



## **PLANNING COMMISSION AGENDA**

**Wednesday, September 12, 2012**

**Regular Hearing**

**Commencing at 6:30 p.m.**

**Council Chambers**

First Floor, City Hall Wing

200 East Santa Clara Street  
San Jose, California

**Edesa Bit-Badal, Chair**

**Matt Kamkar, Vice Chair**

**Ed Abelite**

**Hope Cahan**

**Norman Kline**

**Brian O'Halloran**

**Dori Yob**

**Joseph Horwedel, Director**

**Planning, Building & Code Enforcement**

## NOTE

To request an accommodation for City-sponsored meetings or events or an alternative format for printed materials, please call Support Staff 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 **Edesa Bit-Badal** 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, September 12, 2012**. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the Chambers.

If you want to address the Commission, **fill out a speaker card (located on the table by the door, on the parking 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.**

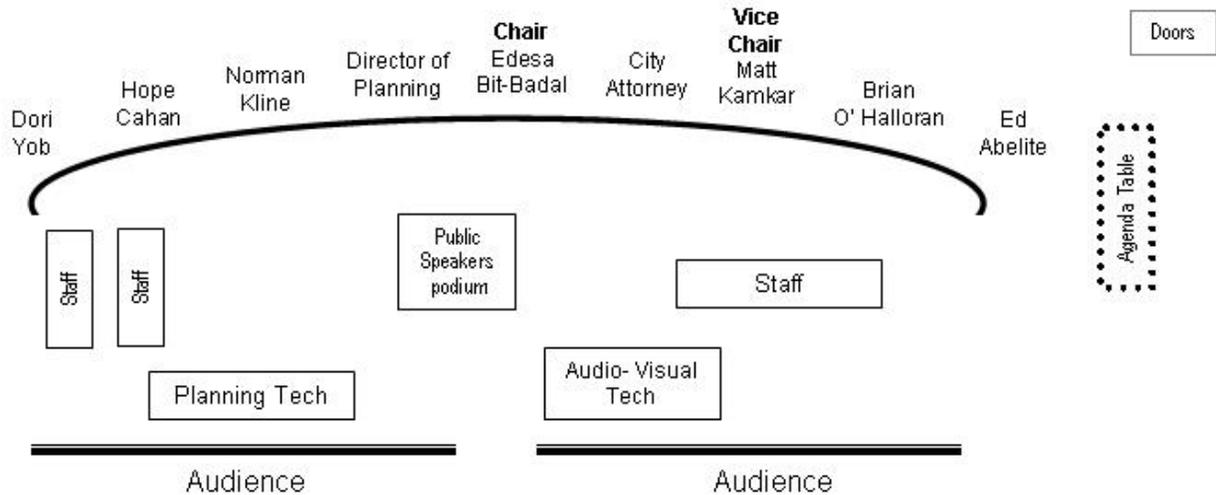
The procedure for this hearing is as follows:

- 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 2<sup>nd</sup> and 4<sup>th</sup> 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/DefaultPC.asp>

**The City of San Jose is committed to open and honest government and strives to consistently meet the community's expectations by providing excellent service, in a positive and timely manner, and in the full view of the public. The City Code of Ethics may be viewed on-line at [http://www.sanjoseca.gov/clerk/cp\\_manual/CPM\\_0\\_15.pdf](http://www.sanjoseca.gov/clerk/cp_manual/CPM_0_15.pdf)**

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, 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](http://sanjose.granicus.com/ViewPublisher.php?view_id=17).

If you have any agenda questions, please contact Support Staff at (408) 535-7811 or email. 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**

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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.

*No items.*

**2. CONSENT CALENDAR**

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**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. **CP11-060.** Conditional Use Permit to allow conversion of an existing 55,000 square foot industrial office building to medical office use in the IP-Industrial Park Zoning District, located on the northeast corner of Lundy Avenue and McKay Drive (1870 Lundy Avenue) (North East Medical Services, Owner). Council District 4. SNI: N/A. CEQA: Exempt. *PROJECT MANAGER, JOHN BATY*

**Staff Recommendation:** Consider the exemption in accordance with CEQA. Approve a Conditional Use Permit to allow conversion of an existing 55,000 square foot industrial office building to medical office use in the IP-Industrial Park Zoning District, for the reasons stated in the staff report.

- b. [CP12-003](#). Conditional Use Permit for the timely renewal of an existing public eating/drinking establishment with late night use until 2:00 a.m. in the DC Downtown Primary Commercial Zoning District, on a .14 gross acre site located on the northwest corner of W. San Salvador Street and S. First Street (389 S. 1st Street)(4 Angel Wings LLC, Owner). Council District 3. SNI: None. CEQA: Exempt. *PROJECT MANAGER, APARNA ANKOLA*

**Staff Recommendation:** Consider the exemption in accordance with CEQA. Approve a Conditional Use Permit for the timely renewal of an existing public eating/drinking establishment with late night use until 2:00 a.m. in the DC Downtown Primary Commercial Zoning District, for the reasons stated in the staff report.

- c. [CP12-026](#). Conditional Use Permit to allow a post secondary school (Unitek College) in an approximately 12,300 square foot portion of an existing 117,739 square foot industrial office building on a 5.9 acre site in the IP Industrial Park Zoning District, located on the northeast corner of Charcot Avenue and Orchard Parkway (1901 Charcot Av) (Fund IX – 2300 Orchard Parkway LLC, Owner). Council District 4. SNI: None. CEQA: Exempt. *PROJECT MANAGER, JOHN BATY*

**Staff Recommendation:** Consider the exemption in accordance with CEQA. Approve a Conditional Use Permit to allow a post secondary school (Unitek College) in an approximately 12,300 square foot portion of an existing 117,739 square foot industrial office building on a 5.9 acre site in the IP Industrial Park Zoning District, for the reasons stated in the staff report.

### 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. [CP12-008](#). Conditional Use Permit request to allow after midnight operation of a restaurant with an incidental drinking establishment until 3:00 a.m. in the DC Downtown Primary Commercial Zoning District, on an approximately 0.28 gross-acre site on the north side of East San Fernando Street, approximately 110 feet westerly of South 3rd Street (87 E SAN FERNANDO ST) (Mr. Simon David Aviel, Owner/Chacho’s Restaurant, Operator). Council District 3. SNI: None. CEQA: Exempt. *PROJECT MANAGER, JENNY NUSBAUM*

**Staff Recommendation:** Consider the exemption in accordance with CEQA. Approve a Conditional Use Permit request to allow after midnight operation of a restaurant with an incidental drinking establishment until 3:00 a.m. in the DC Downtown Primary Commercial Zoning District, for the reasons stated in the staff report.

- b. [CP12-012](#). Conditional Use Permit to allow conversion of an existing vacant 7,637 square foot office building to a private elementary school for up to 120, 1st through 8th grade students on a 1.74 acre portion of a 2.58 acre site in the CG - Commercial General Zoning District, entrance located on the west side of Pearl Avenue 200-feet north of Edenbury Lane (3635 Pearl Av) (Normandin Family Props LLC, Owner). Council District 9. SNI: None. CEQA: Exempt. *PROJECT MANAGER, JOHN BATY*

**Staff Recommendation:** Consider the exemption in accordance with CEQA. Approve a Conditional Use Permit request to allow after midnight operation of a restaurant with an incidental drinking establishment until 3:00 a.m. in the DC Downtown Primary Commercial Zoning District, for the reasons stated in the staff report.

- c. **CP12-015.** Conditional Use Permit request to allow the continued use of an eating and drinking establishment and late night use until 2:00 a.m. on an approximately 0.11 gross-acre site in the DC Downtown Primary Commercial Zoning District, located on the east side of South 3rd Street approximately 190 feet south of East Santa Clara Street (32 S 3RD ST) (Lawrence A R Ross Trustee & Et Al, Owner / Liquid Restaurant and Lounge, Operator). Council District 3. SNI: University. CEQA: Exempt. *PROJECT MANAGER, JENNY NUSBAUM*

**Staff Recommendation:** Consider the exemption in accordance with CEQA. Approve a Conditional Use Permit request to allow the continued use of an eating and drinking establishment and late night use until 2:00 a.m. on an approximately 0.11 gross-acre site in the DC Downtown Primary Commercial Zoning District, for the reasons stated in the staff report.

- d. **SANTA CLARA VALLEY HABITAT PLAN AND ASSOCIATED DOCUMENTS (FILE No PP 12-075).** Planning Commission study session of the proposed Santa Clara Valley Habitat Plan/Natural Community Conservation Plan (“HCP/NCCP” or “Habitat Plan”) which is intended to satisfy the requirements for a habitat conservation plan under the Federal Endangered Species Act (“FESA”) (16 U.S.C. § 1531 *et seq.*) and a natural community conservation plan under the Natural Community Conservation Planning Act (“NCCPA”) (California Fish and Game Code §§ 2800-2835.). The Habitat Plan is intended to serve as the basis for the issuance of incidental take permits and authorizations pursuant to Sections 10(a) of FESA (16 U.S.C. § 1539) and Section 3835 of the California Fish and Game Code. The Habitat Plan was drafted cooperatively by the County of Santa Clara, the Cities of Gilroy, Morgan Hill and San Jose, the Santa Clara Valley Water District, and the Santa Clara Valley Transportation Authority (collectively the “Local Partners”) and the Wildlife Agencies. Citywide. CEQA: EIR Resolution to be adopted. *PROJECT MANAGER, ANDREW CRABTREE*

The Planning Commission will take public testimony and discuss the following items related to the Santa Clara Valley Habitat Plan:

1. **DRAFT ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT FOR THE SANTA CLARA VALLEY HABITAT PLAN.** Pursuant to Section 15051 of the CEQA Guidelines, the Local Partners agreed to be co-lead agencies for purposes of complying with the California Environmental Quality Act (“CEQA”) (California Public Resources Code §21000 *et seq.*) for the Project. This EIR/EIS describes Project elements, assesses impacts and proposes mitigation and other standard measures designed to reduce such impacts. Feasible alternatives and the scope of the Final EIR/EIS are based on input from environmental assessments, responsible agencies including the Wildlife Agencies, the public participation process, and resource agencies.
2. **AN ORDINANCE ADOPTING AND INCORPORATING BY REFERENCE THE SANTA CLARA VALLEY HABITAT PLAN.** The Implementation Ordinance adds Chapter 18.40 to Title 18 of the San Jose Municipal Code, entitled “Habitat Conservation Plan” and adopts and incorporates by reference the Santa Clara Valley Habitat Plan, implements Habitat Plan requirements upon applications for land use permits in San Jose within the area covered by the Habitat Plan; and authorizes the collection of Habitat Plan mitigation fees on behalf of the Implementing Entity (the Santa Clara Valley Habitat Agency.

**Staff Recommendation:** No action at this meeting. The item is on the agenda to provide the public and the Commission an opportunity to understand the Plan, its elements, environmental clearance, and proposed implementation approach. This item will be duly noticed for the Commission meeting of September 26, 2012 for action on the above items.

#### **4. PETITIONS AND COMMUNICATIONS**

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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.

#### **5. REFERRALS FROM CITY COUNCIL, BOARDS, COMMISSIONS, OR OTHER AGENCIES**

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#### **6. GOOD AND WELFARE**

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- a. Report from City Council
- b. Commissioners' Report from Committees:
  1. Norman Y. Mineta San José International Airport Noise Advisory Committee (Cahan)
- c. Review and Approve Synopsis from [8-22-12](#)
- d. Subcommittee Formation, Reports, and Outstanding Business
- e. Commission Calendar and Study Sessions
  1. Review Draft [Retreat Agenda](#)

### **ADJOURNMENT**

## 2012 PLANNING COMMISSION MEETING SCHEDULE

<u>Date</u>	<u>Time</u>	<u>Type of Meeting</u>	<u>Location</u>
January 11	6:30 p.m.	Regular	Council Chambers
<i>January 25</i>	<i>5:00 p.m.</i>	<i>Study Session</i>	<i>Room T-332</i>
<i>Implementing the General Plan through the Capital Improvement Program</i>			
January 25	6:30 p.m.	Regular	Council Chambers
February 8	6:30 p.m.	Regular	Council Chambers
February 22	6:30 p.m.	Regular	Council Chambers
March 7	6:30 p.m.	Regular	Council Chambers
March 21	6:30 p.m.	Regular	Council Chambers
<i>April 11</i>	<i>5:00 p.m.</i>	<i>Study Session</i>	<i>Council Chambers</i>
<i>Capital Improvement Program</i>			
April 11	6:30 p.m.	Regular	Council Chambers
April 25	6:30 p.m.	Regular	Council Chambers
<i>May 2</i>	<i>5:00 p.m.</i>	<i>CANCELLED Study Session</i>	<i>Room T-1734</i>
<i>Capital Improvement Program</i>			
May 2	5:30 p.m.	Regular	Council Chambers
May 9	6:30 p.m.	Regular	Council Chambers
May 23	6:30 p.m.	Regular	Council Chambers
June 6	6:30 p.m.	Regular	Council Chambers
June 20	6:30 p.m.	Regular	Council Chambers
July 11	6:30 p.m.	Regular	Council Chambers
July 25	6:30 p.m.	Regular	Council Chambers
August 8	6:30 p.m.	Regular	Council Chambers
August 22	6:30 p.m.	Regular	Council Chambers
September 12	6:30 p.m.	Regular	Council Chambers
September 26	6:30 p.m.	Regular	Council Chambers
<i>September 27</i>	<i>8:30 a.m.</i>	<i>Retreat</i>	<i>Room T-1254</i>
October 10	6:30 p.m.	Regular	Council Chambers
October 24	6:30 p.m.	Regular	Council Chambers
November 7	6:30 p.m.	Regular	Council Chambers
November 14	6:30 p.m.	Regular	Council Chambers
December 5	6:30 p.m.	Regular	Council Chambers
December 12	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.