



PLANNING COMMISSION AGENDA

Wednesday, November 4, 2009

6:30 p.m. Regular & General Plan Hearing

Council Chambers

First Floor, City Hall Wing

200 East Santa Clara Street
San José, California

Thang Do, Chair

Lisa Jensen, Vice-Chair

Hope Cahan Xavier Campos

Matt Kamkar Christopher Platten

Jim Zito

Joseph Horwedel, Director

Planning, Building and Code Enforcement

NOTE

To request an accommodation for City-sponsored meetings or events or an alternative format for printed materials, please call Dawn Lehman at 408-535-7811 or 408-294-9337 (TTY) as soon as possible, but at least three business days before any meeting or event. If you requested such an accommodation, please identify yourself to the technician seated at the staff table. If you did not call in advance and do now need assistance, please see the technician.

NOTICE TO THE PUBLIC

Good evening, my name is **Thang Do** and I am the Chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission Public Hearing of **Wednesday, November 4, 2009**. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the Chambers.

If you want to address the Commission, **fill out a speaker card (located on the table by the door, on the parking validation table at the back, and at the bottom of the stairs near the Audio-Visual Technician. Deposit the completed card in the basket near the Planning Technician. Please include the agenda item number (not the file number) for reference. Example: 4.a., not PD06-023.**

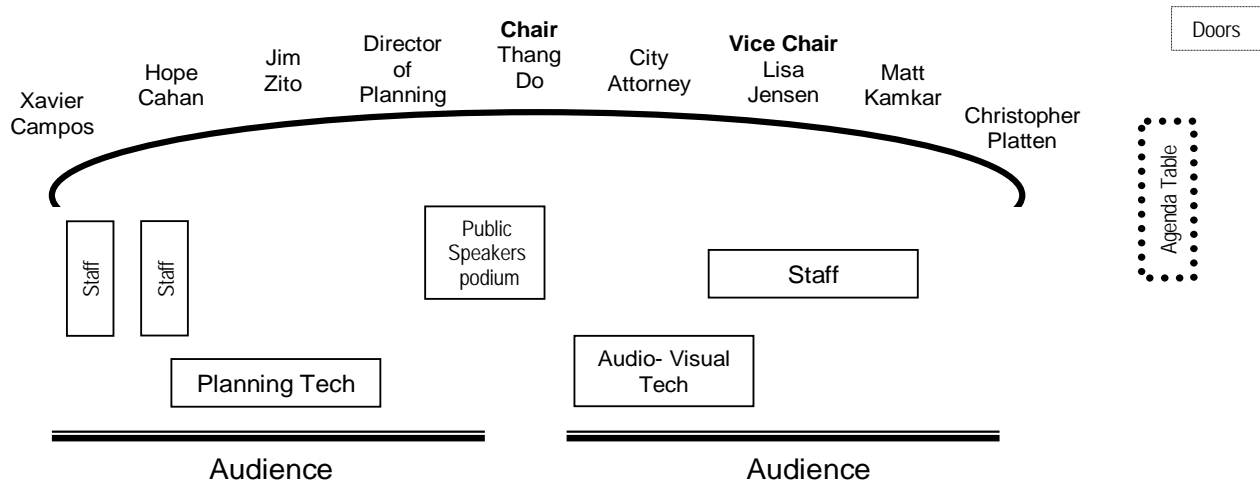
The procedure for this hearing is as follows:

- After the staff report, applicants and appellants may make a 5-minute presentation.
- The chair will call out names on the submitted speaker cards in the order received.
- As your name is called, line up in front of the microphone at the front of the Chamber. Each speaker will have two minutes.
- After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes.
- Planning Commissioners may ask questions of the speakers. Response to Commissioner questions will not reduce the speaker's time allowance.
- The public hearing will then be closed and the Planning Commission will take action on the item. The Planning Commission may request staff to respond to the public testimony, ask staff questions, and discuss the item.

If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the City at, or prior to, the public hearing.

The Planning Commission's action on rezoning, prezonings, General Plan Amendments and Code Amendments is only advisory to the City Council. The City Council will hold public hearings on these items. Section 20.120.400 of the Municipal Code provides the procedures for legal protests to the City Council on rezoning and prezonings. The Planning Commission's action on Conditional Use Permit's is appealable to the City Council in accordance with Section 20.100.220 of the Municipal Code. Agendas and a binder of all staff reports have been placed on the table near the door for your convenience.

The Planning Commission is a seven-member body, appointed by the City Council, which makes recommendations to the City Council regarding the adoption, amendment, or repeal of general or specific plans, and regulation of the future physical land use development, redevelopment, rehabilitation or renewal of the City, including its Capital Improvement Programs. The recommendations to the Council regarding land use development regulations include, but are not limited to, zoning and subdivision recommendations. The Commission may make the ultimate decision on Conditional Use Permits, and acts as an appellate body for those persons dissatisfied with the Planning Director's decisions on land use and development matters. The Commission certifies the adequacy of Environmental Impact Reports.



The San José Planning Commission generally meets every 2nd and 4th Wednesday at 6:30 p.m., unless otherwise noted. Agendas and Staff Reports for Planning Commission items may be viewed on the Internet at http://www.sanjoseca.gov/planning/hearings/planning_com.asp

All public records relating to an open session item on this agenda, which are not exempt from disclosure, pursuant to the California Public Records Act, that are distributed to a majority of the legislative body will be available for public inspection at the Planning, Building and Code Enforcement at San José City Hall, 200 E. Santa Clara Street, 3rd Floor Tower, San José, CA 95113 at the same time that the public records are distributed or made available to the legislative body.

Audio for the Planning Commission hearings are recorded and broadcasted live. To listen to live audio broadcast or to listen to past hearing recordings go to the Internet website: http://sanjose.granicus.com/ViewPublisher.php?view_id=17

If you have any questions, please direct them to the Planning staff at (408) 535-7800. If you have any agenda questions, please contact Dawn Lehman at (408) 535-7811 or email dawn.lehman@sanjoseca.gov. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

AGENDA
ORDER OF BUSINESS

ROLL CALL

1. 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 want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time.

To effectively manage the Planning Commission Agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either:

- To proceed with remaining agendized items past 11:00 p.m.;
- To continue this hearing to a later date;
- Or to defer remaining items to the next regularly scheduled Planning Commission meeting date.

Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m.

The matter of Deferrals is now closed

2. CONSENT CALENDAR

NOTICE TO THE PUBLIC

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 the public to have an item removed from the consent calendar and considered separately.

Staff will provide an update on the consent calendar. If you wish to speak on one of these items individually, please come to the podium at this time.

- a. [CP09-033](#). Conditional Use Permit to convert an existing office building to a child daycare center on a 0.53 gross acre site (no expansion of the existing building included) in the CP Pedestrian Commercial Zoning District, located at 486 W. San Carlos Street (Forbrich Falko Trustee, Owner; Kidsville Preschool, Developer). Council District 3. SNI: None. CEQA: Exempt. *PROJECT MANAGER, A.BATY*

Staff Recommendation: Approve a Conditional Use Permit to convert an existing office building to a child daycare center on a 0.53 gross acre site (no expansion of the existing building included) in the CP Pedestrian Commercial Zoning District, as recommended by staff.

- b. [CP09-029](#). Conditional Use Permit Renewal for after-midnight and live entertainment uses at an existing nightclub in the DC Downtown Primary Commercial Zoning District, located at/on the southeast corner of Santa Clara Street and S. First Street (8 S. First Street)(Pham, Hong Thoa Thi/Diamond S.J. Ent. Inc., Property Owner/Applicant). Council District 3. SNI: None. CEQA: Exempt. *PROJECT MANAGER, S.ZARNOWITZ*

Staff Recommendation: Approve a Conditional Use Permit Renewal to allow a drinking and entertainment establishment with late night use until 2:00 a.m. in the DC Downtown Commercial Zoning District, as recommended by staff.

- c. [CPA03-021-01](#). Conditional Use Permit Amendment to allow amplified entertainment at an existing restaurant, on a 1.2 gross acre site, in the CP Pedestrian Commercial Zoning District, located at 1733 Story Road (Hoady Family LLC, Owner; Tacos Al Carbon, Developer). Council District: 5. SNI: None. CEQA: Exempt. *PROJECT MANAGER, A.BATY*

Staff Recommendation: Approve a Conditional Use Permit to allow amplified entertainment at an existing restaurant, on a 1.2 gross acre site, in the CP Pedestrian Commercial Zoning District, as recommended by staff.

- d. [CPA05-015-02](#). Conditional Use Permit Amendment for a performing circus with no animals to be held on an annual basis on a 4.85 gross acres site in the CO Office Commercial Zoning District, located on west side of N. San Pedro Street between W. Taylor Street and W. Mission Street (City of San Jose, Owner; Cirque Du Soleil, Developer). Council District 3. SNI: None. CEQA: Exempt. *PROJECT MANAGER, A.BATY*

Staff Recommendation: Approve a Conditional Use Permit Amendment for a performing circus with no animals to be held on an annual basis on a 4.85 gross acre site in the CO Office Commercial Zoning District, as recommended by staff.

- e. [PDC09-017](#). Director-Initiated Planned Development Rezoning to establish development standards to facilitate site and architectural upgrades for 58 existing residential apartment buildings (236 individual apartment units) on a 11.75 gross acre site located in the area generally bounded by both sides of Underwood Drive, Temple Drive, Barker Drive, and Keltner Avenue north of Williams Road. Council District 1. SNI: Blackford. CEQA: Exempt. Deferred from 10/28/09. *PROJECT MANAGER, L.XAVIER*

Staff Recommendation: Recommend approval of the Director-Initiated Planned Development Rezoning to establish development standards to facilitate site and architectural upgrades for 58 existing residential apartment buildings (236 individual apartment units) on a 11.75 gross acre site, as recommended by staff.

- f. **DA – Novellus**: Ordinance to approve the First Amendment to the Development Agreement with Novellus Systems, Inc and Vista Montana as approved by Ordinance No. 28154 and entered into on December 20, 2007 to extend the reservation of the residential unit capacity under the North San Jose Area Development Policy an additional two years relative to the development of certain real properties located in North San Jose. Council District 4. SNI: None. CEQA: Addendum to the North San Jose Area Development Policy Update Final Environmental Impact Report. *PROJECT MANAGER, D.BOYD*

Staff Recommendation: Recommend approval for an ordinance to approve the First Amendment to the Development Agreement with Novellus System, Inc. and Vista Montana as recommended by staff.

- g. **ORDINANCE AMENDMENT**. An Ordinance of the City of San Jose adding a new section to Chapter 20.200 of Title 20 of the San Jose Municipal Code to define transitional housing, and adding a new section to Chapter 20.200 to define supportive housing, and to provide that those uses are and shall be treated as residential uses, subject only to those restrictions on residential uses applicable to the type of residential structure or use involved. CEQA: San Jose 2020 General Plan EIR Resolution No. 65459 and addenda thereto, PP09-175. *PROJECT MANAGER, J.NUSBAUM*.

Staff Recommendation: Recommend approval of the proposed Ordinance Amendment adding a new section to Chapter 20.200 of Title 20 of the San Jose Municipal Code to define transitional housing, adding a new section 20.200 to Chapter 20.200 to define supportive housing, and providing that those uses are and shall be treated as residential uses, subject only to those restrictions on residential uses applicable to the type of residential structure or use involved, as recommended by staff.

- h. **CP07-083**. Conditional Use Permit to demolish an existing gasoline service station and construct a 2,900 square-foot convenience store/sales building, canopy, fuel dispensers, underground fuel tanks, and related site improvements; and to allow 24-hour operation and off-sale of alcohol on a 0.72 gross acre site in the CN Commercial Neighborhood Zoning District, located on the southwesterly corner of Tully Road and McLaughlin Avenue (1100 TULLY RD)(BP West Coast Products, LLC Michael Hager, Owner). Council District 7. SNI: None. CEQA: Mitigated Negative Declaration. Defer to 11/18/09. *PROJECT MANAGER, E.SCHREINER*

Staff Recommendation: Recommend approval for a Conditional Use Permit to demolish an existing gasoline service station and construct a 2,900 square-foot convenience store/sales building, canopy, fuel dispenser, and underground fuel tanks, and related site improvements, and to allow 24-hour operation and off-sale of alcohol on a 0.72 gross acre site.

The following items are considered individually.

3. PUBLIC HEARING

NOTICE TO THE PUBLIC

Generally, the Public Hearing items are considered by the Planning Commission in the order in which they appear on the agenda. However, please be advised that the Commission may take items out of order to facilitate the agenda, such as to accommodate significant public testimony, or may defer discussion of items to later agendas for public hearing time management purposes.

- a. [PDC06-069](#). Planned Development Rezoning from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 166 single-family attached residences on a 3.28 gross acre site, located at/on the west side of North 10th Street, between Vestal Street and East Mission Street (825 N 10TH ST) (825 N. Tenth Street, LLC Don Kvingedal, Owner; Hudson Industrial Equities, Inc, Developer). Council District 3. SNI: None. CEQA: Mitigated Negative Declaration. Deferred from 10/28/09. *PROJECT MANAGER, S.ZARNOWITZ*

Staff Recommendation: Recommend approval for a Planned Development Rezoning from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow up to 166 single family attached residences on a 3.28 gross acre site, recommended by staff.

- b. [PDC09-022](#). Planned Development Rezoning from R-1-1 Residence Zoning District to A(PD) Planned Development Zoning District to allow up to 95 affordable multi-family attached residences on a 3.06 gross acre site, located on the north side of Ford Road, approximately 550 feet easterly of Monterey Road (Owner, State of California; Developer, Eden Housing). Council District 2. SNI: None. CEQA: Mitigated Negative Declaration. *PROJECT MANAGER, L.XAVIER*.

Staff Recommendation: Recommend approval for a Planned Development Rezoning from R-1-1 Residence Zoning District to A(PD) Planned Development Zoning District to allow up to 95 affordable multi-family attached residences on a 3.06 gross acre site, as recommended by staff.

4. OPEN PLANNING COMMISSION FALL 2009 HEARING ON GENERAL PLAN AMENDMENTS

5. GENERAL PLAN CONSENT CALENDAR

- a. [GP09-T-03](#). General Plan text amendment request to add policy language to the San Jose 2020 General Plan to facilitate intensifying economic development areas including, but not limited to those areas located on transit corridors, Major Collectors, or Arterials. (City of San Jose, Applicant). Council District: Citywide. SNI: All. CEQA: San Jose 2020 General Plan EIR Resolution No. 65459. *PROJECT MANAGER, J. NUSBAUM*

Staff Recommendation: Recommend approval of the text amendment to the San Jose 2020 General Plan to add policy language, as recommended by staff.

6. GENERAL PLAN PUBLIC HEARING

- a. [GP08-07-04](#). General Plan Amendment request to change the San Jose 2020 General Plan Land Use/Transportation Diagram land use designation from Combined Industrial/Commercial to High Density Residential (25 - 50 DU/AC) on a 2.88-acre site, located on the east side of Monterey Road, approximately 700 feet northerly of Tully Road (Owner/Developer Emergency Housing Consortium). Council District 7. SNI: None. CEQA: Mitigated Negative Declaration. *PROJECT MANAGER, L.XAVIER*

Staff Recommendation: Recommend no change to the San Jose 2020 General Plan Land Use/Transportation Diagram land use designation on a 2.88-acre site. Employment land offsets are available to facilitate the change to High Density Residential (25 – 50 DU/AC), if recommended by the Commission.

7. CONTINUE THE PLANNING COMMISSION HEARING FOR FALL 2009 GENERAL PLAN AMENDMENTS TO NOVEMBER 18, 2009

8. 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 and placed on an agenda. In response to public comment, the Planning Commission is limited to the following options:

- Responding to statements made or questions posed by members of the public; or
- Requesting staff to report back on a matter at a subsequent meeting; or
- Directing staff to place the item on a future agenda.

9. REFERRALS FROM CITY COUNCIL, BOARDS, COMMISSIONS OR OTHER AGENCIES

10. GOOD AND WELFARE

- a. Report from City Council
- b. Commissioners' Report from Committees:
1. Norman Y. Mineta San José International Airport Noise Advisory Committee (Campos).
 2. Envision San José 2040 General Plan Update Process (Kamkar).
- c. Review Synopsis from [10/28/09](#)
- d. Subcommittee Reports and Outstanding Business

ADJOURNMENT

2009 PLANNING COMMISSION MEETING SCHEDULE

<u>Date</u>	<u>Time</u>	<u>Type of Meeting</u>	<u>Location</u>
January 14	6:30 p.m.	Regular	Council Chambers
January 28	5:30 p.m.	Study Session <i>Economic Downtown</i>	Room T-332
January 28	6:30 p.m.	Regular	Council Chambers
February 11	6:30 p.m.	Regular	Council Chambers
February 25	5:30 p.m.	Joint Study Session <i>with Parks Commission</i>	Room T-332
February 25	6:30 p.m.	Regular	Council Chambers
March 11	6:30 p.m.	Regular	Council Chambers
March 25	5:30 p.m.	Study Session <i>Historic Process Update – Rescheduled to April 22</i>	T-332
March 25	6:30 p.m.	CANCELLED	Council Chambers
April 8	5:15 p.m.	Study Session <i>BART/Mass Transit Investments</i>	Room T-332
April 8	6:30 p.m.	Regular	Council Chambers
April 22	5:15 p.m.	Study Session <i>Historic Process Update</i>	T-332
April 22	6:30 p.m.	Regular	Council Chambers
May 6	5:00 p.m.	Study Session <i>Capital Improvement Program</i>	Room T-1654
May 6	6:30 p.m.	Regular	Council Chambers
May 13	5:30 p.m.	Study Session <i>Distinctive Neighborhood Program</i>	T-332
May 13	6:30 p.m.	Regular & General Plan	Council Chambers
May 27	5:15 p.m.	Study Session <i>Green Principles Update</i>	T-332
May 27	6:30 p.m.	Regular & General Plan	Council Chambers
June 10	6:30 p.m.	Regular	Council Chambers
June 24	5:15 p.m.	Study Session <i>Group Homes/Reasonable Accommodation</i>	T-332
June 24	6:30 p.m.	Regular	Council Chambers
July 8	6:30 p.m.	Regular	Council Chambers
July 22	5:30 p.m.	Study Session <i>Habitat Conservation Plan</i>	T-332
July 22	6:30 p.m.	Regular	Council Chambers
August 12	6:30 p.m.	Regular	Council Chambers
August 26	5:15 p.m.	Study Session <i>“Environmental Issues” Brainstorming</i>	T-332
August 26	6:30 p.m.	Regular	Council Chambers
September 9	6:30 p.m.	Regular	Council Chambers
September 23	6:30 p.m.	Regular	Council Chambers
September 24	8:00 am-3:30 pm	Annual Retreat	T-1572
October 14	6:30 p.m.	CANCELLED	Council Chambers
October 28	6:30 p.m.	Regular	Council Chambers
November 4	6:30 p.m.	Regular & General Plan	Council Chambers
November 18	6:30 p.m.	Regular	Council Chambers
December 2	6:30 p.m.	Regular	Council Chambers
December 9	6:30 p.m.	Regular	Council Chambers

CITY OF SAN JOSÉ CODE OF CONDUCT FOR PUBLIC MEETINGS IN THE COUNCIL CHAMBERS AND COMMITTEE ROOMS

The Code of Conduct is intended to promote open meetings that welcome debate of public policy issues being discussed by the City Council, Redevelopment Agency Board, their Committees, and City Boards and Commissions in an atmosphere of fairness, courtesy, and respect for differing points of view.

1. Public Meeting Decorum:

- a) Persons in the audience will refrain from behavior, which will disrupt the public meeting. This will include making loud noises, clapping, shouting, booing, hissing or engaging in any other activity in a manner that disturbs, disrupts or impedes the orderly conduct of the meeting.
- b) Persons in the audience will refrain from creating, provoking or participating in any type of disturbance involving unwelcome physical contact.
- c) Persons in the audience will refrain from using cellular phones and/or pagers while the meeting is in session.
- d) Appropriate attire, including shoes and shirts are required in the Council Chambers and Committee Rooms at all times.
- e) Persons in the audience will not place their feet on the seats in front of them.
- f) No food, drink (other than bottled water with a cap), or chewing gum will be allowed in the Council Chambers and Committee Rooms, except as otherwise pre-approved by City staff.
- g) All persons entering the Council Chambers and Committee Rooms, including their bags, purses, briefcases and similar belongings, may be subject to search for weapons and other dangerous materials.

2. Signs, Objects or Symbolic Material:

- a) Objects and symbolic materials, such as signs or banners, will be allowed in the Council Chambers and Committee Rooms, with the following restrictions:
 - No objects will be larger than 2 feet by 3 feet.
 - No sticks, posts, poles or other such items will be attached to the signs or other symbolic materials.
 - The items cannot create a building maintenance problem or a fire or safety hazard.
- b) Persons with objects and symbolic materials such as signs must remain seated when displaying them and must not raise the items above shoulder level, obstruct the view or passage of other attendees, or otherwise disturb the business of the meeting.
- c) Objects that are deemed a threat to persons at the meeting or the facility infrastructure are not allowed. City staff is authorized to remove items and/or individuals from the Council Chambers and Committee Rooms if a threat exists or is perceived to exist. Prohibited items include, but are not limited to: firearms (including replicas and antiques), toy guns, explosive material, and ammunition; knives and other edged weapons; illegal drugs and drug paraphernalia; laser pointers, scissors, razors, scalpels, box cutting knives, and other cutting tools; letter openers, corkscrews, can openers with points, knitting needles, and hooks; hairspray, pepper spray, and aerosol containers; tools; glass containers; and large backpacks and suitcases that contain items unrelated to the meeting.

**CITY OF SAN JOSÉ CODE OF CONDUCT FOR PUBLIC MEETINGS IN
THE COUNCIL CHAMBERS AND COMMITTEE ROOMS (CONT'D)**

3. Addressing the Council, Redevelopment Agency Board, Committee, Board or Commission:
- a) Persons wishing to speak on an agenda item or during open forum are requested to complete a speaker card and submit the card to the City Clerk or other administrative staff at the meeting.
 - b) Meeting attendees are usually given two (2) minutes to speak on any agenda item and/or during open forum; the time limit is in the discretion of the Chair of the meeting and may be limited when appropriate. Applicants and appellants in land use matters are usually given more time to speak.
 - c) Speakers should discuss topics related to City business on the agenda, unless they are speaking during open forum.
 - d) Speakers' comments should be addressed to the full body. Requests to engage the Mayor, Council Members, Board Members, Commissioners, or Staff in conversation will not be honored. Abusive language is inappropriate.
 - e) Speakers will not bring to the podium any items other than a prepared written statement, writing materials, or objects that have been inspected by security staff.
 - f) If an individual wishes to submit written information, he or she may give it to the City Clerk or other administrative staff at the meeting.
 - g) Speakers and any other members of the public will not approach the dais at any time without prior consent from the Chair of the meeting.

Failure to comply with this Code of Conduct which will disturb, disrupt or impede the orderly conduct of the meeting may result in removal from the meeting and/or possible arrest.