

ORDINANCE NO. 28060

**AN ORDINANCE OF THE CITY OF SAN JOSE
RESCINDING ORDINANCE NO. 27032, ADOPTED BY
THE CITY OF SAN JOSE ON DECEMBER 16, 2003,
REZONING CERTAIN REAL PROPERTY LOCATED AT
THE SOUTHEASTERLY CORNER OF BLOSSOM HILL
ROAD AND COTTLE ROAD (5600 COTTLE ROAD) TO
IP(PD) PLANNED DEVELOPMENT ZONING DISTRICT**

WHEREAS, on December 2, 2003 at a duly notice public hearing, the City Council of the City of San José passed for publication of title that certain rezoning ordinance rezoning that certain real property located at the southeast corner of Blossom Hill Road and Cottle Road (5600 Cottle Road) to IP(PD) Planned Development Zoning District, which rezoning ordinance was finally adopted by the City on December 16, 2003 and became effective on January 16, 2004 (the, “Rezoning”); and

WHEREAS, at that same public hearing the City Council of the City of San José also upheld the certification of that certain Final Environmental Impact Report (SCH #2002122091) prepared for the Lowes Home Improvement Warehouse Project, Cottle Road, South San José, Planned Development Rezoning Project (PP File No. PDC02-086) (the “FEIR”); and

WHEREAS, the Preservation Action Council of San José challenged that FEIR certification action through that certain Petition for Writ of Mandamus filed in the Superior Court of the State of California, County of Santa Clara, Case No. 1-04-CV012829, before the Honorable Leslie Nichols; and

WHEREAS, through its order contained in that certain Judgment Granting Petition for Writ of Mandamus, executed on August 11, 2004 and entered on August 18, 2004 (the “Court Order”), the Court ordered City to set aside its certification of the FEIR and its approval of the Rezoning;

WHEREAS, the Court Order was subsequently appealed and upheld on appeal and the City now desires to take action to rescind the Rezoning, as directed in, and in compliance with, the Court Order.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

The City Council does hereby rescind its approval and adoption of the Rezoning; more specifically it rescinds its approval and adoption of Ordinance No. 27032, passed for publication of title on December 2, 2003, finally adopted by the City on December 16, 2003 and becoming effective on January 16, 2004, rezoning that certain real property located at the southeast corner of Blossom Hill Road and Cottle Road (5600 Cottle Road), as more specifically described in the Rezoning, to IP(PD) Planned Development Zoning District.

PASSED FOR PUBLICATION of title this 5th day of June, 2007, by the following vote:

AYES: CHIRCO, CONSTANT, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE; REED

NOES: CAMPOS

ABSENT: NONE

DISQUALIFIED: WILLIAMS

VACANT DISTRICT 4

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk