections but again there are no other fees that are attached to it. If we do send your account to collections that's the worst that's going to happen to you. Whereas there are a lot of different products that we have as well that will help our community. For instance my company not only do we do our western union so people can pay their built payment services we do cash checks and I'm sorry but if you --

>> Commissioner Cahan: Thank you.

>> Okay.

>> Councilmember Campos: Okay, seeing no questions, thank you. I'm going to call the next three names. Melissa Morris, Christina Luna and pat Krakov.

>> My name is Ann marcort and I'm representing project sentinel a nonprofit agency that represents and mortgage counseling services in the City of San José. For me, this issue boils down to and I'm very glad that this ordinance is being recommended but it boils down to me of what's right and what's wrong. And what's wrong is to charge such high amounts of money for a payday loan or for check -- cashing a check. It's just wrong that if it is \$255 loan and a \$45 charge, whether it's a two week, three week, six week, eight week pay back time, we know what that interest rate comes out on an annualized basis and that's wrong and it shouldn't happen and there ought to be a law against it. I also would like to see the City of San José have a policy and a practice of not doing business with entities that charge such high amounts of money to people who are in desperate straits so that's it and thank you.

>> Commissioner Cahan: We have a question from Commissioner Kamkar.

>> Thank you, madam chair. Let's say I agree with you that these are predatory lenders. The alternative is to go to a bank and as the person before you said, the check gets bounced, they pay maybe twice this amount in like bounce fees.

>> That's right.

>> So I see what you're trying to do but you may end up hurting them even more. Now this may educate them you know which may be a good thing. But what if they're really desperate? I mean we don't want to do something to hurt people already hurting.

>> We need to be working on those options that have been mentioned. But in the meantime if we are going to give people money, if we are going to advance people money it still shouldn't be done at the exorbitant predatory rates.

>> Right, I mean I agree. But if the alternatives were -- not providing an alternative just giving them lip service, you know, I don't think me or my colleagues are interested in that. We want to come up with true you know recommendations you know, so would you do something with the banks you know say you guys cannot do this thing either?

>> I would say let's do something with the banks, yes.

>> Okay okay, I just wanted to is your opinion on had this. Because to me we got to be realistic. Thank you.

>> Commissioner Cahan: Thank you.

>> Good evening. My name is Melissa Morris, and I work at the law foundation of Silicon Valley a coalition against payday predators. I'm also a resident of something. And many of my colleagues have already spoken and explained, our position on the ordinance that overall we support the draft ordinance and think that it is thoughtful and well done and that we also have some suggestions for amendments. I'd like to speak a little bit about the framing of payday loans. And payday loans are often framed as something that people take out for emergencies. However in California the average payday loan borrower takes out ten payday loans a year, that's almost ten a month. And has previous speakers have said where somebody takes out a \$300 loan, they get \$255 and pay a \$45 fee. While that's framed as a fee annualized basis, it is 459%. Most people have to repay their payday loans in two weeks because that's how often people are paid. Even hoe the law payday loan this pay period can't pay it back the next pay period I can't go to the same payday lender to take out a new loan to pay back my old loan. There is no law currently in California prohibiting me fromming take out multiple payday loans from multiple sources or going taking out a payday loan paying it back in time and taking out a new payday loan immediately after. You don't need to be employed to take out a payday loan. You just need to have a regular verifiable source of income. So many payday loan unemployment insurance benefits or disability benefits. Finally, payday loans are not an alternative to bouncing checks. The reality is that many people who take out payday loans face bounce check fees as well and I'm certainly not going to be justifying banks charging bounce check fees. I see that my time is coming up. Does that mean it's done?

>> Commissioner Cahan: Yes, your time is up.

>> Thank you.

>> Commissioner Cahan: Thank you. We do have a question, Commissioner cam.

>> I'm sorry, so what would you suggest, you know you wouldn't be the one to recommend bank charging fees so what is your recommendation to us?

>> With respect to -- banks or alternatives to payday loans?

>> Yes, with the -- with permission of the chairwoman I wanted to see her finish her statement if she could do it in 15 seconds.

>> Okay.

>> Can you finish it?

>> So taking out a payday loan or having your check bounce and be charged amounts check fee for a bank is not an either-or proposition. The fact is the fact you lend the payday lender could cash it bounce it and then you're facing both the payday loan fee and the bounced check.

>> Would the payday establishment get charged a fee for putting that check through? You know I mean if it gets bounced? I know the writer of the check gets charged. But would the establishment get charged a fee too from the bank?

>> Not that I'm aware of. But I don't actually know the answer to that question. I'm sorry.

>> All right, thank you.

>> Thank you.

>> Commissioner Cahan: Thank you.

>> Good evening. My name is pat Krakov and I'm here representing Silicon Valley community foundation which is a public charity that seeks to advance innovative solutions better place. We believe that payday lending qualifies as one of the most challenging problems and that we can strengthen the common good and improve the quality of life if measures are taken to curb the practice here in San José. Enhancing economic security for vulnerable

families is a key focus of our grant making and public policy work and support movements to limit payday lending is a critical element. We want to support hard earned money not communities where fringe financial businesses charge skosh taint interest rates for worse off. We applaud the steps taken by the City of San José to craft an ordinance to curb predatory lending. Especially with regard to prohibiting new establishments in very low income neighborhoods. We think there is room for improvements however off open three key elements that have already been discussed that are check cashing and treating payday establishments like other special use businesses such as bars and requiring a conditional use permit for new establishments. We think the city has an opportunity to be a leader on this issue by adopting these recommendations and already there is strong momentum, land use ordinances and moratoria have been enacted all over the Bay Area as well as other parts of the state and nationally and you've heard the litany of local advertise from San Francisco to Los Altos to the county of Santa Clara and the county of San Mateo's county Planning Commission is set to consider a proposed ordinance actually on May 9th. We believe that communities need to use every tool to they're disposal to put boundaries around businesses that trap people in a cycle of debt. Thank you for your leadership on this issue.

>> Commissioner Cahan: Thank you. Christian Luna then we have Susan price and Greg Miller.

>> Hello, my name is mi ria california check cashing stores. Obviously after hearing all this the question is how can this affect all us. I can tell you I've been with this company it will be ten years next month and I can tell you it will affect the growth of other people. I started being just like a teller and now because the company keeps growing then this opens more opportunities for us. I can see how everybody contends we're so bad. When you are really turning around most of the people come to us because they have already gone over hundreds and hundreds of dollars with the overdraft that keep charging them or you no the credit cards already maxed out. I understand that customers should have like a better financial education but I can tell you we don't just target low income people. I have seen people make enough money where you'll think it's enough money for them not to come and is for the 255. So I think it's pretty much we're not just talking about low income customers that we're just targeting. It's anyone that can be making hundreds and hundreds of dollars if they don't know how to finance or pretty much manage their finance they're not going to -- you know they can make hundreds of thousands of dollars and it will not be enough. My parents they come from a low income family and they have not had to use a

payday loan. So I think for us being there yeah it makes it easier than going to the bank. I can tell you when I was just a teller I see customers their power was going to be turned off and they were so happy were there on a Friday afternoon to get the money so they can -- you know their kids can have electricity or they can have the TV or whatever it was. I see did pros but I can tell you people know the consequence before they go there. They are going to have to pay the \$45 when they have to pay the max. it's up to them to see if they want to get more. Also to I kept saying we don't go to any collections.

>> Commissioner Cahan: Thank you your time is up. Commissioner Kamkar has a question for you.

>> Thank you, madam chair. This \$45 is not -- I mean it's a maximum. You could choose to charge \$20 if you wish, you could choose to charge less. I think that's the issue. You know, I do believe you provide a very valuable service. It's just the rate you charge that I believe people have issue with. You know I mean it's like being on grapevine and selling people gas that need gas.

>> I can tell you apply for a payday, you know, they offer you, you have to have direct deposit but they still charge you the same amount, it's just not us the only ones that are being targeted, our hours, we're open seven days a week but it's more than being targeted. In reality I don't think we're hurting anyone. I the company I work for, we have 12 stores in San José. If this any of the other ones.

>> If it makes you any happier we're not happy with the banks doing it either.

>> I understand that.

>> Commissioner Cahan: Thank you.

>> Hello members of the commission my name is Susan Price and I am a member of the Burbank Del Monte neighborhood advisory committee which was formed when the Burbank Del mop tee strong neighborhoods initiative was formed in 2000. Now perhaps you remember the it's called SNI, strong neighborhoods initiative was

formed to fight blight. And our neighborhood which extends on both sides of San Carlos and also down past 280 between basically 17 and 87, more or less, we have two Pay day lenders already, these two in our area. You can see they overlap on each other and on our periphery we have three more. The fact of the matter is that payday lenders are not located in Los Altos and Cupertino, they are located in neighborhoods like ours. 75% of them are located in low income areas. We are in the midst of recession, we need to have reform of our financial system. Which should be evident to everybody. But increasing the number of payday lenders should not be part of that. Because they are a symptom of the problem. They are not a solution. So our NAC is asking you to increase the spacing up to a thousand feet. Already with San Los and that particular area where those two are located have multiple Porno shops, a check cashing we don't need any more in this community. We need a cap on any more opening. Even if they're in our periphery. Because these are a symptom of a problem they are not the solution. And we can't get any action at the federal level or the state level because we know that big money pays for lobbyists and we're not getting our solutions there. That's why all the municipalities and the local governments are now doing it because we can't get action at the state level. And when someone say well we're state regulated that doesn't mean anything nirmd.

>> Commissioner Cahan: Thank you very much. Okay I'll call the next three names to stand up. Matt King, Rachel Ray and Sean Cartwright.

>> My name is support extend increasing the distance to a thousand feet. Because I think this is basically predatory lending as has been said many times and creates debt traps for many people and the paper today talks about the studies that show that says that customers often return to the lender again and again, losing chunks of their low incomes, nanlized interest rates can reach an eye popping 460%.

>> Commissioner Cahan: Thank you.

>> Good evening. My name is Matt King. I work at sacred heart community service and I'm here to speak for a friend and customer who owns a bar named Maurice. Maurice feels too much shame to come out and tell his story, but I'm proud to share his story and his words. My name is Maurice and I'm a young adult who recently

moved to San José from Richmond. I worked heart to transform myself and the quest to be self sufficient a job is the first thing on my mind. I need to become financially stable so I can save the money I need to go back to school or simply to survive while I take out student loans. While employed I got behind on my bills and decided to turn to a payday loan. I got one loan to cover some bills I needed to pay and then realized that the repayment term was nearly impossible to imply with. I had to take out a second to cover the first. This game of Wakamole very difficult. When I was finally able to secure a few hours of part time work, the payday shops went into my bank account, without notifying me, and took the money I had to pay back the loan I owed. Instead of offering me a reasonable payment plan with incremental payments they raided my account when I was finally getting back up on my feet. I was broke all over again. I believe that regulations are necessary to rein in this industry. That is looking out for its own profits but definitely not for the people who use its products. I would like to see longer repayment terms for the loans and regulations would have to come from the state but that is part of the reason we are here today. We are asking that San José be a leader on this issue along with many other California cities, and help us improve consumer protections while pushing the state to take action as well. I just want the industry to be more responsible. Stop targeting the most vulnerable people and have strong regulations in place so other people are not subjected to what I suffered.

>> Commissioner Cahan: Thank you.

>> Am I out of time?

>> Commissioner Cahan: Your time is up. Thank you.

>> Hello, my name is Sean Cartwright, I'm a member of occupy San José, district 24. You keep asking what we should do when we get rid of payday lenders, when not if. And I wanted to answer that I think that the answer lies in credit unions. Because that's where the city should have all of their money. And that's where you should have already moved all of your money by now and perhaps we can set up programs with credit unions, where they can take over the idea of payday lenders. And we can set up programs there where they can do loans like this at a very small small fee and we can trust credit unions because we can't trust big banks we know that and we can't

trust these predatory loan sharks. That answers your question wells Fargo finances many six of the eight largest payday lenders, Bank of America, J.P. Morgan, chase bank of America and Wells Fargo provided critical advance America fueling the growth of the industry. Bank of America and its subsidiaries own significant stakes more than 1% in advance America easy corp cash America and dollar financial. Now these are the same banks that are now moving into pawn shops and other things because that is how they can make money. We already know that Wells Fargo is making money and their financing for profit detention centers which is taking the Latino community a big hit and that Wells Fargo and Bank of America also did a lot of work on the foreclosures that impacted Latino community four times as hard as any other community. At what point are we going to stand up and say no more? At away point are we going to be responsible and say we are not going to let this happen, at what point is San José going to be a leader and be proactive and not reactive in the situations that are affecting the low income and minority communities. I want you to lead, be leaders, stop responding, be proactive.

>> Commissioner Cahan: Thank you very much. Is Rachel Ray -- there you are. I'm going to call the next three names. Nahal, Irvani, Sani, Sandy Perry and James Soradka.

>> Should I begin? My name is Rachel ray and I'm an attorney with the law association of Silicon Valley. East.

>> Able or the here. We have wide support for our worm in payday lending. Including from the Asian law alliance, the Asian Americans for community involvement, Asian and Pacific islander coalition for justice in Silicon Valley, center for training and careers community homeless alliance ministry council of churches of stlierk, council on aging Silicon Valley, el Comite, La Raza round table low income self help near Mexican American trust credit union momentum for mental health, most holy trinity church, project sentinel, San José Silicon Valley chapter national association for the advancement of colored people, Santa Clara County democratic party, Santa Clara County south Bay labor council, the silicon Valley, Silicon Valley council of nonprofits and the La steep owe Democrat forum. The testimony that you've hashed from individuals who have business interests those who represent the payday individuals I just named do not have business interests and are looking out for the community. Thank you very much.

>> Commissioner Cahan: We do have a question for you from Commissioner Kamkar.

>> Thank you, madam chair. Are you familiar with HR 1909, the resolution in the House of Representatives?

>> I am not, I work for the same organization you asked the other woman, and I'm sorry.

>> Commissioner Cahan: Commissioner Kamkar staff will address that if it doesn't get addressed during the presentation.

>> Good evening, Madam Chair and esteemed commissioners, for those who do not know me I'm Nahal i'm in the consumer protection unit of our office. I'm here on behalf of the office to convey our support for the ordinance that you are considering. We urge you to payday loan outlets in the city and set forth permit and distance requirements for any new payday loan or check cashing store fronts. We believe it is in the interest of San José communities for the council to adopt these strong yet reasonable policies to control the growth of the payday loan industry in our region. I know that the commission is already very familiar with all of the reasons why we defined the payday organizations predatory. But just bullet points, part of the reasons we find them 459% that results in a downward spiraling cycle of debt, that you've already heard a lot about this evening. Clustered in low income and minority communities, lack of written notice, being disemdonated to borrowers to adequately inform them about the terms, conditions and interest rates, or if actual cost of the payday loan that they're about to take out. Lack of written information in languages other than English although we've heard already that a lot of these payday lending institutions are in minority communities. Loans are not used as a one time emergency loan as the industry portrays it. It's not just for emergencies, and as you've heard repeatedly tonight the average payday lender or borrower takes out an average of ten loans per year. Payday lending institutions have been found to engage in unlawful business practices, based on investigation that our office has conducted. Statewide some of the violations that we've seen are unlicensed activity, collections of unauthorized fees, schemes to collect on multiple unauthorized numbers of loans, and schemes to circumvent a \$300 cap on payday loans in violation of the California deferred compensation law . Our county --

>> Commissioner Cahan: Thank you, we have a question from commissioner Kamkar.

>> No I'm not familiar with .

>> It's nice to see you here expressing your opinion. Let's say you limit the number, hypothetically, it's 25, we already have 38, we recommended 25 and city council goes with it, if any of these 38 needs to move, you know, let's say to a new location, are they bound, in your recommendation would they be bound with the thousand foot and the other recommendation that are going to be coming in or are they grandfathered in or peening would the recommendation be coming in?

>> First of all we'll cheer. I don't understand your question, if they move outside the county region?

>> No, let's say the landlord said I'm going to charge you 459% rent so you're going to have to move so now they have to look for a new location. So if that's the case and they have to move to a new location, would that new location be subject to the recommendations that --

>> Commissioner Cahan: Commissioner Kamkar I believe that staff will be able to answer that for us. I'm pretty sure if District Attorney's office doesn't have knowledge of that regulation.

>> I'm asking interpret our own laws, since they are here with their suggestion what is their suggestion?

>> We obviously defer to the commission who has done a lot more homework on the zoning ordinances. But the further away the better. Right now you're considering 500 feet between one institution and another. We would strongly urge you to consider greater distance. A thousand feet as is also recommended by cap.

>> Okay, thorn.

>> Commissioner Cahan: And does the District Attorney's office have a specific cap recommendation?

>> No, we don't. I don't think there is a magic number but we would say if one closes that doesn't necessarily mean another one should replace it. I think we should strive to have this industry simply go away at the rates they are offering now. 459% is simply unconscionable. So as one closes let's offer better sources tot consumers like the mainstream credit unions. Like I said I don't think being there's a magic number but the less the better. If they find it's not profitable to stay in the City of San José, so be it.

>> Commissioner Cahan: Thank you.

>> My name is Sandy Perry, good evening. I'm from Cham deliverance ministry. And we're members of the coalition here but I'm not speaking for the coalition right now. Although we support their recommendations. Especially we support the recommendations about strengthening the ordinance. As they suggested. We're a Christian ministry and as a Christian ministry it really appealed to me what one of the persons testifying here said that this is an issue of right and wrong. And I'd even go further and state, and I'm not talking about the individuals who are involved in this business, because I believe they're just trying to make a living, but the institution itself, as a -- and as a public policy on the part of this body, it's evil and it's wicked. The Bible says you shall not charge any interest to poor people, period. That's from the book of exodus. And if you read through the Bible, there's references all the way up through the New Testament of just how much God hates exploitation of the poor. And that's what these institutions do. As many people have said, I agree with many of the other speakers who said that we also need to move on to regulate Bank of America, Wells Fargo, chase, and we should replace them with public banks. There's a whole movement nationally around public banks which I think everybody should look into. And if poor people need money we should establish programs so that poor people can borrow money. Public programs. These are not rocket science. They're not difficult to set up. They could be done and people taking a loan could be charged no more than the cost of administration, not to make profits for Wells Fargo as Sean Cartwright mentioned. So -- and we go beyond the coalition. We think instead of just limiting these payday lenders, they should be eliminated.

>> Commissioner Cahan: Thank you. Thank you.

>> We think you have the power to --

>> Commissioner Cahan: Your time is up. Thank you so much.

>> Thank you.

>> Commissioner Cahan: And for the last three names. Jamal Lamien and.

>> Robust debate tonight, a bunch of points came out I'd just like to address a few of them. First of all HR 1959 Joe Baca's bill, I just found out about it today and I did look into it. My understanding is it is a highly problematic bill. What it would do my understanding is it would allow payday lenders to get federal licensure on oosms so the proposal would also not coincidentally take authority away I believe from the CFPB the new financial protection bureau that Dodd Frank created and move it to captive regulator. The banks got everything they wanted from OCC. Also what would be part and parcel of any preemption of state and local laws regulating these payday lenders. Now in a way if it were done right our state law as we have said it before is very permissive of these lobbies, they have a ton of money can get anything they want. Other states have very strong protection. Interest rate caps, 36% interest rate caps which is not cheap but a lot cheaper than 460%. preempt a lot of great sedate mortgage laws which could have prevented that catastrophe. So they would have the same effect. And it would also I think in a more general way legitimize these businesses as oh they are federal institutions it is something that is okay. What we really need, wells Fargos of the world to be offering reasonable credit products which many credit unions already do.

>> Commissioner Cahan: I'm going to question the commissioner had specifically. So if we can add an extra minute.

>> Thank you. All right. So what -- we are not -- and I have to say also we're not picking on these payday lending institutions only. We are stridently resisting the attempts of institutions like Wells Fargo to expand their what I call

payday-light products to more places in the country. We are constantly in conversation with them, I was just in a conversation 460% but it is 100-plus percent APR. It is a lot better but still way too expensive for folks and is also a very valid one. You know I think responsibility is in a lot of directions. But you know what comes down, what this comes down to is that a bad product should not be spread further in our community. The alternative is not bounced check fees. The banks are way overcharging people for bounced check fees. But they are responsible products and we have to nurture them. Again I analogize endowment sure I'll do that, you can walk into a payday lender without a credit check but there are other alternatives out there.

>> Commissioner Cahan: Your time is up.

>> Thank you very much.

>> Hello, my name is Jamal Amin with the center for responsible lending. A lot of points have been made and I won't belabor first necessary steps that we think needs to happen to fairly regulate a business model that has gone rampant in the state of California. And in fact it represents in many of all organizations many people's minds really the dissection or bifurcation of fringe financial systems for the for the more well to do. We are at a point now we're witnessing the bifurcation of that process which we think is ultimately unfair in the short term but in the long term it's going to be really harmful of most communities in the City of San José, State of California and nationwide. happened in 17 states including the district of Columbia and nothing happened. In fact there's a study by the university of North Carolina that pointed out that people based more responsibly like we did before 1996 when assemblyman Calderon authored the bill to begin with this is an issue that goes beyond consider a reasonable choice when making this decision, this year I was talking to a minister in orange county decision making process. And for many of us when we make these financial choices, we need that pain. We need to make, we need to determine what we want and what we need and this is one of the larger questions that I think helps us to address this, so we support the ordinance. Thank you.

>> Good evening. My name is Allison Lasser, sacred heart community services. I'm here to read the testimony of Albert Yara. My name is Albert and I'm a payday loan borrower. This is my story. I recently got engaged to my

fiancee whom I have known for many years. I fell deeply in love and ex at that timic to children from a previous marriage wanted to send presents to her children who live in other parts of the country. Like any parent she just wanted to share some holiday cheer with her children and send them a small package of gifts. Since we did not have the money to buy the gifts I decided to go to a local payday loan shop. I did not realize how quickly I would have to pay the loan off or how high the interest rate truly was. In fact the company paid they did not explain how high the interest rate was or is me if I could pay the loan back in the very short repayment time. Unaware of those implications I took out the loan to help my fiancee buy the gifts. It was only later when we started receiving unending harassing calls and seemed to be filling our need was really a Trojan horse, we spiermd into debt and additional stress. I would like to see strong restrictions on this industry. Just as the federal government should curb predatory mortgages so too can this encourage alternatives. Don't use the lack of alternatives as an excuse. You must do both. That is curb predatory practices and at the same time encourage new solutions. Thank you.

>> Commissioner Cahan: Thank you. Mr. Hunt.

>> Good evening, my name is Jerry Hunt. I'm a licensed CPA. I've got 40 years experience in the finance industry and I want to tell you an analogy. There's been a lot of talk about allow wealth is trickling down. Well, wealth is really only the kindling that starts the fire. It's the energy from the people who work for the company and the customers who really add the fuel to that fire. Wealth is really only seconding the energy from the fire. And we have a perfect example here of how wealth is really sucking energy out of the community, rather than contributing to the community. So just remember, if you don't pass this restriction on the payday lenders you're really sucking energy out of the community rather than having them invest in the community. Thank you.

>> Commissioner Cahan: Thank you. [applause]

>> Commissioner Cahan: Okay. And seeing no outer speaker cards. I will entertain a motion to close public hearing. A motion and second. All in favor? Okay. Staff. I'm sure you have a lot to comment on here.

>> Okay, thank you, madam chair. Yeah, there were some suggested modifications to staff's proposed ordinance recommendations, 1 was to include check cashing, I think we had given some thought to that originally. We determined that there are close to 300 licenses check-cashers in San José. They require license from the Department of Justice. It's a little trickier to address check-cashing because they typically don't, aren't stand-alone businesses as our payday lenders tend to be more stand alone store front businesses, although there are stand alone store front check cashers. Licensed check cashers are, check cashing takes place in liquor stores, mainstream supermarkets, small supermarkets, Walmart I believe offers that service. So it's a more difficult land use to develop regulations for. So that's -- so given that payday lending is typically more stand-alone use and that was the charge that we got from the council, to address the current ordinance is limited to check-cashing.

>> Commissioner Cahan: Staff would you compare that to alcohol sales when you say grocery store?

>> I'm sorry?

>> Commissioner Cahan: You were saying the check cashing is frequently in the store with something else going on. And it came to my mind that there's a grocery store that then wants to sell alcohol. So that's a change to an existing, if you could just address that for me while you're on this topic, that would be segregate peached.

>> Laurel Prevetti: Is a maybe I'll help reach out here. That's a good point because many of the other businesses that are associated with check cashing are uses that are allowed by right. And would otherwise not need any kind of permit, planning permit from the City of San José. So that is similar to the analogy that you're raising with well what about grocery stores, that is a retail use that otherwise wouldn't need a planning permit but if they add the use of alcohol, then that's a permit. What rich is saying that based on our research this would cast a much wider net if we were to now include check cashing. And our council gave us pretty specific direction at this point to consider pay payday lending. What we do know is many payday lending as you heard with the testimony this evening, also offers check cashing. So essentially if council does put in place the payday lending ordinance as proposed by staff or some version of it you are essentially also regulating check cashing. And then if at some future time council wants to cast that wider net then we will consider it. But to now be pulling in a lot of other

businesses was really beyond the scope of what we were asked to do. But I think you know, that's the benefit of having a public process. We all learn through the process, and council may have some further direction or priority for us in the future. But we feel that let's get our arms around the real issue of payday lending first. See if council even wants to take that step and we'll seize what additional direction we might have later on.

>> Commissioner Cahan: And staff, normally I let you give your full presentation before I take questions from the commission, but because there is so much here I'm going to entertain questions from commissioners, as you're entertaining the particular portion. And that way we don't have to go back and revisit, unless further questions come up. Commissioner Kamkar do you have a question on this particular point?

>> I do. If whatever we recommend does go through and the council approves it, away keeps the payday lenders to come in as a check cashing business, because I understand that those fees are pretty exorbitant also.

>> Laurel Prevetti: Again the topic for you right now is payday lending, it's not check cashing. At this time if it's a retail establishment that's allowed per our zoning code they need to operate and comply with the Department of Justice requirements or other requirements that the state or other local levels of government might levy on them.

>> So they need that license, they can't open up on their own.

>> Laurel Prevetti: We're looking at what is the purview of local land use for the payday lending. That's really what we're talking about.

>> Commissioner Cahan: Staff, I assume we can make a recommendation to city council to look into check cashing?

>> You can make a recommendation on this ordinance in terms of the provisions that we are recommending. Any proposed modifications to those provisions and then any other comments or suggestions that you might want the council to consider for future work. So that's all within your purview as part of your recommendation.

>> Commissioner Cahan: Thank you. Commissioner Kline.

>> Just a clarification on that. Since it's not publicized, on the agenda, any recommendation on check cashing would be kind of off base wouldn't it since it's not on a public --

>> I don't hear the director saying you know, go ahead and include check cashing in this ordinance, but rather, there's been a bit of testimony that this is would be a good step, so you might want to look into it, they did receive a lot of written correspondence along that same line. It won't be on our agenda to give us direction on check cashing but it's something they will have before them should they want to take it up separately after the payday lending.

>> But it's not on our agenda today?

>> It's not on your agenda.

>> So we can't give them official recommendation?

>> The commission has said this is a good start, we hope that the council .

>> All right.

>> Commissioner Cahan: Staff thank you for bearing with us here as we break things up.

>> There was a suggestion that the city impose a cap on the number of payday lenders in the -- in the city. As discussed in our staff report, and so forth, I think staff's position that the issue with payday lending is their concentration in certain areas of the city particularly in low income areas, thus the requirement for the 500 foot separation between payday lending as well as the prohibition of them being located in low income areas. It would

be difficult to establish how many is enough, what number would result in help solving the problem, it would be difficult to determine a number without some scientific basis or economic basis for that. I think it was stated that the number of payday lenders will sort of be limited by the market, you know, that will be the limiting factor as far as the number. So that's why we're not proposing any -- any cap in -- a cap I think by preventing competition might have the unintended consequence of you know, limiting competition, which would ultimately increase the costs of these loans. So I think the legality of the payday lending, the legality of payday lending should be addressed at the state level or is addressed at the state level and -- how was I going to finish my thought there? I think we view our task with this ordinance is to develop you know where these should be located in the city. And our recommendation reflects that. There's a suggestion for a 1,000 foot separation between facilities --

>> Commissioner Cahan: Staff I'm sorry to interrupt you. I have a question from commissioner Abelite.

>> We should talk about this a little bit. For the benefit of the audience and the commissioners I'd actually like to hear from staff about the direction that was given to you from city council. In my view you know we're a Planning Commission and we're more about implementing land use, and implementing wishes of the city council, and not necessarily engaging in philosophical debates about what's supposed to happen. And my concern with that is more related to this cap discussion. Because to me, that seems to be verging on the edge of getting out of our purview and I just want to hear from staff or perhaps the director about the mandate from city council and was there a mandate as it relates to caps?

>> Yes, the establishment of a cap was not part of the direction that staff received. And for your information, the staff memos or the council memos containing that staff direction are attached to the staff report so you can review that for the specifics of what the council recommended and what their particular concerns were with respect to payday lending.

>> I kind of wanted that to be said for the benefit of the audience as well, so -- and could perhaps the director comment on, is the cap issue considered to be land use, or is that more heading toward towards philosophical debate and that's a tough one to answer.

>> Renee Gurza: As the three per district right? And that's a cap. So the cap does go to a local requirement. But as to your question as to what the council directed staff to examine, it was to explore provisions for an ordinance to either have a citywide temporary moratorium, or to establish regulations or permit requirements, whether it be a special use permit, to examine distance, density, zoning restrictions, reasonable distances away from other businesses, and other possible sensitive uses. Disclosure for terms, and to conduct the appropriate stakeholder outreach. So again, as staff noted, the council memorandum is attached to the staff report. So while a cap, I don't see, is specifically listed, they were directed to examine location requirements. But I think that what you hear the planning staff indicating is that while they certainly did entertain all types of requests from the community, including the cap, that there wasn't a clear path to determine what that number would be. And I think the commission, during the public hearing, sort of pulled various persons providing testimony, what do you think, what do you think? Around you even heard from the community nobody knew how to come up with that number. So I think it was more for that reason that as staff analyze the issue they were really getting towards some of the concerns that the community was raising trying to come up with the appropriate local requirements. And you know, staff can articulate it further but rather than coming up with a hard core number it was more coming up with the buffer distances you know and analyzing what would be rational to address the community concerns that they were hearing. And so I think I'm hearing staff say that an absolute cap wasn't something that they were able to articulate why or how that would work or why that would be of benefit or address the concern.

>> Commissioner Cahan: Commissioner Bit-Badal.

>> I do have a question about number of store fronts we have had in the past. I was wondering, since 2008. Have we had an increase in payday lending in San José?

>> I'm not aware that there's been a growth in payday lending. We had testimony at the community meeting, that the payday lending, number of payday lenders has been relatively steady for the past few years. There hasn't been a huge growth in that, that it's being controlled by the market. I actually attempted to do some research on that with the Department of Justice I mean from the Department of Corporations but they weren't able to provide

me with any historic information as to how many payday lenders there's been or how the number of payday lenders has changed over time. But it's from testimony received at a community meeting, there was -- it was indicated that there was not a growth in the number over the past five years.

>> So basically disputes some of the claims about job growth and business growth in San José. Thank you.

>> Commissioner Cahan: Okay, thank you staff. There are no other questions on that topic.

>> I guess there was a suggestion that the ordinance be amended to include requirements for separation from liquor stores, was the churches and residential uses. Staff doesn't see the feed. We didn't, through our research, we didn't -- wasn't clear to us what would be achieved by such a separation requirement. So that's not currently part of our recommendation. So it's not clear what the issues are with having a payday lender in proximity to a liquor store or the other sensitive uses. I don't have any additional comments beyond that.

>> Laurel Prevetti: There's two more issues I think we do want to talk about but I'll defer to counsel first.

>> Renee Gurza: I think we were both thinking about the same thing. One of the elements that was raised by one of the public speakers, the concern that they would somehow be put out of emphasis business. I just want to touch on the legal nonconforming uses of the zoning code. There is a provision in our zoning code that if a business did establish themselves legally at the time and conform to all of our regulations that were in effect at the time that they commenced their business and we changed the rules on them, that they would become legal nonconforming. And legal nonconforming uses typically are allowed to continue indefinitely. There are regulations limiting expansion and layering additional uses onto a legal nonconforming use. Because the overall policy is that once you become legal nonconforming, the thought is that eventually, while we won't put you out of business and you can continue indent, the thought is that eventually you will go away. Or that eventually you will conform. So that's why there are some regulations about expanding your use. But as long as you're simply continuing operating the way we're operating on the date we change the rules on you, you can continue to operate indefinitely. There was a wrinkle on that. Somebody mentioned what if I have a lease and I go to renew my lease,

again renewing your lease is not going to legal nonconforming. If your landlord does discontinue or terminate your lease, such that now you are going to look for a new location, at the time that you go to look for a new location, you will need to conform to the provisions of the ordinance. So the buffer distances or something that when you're looking for your new site, your new site would need to conform to the provisions of the ordinance. So I hope that clarifies that one particular element.

>> Commissioner Cahan: Commissioner Bit-Badal.

>> Thank you, counsel. Actually that was one of the questions I have about grandfathered, that one was raised and the other was how it would affect existing businesses. Thank you again for the explanation.

>> Commissioner Cahan: Commissioner Abelite.

>> I have zoning certificate. And so, and that's, and I'm presuming this is a very cut and dry item as it relates to the distance requirement. And my question is, is that appealable even though it may be cut and dry and how would that be appealed or is it just determined to be nonapplicable?

>> Renee Gurza: So in a way you've answered your question. Because it is very cut and dried, there is no appeal, at least the way it's currently drafted we haven't provided for an appeal. It's a very black and white decision, there's no discretion involved it's a measurement issue.

>> And question number two is, I've always wanted to understand this with staff. And distance requirements, you know we always hear -- I'm more like a scientist kind of guy, I like 887 lineal feet, that's usually the distance of a city block, as opposed to ordinances are they almost like place keepers in there, and I'm not saying they are, I'm not saying you're willy-nilly throwing those numbers in. But you must somewhere in your mind think, that's consistent with other ordinances. But when you put a number in there, are you waning what we're going to migrate.

>> The 500 foot separation is comparable to other provisions in the code that have been used for other code provisions that require separation from other noncompatible uses or other uses that in close proximity to each other could potentially create a problem. For example, the antisidrow regulations require 200 foot separations from -- between adult bookstores, adult motion picture theaters, adult entertainment establishments. So the proposed 500 foot is more than what exists in that provision of the code. I think the proposed 500 foot separation property line to property line, will help prevent there being typical property line goes to the center of the street so I think the proposed 500 foot and the property line to property line measurement methodology will be effective at avoiding there being a payday lender on every corner or -- so that's the basis for that 500 foot figure and 500 is used in other sections of the code. So --

>> And I'm a little cautious. On the one hand I'm thinking about migrating it higher as it relates to the census tract or the low-income census tract. And I'm thinking in my mind making it a greater buffer making it a little bit longer walk or journey to get to that location. I am fearful of changing the other component of the 500 foot rule, where it talks about they used to use, opportunity sites, if you go to a thousand foot increment where a thousand feet might actually just preclude your ability to put any of these anywhere. And so that's another question maybe you can dialogue about that as well. You know is a thousand feet too much? As it relates to site to site locations? Does it eliminate opportunity sites?

>> No, I think that will go further to addressing the concentration issue. But I think there will be still opportunities to locate payday lenders even with that thousand foot separation number. I want to elaborate on a previous combs about the such as a special use permit or a conditional use permit for these uses. And as council pointed out it's a relatively simple determination as to whether or not a proposed payday lending location complies with the proposed zoning code, so we didn't feel like there would be much achieved by requiring a use permit, other than just expense and time. So I think we felt the zoning code verification process is sufficient in this case.

>> Commissioner Cahan: Commissioner Abelite, within a,000 feet and it appears as if we still have enough alcohol establishments even with that limitation. Commissioner Kamkar.

>> Thank you, madam chair. I'm offer to present a motion if the chair would allow. And then talk about it afterwards. So essentially, what I'm offering --

>> Commissioner Cahan: After you get a second, you can talk about it.

>> Thank you. Essentially I'm going to be recommending what the staff has recommendation, with some modification. And the modification would be to add the separation of a thousand foot, instead of the 500 foot. As well as adding a cap of 20 to the number of establishments. So if I get a second I'd like to explain. My reasoning.

>> Commissioner Cahan: We have clarification. Is it 20 to 38 or 20 period?

>> 20 period.

>> Commissioner Cahan: Okay. Commissioner Kline.

>> I think I'll let that pass, sorry. I was going to try to make a friendly amendment.

>> Commissioner Cahan: Okay, I don't see a second to that motion. Commissioner Kline.

>> I think I'll make a try here. I'd like to offer a moratorium on all new payday lending offices and put a cap of two after it gets down, obviously, which makes two per office which makes it 20 in the city and a quarter-mile radius between offices. And otherwise the ordinance stands.

>> Commissioner Cahan: Commissioner Kline may we have classification on your cap of two?

>> The cap of two is per district.

>> Commissioner Cahan: Thank you.

>> I would second that. And my understanding is, are you recommending a thousand -- or I mean --

>> Quarter of a mile.

>> Which is 1300 approximately. I would second that.

>> Commissioner Cahan: Okay I have a motion --

>> And I'm sorry one more clarification. Is that total of 20?

>> Yes.

>> Commissioner Cahan: Okay, I have a motion of following staff's recommendations with the addition of a moratorium, and the cap of two per district with a distance requirement of a quarter of a mile between each location and I have a second to that. Commissioner Kline.

>> I do have to clarify my motion because there's a little contradictory. This motion would be a moratorium completely freeze and when I indicate a new business it would be a quarter mile that is a little bit of contradiction. This would be a moratorium so the quarter mile does not make any sense because there would be no new stores. Then that's good. It would go at 20.

>> Laurel Prevetti: I think we need the counsel to disclose the difference between a moratorium and a ban.

>> Renee Gurza: There are recording the continue and immediate health and public welfare. To support the moratorium there are provisions about make it limited. I think it's initially 45 days. You need to come back and explain what the immediate threat still exists. So the -- while that can be a recommendation, that would take a lot more work by the city council if the city council took that up. Gals we'd need to explain what we would be looking

at during that moratorium period what we would be trying to figure out and what is the immediate threat, immediate threat to health and safety that would be occurring right now, given that all of these businesses are existing. So there would be some challenges.

>> I appreciate the clarification and I'll amend my motion to basically put two per district office, max 20 in the city and no new business within a quarter mile of each other which was very similar to what you indicated. Would the seconder be okay with that?

>> Sure.

>> Commissioner Cahan: Commissioner Kline would you like to speak further to this motion?

>> Yes, sure. I personally believe this institution is evil. I come from a very, very poor family and I know the desperate straits people get into and I believe usury should be outlawed in the entire location. This is basically crack cocaine financing, people get addicted to this and it is just not a pretty sight and there is no excuses for there not at all. This is not a personal vendetta against anyone making a living doing it, one speaker said this is making a living and I realize that this is something we should do for the good of the community, as quickly as possible and this should be the very first step. We should really try to get rid of these completely from our community. It is not very common for us to get a letter from our District Attorney. It's not very common for our District Attorney representative talking here about land use issues. This is a very serious problem in our community and we have to do it quickly, and effectively. And this is the fast way we should do it then it should get done.

>> Commissioner Cahan: Commissioner Kamkar would you like to speak to your second?

>> Yes, just very quickly. I would like to add there were numerous community organizations that support this and we really appreciate you guys coming out and advise us as to what to do. And also again, second what comeanl said. I've been here six years as a Planning Commissioner and ten years as another commissioner on top of

that. I never had a District Attorney in charge of the consumer protection unit come out and advise us, to me, that's significantly. I highly respect her and I think it's the right thing to do. Thank you.

>> Commissioner Cahan: Yes, I had a request to repeat the motion. And the motion is to follow staff's recommendations, with the change of or addition to putting a cap of two establishments per district, so no more than two per district, with a limit of a quarter of a mile between those two, and I assume that that also carries over if there's one next to another district, that it's that quarter-mile into that other district as well. So between each establishment there must be a quarter-mile between.

>> Renee Gurza: Thank you.

>> Commissioner Cahan: Commissioner Abelite.

>> I'm very reluctant to -- and I don't think I'm going to support -- I'm not going to support this motion. I appreciate the plight everyone goes through but the cap idea and the moratorium idea is more of a philosophical debate that needs to be held at the city council. Our purview is more land use oriented to for other reasons so I don't think it was a good analogy. But again I don't think it's appropriate. I think we're in the land use business in terms of spatial relationships and distance requirements. And I don't think -- I don't want to engage in a whole philosophical debate. I mean briefly, I like -- I like market supply and demand issues. I believe that if you cap these it's going to go underground. It already is underground probably and we're just going to exacerbate that. At least there's some level of dpreks. Again City and County's direction didn't really talk about caps and moratoria. So I'm going to not support this motion.

>> Commissioner Cahan: Staff, included in this motion I assume in the draft ordinance, is section 4 which actually discusses medical marijuana. Would you please address that?

>> Laurel Prevetti: Yes, thing, I can assist there. So on the -- in the draft page 15, section 4, what we are bringing forward is essentially rescinding, and this is complicated, rescinding a portion of the very narrow medical

marijuana ordinance that the council suspended last fall. It was within the medical marijuana ordinance that we first attempted to codify a zoning municipal code we need to narrowly rescind that suspension. So it's really enables us to use the zoning verification, that's the only purpose for section 4.

>> Renee Gurza: And I just wanted to add a clarification that the original council memo actually talk about possibly exploring a moratorium, temporary moratorium. I didn't want to give the impression that that wasn't included.

>> Commissioner Cahan: Council I assume you mean by that, that the cap is not an unreasonable thing for us to discuss with a moratorium?

>> Renee Gurza: I think I stated at the beginning is a cap would be a local issue in terms of the prevalency of use within the City of San José. So it would be a lotional requirement, the notion of a cap wasn't specifically listed at least what I'm seeing here now.

>> Laurel Prevetti: Let me elaborate back in the initial correspondence council provided a variety or the councilmembers provide a variety of ideas and the momple was one of the first ideas banes it is away so new they thought that that may be the first step. But it wasn't until August much 2011 that council said, okay, let's put this ordinance on the priority list and at that point there was more regulation. Let's create more regulation. Staff come up with regulation. So they kind of got beyond the moratorium issue. So this has been kind of been discussed and on the plate for the city administration for quite some time and now we're finally here trying to craft those regulations for the council. So again, your recommendation is important, and we're happy to take whatever that is to if full council.

>> Commissioner Cahan: Commissioner Kline.

>> Yes, just wanted to make sure the process. I normally agree with Trish Avila on many things, on this we don't agree. On city council would discuss an action to go forward on an area of regulation and it would send it down to

the commission to work out the details and the details would be brought up with direction to the commission. The mayor exception to the rule. City council spent sending it with very specific directions to us which we sometimes agreed with and sometimes didn't agree with. We sent back to them something that they didn't agree with, obviously because they didn't vote for it. This is quite different than that. This is coming back to a why it's generally being used because they want a general approach, gave us outlines cap would be part of land use. It's not a philosophical question at all, it's very physical, it's just as physical as distance is physical, I do disagree with that in all respect. We are charged with doing something like this, it is within our purview. It's very practical in nature is do we want these things to be thriving here or not? That's the practical aspect of it and I think not is the answer to the question. Land use is how we do things like that. That's the way it is.

>> Regulated capitalism. Capitalistic doesn't exist unless it's regulated. So I really think this is our way to go. And it's not inconsistent when what city council has asked us to do.

>> Commissioner Cahan: Commissioner Yob.

>> I wasn't on the commission at the time the medical marijuana was on the agenda. I feel a little bit, people who are here to testify today what the suggestion would be, and nobody could really come up or articulate a reason for a particular number or without any type of study or recommendation for staff I feel like a particular number is somewhat arbitrary so that makes me uncomfortable. I am concerned about the analogy in some other states, there's a regulation on selling their business for these exorbitant amounts and I think it will cause another problem in this industry and exacerbate a problem that already exists. I have an issue with the cap is and so I can't support the motion.

>> Commissioner Cahan: Could I get clarification on whether a business owner would be able to sell their license to a new person like Commissioner Yob just suggested with alcohol it goes with the land so --

>> The zone certificate could not be sold.

>> Commissioner Cahan: So one of the if they want do close down their business then it's done?

>> Well, the zoning tickets is only issued at the time you want to he commence your business, so we look at the distance requirements at that point in time. And those, I don't think we maids those am if somebody else wanted to come in and commence at that time, they would get their zoning certificate so it wouldn't be sold. But it's not a license.

>>> It's not a license but the legal nondeform, that the council laid out earlier, would still be in effect. If the business were to stop and another business moved in got their criteria, still met all the exercises that, leal nonconforming provisions would still apply.

>> Commissioner Cahan: So even with a.

>> State regulations but that's really outside of our purview. So how -- whether the state -- how the 78th manages us if they allow it to go from the business to address, we know that from alcoholic beverage control that runs with the business. There are sales and trades and all things that happen with those licenses. Again that's not the purview of the city.

>> Commissioner Cahan: Thank you. Well, I applaud the motion. I will definitely be supporting it. These businesses, although we've met some concerned business owners here today, I think the potential for future business really being a parasite on our community is very great and we need to limit the number. The alternatives for those in desperate straits, to be not taken advantage of the way they currently are, we cannot do anything about tbarchtion but we can fortunately start here. Commissioner Bit-Badal.

>> I just want to concur with very uncomfortable coming up with a number. We had experts in the why not 25 or 29, I mean they all sound like great numbers. So for those reasons, I cannot support the motion that we have before us. Of course, there's a huge issue in our community and that's why we're addressing it and staff has been working very hard over the last year on this memo. So but at this point, this evening, I cannot support a motion

that specifically states a number for a cap. And I feel like by the time it goes to the city council, councilmembers can truly discuss this much more in detail and have a much more thoughtful discussions about it. I would like to stick to land use regulations part of it. Thank you.

>> Commissioner Cahan: Commissioner Kamkar.

>> Thank you, madam chair and I appreciate words of my fellow Commissioner Bit-Badal. But the issue is, you know, we are a commission. We are -- we have given the responsibility to make a recommendation and to lead if you will. The city council is going to do what they're going to do. Ours is just a recommendation. Whatever we say doesn't necessarily mean what they're going to do. So I feel you know we should make a recommendation and if they say the number's too low they will change it and if they feel it's too high they will lower it you know and they want to know what we really think. And you know I heard so much testimony, the only testimony I heard against this ordinance was from the owners of the businesses. You know and to me, you know, it was of course self-fulfilling. But we heard from so many others, you know. And anyway just we need to -- we need to lead. You know, and I guess that's my -- that's my recommendation to all my fellow commissioners.

>> Commissioner Cahan: Commissioner Bit-Badal.

>> I truly appreciate that and I absolutely appreciate District Attorney's comments. And community members' comments. And of course I'm not denying the fact that we do have an issue. I'm not against the ordinance, I am for it. I'm just not in favor of arbitrary caps at this one moment.

>> Commissioner Cahan: Commissioner Kline.

>> I'd like to make an amendment to my motion to drop the cap clause, keep the quarter-mile in but with a side recommendation that staff should be directed at providing city council with cap information as a study, as what have other cities done, are there caps, is a cap feasible et cetera, et cetera, and we've done that before. If the seconder is okay with that.

>> So is it so according to your recommendation, can the staff come up with a cap of say 50 total?

>> Just basically to direct staff to do research on and provide the information to city council. It would not be part of the official recommendation.

>> That's fine.

>> But the quarter-mile will still be in there.

>> I will still support it.

>> Commissioner Cahan: Commissioner Abelite.

>> I do want census tract for the low income census tract group. And my inclination was to actually try to expand that barrier even wider. But I think your motion doesn't really address that. This is rather space to space location.

>> Space to space.

>> I would is if you would -- I would offer a friendly amendment and suggest possibly that we increase that buffer away from the low income census tracts to also be did you say a quarter of a mile?

>> Quarter mile.

>> So I would offer that as a friendly amendment just as a suggestion.

>> Explain it again.

>> Okay. There's three basic components or constituents in staff's recommendation. One of which is there's a map within our packet that shows the low income housing and currently that has a buffer of 500 feet around that prim per. In my view, that's a little bit too close. Somebody could walk 500 feet very quickly and get to one of these locations. If we truly are trying to hem get in the direction of helping these folks, they, I think that buffer needs to be further.

>> I got it, I agree with that recommendation. Second to that too?

>> So do you have the actual number in mind?

>> I just wanted to mirror the space to space number that Commissioner Kline brought up.

>> Which is quarter-mile.

>> Right.

>> Which is really great. That's a good recommendation.

>> I mean I'm unclear as to what I would be seconding.

>> The low income geographic area, basic quarter mile from that borderline would not be allowed. I think I've got that correct.

>> Oh, I see, it is not place to place but quarter mile of the district of the low income --

>> It's in addition to the quarter mile --

>> In addition, yes I would second that.

>> It's a buffer zone.

>> Commissioner Cahan: Sorry for more clarification. So that means no more in the low income districts?

>> That's correct. And then a quarter mile from that district out. As well as between them overall in the city.

>> Commissioner Cahan: I'm wondering if the maker of the motion would be willing to entertain adding the liquor, adult stores, near bars, somewhere in the distance requirements to prevent people from, who just suddenly have the urge to have a drink, to make a really bad impulse decision so easily?

>> I seriously did consider that, actually I felt very hard about that but I think the nexus is hard. Gut reaction somebody is going to get drunk walk into one of these places and get \$250, I doubt that really happens, that's probably a stretch in my view but I really did consider that.

>> Commissioner Cahan: May I just remind you we had an owner of a place say that he knows that sometimes they come in, to cash a -- to get money to go purchase alcohol.

>> Yeah, and again, I think that does happen. Occasional but I don't think it's something it's kind of like hearsay type things and I think it is a stretch and it would make the ordinance a lot more complex. Because then you have a quarter mile, how can you do a quarter mile between -- we'd have to come up with another length bough if you try do quarter mile between liquor stores in this town, it would probably be difficult to actually find any store that would exist, just from a practical point of view. But I agree with the thought.

>> Commissioner Cahan: Okay, seeing no other speaker lights, we will take a vote by light. Okay and that motion passes with all commissioners present in favor of. Thank you all for coming out and spending a few hours with us this evening. Staff, before we begin 3B is there something that we should discuss?

>> Laurel Prevetti: Item 3B is the appeal of a director's decision. And so we have several commissioners that need to recuse themselves. However, we, when that occurs, we will not have a quorum. Or counsel can clarify.

>> Renee Gurza: I was going to say, why don't we allow the recusals to occur. And if it appears we won't have a quorum, I guess I'll look at the bylaws to see if can you have a motion to defer, if you can take that action without having a quorum. While you're doing the recusals I can look at the law. Kalra all right, comawb.

>> The I can be impartial to avoid any appearance of impropriety I am going to recuse myself from this item.

>> Commissioner Cahan: Commissioner Bit-Badal.

>> The applicant on this matter have contributed to my campaign within the last couple of months. So I will need to recuse myself.

>> Commissioner Cahan: Around commissioner Abeleite.

>> I'm the applicant. I will recuse myself. Although I will state for the record that I never knew Commissioner Yob until she joined the commission, I never dealt with her directly.

>> Commissioner Cahan: Counsel.

>> Renee Gurza: So with Councilmember Pyle absent, that leaves three. Commissioner Yob, however has indicated that she is not legally required to recuse herself, however she feels she can parent and be impartial it was more of an appearance issue. So given the fact that you're not legally compelled to recuse yourself if you would reconsider that recusal if you feel you can act impartially maybe you could at least act upon the motion to defer. So that maybe at the next commission hearing we'll have four and then you could be able to recuse yourself on an appearance base.

>> I would be happy to rescind my recusal with that understanding.

>> Renee Gurza: Thank you. So I think the persons technically who have recused themselves would need to remove themselves from the dais. And Commissioner Bit-Badal, from the room. The applicant doesn't need to leave.

>> Commissioner Cahan: Do I have a motion from any of my fellow commissioners? Commissioner Kline?

>> Move to defer the item to the next agenda.

>> Okay, I second that motion.

>> Commissioner Cahan: Okay, we have a motion and second. Any discussion?

>> Just that probably maker of the motion apologize for anyone to come out to talk about this item. There was no reason for us to know, because of the legal requirements we can't actually talk to people like that so there was actually no way for us to know this.

>> Commissioner Cahan: So with the Brown Act we're not allowed to discuss these items with each other in private. We have no way of knock that so many of the commissioners would have to recuse themselves or we would also have someone absent. It's an unfortunate situation, it doesn't usually happen.

>> Laurel Prevetti: May I is for a clarification to which hearing, the May 2nd, next week's.

>> It is next week. Will this be on it though?

>> Laurel Prevetti: Yes, it will be but there's no other land use items.

>> Then May 2nd is fine.

>> As the seconder of the motion yes, may 2nd is fine.

>> Laurel Prevetti: Yeah, let me just for the members of the public, next week on May 2nd the Planning Commission is having its regular session in this very same room beginning at 5:30 p.m. The first item open the public hearing agenda is the capital improvement program which is this very large binder. So the commission will first be reviewing that document and making their public comments after which this would be the next land use item, the appeal. So you can -- you're welcome to join us at 5:30 but you can also monitor the proceedings on the Internet and determine when you desire to join us. Thank you.

>> Is there a motion --

>> Commissioner Cahan: On the motion to defer?

>> I'm not sure what the question is.

>> Laurel Prevetti: Staff is available after this item if you have a follow-up question. Right now the only motion for discussion is the matter of deferral. (inaudible).

>> Laurel Prevetti: Thank you. Later on the commission will be discussing the agenda of upcoming items. We will be republishing and reposting our foe and you can .

>> Commissioner Cahan: Just for informational items, the capital improvement program is a lengthy discussion so you would not need to be here at 5:30.

>> Laurel Prevetti: Typically the capital improvement discussion is about an hour and a half to two hours. (inaudible).

>> Extend this second meeting? I'm perfectly fine with that.

>> Councilmember Campos: So if Commissioner Kline is happy with that idea of changing his motion.

>> Absolutely.

>> Commissioner Cahan: To deferring to may 9th?

>> Yes may 9th. And we can work on that.

>> Commissioner Cahan: We don't allow the public to just generally talk to us. I appreciate and I know that this is a stressful situation. Which is why we've allowed some interaction.

>> I understand that and I appreciate that. I was trying to get this done as quickly as possible for the audience but I understand the input that they would like to have more time. And I think it's appropriate given what they have gone through. So May 9th would be fine with me.

>> It would be fine with me also.

>> Commissioner Cahan: So then if the motion does pass to defer it to May 9th then that is going to be a much shorter meeting and the item will probably come up a lot more promptly than if it were to come up on the May 2nd agenda. And that will be posted ahead of time. The agenda is always on the city Website. So you can view that and see when it's on there. If it is, say, the first item after consent, then you know that it's going to come up right away. Because we usually get through the initial items quickly. If you have additional comments, staff is available to talk to you. It's really not -- okay, I'm sorry, I'm not taking any additional comments from the public. So at this point we have a motion to defer until the May 9th meeting, and we will vote right now on that. All in favor? Any opposed? Or abstaining? Okay motion passes with all commissioners who have not recused themselves and are

voting in favor of. Moving on to item 3C. After we get our commissioners back in here, that's right. We need to invite them back in. Okay, staff, item 3C.

>> Thank you, madam chair. Please note that two additional comment letters from area residents were inadvertently not included in the original packet but were handed to you at the beginning of this meeting. As discussed in the staff report the subject rezoning is to allow a 9300 commercial business with a drive through use with the general plan and the site's neighborhood community commercial land use destination, the commercial floor area ratio with .175 which is below the maximum floor area ratio of 2, is one story in height and falls well within recommend of the site with new commercial building will widen Curtner avenue there are providing a frontage where continuous facilities do not currently exist. It will also complete a seemingly integrated shopping center with smooth on-site vehicle and pedestrian circulation within the center. The smaller size commercial building will also allow for typical neighborhood retail uses, within walking distance of existing established neighborhoods. The project, as proposed is also consistent with city council policy 6-10, the criteria for review of drive through uses. The conceptual site plan shows the drive through lane that accommodates stack for up to 12 cars which is above and beyond the policy requirement of stacking for eight vehicles. These can safely circulate through the site and will allow pedestrians to circulate without having to cross drive through lane which we feel meets one of the most important intents of the policy. The drive through lane is also located more than 200 feet from a residential community. And while the proposed drive through use is approximately 300 feet away from an existing wendy's drive through restaurant to the north of the site this is not technically in conformance with this criteria. drive through streets and physically separated from the drive through building. For this reason staff feels the product meets the intent of the separation policy. As this project is in the rezoning stage, there will be a separate planned development permit and that will be the appropriate time that staff will go back and analyze whether or not there should be limitations on the specific hours of operation for the drive-through use and plan development permit basically functions as the conditional use permit we feel that that's the appropriate time to address that issue rather than the zoning stage. Finally, planning staff recommends that the Planning Commission find that the project is yorms with the California Environmental Quality Act, CEQA and this concludes the staff report.

>> Commissioner Cahan: Thank you. And the applicant. You'll have five minutes for your presentation and then an additional five minutes at the end to come up and speak some more.

>> Good evening. Madam Chair, members of the commission, my name is Pete Larco with J.P. diNapoli companies. Given the hour I'll be very brief. I'd like to show you some slides and give you some context as to how the plan that's before you this evening came to be. First slide, can we have the next slide please? Thank you. About a year ago, early last year we acquired the Cosentino's supermarket, which is the gray area before above the subject site. At the time we were acquiring it it was going out of business and it was dark by the time we took possession. We were able to interest Leonardi's supermarkets and fortunately we struck a deal with them and they came in and started operating pretty much as the prior operator had. So a couple benefits. The format's very similar to what the patrons had experienced over the years. And probably more importantly approximately 75 union jobs were preserved. While we were working on that deal, we looked next door, and saw we had a mess on our hands as a neighbor. There was a lot of blight there. Billboards, dilapidated buildings, no landscaping. And more importantly, access issues. Parking and access issues that just didn't work. So we set about to acquire that property with the plan that ultimately is before you, the notion was to put in shop space, and complete a neighborhood center. Next slide, please. Away we have is 9400 square feet of retail. Ample landscaping. 15 foot landscape buffers around the perimeter as staff requested. Parking that is integrated with the Leonardi's center and access that works very well with that as well. Next slide please. The elevation to show you we have attractive buildings, our architect staff and our cells worked together to come up with this concept. Highly articulated architecture, four-sided architecture and a lot of nice finish work on it. We have chase bank and McDonald's as secure tenants and there's one additional space in the middle. With this development we bring in quite a bit of investment, some additional new jobs and an increase to the tax base as well. And the benefits that Mr. Ender bipointed out, create a pleasant atmosphere at that corner. We hope you will support staff recommendation and recommend this approval to city council. And I'd be pleased to answer any questions you may have.

>> Commissioner Cahan: Thank you, do I have a question from Commissioner Kamkar.

>> Thank you, madam chair. Just a clarification. In staff report, they said the circulation for the McDonald's drive-through doesn't cross any pedestrian path. As I look at the shape of the entrance of the driveway, driveway is really not from Curtner, it's from union, and they go around the bank and McDonald's to get in --

>> That would probably be the primary way to come in, yes.

>> Through union?

>> They could come in from Bascom for that pleater. It's all integrated. The access from all three streets is pretty well integrated.

>> But from Curtner they would not be able to make that turn, plate tight turn there?

>> No the cars could come in .

>> Then for the retail in the middle, I know I had a question, it's going to come to me but nothing for now, thank you.

>> All right, is that it?

>> Commissioner Cahan: Thank you. And I do have two speaker cards. Tony Daly Rene and Chris ranchef Jeannie.

>> Good evening. My name is Tony Del Bene, I'm property manager of the adjacent property to the new development which I think is great, the new development. We welcome it. I have two points of concern. First of all the owners, my daughter owns half of the building, she has her practice there. And the other owner is across country tending to his mom's illness so that's why I'm here tonight. Anyway the concern I have is with the widening of Curtner road. We have only 14 feet six inches to the face of curb from the rear of a car when we're

backing out, and we have five offices there, chiropractor health care and so on. By widening the road are we going to control did traffic to a slower pace coming through, because I have a feeling when you back out of our lot, we're going to be facing oncoming traffic. That's point number one. Point number two, the enclosure you have on the property I understand is for construction purposes, is it going to remain there and if so, are they going to be using it for like meats and fish for dumping into this dumpster? We already have a Leonardi problem for dumping into their existing dumpster which is very messy and tenants tend to shy away from coming to see us. Those are my two concerns, if somebody could address that and get back to me I would appreciate it.

>> Commissioner Cahan: Mr. Del Bene, I'm trying to figure out where you're loked.

>> We have a triangular piece of property --

>> Commissioner Cahan: You're off Curtner near Bascom.

>> Near Bascom.

>> Commissioner Cahan: I apologize, this is my neighborhood. I'm having trouble locating your.

>> I do have a layout of where that is located.

>> Commissioner Cahan: That wok great if you would bring that up.

>> Renee Gurza: If you can please put that information into the public record.

>> Commissioner Cahan: Okay, so the location he's showing me, I'm looking at our map that was submitted in our staff report that we also saw on display. And it shows where the proposed bank and retail and drive-through, and page 3 of the conceptual site plan. And on there, there's a section that says not a part. And that's the location that his business is in, and he's wondering about the trash issues there and also the traffic and pulling out the

bring and exit from that location, how he'll be affected by that. And we'll have staff speak to that after we close public comment and staff will address your questions. So you won't have a chance to is anymore. But they know that you're concerned about this and will address that.

>> Will somebody get back to us?

>> Commissioner Cahan: If you stay right here, you should hear the answer.

>> Oh, okay, thank you.

>> Madam Chair and Planning Commission, thank you for your audience. I live within the 1,000 foot radius of the proposed McDonald's pedestrian and intended to support pedestrian oriented retail at a scale compatible with surrounding residential neighborhoods. It sounds like the current disponge is actually the proper one. Appendix A, greenhouse gases and analysis states, if reduction in greenhouse gases would be expected between 2011 and 2013. But with the proposed development no decrease. in fact opt by who of your families would care to breathe of this proposed air quality? The noise air hazardous material reports can only claim less than significant impact but not no impact. Is not as significant as those who have to already there. Page 5 under the staff report criteria, metal and stucco monolith would creation of a complete neighborhood . Page 6 of council's own policy 6.10 requirements for drive through requires 500 feet wendy's is only 300 feet away and not compliant therefore we do already have hamburgers on the block. Please don't suffer improvement or the quality of life and only cheap in Cambrian park. Thank you for your time.

>> Commissioner Cahan: Thank you very much. Okay if you would like to speak for another five minutes or less, depending upon how much you have to say.

>> I think I can cover this in a few seconds. With regard to the first speaker we've been made aware of the owners and issues of trash at Leonardi's we take it seriously in being a good neighbor as to the temporary enclosure it is indeed temporary. There are compressors and a plywood enclosure that has been moved outside

the market fairly soon and the enclosure will be taken away. With regard to the second speaker, I'd only say beauty is in the eye of the beholder. Thank you.

>> Commissioner Cahan: Thank you. Commissioner Kamkar.

>> Thrnl. As far as the parking concerns for the first speaker, I can't tell from the first plans how far will Curtner be improved? Is it going to be fully improved or is it going to be improved just to your property line?

>> It's to our property line.

>> Property line.

>> Correct.

>> So is there a gap between your property line and the rest of it or is it just to your property line?

>> There's already, excuse me. There's already a curb line at that property. That is consistent with where our curb line will be.

>> Got it so you will be meeting it and it will be --

>> Correct.

>> And then is the parking on your side? Is the parking allowed on Curtner on your side of the --

>> Currently it is sort of a haphazard arrangement. increase the parking capacity in that immediate vicinity.

>> Excellent, thank you.

>> Commissioner Cahan: The onstreet parking you just mentioned sounds like that would hinder the ability for someone to bike in that area. If you're parking on Curtner it's already really tight in there. So if you had onstreet parking then wouldn't that be into the bike area?

>> Well I would defer to city staff as to the street section is being widened considerably and it's being widened to what was planned. I think it's sufficient for -- as Mr. Enderby pointed out, wide sidewalk for pedestrians and the ability for bicycling and vehicles.

>> Commissioner Cahan: Okay, thank you.

>> Thank you.

>> Commissioner Cahan: Okay there are no other speaker lights so I will entertain a motion to close public hearing. Okay, a motion and second. All in favor? Any opposed or abstaining? Okay, it passes. Staff.

>> Thank you, madam chair. I just want to remind the commission that this will be coming back for a planned development permit which will work out a lot of smaller details for the project as is typical. I do want to point out an exhibit and apologize for the handwritten portion. To deal with the lane alignment issue, the gentleman who owns the medical building next door, there is currently a dark patch on the pavement that sticks out. As is typical of the development in San José we get dedication with the project project and improvements with the project and a project that doesn't improvements in place and then we may have a piece of property in the middle of a block that's unimproved. And there may be improvements that kind of jut out into the travel way beyond the curb line. And so we might have to do a temporary lane alignment as is demonstrated on the handwritten drawing. As in the interim until such point in time when there's dedication which might occur on the property which will allow us to finish the street improvements on Curtner. With regard to we will take a look at this and refine this when we get to the planned development permit stage what we're really trying to do is lock in the size of the building the setbacks of the building the parking ratios the land uses as part of this PD zoning but the details such as trash

enclosure and architecture and landscaping and those sorts of things are really issues that are most appropriately addressed at the PD permit stage that would follow this. With respect to air quality issues, air quality issues were really thoroughly addressed as part of the envision San José 2040 general plan. And so those took into account sort of more a citywide approach to dealing with air quality issues as opposed to putting the responsibility on individual developers on a project by project basis for dealing with that. And so the mitigated negative declaration for the project takes that into consideration and because of the adoption of the environmental impact report that went along with the general plan update that addresses the air quality issues and that covers this project with respect to air quality issues. Concludes my presentation unless anybody else has any questions. Thank you.

>> Commissioner Cahan: Thank you, Commissioner Bit-Badal.

>> Thank you, madam chair. I would like to propose a motion to approve as set forth by the staff.

>> Commissioner Cahan: Okay. I have a motion. And a second. Commissioner Bit-Badal would you like to speak to your motion?

>> Yes, thank you, madam chair, I appreciate that. I think this is a great project. It truly adds to the neighborhood and it will be a great addition to the City of San José in general. I'm always pleased to see high quality development or redevelopment of areas. The only request I have, which is not within our purview here as a Planning Commission, is that you invest some funds into high quality signage. I don't see it here of course and it's going to go through the President development process. Sometimes I feel like when it comes to signage we don't see the qualities that I wish we could see so I hope you will do that. Other than that I think the development is great and I am in agreement with the proposal set forth by the developer and staff.

>> Mayor Reed: Commissioner Kamkar.

>> Thank you, madam chair. Question of staff regarding that little patch of asphalt some who will pay for that once that dedication happens to you?

>> That will be detailed out at the planned development stage. With regard to the patch of asphalt, there may be property owner's frontage. We really can't address that specifically until some redevelopment or some addition occurs on that other piece of property property. There have been substances in the past where we have encouraged developer of the subject site for example to go and work out a situation with the adjacent neighbor to go ahead and fix those improvements up front or take care of sort of the awkwardness of a small little elements that might stick out there. But if it involves the potential relocation of a utility pole then what might seem like an suddenly becomes a bigger more expensive issue. That is an option we'll be all the Curtner improvements and have a nice seamless straight sidewalk from union all the way to Bascom. So we'll work to that end to agree that we can.

>> Exactly. I wanted to say that would be one lure for me to vote for this project because I will see that place finished off. But if you come in with a nice beautiful little project and still have that part you know not done sticks out like a sore thumb even though it might be a minor item. Thank you.

>> Commissioner Cahan: Commissioner Abelite.

>> I'm going to support the motion. I do have a question of staff which relates to GP 2040. This projects that come through here and by the way I'm not proposing that we is any contributions from the developer some has nothing to do with the motion. I just want to know how this funneleddings of urban vilgages occur they don't really contribute to a larger study that we always wanted to have for urban villages. At the risk of maybe rePetting what you already heard in 2040, I would like to hear that again.

>> Laurel Prevetti: Thank you. The way the current general plan operates is a lot of our urban villages have an existing designation for one of our later horizons so we do not yet have the budget to do an urban village plan for this particular one. So in the future, whether it's through grant funding or the use of the General Fund, or maybe even through a partnership with the property owners, we would look forward to the opportunity to ultimately do an urban village plan when the time is right and the council has deemed that we need need this particular horizon so

in the meantime since our general plan is our jobs first general plan we want to make sure we're creating and maintaining the economic opportunities of the city. While -- let me just add one more footnote. While maintaining the spirit of the 2040 in terms of improving access via pedestrian and bicycles, et cetera, et cetera. So there are site design issues that staff will work through at the PD permit to make sure we are meeting the other objectives of our general plan to the extent possible with the combination of uses that would be allowed with this zoning should it be approved. Thank you.

>> Commissioner Cahan: Commissioner Kline.

>> I really appreciate Commissioner Abelite's question design and this is to some dray. This is one of those designs I would actually hate and not support, because it does YOPS new you are rks no access from the street, no access from the sidewalk, it's a traditional nice looking 1980s style building. We've got quite a few of these in the city and the market. Downtown market looks pretty much like this, which is basically you loss this type of for possible entrances from a walking point of view, walking around the neighborhood, you literally have to walk into the parking lot to get into the building. That is not a good influence urbanist village concept at all. But I'm going to support this because it pretty much consistent with our ordinances today and it looks like a greatly projects and looks like it's going to be a.

>> Access down of the community. Down design wise we want something that takes varng of the down plays and down place 2040 plan than this design. And maybe they can implement some of that into this. Although it would be -- I think very hard at this late stage. But perhaps during the design stage they can try. But I will support this.

>> Commissioner Cahan: I live a couple of blocks away from this location and I drive this street every day. And I am so thankful that Leonardi's went in there and we will continue to have a grocery store there. I do try to bike over to this location and it is sometimes a dangerous feel to bike over there. So I certainly appreciate any enhancements that will make biking over there easier, and safer. And the parking lot in there is, every time I drive through there I'm worried that there's going to be some sort of accident because it's very confusing and hard to maneuver. The wendy's that's there is very popular and they're frequently, probably during one lunch hour

probably 2 or 3 you'll see a backup of traffic coming into union, and because the lineup to get to that drive through is very short at that union entrance, and not that easy to see that there's a Bascom way to get in there and then there's the lineup from Bascom so you have two merges into that drive-through. And ifsd clearly KWREU6R7B8G9SDZ by our community. But it does cause traffic problems as it is. And you're right, that corner absolutely has blight. And I'm thankful that you are looking at improving it. And I think that a bank is an asset to a community, provides a walkable solution to people who would like to go to the bank, and also want to get some exercise or who lived nearby and it is a quick easy jogs over there. I do not support the drive through. We dmow has the gyros and other Greek food used to be a hamburger location, it went out of business, it's now the gyros place. We've got Steve's bar and grille across the street. We have Leonardi's tankfully. We have the Middle Eastern healthy options and not so health options for poem to get food near where they live or are just driving by and hopingary . I appreciate drive throughs when I was a mother with an infant being able to go through because I didn't want to wake up my baby and I was starving. I do not think a second drive through will enhance our neighborhood. I think it will cause a further traffic congestion which we already have from the existing drive through. And also there's the 300 feet. It's so close. McDonald's is a very extremely unhealthy establishment. It is a money maker clearly but it's very unhealthy. And we have the middle school about two blocks away. Easiably wallable by the middle school students. Who -- I'm not sure how they're being monitored by their parents and obesity is a huge problem right now. And I think adding an additional 500, easily influenced children is a detriment to our community. The elementary school is one block further than that. A lot, a lot of people walk to that elementary school and again I don't want do add this detrimental fast-food location in an area where people will I believe walk to that location and feed their young children the food that is causing us such hit and obesity within our country. I cannot support McDonald's or the drive drved through at this location. It is an absolute detriment to my community, to my direct, to the children there, off the whom my children might wand over there when they're a fuds years longer. Hopefully they won't go there, the reality is they'll probably go off and eat at locations I don't know about. To hinder and help the health of the people in my community. Where that, we'll day a vote by light. And that motion passes with -- I am voting against it. Councilmember Pyle is not here. And the rest of the commissioners voting in favor of. Okay, that concludes our public hearing. Moving on to petitions and communications, staff.

>> Laurel Prevetti: We have none, thank you.

>> Commissioner Cahan: Referrals from city council, boards commissions and other agencies.

>> Laurel Prevetti: We have none.

>> Commissioner Cahan: Reports from city council in challenger school site that you saw at a previous meeting as well as the Vendome that was your big soccer night so that ordinance has now been approved, there was significant council modification since the developer agreed to car sharing and a number of other modifications to the projects and that concludes staff's report.

>> Councilmember Campos: And commissioners report from committees, the Norman Y. Mineta San José international airport noise advisory committee. Did meet. The final analysis of the improvements to the homes that would be affected from the noise at the airport was completed and the report of all of the modifications to homes being successful, was reported to Santa Clara County. And to the Board of Supervisors. And so they approved that -- that noise review and now, it will go to our city council to decide whether the committee should continue to go on. It was formed to partially regulate that and keep track of the airport noise but mostly to make sure that all of those buildings were brought up to substantial noise abatement. So it may be that this committee only has a couple more meetings while it waits for city council to make a change to that. And so I will keep you updated as we move on with that. Review and approve synopsis from 4-11-12.

>> Laurel Prevetti: Staff has one slight modification report from city council the sentence in italics should read, "report on recent council actions." Thank you.

>> Commissioner Cahan: Thank you. Commissioner Kline.

>> Move to approve.

>> Second.

>> Commissioner Cahan: Okay, we have a motion and second, Commissioner Kamkar?

>> I have reviewed the tape of the meeting, I was absent and I'm up to date.

>> Commissioner Cahan: Excellent, thank you. Okay, all in favor, any opposed or abstaining? Okay that passes. I turned off my microphone. Okay subcommittee information reports and outstanding business. Seeing none, commission calendar and study sessions.

>> Laurel Prevetti: Thank you, madam chair. Before all of your seats is the agenda and propose capitol improvement budget for your reviewing prior to next week's meeting. We will have the City Manager's budget office and staff from numerous city departments available to answer any of you questions and then planning staff will be happy to present any and all of your are recommendations to the full city council purr the charter. The other item I wanted to bring to your attention is, we had originally thought we would be cancelling the May 9th meeting for lack of land use items. So when you look at the calendar that's attached to the agenda, please note that we are not cancelling the May 9th item since you now have an item before you. So please keep May 9th on your calendar, in other words. And that concludes staff's comments.

>> Commissioner Cahan: Okay, and with that, we are adjourned.