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

>> Commissioner Jensen: Good evening. My name is Lisa Jensen, and I am the chair of the Planning Commission. On behalf of the entire commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, March 23, 2011. 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, please fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4.A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker card in the order received. As your name is called, please line up in front of the microphone at the front of chamber. Each speaker will have up to two minutes. After public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else has raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. Roll call. Let the record reflect that all commissioners are here, with the exception of Commissioner Platten and Commissioner Kamkar. Deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you wish to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with the agendized items past 11:00 p.m, continue this hearing to a later date, or to defer remaining items to the next regularly scheduled Planning Commission meeting date. The decision on how to proceed will be heard by the planning commission no later than 11:00 p.m. At this

time, there are no items scheduled for deferral. Consent calendar. The 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 public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak to one of these items individually, please come to the podium at this time. At this time, there are no items scheduled for inclusion in the consent calendar. 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. The first item on our agenda is CPa 10-040-01. A conditional use permit To allow a 1900 square foot expansion of an existing public eating and drinking establishment with late night operating hours of 12:00 midnight to 2:00 a.m. in the DC downtown primary commercial zoning district on .14 gross Acre site at the Southwest corner of East Santa Clara street and south fourth street. Staff.

>> Thank you, Madam Chair. A conditional use permit, file CP 10-040, was recently approved by the planning commission on November of 2010 to allow a drinking establishment with late-night uses in the existing 1940 square foot restaurant. Previously a sidewalk cafe permit file SC 06-007 was also approved to allow up to 10 seats in the public right-of-way along the Santa Clara front and a portion of the south fourth street frontage. The conditional use permit amendment does not allow an expansion of the sidewalk cafe. Currently the owners have a valid type 47 license from ABC. Type 47 license is an on sale general for an eating establishment. The license authorizes the sale of beer and wine and distilled spirits for the consumption at a bona fide public eating establishment, there must be suitable kitchen facilities and substantial sales of meals for consumption on the premises. Minors are allowed on the premises under this license type although the proposal includes an expansion of the size of the drinking establishment, the applicant is not seeking an additional or different license from the Department of Alcoholic beverage control. This item is exempt from CEQA. Staff is able to make the required findings for this proposal and recommends the application approval. Thank you.

>> Commissioner Jensen: Thank you. Is the applicant here? You may have up to five minutes to make a presentation. You are not required to do so. There are no speakers' cards on this item. Okay. I guess we have a motion to close public hearing then. Is there a motion? And a second? Thank you. All those in favor? Commissioner Bit-Badal.

>> Commissioner Bit-Badal: I would like to propose a motion to approve staff's recommendation as stated in the memo.

>> Commissioner Jensen: Is there a second? There's a second. Commissioner Bit-Badal would you like to speak to your motion?

>> Commissioner Bit-Badal: Sure. I just want to say that I reiterate the fact that this project, the proposal, will comply with the downtown revitalization major strategy plan and I'm in agreement with it. I'm glad that we're expanding businesses in downtown this time of the year.

>> Commissioner Jensen: Thank you, Commissioner Kline. I'm sorry, Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I was wondering about the e-mail in our packets towards the end, was the concern with the smoke coming up and how that affects people with asthma, in general it's not healthy. And I am wondering if staff has addressed this at all?

>> Commissioner Jensen: Staff, director?

>> Laurel Prevetti: The city has other regulations outside of land use that regulates smoking. And so those are -- those need to be enforced through other mechanisms, so this is really a land use item, in terms of the permit that's really before you today. We do not have secondhand smoke ordinances in the City of San José. It is something that the council might consider in the future. Because it is something that our county is very interested in. But given other resources and priorities at this point, we have not put into effect secondhand smoke

ordinances. But we do regulate indoor smoking per other titles of our municipal code, outside of the land use venue.

>> Commissioner Jensen: Thank you, director. Commissioner Cahan, does that answer your question?

>> Commissioner Cahan: So I would just like to have the -- make the applicant aware of the concern that the residents have of smoke coming up in their windows in the summer, when they have their windows open, and of the health issues with that and ask that you try to incorporate some sort of protection for them in your planning of your outdoor area. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Cahan. I see no further speaker lights. May we vote by light? Please. And that motion passes unanimously, with commissioners Platten and Kamkar absent. The next item is CP10-016 and ABC 10-003. Conditional use permit and determination of public convenience or necessity to allow offsale of alcohol for a general retail store in an existing approximately 20,317 square foot tenant space in a shopping center on an approximately 13.2 gross acre site in the CG general commercial zoning district located 100 feet westerly of the Northwest corner of Morrill avenue at amberwood lane. Staff.

>> Thank you, Madam Chair. This is a request for a conditional use permit. And a determination of public convenience or necessity to allow the offsale of alcohol at an existing general retail pharmacy store within a 20,000 square foot tenant space within an existing shopping center. The applicant statement and plans show that this proposed alcohol sales represents less than 5% of the total sales area. There is no proposed expansion of the building area and no proposal for operational after midnight. Notices for a committee meeting were sent out to property owners and tenants within a 1,000 foot radius of subject site and a committee meeting was held on February 24th of this year. There were no members of the public at that meeting and to date staff has not received any correspondence from any community members on this proposal. This project is exempt from CEQA. Staff is recommending that the Planning Commission deny the requested conditional use permit and not make a determination of public convenience or necessity as mandated by the municipal code and include the facts and findings as indicated in the resolution for the following reason. The proposed offsale of alcohol at the

subject site would lead to a grouping of four offsale establishments within a 500 foot radius of the proposed use. This would -- and these all happen to be in the same shopping center. The subject site is located within 150 feet of a residence. The proposed offsale use would adversely effect the peace health safety morals and welfare of persons working or residing in the surrounding area and the proposed offsale of alcohol would not enhance or facilitate the vitality of the existing commercial center, without present being significant impacts on Public Health or safety. This concludes the staff report.

>> Commissioner Jensen: Thank you, staff. I have a speaker card for Dan Kramer representing the applicant. If you would like come forward and please introduce yourself, you have up to five minutes to make your presentation.

>> Hello, I'm Dan Kramer, I'm outside counsel for Walgreen's. Thank you for the opportunity to speak tonight. Walgreen's seeks to carry a small selection of beer and wine as an ancillary use at its store at 2105 Morrill. This use will provide the convenience of one stop shopping to the thousands of Walgreen's customers who shop at the store every week, and is consistent with uses allowed under the commercial general zoning designation. The police department is not opposed to this use which indicates that it will not be detriment am to the safety and welfare of the community and there's been zero opposition from surrounding neighbors or businesses. Furthermore, the store closes at 10:00 p.m. each night and Walgreen's is willing to sign conditions precluding the sale of alcoholic beverages after 10:00 p.m. Walgreen's knows that the planning commission strives to make informed decisions that apply the city's zoning ordinances consistently and fairly. As such Walgreen's is concerned about the inaccuracies and inconsistencies in the staff report that make your task today more difficult. For instance the staff report states that there are few barriers between the store and the residences within 150 feet. In fact, all residences within 150 feet of the store are surrounded by an eight foot wall with no public access. And further separated by amberwood lane, another six foot fence, and loading dock. In addition, staff uses an overconcentration test coupled with whether the use provides, quote, offsetting improvements to the welfare of persons residing in the area, end quote, to conclude that this use would adversely affect the peace and general welfare. I reviewed every single staff report relating to the offsale of alcohol for the past 18 months and this is not the test that was used with other applicants. Additionally, the staff report indicates that the use will be

detrimental to the general welfare because Walgreen's is not a full service grocery store that serves meat and produce. Again in reviewing the commission's decisions for the past 18 months this is not the criteria that was used for other applicants. Here are just a few recent approvals in the past 18 months that did not contain the requirement of fresh meat and produce. Rotten Robbies on de Anza was approved even though this property was within 150 feet of residences, 500 feet of a daycare center and within a short drive of Trader Joe's and Maxim Market, both of whom sell alcohol. Over 60 people submitted a petition in protest of this use but it was nevertheless approved. In April 2010 the commission approved the offsale of alcohol for a convenience store and a hotel. There was no conditions related to fresh meat and produce. Also in 2010 the commission approved offsale of alcohol for a 54 hour convenience store at 4156 Monterey road. Two other offsale establishments are within a thousand feet and the census tract is deemed high crime in this case. No conditions were imposed mandating the sale of fresh meat and produce. On July 2010 the commission approved the offsale of beer and wine at Sherman cellars at 40 Post Street, this business is located in an area deemed both high crime and over-concentrated with licenses. Both Safeway and DeNotto's Market are within 500 feet of the business, and both sell alcohol. There was no conditions attached to the C.U.P. relating to fresh meat and produce. Again in December of 2010 this commission approved the offsale of alcohol at the urban public market. This business is in a census tract over-concentrated with licenses. There were no conditions relating to fresh meat and produce. Interestingly, over the past 18 months, only three applications have been denied by the commission and two of those applications were from Walgreen's. Every other application over the past 18 months was approved regardless of use, since these other applications were approved there has been no change to the municipal code nor the general plan. While there are promotes for changes to the general plan at this point in time, they are just that, proposals. And accordingly, Walgreen's asks that the same rules and analysis be applied to this application as with prior applications that received your approval. Even if the draft 2040 plan is taken into account by approving this using you are not detracting from the healthy community proposal. There are few companies in San José who residents turn to more for their health and wellness needs than Walgreen's and for this the city should be doing everything it can to support this company. In addition Walgreen's sells many products that are consistent with what the city is trying to promote. Despite that this provides public convenience and necessity, we understand that you're required not to make this finding due to the residences within 150 feet but we respectfully request that you

approve the conditional use permit today, and make a recommendation to the city council to make a finding of public convenience or necessity on appeal. Thank you.

>> Commissioner Jensen: Thank you. I have a number of speaker cards. I'm going to call the first three speakers up and if you would line up at the bottom of the stairs. Dan kidson. Lus Robles. Jessica. Certainly please come forward and introduce yourself and you have up to two minutes.

>> Thank you. My name is Dan kidson I'm district manager with Walgreen's. I've been with Walgreen's for 18 years and I oversee the store at 2500 Morrill as well as many other in City of San José. Walgreen's is not looking to become another liquor store. At the request of our customers we are trying to bring a product back to our stores that we carried for over 70 years. We sell beer and wine in a number of stores that I oversee. Including some in San José. I can tell you that people like shopping for beer and wine at Walgreen's because of our dedication to customer service, a well lit, safe store, and convenient locations. They also like shopping Walgreen's because we are part of the community. When our customers come to the store, they see the same employees day in and day out. Many of our employees live in San José, and they stay with Walgreen's for life. We have employees at this store who have worked there for more than 25 years. We also are active in the community. Recently we have been involved with sobriety POW wow, health and wellness events, with our wellness bus providing over 100 free wellness test for their diabetes center, and a breakfast with Santa at Emma Prusch Farm for underprivileged children. So while some people view Walgreen's as just another large corporation, the truth is that each store has many of the same characteristics as a small community pharmacy. Just because there maybe a liquor store or grocery store nearby that also sells alcohol, in no way negates the convenience that would be provided to Walgreen's if we also carried beer and wine. We serve thousands of customers each week in our store, many of who do not want to go to a liquor store, a Target or grocery store when they would be able to buy beer and wine for months. These other stores provide for a totally different shopping experience. That being said Safeway, Target and other supermarkets now also have pharmacies and carry similar merchandise to us and it's a huge impact on us when customers go to a Safeway, Target, CVS or rite aid to purchase alcohol and decide to buy their toothpaste or Tylenol there instead of from us.

>> Commissioner Jensen: Thank you, Mr. Kidson, your time is up.

>> Thank you very much.

>> Commissioner Jensen: Ms. Robles, and if you would come forward and introduce yourself.

>> Hi, I live about two minutes away from Walgreen's. This Walgreen's is very close to the elementary school and church. I don't think it try to sell alcohol so close by to our elementary schools. Where the small kids are present. Beer and wine should not be served near a school also there should be some respect. I believe the community and Walgreen's should respect the church. I always see the small kids by Walgreen's and they should not be around the beer and wine. Thank you.

>> Commissioner Jensen: Thank you. And Jessica, if you would come forward and I'm going to call the next three speakers and if you would line up. Mangit Khan, Jimmy and Sammy.

>> Hi, my name is Jessica. I live in the neighborhood, Walgreen's area and all I want safe neighborhood area. There's already five story carry the beer and wine in that shopping center and more liquor license means more crime in the area. I always see small kids in the Walgreen's. If beer and wine there they would be more influenced to the beer and wine. Whatever that's what they do. So all I want a safe neighborhood area. Thank you.

>> Commissioner Jensen: Thank you.

>> Hello, my name is manjit Khan. I'm living in the area, I serve sometime to the shopping center is a lot of crime, somebody one time somebody trying to slit my pass over there so that's why I don't want any more liquor license and more crime. I want justice thank you.

>> Commissioner Jensen: Thank you.

>> Hello, ladies and gentlemen, my name is just Jimmy and I live on amberwood road. That shopping center there already have five license. Target have a license, California fresh they have a liquor license. We no need more crime in this area. They already too much already five stores selling beer and wine. We don't need to ABC the same shopping center, you can issue more than five license, same shopping center you know. They have already five issued license same shopping center. And plus, my kids go to over there all the time. We don't mind who get the license, Walgreen's, any other area but we don't want it to the Walgreen's, that Walgreen's get the license beer and wine. My kids go over there because we shopping atom time that Walgreen's, we get the medicine from the Walgreen's, all pharmacy over there so we don't want to get more crime. We want to save my community and my family. Thank you.

>> Commissioner Jensen: Thank you.

>> Hello, my name sonny and I live in Walgreen's area and I have two kids, you know, when they go they need some stuff, I send to the Walgreen's. And because they no have their liquor over there and no beer license. Other stores they have the liquor license. That's why I'm not sending to the other stores. And that's why I need to be do not approval liquor license. Because my kids go over there and they cannot shop over there. That's all I have.

>> Commissioner Jensen: Thank you. And Mr. Kramer, if you like you can have up to five minutes to answer any of the questions that were raised or address any of the concerns. You're not required to take this time but it is open to you.

>> Thank you. I just like to address one other thing that I have seen in this staff report and that is the concept that there needs to be a preference given to full service grocery stores. Because I think this concept rests on the premise that there are just a finite number of liquor licenses that are available in San José that will somehow run out if given to businesses other than full service grocery stores. This is not accurate at all. The governing body in the city, meaning you in this case, is given the discretion to approve as many liquor licenses as it wants, if it makes a finding of public convenience or necessity. So if you so choose, the commission can approve 100

licenses in a census tract that is only allowed one license if you make a determination of public convenience or necessity exists. In light of this I'd hate to see good applicants denied use permits on the basis of that licenses somehow need to be saved for a certain type of business. Thank you.

>> Commissioner Jensen: Thank you. Motion to close public hearing?

>> So moved.

>> Commissioner Jensen: Is there a second? All those in favor, please say aye. Thank you. Staff.

>> Thank you, Madam Chair. Just in response to some of the examples that Mr. Kramer brought up. For other approvals, there are some variations to those that in some ways compares the subject proposal in an apples and oranges sort of way. He mentioned the rotten Robbie proposal on de Anza boulevard. Part of the reason that was approved is that also facilitated the construction of a new gas station, with a new facility, which substantially upgraded the site and took care of an extremely blighted location with the existing gas station that was there. I think it was partly because the decision maker at the time -- the decision makers at the time viewed that as a substantial public benefit and they wanted to see that succeed and project to move forward. The hotel that was identified in North San José was -- it's a very limited amount of offsale that's proposed as part of that. That was approved primarily because it was sought to be a benefit for the guests of the hotel and thought primarily that that was going to be the target market and that would not result in you know widespread sales for the surrounding neighborhood, wouldn't necessarily lead to folks drinking and driving. The proposal on Monterey road was for a convenience store, that one was not subject to determination of public convenience or necessity. Didn't have the same rigorous findings that would be required for this proposal because of the proximity of the site to residential. The Sherman cellars proposal that was cited that was located in downtown, that was approved primarily because it was a very limited offsale proposal, also in conjunction with an onsale proposal that was deemed to be beneficial as far as the promoting a variety of uses downtown, to promote uses that would be more attractive to a different demographic than most of the night clubs that are out there. The urban public market project that was identified did include offsale, it's also in conjunction with on-sale as well. Substantially different

project than that, it facilitated the additional new development and also the restoration of historic buildings. And so those are some of the reasons that those projects differ from the current proposal.

>> Commissioner Jensen: Thank you, staff. The applicant also raised a concern that there may be different criteria being used for this application than has been used in the past. And I wasn't writing fast enough but if I -- if the applicant would not if I get this correctly, I'm sorry, I don't actually see anything that we don't normally see. Director, do you --

>> Laurel Prevetti: Staff did a fine job responding to the applicant's concerns, if there are other questions that the commissioners have regarding the -- any of the testimony that you've heard tonight, Mike or I are happy to answer those questions.

>> I heard the applicant's testimony I believe what he may have been referring to is the concept of fresh meat and fresh produce. And that he's saying that he did not see any changes to the City's ordinances. But yet he's seeing that this new element is being identified by staff as a consideration. Again, as the chair noted, you cannot, if I got it right, or -- I don't know if the Planning Commission wants to open the hearing just to hear that element but --

>> Commissioner Jensen: The applicant has indicated that you identified the --

>> So as I was listening to his testimony I think he was identifying from his perspective a new element of fresh produce and fresh meat in the absence of a code change to add that particular element. So I think that's what he's asking about.

>> Commissioner Jensen: Thank you, staff. And are there any questions or comments of staff from the commission? Or discussion from the commission on this item? Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. The applicant requested a -- correct me if I'm wrong -- but I believe the applicant requested that we approve the conditional use permit. Is that correct?

>> Did I hear the applicant make that request, although typically they are taken together, since the use permit, the use permit sets forth the parameters of the allowed use and so certainly the PCN is going to affect the allowed uses on the site. So typically they are taken together.

>> Commissioner Cahan: And looking at the analysis, it's my understanding that in order for us to approve the conditional use permit, the matter of the residential zoning is part of that factor, is that correct?

>> Commissioner Jensen: As is the grouping of for offsale within a 500-foot radius.

>> Madam Chair, if I could add some clarifications.

>> Commissioner Jensen: Certainly.

>> There are findings with respect to the conditional use permit that are a little bit different, and there is a little more flexibility with how those findings could be made. There is -- because of the fact that this is located within an area that is over-concentrated, they do have to go through the extra step of having a determination of public convenience or necessity also come into play. And there's four very specific findings that must be made in order to approve that. We typically couple these together as was indicated and so approval of one without the other does no good. And plain and simply, because there is this determination of public convenience or necessity, one of the key findings is you have to make a finding that the proposed use is more than 150 feet away from residential uses. There's no discussion within that particular element about orientation, separation by some combination of sound walls, loading docks or whatever. It is plain and simply separation of the use, the tenant space that they're in and the residence, that's closest to the site and the reality is that they are within 150 feet. And so we're in that situation where there really isn't the discretion to look at it differently. The findings do talk about the separation of use issues, but provides some opportunities for flexibility based on the orientation of the

facility to residential. In other words, sit oriented in a different direction, perhaps it backs up to the site, but you have to walk a quarter of a mile in order to get to that. I.T. allows factors such as that to be taken into consideration.

>> Commissioner Jensen: Thanks, staff. Commissioner Cahan.

>> Commissioner Cahan: That being said I'm ready to make a motion to deny a conditional use permit and do not grant a determination of public convenience or necessity to allow offsale of alcohol for a general retail store/pharmacy in an existing approximately 20,317 square foot tenant space in a shopping center on approximately 13.2 gross acre site in the CG general commercial zoning district as recommended by staff.

>> Commissioner Jensen: Thank you, is there a second? There's a motion and second. Commissioner Cahan, would you like to speak to your motion?

>> Commissioner Cahan: I see no way to go around the residential issue and I'm certainly not going to make a recommendation that even if we were allowed to overlook that, to overlook it. I think it's very important to honor that specific distance between a sale of alcohol and residences.

>> Commissioner Jensen: Thank you, Commissioner Cahan, is in any additional? I would like to add, also, that this would add to overconcentration. I mean, it is already over-concentrated in this area, I'm sorry that you are at the mercy of other facilities already being there, but per the ABC guidelines, there is currently an overconcentration in this area. And I think the community spoke very clearly and very eloquently about their concerns regarding their children. And they indicated they send their children to your store, specifically, because it doesn't have alcohol. So to pick up things that the parents need. Thank you. May we vote by light? And that motion passes unanimously, with commissioners Platten and Kamkar absent. The next item is CP 10-064. Conditional use permit to allow a public eating and drinking establishment with late night operating hours until 2:00 a.m. and to allow an alternate parking arrangement for such establishment on an approximately 1.6

gross acre site in the CN neighborhood commercial zoning district Located on the southeast corner of Tully and Monterey, staff.

>> Thank you, Madam Chair. This is a request for conditional use permit to allow drinking establishment and late night hours until 2:00 a.m., in conjunction with an existing 5,000 square foot public eating establishment, and also to allow alternating use of common parking facilities. This particular tenant space is part of a retail building that includes two other tenant spaces. Staff recommends approval of the conditional use permit and drinking establishment in conjunction with the public eating establishment and the alternating parking arrangement but not the use hours to go past midnight. The police department did a -- shows that in the past year the subject restaurant has had a higher than average number of reported incidents related to drunkenness, occurring during evening and late night hours and the site is within 500 feet of a mobile home park. For these reasons staff and the police department have included that after 12:00 use of the restaurant and bar on the subject site are not compatible with the surrounding uses and therefore, do not recommend approval of the late night hours. There are three drinking establishments with incidental -- drinking establishments that are incidental to public eating establishments that were recently approved kitty corner to this site at the plant shopping center on Monterey Road which are in close proximity to the subject site. These do not have approval for late night operation past midnight. Given this context, staff is recommending approval of the drinking establishment but only in conjunction with the public eating establishment and feels that this is consistent with past approvals for other projects in the area. To address concerns of the police department, planning staff is including several conditions within the draft resolution regarding nuisance, hours and security. With respect to the alternating parking arrangement, because the added parking demand caused by the Agave restaurant the current proposal under the side would not be able to comply with the city's parking requirements. There is a situation because of the fact there are two other businesses on the site, those tend to close earlier in the evening, and when that happens, there is an availability of greater number of parking spaces for the use of other tenants that might still be open. There are 109 parking spaces on the site which are used by the agave restaurant, furniture store and a printing shop. The Agave proposal has a main dining room and a secondary dining room. The main dining room requires 52 parking spaces, and the secondary dining room requires 29 spaces, for a total parking requirement of 81, which is about 80% of the parking requirement, or 80% of the parking spaces for the site. The Agave Restaurant is only allocated

43 space because of the requirements to provide parking for those other uses. So therefore the maximum number of seats in the main dining room needs to be reduced slightly from 128 to 107 seats so that they can operate in conjunction with the other two businesses when they're open. The separate rear dining room should only be used during times when the other businesses are closed. And during that time, staff would -- staff feels that there is enough parking to accommodate the 72 seats for that dining room as the applicant has requested. This project is exempt from the provisions of CEQA and again staff recommends approval of the drinking establishment but not with the extended hours past midnight and we do recommend approval of the alternating parking arrangement as previously discussed and commented on in the staff report.

>> Commissioner Jensen: Thank you staff. Is the applicant here? If you would like to come forward you have five minutes to present your project and if you would state your name please.

>> Good evening, my name is Miles Miranda, I'm the owner of agave restaurant. Since 1990 or '91 or so this location has been a Mexican restaurant and has been operating until at least 12:00 a.m. And it's has very little incidents in the time it's been a Mexican restaurant. Therefore for years the restaurant has been known for private parties and so forth, has had a lot of success. For the last year I've, you know, been able to meet a lot of people that had parties in the past and nothing but good memories, and again it's had very little incidents. But to ensure the concerns of the police department and some that the city may have, I have hired security, for the last eight or nine months. And since then, have had no incidents whatsoever. It's always been great results for private parties. As far as I know, since again 1990, '91 it's been operating until 2:00 a.m. So I continued the same hours that they've had for years. I also installed security cameras inside and outside the whole premises, I've put more lighting to ensure the safety of the patrons and that I did it before knowing some of the concerns that the city has. I just -- I'm trying to see whatever possible option I can have, or anything I can do to ensure the safety. There's -- sorry. There's really no other way for me to stay in business, other than to have the opportunity to stay open until 2:00 a.m. I mean I'm competing with big franchises across from the plant and the previous owner that's why she sold because she was just not able to compete with them. I'm -- the only reason I'm able to stay in business is because once again it's been known to have -- to hold the private parties there and people still come to me. And seek that same opportunity to have a private party there and it is mostly family parties

there. People that their only goal out there is to celebrate a family function, birthday, wedding, anything, people rarely have a bad end result to that. Again, there's really no other way for me to stay in business than to be able to compete with franchises, so unless I have the opportunity to stay open until 2:00 a.m. With that I will probably have to close or find another way to make ends meet. It is family-owned restaurant. I think I'm a responsible man and I try to hold the business in a responsible manner. Trying to make sure I said everything in my five minutes before I forget. All I can say is that I hope I have the opportunity to stay open until 2:00 a.m., and you guys see the same views that I have, and it's really to have just a family restaurant, where people can go have a good time. And I plan to have the opportunity. And to make it safe for everybody, including myself, my family, and everybody that visits the restaurant.

>> Commissioner Jensen: Thank you, and we have a question for you from Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I have a question to ask you. You said that for the last eight months you've hired security, so you haven't had calls, yet I'm looking at the police report. And there are one two three for five six -- eight calls since July. And July is within the last eight months. Truly, the only thing I don't see is a report from 2011. This report ends in 2010. When did you hire the security?

>> I -- no police officer has been there. I have -- I mean if there's calls been made, they've been made without me knowing of any assistance to or the reason why. I can assure you that no police officer has been there. All I can tell you is that honestly, I really don't know what to tell you, other than that I was not aware of them. I know they have not been there.

>> Commissioner Bit-Badal: Okay.

>> I know that from the Terazzo, has been there, he says how's it doing with the C.U.P., I told him about the process, I keep getting calls and people are, you know, apparently there's people out there competition that probably wants to see me close. That's all I -- I don't know. I can assure you since July no officers have been there.

>> Commissioner Bit-Badal: Since July. I have another question to ask you. What would you get if your business is open until 2:00 in the morning that you don't get now? You are taking about family business and I don't see family staying there until 2:00.

>> One of the things they asked moo is to what time do you close because my mom got married here and we got married here and we want to baptize, we want to stay here until 1:00, 1:30, do you still offer that? And I tell them yes. And a lot of the competition doesn't allow that, you know, there's a private banquet with most restaurants as you know at least in the plant do not have anything private, it's all exposed to the public. And I'm all -- I do offer that. I mean at times I will close the restaurant if the party is large enough for me to be able to consider closing it. And the major thing they ask is, you know, can we stay late because we went to another place where they told us 10:00. We went to another place where they told us 12:00. So if you are still can do it until 1:00, 1:30, we would like to have the party here. That is the advantage I have compared to other businesses.

>> Commissioner Jensen: Thank you, we don't -- do we have another question? Commissioner Abelite.

>> Commissioner Abelite: How many average do you have in a year?

>> Honestly, every single one. I didn't know it was going to be five minutes. I brought my printout of the parties I've had and the sales that I've had and all of them I mean have really been past midnight.

>> Commissioner Abelite: My question is, in a typical week, do you have parties that go Friday night, Saturday night, how big of an impact is it I want to know.

>> I'm not really looking to have 2:00 a.m. Monday, seven days a week. All I'm looking forward to is to be able to have 2:00 a.m., Thursday, Friday and Saturday. With that alone I would be able to be in track with my sales and the competition that I have. To answer your question, almost every single party that I book quite honestly goes

past 12. I think one out of ten probably go home at 11:30, 12:00, 12:30. Majority of the parties want to stay past 1:30.

>> Commissioner Abelite: And you characterize these parties being like family, various, birthdays, et cetera?

>> Exactly. I offer package deal, the dinner late, and so forth.

>> Commissioner Jensen: Thank you. Robert Sandoval.

>> Good evening. Planning Commissioners, my name is Robert Sandoval. I am president of West Evergreen neighborhood association in District 7 along with my friend, Mike Arranda, with District 7. And I frequent his place of business. By the way, excellent food. You should try it. I represent about 4800 residents in our -- my association area of West Evergreen, and we discussed it at one ever our association meetings about me coming down here and supporting our business partner. Mike Arranda. Miranda, rather. And that's the reason I'm here, in his support, and requesting the Planning Commission grant him that time. And I did recommend to him request only for four days. Because of the situation, he is in a really dire mode, too, because of the fact that business has changed down just about in every restaurant in San José, and we hate to see him lose and close down his business. And for that reason, I'm here tonight on his behalf. And we are here in a stress mode, that we're not here to drive small business people away. We want them to stay in business in San José. And let them continue paying their revenue to the City of San José. We, City of San José is in badly need of revenue. And if his business grows, everybody profits, not only him but everyone else. And we all will have a good time in his place of business.

>> Commissioner Jensen: Thank you, Mr. Sandoval. Your time is up. Thank you. Is there a motion to close public hearing? There's a motion. Is there a second? And all those in favor? Thank you. Staff?

>> Staff has nothing to adds, unless there's specific questions by the commission.

>> Commissioner Jensen: Staff, could you clarify, in the agenda, the staff recommendation? I think I must be misreading it. It appears to say inclusion of late-night hours.

>> The summary includes late night hour but the detail, inclusion does not.

>> Commissioner Jensen: I know. Before somebody reads it verbatim, I just want to make sure everybody's on the same page.

>> It incorrectly identified on the agenda.

>> Commissioner Jensen: Thank you.

>> The staff approval does not include the late-night hours.

>> Commissioner Jensen: Thank you very much. Commissioner Kline.

>> Commissioner Kline: That was my comment, actually.

>> Commissioner Jensen: Okay. Commissioner Abelite.

>> Commissioner Abelite: Yes, can the staff kind of go through again what are the main reasons to prevent going past midnight in this particular case?

>> Thank you. There's really two reasons. The police department has identified that there have been issues, that the crime has increased, frankly, since the opening of the plant and the approval of some of the restaurants that include drinking establishments, and records have shown that the crime has steadily gone up somewhat. There have been specific incidents related to this restaurant that are identified and was talked about in the memo. Staff's also, the second issue is really that although the crime is slightly higher, we do have worked with the police

department to include conditions to mitigate some of that through the conditions that are in the permit to deal with nuisance and noise and so forth but we also wanted to make sure that we were very consistent with our approvals. The drinking establishments that are associated with public eating establishments in the plant are not open past midnight. They all close at midnight. So then they don't have a competitive advantage from that standpoint to this particular use. Staff does think it's important to treat all similar uses fairly, and equitably and thought it was a reasonable compromise to allow the drinking establishment but with the showers closing at midnight. We've had conversations with the applicant to indicate that this isn't by any means the end of the road, as far as any consideration for late night hours. And frankly had indicated to the applicant that they and implement some of the security measures that they talked about, security cameras and so forth, and that perhaps if, after some period of time you know it can be shown that there aren't any problems with the subject site, they could come back for a conditional use permit amendment, a year or two away from now, and ask again. Maybe circumstances will be different.

>> Commissioner Jensen: Thank you, staff. Are there any further comments from the commission? Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. For clarification, the applicant stated that he did already implement the cameras and the lighting, and so are you saying that that hasn't been done?

>> Staff's not aware that that had been done. But needless to say we don't have any evidence from the police department yet to suggest that those improvements have had any effect. At it will point in time you know when there's more data collected, we have complete data perhaps for 2011 we can go back and look at it and see if that has made any measurable difference.

>> Commissioner Cahan: Thank you.

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

>> Commissioner Kline: If we went ahead and approved this with notations on Thursday, Friday and sat, what conditions would you put in to make sure if issues continue, could we put conditions in through a code enforcement that would bring this back to us? Some type of trigger mechanism?

>> There's always an opportunity, whether or not there's specific conditions in here, to bring it back to bring such proposal back where there's noncompliance with conditions. First we start with an issue of notice of noncompliance that we send to the applicants to let them know that there has been some concerns about whether or not there's full compliance with certain aspects of the proposal. It's a little bit tough you know when you're dealing with issues such as crime. We don't have a specific condition in there that says you know this use shall not result in an increase in crime. So you know if that does occur that wouldn't be a specific violation of the permit.

>> Commissioner Kline: That's a very fair statement. I was thinking more in line with what we do with changing churches to schools and telling neighborhoods that if this has a problem then you can come back and we can pull their permit because of the nuisance they cause. I mean isn't this something that can go along on those lines if a nuisance is there, they can come back and we have a chance to look at the permit again?

>> We do, and that's the second part of where I was going. So if we find that through the issue of notice of noncompliance that we do have an issue, or there's just a general nuisance issue, we can issue an order to show cause. We can do that and that would allow this application to come back to the commission for consideration of a couple of other things. Either adding conditions, modifying conditions or revoking the permit.

>> Commissioner Kline: That's the thing right there, thank you.

>> That would need to occur.

>> Commissioner Kline: Thank you. Well said.

>> Commissioner Jensen: Thank you, Commissioner Kline. I see a letter here from one of the neighbors of the applicant's site who indicates that the applicant is currently operating until 2:00 a.m. on weekends. And so I just want to make sure I understand, this is probably one of those permits that we are in the process of cleaning up and going through and that the applicant may not have been aware that they didn't have a permit to operate?

>> That could be, I can't speak to all those points but I do know that there's code enforcement case that's pending on the site and I believe it has to do with operation of lately night hours.

>> Commissioner Jensen: Okay, thank you. Commissioner Abelite.

>> Commissioner Abelite: I want to focus in on the police reports again. It seems like there's a big concentration of those seven reports that happened back in April and May of last year. I think I heard the applicant say they installed recently cameras and a security guard so I'm kind of noting that almost in the last ten months there's only been one, one police call out on this particular site and that doesn't seem terribly bad to me. Do you know offhand, sounds like --

>> Commissioner Jensen: There are two pages of reports.

>> Commissioner Abelite: This one?

>> Commissioner Jensen: On the other side of that one.

>> Commissioner Abelite: Oh, got it, got it, okay, all right. And then -- and then since I'm talking on the microphone, it sounds like this applicant recently bought the business in the last -- does the staff know when he bought the business? I'm just curious.

>> I don't have that information.

>> Commissioner Jensen: The applicant has responded, last year.

>> Commissioner Abelite: Okay, thank you, that's all I have.

>> Commissioner Jensen: Thank you, Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Is it correct that the complicate said in the last eight months?

>> Commissioner Jensen: Correct.

>> Commissioner Cahan: Perhaps Commissioner Abelite is correct that --

>> Commissioner Jensen: There have been incidents since July of 2010.

>> Commissioner Cahan: I was looking at the other page.

>> Commissioner Jensen: Everybody was looking at the other page and the other page also includes an incident from July of 2010. Are there any additional comments from the commission? Would somebody care to put forward a motion? Commissioner Bit-Badal.

>> Commissioner Bit-Badal: I would put a motion forward to approve staff's recommendation as stated in the report.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. Is there a second? Is there a second? And it appears your motion dies for lack of a second. Commissioner Kline.

>> Commissioner Kline: I'd like to put a motion to approve this use permit, with the limitation as staff recommended but with the 2:00 a.m. closing on Thursday, Friday and Saturday. I think the conditions are good enough, actually, if there is a problem we can bring it back and revoke it. That's my motion.

>> Commissioner Jensen: Is there a second? There is a second. Would you like to speak to your motion, Commissioner Kline?

>> Commissioner Kline: I think this particular piece of property, and the permit and use goes with the property, not the particular individual, and my heart bleeds for someone who's in a small business environment. I fully understand that. But it goes with the property. And this particular property, actually it goes in your favor, I think. If there -- there can't be a drinking establishment past 12:00 midnight in this particular piece of property, there can't be a drinking establishment past midnight in any piece of property. You've got basically a cemetery across the street, industrial, light storage rooms around you, open granaries, a Radio Shack, and then in the far corner across a very busy Tully Road which is practically freeway at that point, you've got some mobile homes but with no real direct access. So it seems like this is a fairly good location for a drinking establishment past midnight. Now, the -- where it comes in, where the ownership comes in is problems, and you can get that use permit pulled. So the challenge is really up to you in this particular instance. More than anything else, we're going to basically give you, going to try to give you a pass on this and see if this is -- if everything goes right, and there's no instances and then you've got a good deal going. If there is, then it really does run a risk of being the permit being pulled. Not particularly because of you, it's just particularly because of the incidences that occurred. So that's my motion and I think -- I think I will wish you well on this particular establishment. I think it's a good establishment for something like this.

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

>> Commissioner Abelite: I like supporting this motion for those reasons and also I think that there's a distinct difference between the three operators of plant 51 which are more corporate level and the whole location that shuts down fairly at the same time or it goes to bed at the same time, whereas this is catty corner, I can see

families having parties here that have to go past midnight not in a wild sense but you know these things spill over. And I think it's a vital part of the community. I also like to add I do really like the idea of the parking lot, you know the parking lot mitigation where you have a printing office that shuts down, you've got an office use or furniture seller, that clearly does not use that parking lot for the 1 to 200 or 250 ratio, and so why not be flexible in this city and adjust the parking to accommodate more businesses so we can all just eat. So anyway so those are the reasons I'm going to support the motion. Thank you.

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

>> Commissioner Cahan: Thank you, Madam Chair. I also concur with my fellow commissioners on this and additionally impressed that the neighborhood came out and shared their support for this and that means a lot for us on this to have neighborhood support on this sort of project and it does seem to be an appropriate location for all the reasons my fellow commissioners stated. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Cahan. I'm going to have to go in the opposite direction that all the salmon are swimming and I will not be supporting this motion. And the reason is, I am concerned and I'm very sorry, Mr. Aranda that perhaps the previous owner may not disclose fully to you some of the challenges that she was facing and that she didn't actually have permission to stay open until 2:00 in the morning. We had -- we have seen similar challenges along this stretch of the road and I would be more comfortable having you have the opportunity to demonstrate that the safety mechanisms you put into place have in fact decreased the issues that San José PD is seeing. I come from a neighborhood where we have a lot of challenges that we try to face -- that we face, and so I'm very sensitive to the issues that were brought forward by San José PD. It looks like you know you may be moving forward with this, so I just wanted you to understand why it was that I was going to vote in the opposite direction. And should this pass I wish you well and I hope that in fact the measures you've taken have -- to put in place do, in fact, decrease the number of issues that are seen at this address. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I also agree with you and I stand with my original motion. I do feel for the business owner as someone who has helped bring businesses to downtown, and retain businesses. I've seen great business owners and I've seen the ones who are not really yet ready to take certain business -- businesses on. And taking on a business that sells alcohol to 2:00 in the morning, it really requires someone who is going to be tough on it, basically. Tough on some of his customers. And what troubled me, it's not I have anything against this business, I actually don't even know them but what troubles me is the report from the police department. It really clearly spoke to me. Eight incidents calls for service over the last eight years, when the city is facing one of are its largest deficits in its history, to me it's an undue burden to our police department. And also, to the residents. And also, another thing that is of a concern to me is the open case where the code enforcement. I feel at times businesses should be able to demonstrate to us that they can be good neighbors, and then, we can allow them to open further, or sell alcohol till late. At this point I haven't seen that yet, and I hope you will and I hope that you will be a great neighbor and I hope that when I go to your restaurant and utilize your services, as Mr. Sandoval mentioned I'm going to have great food there and I'm going to be in one of the best places, I'm going to come back and tell my friends to go there as well. And my denial is not for denying the business I really wish you well but I really forewarn you and wish that you will take some of these comments to your heart and make changes and really beef up on security and take the measures to keep your community safe. Thank you.

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

>> Commissioner Kline: Well I can count, as well as anyone else can count, and we do have a problem here. And so whenever you have two opposite ends you try to make some compromises. This time, making compromises that not only make a decision here but the best for the business. I can understand some of the concerns and perhaps the Thursday might be one issue. It is a weekday. It is something that may be at the 2:00 a.m. closing time may not be appropriate into that location. But I think Friday and Saturday seems reasonable. I think spillover effect is definitely something that might concern, from midnight forward. So we could go a Friday-Saturday 1:00 p.m., that would really give him the opportunity to still make the business out of these late-night parties, weddings, but not go to that 2:00 p.m, which 2:00 p.m. is the witching hour out there --

>> Commissioner Jensen: I think you mean 2:00 a.m.

>> Commissioner Kline: 2:00 a.m. I'm sorry. 2:00 p.m. could be a witching hour too.

>> Commissioner Jensen: I think the restaurant operator would be very upset if we made him close at 1:00 in the afternoon.

>> Commissioner Kline: A 1:00 a.m., closing for this type of -- which is not a bar, per se, makes him have the opportunity to have right over into midnight and have a spill-over effect and closing by 1:00 and get an opportunity for that 2:00 p.m. closing, which we all know can cause problems on the freeways and the highways. That is kind of a compromise, I would be willing to change my motion to include that.

>> Commissioner Jensen: There is an amendment made by the maker of the motion, is the seconder of the motion in support of that?

>> Commissioner Abelite: I have a request to speak.

>> Commissioner Jensen: Commissioner Abelite.

>> Commissioner Abelite: I would be in favor of the amendment to the original motion and I also want to say that being in the restaurant business myself I can tell you a lot of restaurants are suffering everywhere. And my sense is that this particular operator is on the brink. And he's already, I think he's already suffering right now, with the 2 A -- running the business the way he's already running. I'm sensing if we don't already approve the motion that's now before us I'm afraid that we'll be looking at another business that is going out of business in the City of San José. I'm I'll be fully supporting this motion and I hope the other commissioners do as well.

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

>> Commissioner Abelite: In your original motion did you have them come back to the Planning Commission over reviewing it?

>> Commissioner Kline: No but basically there's conditions in there if there are complaints, the complaints will come to code enforcement and staff has the opportunity to bring it back here, just as many other instances where we approve on condition. And this one has pretty high visibility. So if there's issues I'm sure staff will bring it back, it's on the Monterey road.

>> Commissioner Bit-Badal: Questions to -- I don't know if I can have questions to staff on that. Have we on that previous subject, have we asked applicants to come back on review of the Planning Commission?

>> Thank you. There have been times when we have imposed conditions for a mandatory compliance review. Staff has generally moved away from recommending that, in some instances, because if there aren't issues it creates a lot of extra work for staff, a lot of extra headache for an applicant to have to come back if there aren't any issues. So we found that it's better to use the order to show cause process and you know, not take excessive time from staff or the commission if there really aren't any problems.

>> Commissioner Jensen: Commissioner Bit-Badal does that answer your question?

>> Commissioner Bit-Badal: Yes, it does. I do have another question, I understand for other such projects. We have a limited number of days they can have open until 1:00, is that correct?

>> There have been a lot of conditional use permits that have been approved over the years and sometimes they have reined in tighter hours during weekdays and a lot more flexibility on Fridays. I've seen applications where we've proposed later nights allowed on Fridays and Saturdays, sometimes Thursday Fridays and Saturdays, more restrictive hours than others, and so that's not unusual.

>> Commissioner Bit-Badal: My question more specifically was stating for example, 11 Saturdays a year, for 11, you know what I mean, not a full 26.

>> There have been conditions imposed along those lines, too. Those get to be a little tougher to track. Because we don't oftentimes have schedules for those kinds of events. It makes it difficult also sometimes for the neighborhood for anybody else to really track how many times they're compliant. It is not out of the realm of possibility, sometimes when you allow things and you maybe one event a month it's a little bit easy tore track. Because of the tracking issue staff has generally shied away from trying to do that type of condition. But the commission and the city council have imposed that type of thing from time to time on projects.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. Commissioner Kline, would you repeat your motion?

>> Commissioner Kline: The motion would be to approve staff's report with the change of 1:00 a.m. for Saturday, Friday and Saturday.

>> Commissioner Jensen: And is there a -- are you requesting a mandatory report-back?

>> Commissioner Kline: No, I think the conditions in the document would provide that. It would be very staff-intensive the more of these things that we actually do, becomes a staff problem, I think and I'm sure that's why they moved away from, I think we need to rely on the citizens to report problems and the staff and let staff bring it back if there is a problem.

>> Commissioner Jensen: And I understand that completely. My concern with that is so far there isn't a track record established of a lack of incidents. And unless we, and in general, the public tends not to complain, generally speaking, that's my experience. The public has a tendency not to complain. And so I won't be able to support your motion unless there were actually a required report-back at the end of a year.

>> Commissioner Kline: I fully understand that, that's fair. Just some past experience, since the smaller cities who tend to be what we call low service cities or some call no service cities, their entire code enforcement is complaint-driven. The entire code enforcement.

>> Commissioner Jensen: As is ours.

>> Commissioner Kline: Well, having to automatically come back for review I think those days may be numbered in terms of the staff for doing had a. I fully support your intention, I think. If I can get your vote and say come back in two years when there's enough time I would change my amendment. I don't think the applicant would mind at all to tell you the truth, I'm just more concerned with staff. But I'm more than willing to change my motion to make it mandatory two years ago if you would support it, it would be automatic.

>> Commissioner Jensen: I think counsel has something to say. Before I say anything further I would like to have her pop in.

>> I believe something the commission has utilized, so one has been the mandatory referral back to the commission for report. The commission has moved away from those mandatory report-backs only because it is staff intensive and it to be honest is a waste of staff time especially if there's no issue. There is a lot of legwork and research and report writing and it takes up commission time. One things you also have done in the past is to say proactively to look at something. So it is not a mandatory report-back but it has been a request of staff after a certain period of time to look at it so that it's not something that is -- it's sort of a compromise position, it's not completely complaint-driven where we just sit back but rather, staff is asked to look at something. It is not a mandatory report-back because if they don't find anything it never comes back. You do ask staff after a certain period of time to coordinate with police and look if there is a problem. I just wanted to requirement the commission that you have done the sort of middle of the road type of issue.

>> Commissioner Jensen: Thank you, counsel. And if Commissioner Kline were interested and open to doing that in a 12-month period, I would be more than happy to support the motion.

>> Commissioner Kline: I'd be happy to amend my motion to include a proactive review by staff of the applicant's permit status.

>> Commissioner Jensen: You had your speaker light on, would you like to speak? Okay, Commissioner Bit-Badal.

>> Commissioner Bit-Badal: I would like to thanks Planning Commissioners Kline and chair for providing that. I personally field much more comfortable and it's the best interest in the community and the business owner to come back, for staff to know how the business is doing. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. I see no speaker lights. May we vote by light? Commissioner Abelite, are you okay with the multiple changes that have been made to the motion?

>> Commissioner Abelite: I am. And I thank staff for working as hard as they have done on this. It gives the business owner oxygen and we're all moving in the right direction. That's all.

>> Commissioner Jensen: Commissioner Abelite, my apologies for not checking in with you.

>> Commissioner Abelite: That's all right, I wanted to speak anyway.

>> Commissioner Kline: May I have one more comment on this?

>> Commissioner Jensen: Certainly, Councilmember Kline.

>> Commissioner Kline: I appreciate that. And I highly recommend the applicant, after 12 months of fantastic review by staff, to come back for three 2:00 a.m. closings.

>> Commissioner Jensen: I'm sorry, we have closed public hearing. If you would like to stay after the meeting is over, I'm sure the commissioners would be happy to chat. Hopefully, we will be done, this is our second to the last item, and we should be done before very long, thank you. So now may we vote by light? Thank you. And that motion passes unanimously. With commissioners Platten and Kamkar absent. Thank you. And our next item is planning land use ordinances. A review of the staff proposed and council proposed prioritization.

>> Laurel Prevetti: Thank you, Madam Chair. In your packet is a one-sheet summary of some of the pending ordinances facing the city council on the reverse of the memorandum are the results of a prioritization exercise that the council, City Manager, deputy City Managers and all department heads participated in, in February. You see the results of that. We've categorized the pending ordinances by category. So the first set are all around economic development, the second are more neighborhood-focused, third historic preservation, then we go into code modernization. Various green initiatives and finally other topics. You'll see that quite a number of ordinances rose to the top, especially in the economic development category. This is consistent with council's direction in the past. I wanted to just let you know that in terms of our own work plan, where we are now is that we're very interested in moving forward with the second phase of the sign code, given its economic development importance, and that is consistent with the council's priorities. We are continuing to work on the medical marijuana issue that is very staff-intensive and we may have some resolution or the beginnings of resolution of that in April but we expect further work will be needed. We do have a moratorium currently in place on bail bonds and that's set to expire at the end of this fiscal year, in June. So some kind of action is needed. And then finally our staff member who has been handling our ordinance section has decided to retire next week. So she's about to leave, and we are looking at some staff options so that way we can continue to deal with the staff work. But absent that and given the interest of this commission to really be part of future planning efforts, we really were interested in your input, in terms of the priorities. We would -- we are going to city council committee on Monday afternoon and would be very happy to provide any comments that you might have, whether it's priority, emphasis, anything, again, as our advisory body, we very much value your input. Thank you.

>> Commissioner Jensen: Thank you. And are there any questions or comments from the commission? Okay, I have a comment. I don't see the riparian corridor study policy listed on here. And since the commission requested

last year the opportunity to make recommendations on that, I was surprised that it wasn't even given consideration.

>> Laurel Prevetti: Yeah, and that was really as the subcommittee knows, we've started the dialogue with the community and with the plannings subcommittee to consider riparian. You Ho, I think it really demonstrates that the City of San José is such a dynamic organization that at any point in time that a list is created, you know, there's always going to be something that, quite honestly, got accidentally forgotten. And so that was an honest omission, but we will make clear to the committee on Monday that the riparian study and its policy, being formulated into a formal policy or even an ordinance is something that should be on the list. Thank you.

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

>> Commissioner Kline: I'm still getting a handle on what you're actually requesting here. Obviously this was a priority listing by the committee and I guess you want us to comment on their priority listing or come up with our own priority listing or what exactly?

>> Laurel Prevetti: So essentially, what we would be very interested to know is, do you agree with the city council and with the department heads that economic development is, in fact, the number 1 priority for ordinances? Obviously, the council has the fine say in all of this but we wanted to, A, give you an opportunity to become familiar with the ordinance ideas that staff and others have come up with. And two, really give you an opportunity to comment so that again, you can have a voice in this. The last couple of -- about the last year or so we typically go to council about once every six months, and check in on this ordinance list. So it is dynamic, and oftentimes council will think of new things to add on here such as pay-day lending so it's hardly static. But again, we just wanted to get your -- any input that you might have. If you don't have comments, you want to support the priorities, you know, that's certainly fine, as well, I don't want to put you in a place where you feel you have to conflict with our council, certainly but I also want to make sure that you have the opportunity to provide input because you are our Planning Commission, and you see what applications come forward and if you've got ideas for streamlining we're always interested in what those might be. Thank you.

>> Commissioner Kline: Thank you acknowledge just a follow-up real quick. I think this is great that they present us with the ordinances and the priority the council wants. It's a big job, though, to actually do this right and to tackle this you are talking about a month of real work to get anything really practically speaking out of this. This would be something a subcommittee in our group could tackle and say, these are the five ordinances of that are highest priority to the commission. Listing priorities that include I'm not sure how much are here, 15 or 20, it's a nice effort but this is all I can do, what are the five thins that you want to focus on that will make a difference in the next year to to two years in economic development. And I have my opinions, but they're kind of like worthless as one vote. It would be important for the commission as a whole to say to the city council, this is the two or three or this is the number one thing for the next six months and this is the five things you should look at for the next year. This is really useful information but it is something we have to work on for a long time to do anything practical.

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

>> Commissioner Cahan: Thank you, Madam Chair. Would staff elaborate on the green building, building renovation and expansion and it only got two votes, and I'm wondering what the discussion was around that?

>> Laurel Prevetti: Well, the prioritization exercise that was conducted at the 14th was at the end of the study session where council heard a lot of material and discussed the issues around our budget challenges, quite honestly. So this was one of those classic dot-exercises where everyone was given their ten dots, and they could put them all on one item or separate them. There were other items on the list. It wasn't just all about planning and land use. There were other initiatives that affected other aspects of city operations, so the list was much, much bigger and that was the link that was provided to you in the staff report on the front page. In terms of the green building, building renovation and expansion, our current green building provisions only pertained to new construction. And so the thought was, we had the thought actually for quite some time, what about the tenant improvements, or the building's already standing and someone just wants to change the interior, or a home remodel, shouldn't we require green building measures. Part of that was taken care of with the new building code,

the Cal Green code that went into effect in January. But as a city we have not yet taken the step to have requirements that go beyond the building code requirements. So again, there was no real discussion, the pros and cons of all of these different items. But when it came time to put the dots, this is how they landed.

>> Commissioner Cahan: So I understand that we are under great financial restraints at the moment. I also am remembering a meeting that we had of new construction and even if how every single new building was energy efficient, that the dent would make on the impact we have, the negative impacts that our city has on the environment, is minimal, one, 2%. So that says to me that it's a priority or it should be a priority that we start going into the existing buildings, and making those more energy efficient, doing any energy renovation possible, as quickly as possible. Looking at the disasters around the word, we do not know when they're being caused but there is indications that the environment is changing rapidly and I believe that it behooves us to the rapid in our response. So to me, that is a top priorities. Additionally account latest earthquake and the knowledge that we are in an earthquake zone and that our buildings may not with stands a severe earthquake, it concerns me not to see a priority in here about examining our buildings and retrofitting where we need to, again, as quickly as possible, to try to make our city as safe as possible. I read a study that said the prediction in the next 30 years is that California will have 99.7% prediction that we will have an earthquake that is 8.0 or higher. And the prediction was, in this area, the Bay Area, based on what they're evaluating that's happening right now. And to -- who knows, when that might actually happen? But I think it's a severe importance that our buildings are ready for that, whenever and if it happens. And so I see that as a high priority, that doesn't seem to be addressed here. Thank you.

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

>> Commissioner Bit-Badal: Thank you, Madam Chair. I also agree with your comment regarding the riparian corridor. I personally believe it's a really important item to take on. And also, I agree with Commissioner Cahan, regarding the green building. I wanted to also state that I'm extremely excited to see the sign ordinance having as much priority as it does. Having worked with businesses and having participated in the sign ordinance for the City of San José I'm extremely excited because it's the biggest marketing tool businesses could have and I remember

from our discussions with business owners and property owners, especially shopping center property owners, it really makes a big difference, particularly plant, they had a big issue and they did over the years and there's another shopping center in the Evergreen area that has visibility issues. I also have a question to ask you about green roofs and villages. Villages is also a good way of looking into economic development I feel. I know there's a direction we're going into, is there some way we can look into those? Also green roofs, also I'm very interested in that. It's a great thing to do, we live in California, and we have happy hollow park and zoo, I'd like to see it in other areas.

>> Laurel Prevetti: We don't Do need ordinances to do green roofs. Property owners are welcome to install them, in existing buildings or new buildings. We've seen them in affordable housing projects as well institutional uses as you've described. We do have new permit requirements that are coming to all cities in the Bay Area region from the regional quality -- regional water quality control board. And they are stricter in terms of water quality improvements and water quantity management. And one technique to address that are green roofs. So we're still evaluating the implications of the permit requirements on new construction and all development. But we imagine that because of that permit, more property owners may voluntarily choose that as a solution to address storm water runoff. In terms of the villages, that's something we're doing really through our long range planning program, through our general plan update, and again, we don't need a code or an ordinance. But related to villages is really then enabling zoning requirements that are more form-based as opposed to the traditional use based requirements. And so our main street zoning district which needs just a little bit of tinkering is also on the list, that's under economic development, main street/Alum Rock zoning standards. And that is something that we're doing a little bit of additional work on because we find that if we can actually zone property with those types of regulations, then a builder can just come in for a site and architectural, and maybe a use permit if needed, and we'll be getting the urban quality that I think San José is really ready for. So that is something that will help us implement those ordinances around building.

>> Commissioner Jensen: Thank you, director. Commissioner Abelite.

>> Commissioner Abelite: That's.

>> Laurel Prevetti: Future village plans we will likely have similar main street type zoning for those villages. What we're learning with this kind of form based coding is that it's so context-specific that it's very hard to say one size fits all. So you almost really need to get in there and explain what exactly you want to achieve and then code from there. But we see that as part of the future of San José.

>> Commissioner Abelite: I have two other items to talk about. So the third bullet point down could you elaborate what that means? Quarterly modifications, small residential building, 8 percentage increase?

>> Laurel Prevetti: Yeah, I'm sorry, that's kind of code for what this current quarterly modification would be. What we try and do, and we're not always successful, is every quarter we would like to bring before the planning commission and then the council for adoption our minor modifications to the zoning code, the little hiccups that we have found through the permit center. So the ones that are listed on the sheet are just the ones that we're hoping to address, and we're hoping that those would come forward in the Spring for you.

>> Commissioner Abelite: One last question. Because what I think I heard you say is that all of the issues that were brought forth through the study session aren't here. And I'm thinking about another department, another department I'm familiar with and that's the building department. And permitting is very, very difficult in downstairs from several people -- several applicants that I hear. And it's spiraling in the wrong direction and I was wondering, was that on another list that we just don't see here? In other words, is somebody going to look, is somebody going to be looking at the first floor a little bit?

>> Laurel Prevetti: Well, we're always looking at our first floor because that's the hub of how we get permits issued and out the door. We've actually created a lot of expedited services through our building division and maybe you and I can talk offline. I'd like to hear of the experience that you have, because actually we've come a long way from where we've been. We know there's always more room for improvement. We don't see that so much a municipal code issue, that requires a new regulation but really more business practice. We are underway, just so all of you know, with a customer bill of rights and responsibilities. So that way, expectations are clear for

people who come to get service in our permit center or through development services and that's a work in progress that we hope to have finished no later than June. So we're trying to address those customer concerns.

>> Commissioner Abelite: So the building permitting part of it, I'm not talking about planning permitting, but building permitting didn't even show up on this list, but did it show up somewhere?

>> Laurel Prevetti: No it didn't because it's not an issue with the code itself. I suspect that the concerns are more around how we're delivering that service. I would like to talk to you offline to understand those experiences so we can learn from them.

>> Commissioner Jensen: Thank you, Commissioner Abelite and director. Commissioner Kline.

>> Commissioner Kline: I just want to follow up with that last comment. I personally don't have any experience at all with the room downstairs, but I do know of third parties that do, and they support everything my fellow commissioner indicates. Jeff Smith, the new exec at the county, had similar issues, and I don't know if they're still there or not, and he instituted a code of not customer rights, because they can pretty much be ignored, but he actually shipped all his customer service people to extensive customer service training and I do understand things have tremendously improved. His focus is he wants everyone to come out of the county building 100% satisfied, even though they may not have gotten their way, they think that they were treated extremely well and the process had worked will and that's his number one goal at the county is to make sure that they're customer focused and again some of the best practices down the street give him a call to find out where he's training, I think it was Stanford actually. He had other things he put in he's a very quantitative guy, for measuring, yardsticks for feedback right at the counter or right at the process so you can get statistical members to actually say whether you're making progress or not. That's a side note. What I wanted to talk about was the main street, fascinating, that we have a committee to kind of talk about that, of applying the main street which I voted against, I was for it before I voted against it. The idea was, I just thought it was too fast. We were going too fast. I'm really happy with these accurate, high priorities. I think we should take a look at it because I know there's great concern with the older, extremely well done neighborhoods, about the effects that this thing might have of the degrading a good

quality of life they think they already have by overlaying this type of zoning on top of them so I'm really really interested in how that's going to go forward and stretching that. And we do have a subcommittee that would be interested in working with staff on this, specifically. So I know that would be interesting and that's about it. Thank you.

>> Commissioner Jensen: Commissioner Kline, thank you very much and director. And I would like to thank the director also, for outlining kind of what the process was and the council and the various department heads had a very long list. And vs. been through more dot-exercises than I care to think about, I know how challenging it is to think about the allocation of your precious dots, and the negotiation that go on, trying to get people to vote for items that you're passionate about. And so I think y'all did a great job, not knowing what the other ones are, but -- and I'm also happy to see sign codes. I just as a plug, I hope sign codes includes more pedestrian-friendly signage and a mandatory requirement for pedestrian visibility on things that are considered villages and main streets. I gave a previous councilmember a tour of some of our downtown areas and we had to walk into the middle of the street to figure out what the buildings were, because they were signed above the awnings, so that was a very nice practical lesson. I think the habitat conservation plan is critical. I know that the outside work with other organizations has been going on for quite some time and that it's coming forward. They're coming to conclusions. And again, I think riparian corridors are important. I appreciate Commissioner Bit-Badal raising the issue of the encouragement of green roofs and riparians as well, and I really appreciate Commissioner Cahan's respect and recommendations regarding green buildings. And I think that we are seeing the effects of climate change. And it's going to make green building our ability to try and do what we can in support of lowering our impact, even more important. And I think that that also has economic value to this community. I think this community has huge opportunity to generate a lot of revenue on creating those solutions and implementing those solutions. But I have a lot of respect for all the department heads and council for having to go through this exercise and try to pick their favorite babies and not ignore the ones that didn't make the list. So thank you very much for allowing us the opportunity to comment on it. Are you looking for anything, a vote from us or just -- okay, good.

>> Laurel Prevetti: No I think you've just given a very nice summary and I will provide that to our director, who will be presenting this to the council committee on Monday. So thank you, all of you, for your comments.

>> Commissioner Jensen: Thank you. And moving on. Petitions and communications. Public comments to the planning commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to three minutes. The commission cannot take any formal action without the item being properly noticed or placed on the agenda. In response to public comment, the commission is limited to the following options: Responding to statements made or questions posed by members of the public or requesting staff to report back on a matter at a subsequent meeting, or directing staff to place the item on a future agenda. And I see we have two new visitors and I'd just like to see if either of you have anything you wanted to say. Are you students? Ah, I won't mention that you arrived late at the meeting. So referrals from city council, boards, commissions or other agencies?

>> Laurel Prevetti: We have none.

>> Commissioner Jensen: Thank you. And by the way you can watch the whole thing on video so it doesn't look like you're late. Good and welfare, report from city council?

>> Laurel Prevetti: Thank you, Madam Chair. The city council has not really considered many land use items. We've had some minor conventional zoning items go to the city council but nothing of major importance. I think they did since you last met, unless the director gave you this update last time, there was one of the Walgreen's had been denied by this commission was appealed by the council and they also denied it. So I don't know if Joe gave you that last time. Thank you.

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

>> Commissioner Cahan: Thank you, Madam Chair. The group has not yet.

>> Commissioner Jensen: Thank you. Envision 2040 general plan update process. Commissioner Kamkar is unfortunately not with us this evening. So I will provide an update, and whatever I miss or get wrong, the director can help me. We are in the final stretch. We had meeting number 48 -- 49 on Monday. And pretty soon we're going to celebrate our four-year anniversary. The task force had three I think it was three major discussions, that evening, I'm going to go with the easy one first. The five wounds Brookwood terrace community planning area brought forward their recommendations for a village concept within their area. This is a model program, and was driven by the community with support from San José State University planning students, and city staff, and a number of community members, and they have a report that's over 200 pages long with their recommendations. And the task force had the opportunity to review it and make recommendations to incorporate that. One of the major components of that was a rails to trails policy for rail line that goes through their community and we were all very happy and impressed with the work, tremendous work that they had done. And just appreciation to some of those members. And I'm certainly not going to remember everyone, but David Viera and Melda Rodriguez were instrumental in making that happen and Terry Christianson of course is leading the charge. The task force also had a rather lengthy conversation regarding the recommendations put forth by staff for hillside development and when it came to a vote, we were split exactly down the middle. And so we sent forward a recommendation to council that we were split down the middle, and we asked them to figure out how to put the baby back together again. And then I'm at a loss. Because I know the other one was very important but those two took up so much of my evening that I've forgotten.

>> Laurel Prevetti: Those were really the major issues. I just want to let the commission know that we, based on the last task force meeting we're putting the final touches on yet another version of the update text. Once it's complete, it will be available online through the plan button on the envision Website. And if any of you are interested in hard copy, copies, we'd be happy to get that to you. We're continuing to work on the environmental impact report and hope to have that also available. As the Planning Commission you will be required to evaluate it to determine whether or not it's in compliance with CEQA. So you'll also be getting a hard copy of that.

>> Commissioner Jensen: And there is some discussion as to whether we'll have a meeting in may. And then if we don't have a meeting in May I believe our next meeting is in September. So we get a summer break. We're very excited. Thank you. Are there any questions -- Commissioner Kline, you know, we've had 49 meetings, believe me, we need a break. Our coach here is threatening mutiny now. Review and approve the synopsis from February and March. The March 9th synopsis, I don't think, can be approved because we don't have a quorum of the members who were at that meeting, and we were unable to reconstitute ourselves due to the audio problem. And I don't believe I saw the February synopsis in our packet. Did other people get it? You did? Well, lucky you. Okay, Commissioner Cahan you were the only one who received it so we will hold that recommendation.

>> Commissioner Cahan: I was absent that meeting so --

>> Commissioner Jensen: We will hold that for next meeting. Subcommittee formation reports and outstanding business. Continued discussion on the report related to hiring outside consultants for environmental reports. Commissioner Kline. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. At the last meeting Commissioner Kline reviewed our findings on our subcommittee findings. And then we decided to postpone discussion on it, first of all to make sure the community was fully aware of the discussion and the recommendation, and also, to have more of our members present on the planning commission to discuss it. And what our committee looked at was the best practices of the city hiring environmental -- for the environmental reports, the consultants, hiring of the outside consultants. And currently the City of San José does this under really an applicant-driven process where the applicant goes out and finds the consultant and then the consultant works with the city staff. And Commissioner Kline and I wanted to look at some of the other cities to find out what their process was to see if perhaps there was a better way to do this. And our review found that of all the other cities we looked at, Cupertino, Milpitas, Los Altos hills, Sacramento, San Francisco, Santa Clara, Saratoga and Sunnyvale, only one had a similar process to ours. And the rest of the cities were city driven, they either had a list of consultants that were preapproved by the city that then applicants could hire from or the city itself selected the consultants and then the developer worked

under those restrains. And reviewing that process, that just seemed to be a cleaner way of doing things, where it eliminated any suggestion that there might be any sway, that the developer might have. And we haven't heard complaints to us about that. But there is a concern that perhaps the community might view someone who was hired directly by the developer, that there might be some issue there. And so looking at the other cities and the way they're doing things, that just seemed to be a much better approach to making sure that everything was clear. That there was no bias on behalf of the consultants.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Commissioner Kline, did you have something you would like to add?

>> Commissioner Kline: I want to thank Hope for all the good work. We both carried this forward in the last two or three months. I also want to thank staff who actually without their help we would never have this done at all. So I do appreciate their active cause of support on this. And I think Hope covered everything quite well. I think the key component was following the revenue stream, that's all the money, income, but meet with an environmental consultant who has done business sometimes for 20, 30 years, with a particular applicant, if he wants to do business again with that particular applicant, it is a business, and the relationship is, the applicant gets to pick the consultant, gets to hire them, select them, pay them directly, there is at least an appearance of a conflict of interest, if not one directly. And in looking at the other cities, they all basically not only have a -- either have a preapproved list, but the revenue streams they control. They don't allow the consultant, the developer to actually pay directly to the consultant. The developer pays the city. The city then hires the consultant, and then charges the developer the fee plus the administration fee. And the consultant fees go from 8% to in some cases 35% of the application. So it well covers the cost of the administrative process. So you break the tie between the applicant and the environmental consultant. And even the one that said that they basically do something similar to San José said they're looking at changing it, didn't give us particular reasons why, but what was very interesting was the results of this report which I have not sent yet. So we're simply asking that the staff when they get some breathing room, which I know they're completely underwater at the moment, look at changing policy and best practices of other cities and convey this to city council for us that they are doing such. Because we think this is going to be a very fair process. And I have had many people come up to me, talking about this process. And

even since -- on the agenda I've had people approach us and say right on, we can note incident after incident where we've got instances that are strange, they may not be strange, they just appear strange, where the applicant and consultant look like they're the best drinking buddies.

>> Commissioner Jensen: Thank you, Commissioner Kline.

>> Commissioner Kline: Actually, I'm not done yet. Thank you for interrupting. I think it's very important from an ethics point of view, a morals point of view, to do this process. And I can't say strongly enough, that the appearance matters just as much as anything that really is going on. And so I really do hope the commission votes not only to approve this recommendation, to staff, but then, make sure it moves on to city council.

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

>> Commissioner Bit-Badal: Thank you, Madam Chair. I would like to thank commissioners Cahan and Kline for their outstanding work. It is definitely something we need in our city and we talked about it a little bit during our study session earlier as it relates to third parties and people who are reviewing and coming forward as experts in the field. So I just want to say thank you again for bringing that forward. Out of curiosity, which city is like us? You mentioned there's one city and they're looking at --

>> Commissioner Kline: I noticed the report wasn't in the packet. Do you have the report?

>> Laurel Prevetti: We typically -- it was on the online version so I know that's what's challenging is that we typically don't reprint your reports twice. So if something gets continued you need to kind of -- and that's what happened with the prior synopsis so I will remind our staff to put hard copies and not assume that you've necessarily brought your former packets with you. So --

>> Commissioner Cahan: Madam Chair, if I may, it is the city of Milpitas that currently operates under the same system that we have but said that they are looking at changing that system.

>> Commissioner Jensen: Thank you, and I'll be sure to print out a copy from the online copy. Thank you, commissioner Kline.

>> Commissioner Kline: I didn't even know that you didn't have copies. Just to review the report, the summary on the front gives you a breakdown by city. And then detailed on back gives you the exact response. It tells you exactly who responded from the Planning Department, in which most were senior planners or the actually planning director, it gave you the policy summary, policy staff and fees structure is exactly as they responded to us. We had two people who responded by phone, verbal but everybody else did written, and we basically cut and paste their e-mails. It's their writing there. So we didn't want any type of filtering going on. In some cases it was very long, like Sacramento and Sunnyvale, in other places we do just like Sunnyvale with these changes. It makes nor pretty interesting reading, and in talking to them I got the impression that they really wanted this report back because they would like to review best practices, too, what's going on and how to change it. So with your permission we'd actually like to send a copy back to the cities which requested, and which we think is important.

>> Commissioner Jensen: Is there any, I mean since the commission hasn't finished the meeting process, or is there any things that would prevent us at this point from sending them an initial draft?

>> Laurel Prevetti: This is a public document and this is a public meeting so if you wanted to send them a link from our Website, that would be simply fine.

>> Commissioner Jensen: Thank you, director, Commissioner Abelite.

>> Commissioner Abelite: Thanks. I just had a couple of questions. I thought I heard Commissioner Cahan say two different things, there's possibly an approved list that an applicant might be able to just go to and contact direct, correct, is that one BNP? And then the other one would be to go through the staff part of the contract process?

>> Commissioner Cahan: Right. So the cities have two varying ways they're in control, how the developer and the applicant coming back together. So in some of the cities -- let's see, in San Francisco and Santa Clara, they have a consultant pick from a preapproved list and that city is from the city itself. And then they paid, once they pick someone they paid e-pay the city and the city pays the consultant. And the other cities in Cupertino, Los Altos Hills, Sacramento, Saratoga, Sunday, you have the city selects hires and pays for.

>> City Attorney Doyle: A consultant to do the report.

>> Commissioner Abelite: The reason I ask is, so I've been on the other side of the podium for many, many years and actually had some of the staffers here, not going to name who, pay them, I want to do business in the city, I want to do an EIR, even though I'm supposed to be able to go out and pick my own, I name the two because I wanted to pick the most reputable one, and I was developer guy right, and I just wanted to pick somebody that had high credibility, no coercion going on. It never even entered my mind. Where I'm going with on this is I'm a little bit -- I just want to make sure that we don't overload staff, for instance, in an already stressful time that is not going to go away in the next one, two to four years in my opinion. And I also don't want to inhibit necessarily the time line for those new projects. Big projects already take a long time to get done in this city, county, state, and even -- you know. So I want to make sure that we do things for our economic development that don't go in the opposite direction. Maybe you could talk about that a little bit. I'm not worried so much about the cost so much as the cost of time, and loading up staff which is already stressed. So maybe you've discussed those with some of the other cities.

>> Commissioner Kline: Well, I guess there's never a bad time to do the right thing. You know, it's not particularly a budget issue. There is some time involved and we're not saying do this tomorrow or next week or even next month. But clearly putting off something for five years No. the economy comes around doesn't make sense either. If you see something that's best practices you should move forward. All the other cities have financial stresses as much as we do, they just got hit on the ball on this one a little bit earlier. I think this is important to do than just a civic or an ethical issue, to have independents come forward presenting what is presumed, to the audience, as independent analysis, when I've reviewed this, and people in the legal field and

others we just look at and go, wow, there's a major conflict of interest here, it's just wrong and there was probably a very good reason why it was done, and many cities indicate that that was a process they had, years ago. So for whatever reason and good reasons probably, we never probably kept up with changes in the planning on this particular issue. And used an excuse that well, we don't have time to do it now either. Well when do you have time? You may never have time. I think we have to move the ball forward in a fiscally responsible way that doesn't jar our Planning Department or cause major issues. But once it's up and running it should easily pay for itself. You simply apply fee directly to the applicant and it covers the cost of the service.

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

>> Commissioner Cahan: Thank you, Madam Chair. I'm hoping that this would also help streamline the process for the developer, if there's already a list. So you don't have to go out and ask your friends, as a developer you don't have to ask other developers who the most reputable is, because there's already a list. Or the city staff will already take care of finding that person for you. And additionally there are the fees to cover it, and perhaps even add some extra money to San José.

>> Commissioner Kline: And frankly, I'm actually concerned of the process you went through as you're dictating it to me, I could go back through my ethics courses and say, oh my goodness you did that? You actually went to the staff person, asked for a replication from the contractor and they gave you one? Wow, to me that causes me to pause a little bit. What relationship does our staff have with this particular outside independent contractor? Is there a relationship, is there an ongoing relationship, is there something going on, that raises some concern because if they're not into having that an open process. So I -- from a city council, Planning Commission point of view, I have a concern with the process you just -- even though it was well intentioned and there was no hokey pokey going through, then pressure could be different.

>> Commissioner Jensen: Thank you. And I'd like to add that I've also had a number of comments from community members who have over a number of years questioned the process we have in place, and the potential for impropriety, whether or not it exists, there is certainly a perception. And so a number of people are

aware of this process, and they're very excited about what's happening and interested in the outcome. Thank you very much, commissioners Kline and Cahan, for the work that you're doing on this, and we look forward to seeing your final recommendations and having the opportunity to vote on it all. This is your final recommendations. Okay.

>> Commissioner Kline: And it's kind of interesting that at the last Planning Commission meeting, the two that aren't here, were here, and the three that weren't here, are here. We covered all the planning commissioners as a pretty good presentation.

>> Commissioner Jensen: In one way or another.

>> Commissioner Kline: Right, we all know about that.

>> Commissioner Jensen: We certainly have a quorum and we could vote on it but would you mind if I requested that we hold a formal vote to the next one, so that those of us who have just received it this evening, have and opportunity to read and review it, and that's fine with you?

>> Commissioner Kline: I think it's very appropriate to.

>> Commissioner Jensen: Thank you very much for allowing us that opportunity. Commissioner Abelite.

>> Commissioner Abelite: I want to ask staff what their thoughts are in terms of time load. If we're going to study this for another two weeks I just want to -- I'd like to know that answer kind of now.

>> Commissioner Kline: And that's what Chris asked for last time, he wanted staff's input on this.

>> Commissioner Abelite: In terms of load.

>> Laurel Prevetti: Similar to Milpitas, San José has been debating this for some time. We've had our own internal conversations, we also want to thank the subcommittee for doing the analysis of what other cities have done. And as a subcommittee, this would be a recommendation for our planning director to take under advisement what would happen next. Should the commission pass those forwards, is that we would look at this in light of all of the requests for proposals that we're thinking of, we've actually been thinking of. Having a bank of consultants not only for environmental review purposes but also for urban design, biology and other technical areas. So that way as technical studies are needed, we have a preapproved staff and then, staff would then work with those people directly to get the work done. And clearly, CEQA is the most apparent area that could benefit from something like this, but we also could use professional service and other arenas as well. And as mentioned in the subcommittee report, we would certainly charge an administration fee that would allow this effort to be cost-recovery, because it would take additional staff time to administer all those process, and pay the bills, and do whatever one does when you have consultant resources. But I think this is -- really it's just a matter of time for San José. I don't know if we would be successful in implementing this in 2011 but I think it's definitely coming in our future. Thank you.

>> Commissioner Jensen: Thank you, director. And the riparian corridor subcommittee has also had the opportunity to have a meeting, an initial meeting. And by and large what we did was go through the history and the outline of where we were, and consider what it was that we were attempting to do, so that we had a plan. And we will be meeting on Monday, the 28th. In the evening, early evening, and we look forward to having something more substantive to present to the commission after that time. Are there any other subcommittees that would like to provide an update? Seeing none, okay. Commission calendar and study sessions. Are there any requests or recommendations from the commission on additional study sessions? We have a study session planned for May which is the always fabulous Capital Improvement program. And for those of you who haven't had the opportunity to do this before, I'd suggest lifting weights now. And then after that the rest of the year appears to be open. So we certainly have room. Commissioner Abelite.

>> Commissioner Abelite: Yes, can you tell me about the weight lifting in May, I mean, when are we going to get some documents, what is our role, and are we trying to prioritize capital improvement projects and dollars, by district, or what are we doing?

>> Laurel Prevetti: No, by city charter, the planning commission must review the capital improvement program for the city of San José and provide any input to the city council by city charter. They're looking for a specific finding of consistency with the existing general plan. As we move forward we're very interested in working with this commission around priorities, but that will be more of a future effort once we have the envision San José 2040 plan adopted. So we can make sure those investments are aligning with the new villages and other strategic changes that we expect in our city.

>> Commissioner Jensen: Thank you, director.

>> Laurel Prevetti: And you'll be getting the document probably May 2nd. You may be getting it very late in April, if possible, but no later than May 2nd.

>> Commissioner Jensen: Thank you, director, and are there any other comments or questions from -- okay, are you looking forward to this, because you should. Yeah. You will. Thank you, and are there any other questions or comments or recommendations from the commission? Hearing none, I believe we are adjourned for the evening, thank you very much.