



PLANNING COMMISSION SYNOPSIS

Wednesday, October 26, 2005

5:00 p.m. STUDY SESSION

Room # T-332

Joint session with Airport Land Use Commission

6:30 p.m. Regular Meeting
Council Chambers, City Hall

200 East Santa Clara Street
San Jose, California

Bob Dhillon, Chair
Xavier Campos, Vice-Chair

Bob Levy Jay James
Dang T. Pham
Christopher Platten James Zito

Stephen M. Haase, Director
Planning, Building and Code Enforcement

NOTE

To arrange an accommodation under the Americans with Disabilities Act to participate in this public meeting, we ask that you call (408) 535-7800 (VOICE) or (408) 998-5299 (TTY) at least two business days before the meeting. 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 **Bob Dhillon** 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, October 26, 2005**. Please remember to turn off your cell phones and pagers. Parking ticket validation machines for the garage under City Hall are 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 or at the technician's station), and give the completed card to the technician. Please include the agenda item number for reference.**

The procedure for this hearing is as follows:

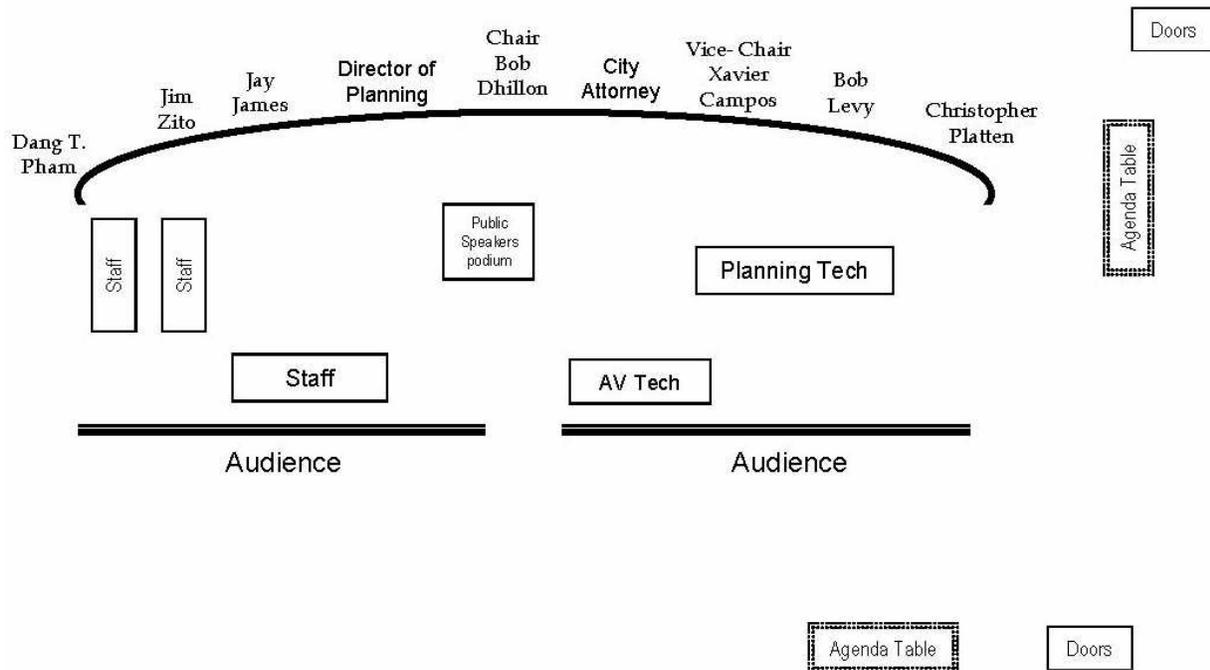
- After the staff report, applicants and appellants may make a 5-minute presentation.
- The chair will call out names on the submitted speaker cards in the order received.
- As your name is called, line up in front of the microphone at the front of the Chamber. Each speaker will have two minutes.
- After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes.
- Planning Commissioners may ask questions of the speakers. These 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 advisory only 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 rezonings 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.

Note: If you have any agenda questions, please contact Olga Guzman at olga.guzman@sanjoseca.gov

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 Jose Planning Commission generally meets every 2nd and 4th Wednesday at 6:30 p.m., unless otherwise noted. The remaining meeting schedule is attached to this agenda and the annual schedule is posted on the web at <http://www.sanjoseca.gov/planning/hearings/index.htm> Staff reports, etc. are also available on-line. If you have any questions, please direct them to the Planning staff at (408) 535-7800. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

AGENDA
ORDER OF BUSINESS

1. ROLL CALL

ALL PRESENT EXCEPT PLATTEN ARRIVED DURING 3.e., CAMPOS AND ZITO ABSENT.

2. 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. 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.

- a. The projects being considered are located on west side of Morrill Avenue, 550 feet southerly of Landess Avenue (TARGET) (2155 MORRILL AV) in the CG-General Commercial Zoning District (Cheng Betty L Trustee, Owner). Council District 4. SNI: None. CEQA: Exempt. Continued from 9-28-05.

1. **CP05-033**. Conditional Use Permit request to allow off-sale of alcoholic beverages at an existing retail commercial building on a 9.02 gross acre site

DEFERRED TO 12-07-05 (4-0-3; ZITO, CAMPOS AND PLATTEN ABSENT)

2. **ABC05-003**. Liquor License Exception permit to allow off-sale of alcoholic beverages at an existing retail commercial building on a 9.02 gross acre site.

DEFERRED TO 12-07-05 (4-0-3; ZITO, CAMPOS AND PLATTEN ABSENT)

- b. **PDC05-059**. Planned Development Rezoning from LI Light Industrial Zoning District to A(PD) Planned Development Zoning District to allow 44 single-family detached residences on a 2.79 gross acres site, located at the east side of North Ninth Street between Taylor Street and Jackson Street (680 N 9TH ST) (Le Ba Van And Nguyen Hanh Thi Et Al, Bale Properties Huong Le, Martin and Nell Feldman Trustee, Owner). Council District 3. SNI: 13th Street. CEQA: Mitigated Negative Declaration.

DEFERRED TO 11-09-05 (4-0-3; ZITO, CAMPOS AND PLATTEN ABSENT)

3. 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. If anyone in the audience wishes to speak on one of these items, please come to the podium at this time.

- a. [CPA02-047-01](#). Conditional Use Permit Amendment to allow a drinking establishment in conjunction with a new restaurant (Chili's) on a 42.06 gross acres site in the CG General Commercial Zoning District located on the north side of Quimby Road, approximately 750 feet west of Capitol Expressway (Brinker International, Owner; General Growth Properties, Inc, Developer). Council District 8. SNI: None. CEQA: Use of the EIR for the Eastridge Mall Redevelopment Project, Resolution 03-072

APPROVED (4-0-3; ZITO, CAMPOS AND PLATTEN ABSENT)

- b. [CPA02-047-02](#). Conditional Use Permit to allow a drinking establishment in conjunction with a new restaurant (Romano's Macaroni Grill) on a 42.06 gross acres site in the CG General Commercial Zoning District located on the north side of Quimby Road 300 westerly of Capitol Expressway (2200 Eastridge Loop) (Brinker International, Owner; General Growth Properties, Inc, Developer). Council District 8. SNI: None. CEQA: Use of the EIR for the Eastridge Mall Redevelopment Project, Resolution 03-072

APPROVED (4-0-3; ZITO, CAMPOS AND PLATTEN ABSENT)

- c. [CP04-007](#). Adoption of a Resolution for a Conditional Use Permit to allow the conversion of five existing single-family detached residences for religious assembly uses as an expansion of an existing church facility on a 2.06 gross acre site in the R-1-8 Residential Zoning District located at the southerly terminus of Pinewood Drive 310 feet southerly of Williams Road (4488 Williams Road) (Korean Baptist Church Of San Jose, Owner). Council District 1. SNI: None. CEQA: Exempt. Continued from 10-12-05.

APPROVED ADOPTION OF RESOLUTION (4-0-3; ZITO, CAMPOS AND PLATTEN ABSENT)

- d. [CP04-011](#). Adoption of a Resolution to approve a Conditional Use Permit to legalize conversion of a single-family detached residence to a private performing arts school use on a 0.14 gross acre site in the R-1-8 Single-Family Residence Zoning District, located at/on northeast corner of Garces Avenue and Santa Teresa Boulevard (5998 GARCES AV) (Fagundes Anthony D And A J Trustee, Owner). Council District 10. SNI: None. CEQA: Exempt. Continued from 10-12-05.

APPROVED ADOPTION OF RESOLUTION (4-0-3; ZITO, CAMPOS AND PLATTEN ABSENT)

- e. [PDC05-043](#). Planned Development Rezoning from A Agriculture Zoning District to A(PD) Planned Development Zoning District to allow up to 12 single-family detached residences on a 3.19 gross acre site, located at/on the southeast corner of Fleming Avenue and Morrie Drive (1351 FLEMING AV) (Wallech Judith M Trustee & Et Al, Owner; Braddock & Logan Group Mr James Sullivan, Developer). Council District 5. SNI: None. CEQA: Negative Declaration.

RECOMMEND APPROVAL (5-0-2; ZITO AND CAMPOS ABSENT)

Pulled from Consent Calendar by member of the public.

The applicant highlighted slope issues with the property, and public road which would serve the project.

Two area residents expressed concern regarding access to the site proposed from Morrie Drive, rather than from Fleming Avenue, discrepancies in sizes of the new lots, and proximate assisted living environment. Another resident expressed concern about proposed homes being two-story in area with primarily one-story houses, and concern about state of proximate roadways, and future traffic from the proposed project.

The applicant clarified lot sizes proposed, and that presence of “halfway house” would be disclosed to prospective home buyers.

In response to Commissioner Levy, the applicant clarified 3 reasons for access from Morrie Drive being 1) the slope of the property with preferred slope area being in rear yards, and 2) that Morrie is low traffic volume road and that it will be easier to integrate with the neighborhood across that street, and 3) that it was easier to achieve required grading with only 3-foot retaining wall with access from Morrie. The applicant also explained reason for some lots fronting on Morrie, to not “wall off” development from the community.

In response to Commissioner James, the applicant explained access directions which would be required to access from Fleming Avenue. Staff clarified lot sizes, and explained proposed design standards to help make sure houses are compatible with this rural area. Public Works staff further clarified that access for cul-de-sac should come from Morrie Drive in response to overland stormwater release and drainage concerns.

In response to Commissioner Levy, staff clarified the grading and “working the slope” close to the proposed new public street, specifically lots 1 and 2. Commissioner Levy commented that he felt perhaps there were too many lots proposed, and that those lots were smaller than the lot directly across Morrie Drive. Commissioner James commented that lots 1 and 2 were approximately 8200 square feet in size, which were similar to most in the area, and proposed a recommendation of approval.

The following items are considered individually.

4. PUBLIC HEARINGS

- a. [PDC05-012](#). Planned Development Rezoning from the R-1-5, R-1-8, and R-M Residence Districts to A(PD) Planned Development District to allow 56 multi-family attached residences on a 2.27 gross acre site, located on the east side of Almaden Road across from the intersection with Malone Road (1992 ALMADEN RD) (Camara Maurice M and Adaleah K Tr Trustee, Owner). Council District 6. SNI: None. CEQA: Mitigated Negative Declaration.

RECOMMEND APPROVAL (4-1-2; LEVY OPPOSED, ZITO AND CAMPOS ABSENT)

The applicant explained that the project proposed townhomes at the lower end of the General Plan density range to better fit in the surrounding community. In response to Commissioner Levy, the applicant explained the balancing of the amounts of private and public open space in the project, and commented he could work with staff to work to increase the on-site open space. In response to Commissioner Dhillon, the applicant commented that the General Plan was already in place on the purchase of property.

Commissioner James expressed concern about the existing left turn situation, and commented it will be a benefit to the area to widen Almaden Road, and expressed concern about parking. The applicant clarified that the CC&Rs for the project would limit resident parking in guest areas. Commissioner James commented that residents of the existing apartments on the street were creating an overflow parking concern and were using the parking lot of his place of employment, leaving debris behind.

Commissioner Dhillon asked for clarification on parking for the project, and whether on-street parking was counted in the total. Staff explained that the street parking on Almaden was counted since the applicant would be improving the road and creating extra parking. Commissioner Dhillon expressed concern that there might be too many units proposed to be able to have both adequate parking and open space on the site. In response to Commissioner James, Public Works staff indicated site frontage improvements, including road widening, were standard, and applicant had also designed site access as a fourth leg of intersection.

Commissioner James moved recommending approval of the number of units that can achieve the 100 square feet of common open space per unit on site. Commissioner Levy stated he was concerned that there was no park in the immediate area, and that 150 square feet per unit should be the requirement, or a different product type should be used. Commissioner Platten noted that in other respects the project meets the General Plan, but that open space criteria for unit types need to be reviewed citywide. Commissioner James noted that 6 blocks away there is a large park and that this is in walking distance.

- b. [PDC05-022](#). Planned Development Rezoning from IP Industrial Park Zoning District to A(PD) Planned Development Zoning District to allow up to 98 single-family attached residences on a 4.7 gross acre site, located on the northwest corner of Old Oakland Road and Rock Avenue (2059 OAKLAND RD) (Pestana Ernest E Trustee, Owner). Council District 4. SNI: None. CEQA: Negative Declaration.

RECOMMEND APPROVAL (5-0-2; ZITO AND CAMPOS ABSENT)

Staff highlighted proposed changes in the recommended draft Development Standards. In response to Commissioner Dhillon, Parks Department staff clarified that the applicant would be eligible for private recreation credits for up to 50 percent of the large common open space area in the middle of the development, which would proportionally reduce the required in-lieu fee required under the Parkland Dedication ordinance.

- c. [PDA94-016-02](#). APPEAL of the Planning Director's decision to approve a Planned Development Permit Amendment to construct a 7,885 square foot expansion of existing ammonia gas vault and minor site improvements for industrial uses on a 88.73 gross acre site, in the IP(PD) Planned Development Zoning District, located at/on the southwest corner of Trimble Road and Orchard Parkway (370 W TRIMBLE RD) (AGILENT TECHNOLOGIES INC, Owner). Council District 4. SNI: None. CEQA: Mitigated Negative Declaration.

UPHOLD DIRECTOR'S DECISION TO APPROVE (4-0-2-1; ZITO AND CAMPOS ABSENT, LEVY ABSTAINED)

Tom Ruby, speaking on behalf of the appellant, clarified that the use of ammonia on the site for manufacturing purposes was not the primary issue, but rather the size and scale, and particularly the use of the alternative release scenario for the staff's analysis, which he stated would set a bad precedent for the future. The appellant requested that the project approval be delayed, or downsized, pending development of formal policy guidelines.

The applicant explained the context for North San Jose's industrial future, commenting that the City Council's direction was to maintain the area as a center for driving industry for the City and for all of Silicon Valley.

In response to Commissioner Platten, the applicant responded that for 27 years, ammonia has been used on the site, and that ongoing review and on-site inspection has occurred continuously. Specifically, on-site workers, who would likely have the greatest concern, have been involved in those reviews.

In response to Commissioner Dhillon, the applicant explained current ammonia handling system and that manufacturing levels were being increased, and that new handling system would increase safety as "human handling" would be greatly reduced. In response to Commissioner James, the applicant clarified that the ISO "staging area" shown on the plan was related to truck turning radii, not an emergency staging area.

Art Kennedy spoke on behalf of Carr America, indicating concern about large increases proposed in the facility's operation and on-site ammonia usage, and commenting that better standards are needed. In response to Commissioner

James, Mr. Kennedy identified proximate properties managed by Carr America. A speaker from Spectral Dynamics commented that there was concern about the Fire Department having oversight of hazardous materials handling, and that compliance is an issue, and that future larger container size could, in a catastrophic event, create a threat to a 2-mile area, if tank were damaged.

In response to Commissioner James, environmental staff clarified that the project was on file prior to the approval of the North San Jose Policy update, but that an Addendum had been prepared for the Negative Declaration to address the Update.

Frank Jesse, speaking as a resident of San Jose, expressed concern regarding possible impacts on burrowing owls on the site, and possible hazards with tanker trucks maneuvering on site. In response to Commissioner Platten, Mr. Jesse commented that a variety of events could cause a massive release of contents of one or more than one tank, and that a variety of events could create a hazardous release.

The appellant noted that staff did prepare an Addendum to address the NSJ Policy Update, but that the alternative scenario was used as the basis for the analysis, not a more formal policy. The applicant stated that “common sense” and CEQA law coincide in this situation, and that while scenarios of catastrophe can be identified, the factual basis of the arrangement of the facility makes it unlikely to rupture more than one tank, and that the new operation design significantly reduces handling of the material, and that burrowing owls would not be affected as the expansion is proposed to occur on an already paved area.

Deputy Director Horwedel explained the “reasonably foreseeable” rule for CEQA analysis, and commented that if the absolute worst case were always used, North San Jose industrial area would not have been built where it is due to chlorine used at the Water Pollution Control Plant that is transported by rail.

Commissioner James asked the applicant if the most likely element to cause hazards would be human error, and the applicant responded affirmatively. The applicant explained further about staff training and the multiple redundancies in operating procedures and the design of the ammonia facility. He further explained that on-site training of engineers occurred continuously, with a 24-hour emergency response team always on the site, and that people handling material, Air Products, are well trained and have a good safety record.

Staff responded that Fire Department staff could address safety issues in multiple smaller tanks versus larger containers. Fire Department staff reaffirmed that handling was biggest risk element, and bigger tanks are better since less handling, and that Fire staff would inspect annually, and business and safety plans would need to be updated annually if any changes, and that the Department had been satisfied to date, over 27 years. In response to Commissioner James, Fire staff clarified that the vendor choice for ammonia delivery would not be reviewed, and was at discretion of facility operator. Commissioner James moved upholding the Director’s decision to approve the permit, and commented that we need to standardize the response to hazardous

materials use in the area for future permits which will come forward.

- d. **SP02-006.** Appeal of the Planning Director's decision to deny a Special Use Permit to legalize the addition of an unpermitted 200 square foot storage room, bathroom, and wet bar to an existing single-family detached garage on a 0.21 gross acre site in the R-1-8 Single-Family Residence Zoning District, located on the east side of McLaughlin Avenue approximately 250 feet south of Appian Lane (730 McLaughlin Ave.) (Maria Teresa Snyder, Owner). Council District 3. SNI: Five Wounds/Brookwood Terrace. CEQA: Exempt.

CONTINUED TO 01-11-06 (5-0-2; ZITO AND CAMPOS ABSENT)

In response to Commissioner Pham, the applicant indicated she had lived in the area 25 years, and clarified her understanding of the site's permit history. In response to Commissioner James, the applicant clarified that the rear house had not been used while permit process underway, but that she would like to use it for an exercise room, but not a secondary unit. In response to Commissioner Levy, staff and the Deputy Director clarified that the garage was legal non-conforming, but that the additions to the structure did not appear to be legal.

The City Attorney explained that the proposed additions to the accessory structure and additional plumbing fixtures could not be approved if not legally constructed, as they do not conform to the Zoning Code.

Staff clarified the basic elements of the Zoning Code which apply, that the building coverage in the rear yard exceeds 30 percent maximum and that additional plumbing fixtures cannot be approved, but that legal non-conforming accessory space can be used with the 3 plumbing fixtures.

Commissioner Levy asked if there were any other approaches to reviewing the size of the accessory structure, and whether plumbing for the half bath looks the same as other 1950's plumbing on site, and moved for a continuance to allow more research. Commissioner James noted that the applicant's plans which proposed the half bath and addition to storage area were dated for October 2000. Commissioner Dhillon recommended the applicant check with the County for additional permit records. In response to Commissioner James, the applicant again explained when the plans were drawn, and stated there had been complaints in the past about the use of the property which led to the Code Enforcement case now on file.

Commissioner Platten commented that there were still many loose ends, and recommended continuance for 4 weeks. The applicant indicated that due to work and vacation plans, she would be out of town through December, and staff noted that a continuance could be to the first hearing in January 2006. Commissioner Platten indicated that the applicant should work with staff on when to bring item back to the Commission with all relevant information.

5. PETITIONS AND COMMUNICATIONS

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

None

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

None

7. GOOD AND WELFARE

- a. Report from City Council

None

- b. Commissioners' reports from Committees:

- Norman Y. Mineta San Jose International Airport Noise Advisory Committee (James).

None

- Coyote Valley Specific Plan (Platten)

None

- Evergreen East Hills Vision Strategy Task Force (Levy)

Commissioner Levy gave brief update report

- c. Review of synopsis

No changes

8. ADJOURNMENT

2005 PLANNING COMMISSION MEETING SCHEDULE

January 12	5:00 p.m. - 6:00 p.m.	<i>Study Session</i>	Room 400
		<i>Discussion of Meeting Logistics</i>	
January 12	6:00 p.m.	Regular Meeting	Council Chambers
January 26	6:00 p.m.	Regular Meeting	Council Chambers
Monday, February 7	4:45 p.m.	<i>Study Session</i>	Room 400
		<i>Discussion of Jobs/Housing Imbalance</i>	
Monday, February 7	6:00 p.m.	Regular Meeting	Council Chambers
February 23	6:00 p.m.	Regular Meeting	Council Chambers
March 9	4:45 p.m.	<i>Study Session</i>	Room 400
		<i>Discussion of General Plan Amendments/development projects</i>	
March 9	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
March 23	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
Monday, April 11	CANCELLED	<i>Study Session</i>	Room 400
		<i>Discussion of Alcohol sales</i>	
Monday, April 11	6:00 p.m.	Regular Meeting	Council Chambers
April 27	6:00 p.m.	Regular Meeting	Council Chambers
Monday, May 2	4:00 p.m.	<i>Study Session</i>	Room 216B
		<i>Review CIP</i>	
Monday, May 2	6:00 p.m.	Regular Meeting	Council Chambers
May 11	4:00 p.m.	<i>Study Session</i>	Room 400
		<i>Discussion of Parks planning strategy (Joint session with Parks Commission)</i>	
May 11	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
May 25	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
Thursday, June 2	5:00 p.m.	<i>Study Session</i>	Room 106E
		<i>Discussion of Jobs/Housing/Transportation Policy Update</i>	
Thursday, June 2	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
Monday, June 6	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
Tuesday, June 7	6:30 p.m.	General Plan/Regular Meeting	Health Bldg. Rm. 202A/B
June 8	CANCELLED	Regular Meeting	Council Chambers
Wednesday, June 15	6:00 p.m.	Regular Meeting	Council Chambers
June 22	6:00 p.m.	Regular Meeting	Council Chambers
July 13	CANCELLED	Regular Meeting	Council Chambers
July 27	6:00 p.m.	Regular Meeting	Council Chambers (801 N. 1 ST St.)
August 10	6:00 p.m.	Regular Meeting	Council Chambers (801 N. 1 ST St.)
Meetings August 24th and subsequent located in Council Chambers on 200 East Santa Clara St.			
August 24	6:30 p.m.	Regular Meeting	Council Chambers
September 14	6:30 p.m.	Regular Meeting	Council Chambers
September 28	6:30 p.m.	General Plan/Regular Meeting	Council Chambers
October 12	6:30 p.m.	Regular Meeting	Council Chambers
October 26	5:00 p.m.	<i>Study Session</i>	Room T-332
		<i>Joint Airport Land Use/Planning Commission</i>	
October 26	6:30 p.m.	Regular Meeting	Council Chambers
November 9	6:30 p.m.	General Plan/Regular Meeting	Council Chambers
November 16	5:00 p.m.	<i>Study Session</i>	Room T-332
		<i>Joint Planning/Parks Commission</i>	
November 16	6:30 p.m.	Regular Meeting	Council Chambers
December 7	6:30 p.m.	Regular Meeting	Council Chambers
December 8	8:00 a.m. - 5:00 p.m.	Annual Retreat	Room T-1572