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>> The first item on the agenda is the city council agenda for March 10. So page one. Page two and three, page four and five. Page six and seven. Page eight and nine. Page 10 and 11. And 12 and 13. Are there ... and then there is a sheet of add items. Let me just mention that I think the actions relating to council member traveling to Washington, D.C., A is already on the agenda and B is actually the add. But I am going to need to check with the council member to determine that we have the right source of funds listed here. That's correct, yes. Thank you for noticing. That's correct, council member Liccardo says there is a memo to account that add and this one is not only requesting authorization to travel but it includes the designation of the council member as the city's representative. In assigning time certain to agenda items, any specific items that need to be time certain? Okay. There is no need to assign time certain in the open forum, we'll just follow as the usual procedure.

>> Right.

>> It may be safer to take it out, still run in the same order we're following.

>> Need 3:30 reference.

>> Instead of having to recess and reconvene.

>> So just open forum. Okay. We have a motion and a second to approve the March 10 agenda. All in favor? All those opposed? That motion carries. We have the redevelopment ... I'm sorry. We have the city council March 17 agenda. And we have page one. Page two and three. 2.4A has been dropped. Page four and five. Page six and seven. Page eight and nine.

>> I thought we moved the budget message to the next week. Did we not?

>> The first reading will be ... the discussion will be on the 17th, the final action is on the 24th.

>> Two is in question.

>> He would like to be heard when the full ... all the members are going to be there so one week would work.

>> So defer 7.2 one week. Okay. And then page 10. And 11. And page 12 and 13. Page 14. I don't have any adds ... wait a minute.

>> We have one from the Mayor.

>> the Mayor is going to Boston so we have that add. And time certain I think is next week. If I could have a motion. We have a motion and a second to approve the March 17 council agenda. All those in favor? All those opposed? That motion carries. Now we have the redevelopment committee agenda for March 10. Page one. Page two and three. Page four and five. And page six. And there are no new items?

>> There are no new items and no changes. I would note the next item, however, March 17, the agency has no items scheduled that date at this time. We can come back next week and make a recommendation.

>> Okay, could I have a motion for the 10th. I have a motion and second to approve the March 10 redevelopment agenda. All those in favor? All opposed? That motion carries. At this time we have nothing for the 17th and that will determine we have a meeting or not. No legislative updates. At least it says none. Public records, anything anyone wants to pull. We have a motion to note and file. All those in favor? All those opposed? That motion carries. Item 10.1, which is the workload assessment for potential further regulation from a bail bonds establishment. If there are no questions.

>> Madam Chair, I don't know ... I want to make clear staff did not present a workload assessment because they felt they're recommending that the regulations that are in place are sufficient to control this sort of establishment.

>> And I know this is rhetorical question, but this memo will go to all the council people?

>> This is already distributed.

>> Because I know this was a topic that we had heard and this is a response to it. We have a motion to approve this. Wait a minute. Okay, we have one speaker. Jeff Stanley. Two minutes, sir.

>> Thank you. Vice Mayor, members of the Rules Committee, my name is Jeff Stanley, the President and CEO of Bad Boy's Bail Bonds. For over 10 years I've operated my company in a way that provide as valuable service to our community and acts as a good neighbor. I want to speak specifically to the analysis that bail bonds is a personal service, thus requiring a CUP. We provide a personal service as beauty or barbershop, shoe shop repair, self service laundry and tanning salon. Bail bondsmen operate as an insurance company, heavily regulated by the department of insurance and function like a title company, real estate office or insurance company. Our clients come in to fill out paperwork and run a credit report, that's it. We're not a retail establishment. The municipal code defines and provides examples of office general business use as real estate, insurance, property management, title companies

and investment. Based on the code, bail bond companies by right should have the right to operate on a 24-hour basis, just as other insurance-related industries. If we're forced to shut our doors, we will begin to see backlog in releases from the county jail it means the county must provide costly housing to arrestees who would otherwise be allowed to leave pending their court date, this means real money in the county coffers and overcrowding in the jail. And police officers will spend more time processing arrestees at the main jail, keeping them from returning to patrol sooner. By shutting us down early, you will really leave the county with one option for overcrowding, releasing arrestees on their own recognizant. They have a greater than 40% likelihood of missing their court date which causes or criminal justice system to issue bench warrants for arrestees and require law enforcement to rearrest these individuals. Arrestees out on bond have a greater than 80% --

>> Your two minutes are up, sir.

>> Thank you so much.

>> I would like to ask Joe Horwedel if maybe you could address the question he raised as an insurance company and not --

>> Thank you. Staff has looked within a close consultation with the city attorney's office at our zoning code regulations and this was explained in the report. Staff is convinced this is a personal business type business and is subject to the 24-hour regulation for the city of San Jose that those regulations do not prohibit a bail bonds from being open past 10:00 at night or 6:00 in the morning, but it does require a conditional use for that business and the city has regulations and policies that deal with those businesses operating in a good neighbor manner, so our response is that we've looked at it, analyzed and recognize it is a question as how the gentleman spoke about it, we've gone back and looked at it and we're confident in our answer.

>> Council member Constant.

>> My question is for the city attorney. In going through and reading this, and reading the differences between personal service and general commercial, I can tell you I have the same questions brought up by the gentleman who spoke right before Joe. How do we resolve something when there is a difference of interpretations. Because I do see the merits on both sides of the argument but before ... what's the proper form for us making a determination with the intent.

>> You can seek an amendment to the code to make it ... to clarify the definition. Typically, when there is a dispute, a court decides on the ... unless the council decides to change the code and clarify the definition, if you wanted to include it or not include it. I think staff historically, definition has before given, a cash type business, based on personal service, a lot more traffic, a lot more people coming in and out, third parties. General offices people usually go to the office, maybe occasional customers but it is not the same as other types of businesses. But how it is always interpreted, bail bonds, between a personal service and not a general office. If the county were to ask for a clarification and change, we could come back with an ordinance to do so but right now it is requiring general office to be operated between midnight and 6:00 a.m. and I'm aware the county is concerned about that and may represent the same thing, it is really ultimately a council call if they want to make a change.

>> Okay. Some of the reservations I have is where the personal service relate to the retail environment, where bail bondsman is not really a retail environment and some issues brought up about the insurance so I'm not confident we're getting it right based on my reading of what we have in front of us. So if I understand this right, what we're taking action on right now is the staff's recommendation to not make any changes to what we're doing currently.

>> That's correct.

>> What's before you is whether or not there needs to be any kind of workload assessment, making changes to the existing provision and staff is recommending no. To the extent that we do want to make a change, you can direct staff to come back with that but the staff is doing with respect to Bad Boys is merely enforcing the code with an administrative decision at this point.

>> You know, help me to understand this, there is one paragraph that talks about, allows personal service establishment without a use permit and commercial pedestrian or commercial neighborhoods and commercial general zoning, are there some zoning areas that they can operate by right without having the CUP?

>> City wide retail uses, personal service uses, are required to have a use permit if they operate between midnight and 6:00 a.m. If it's an office use, just a general office use, those restrictions on midnight to 6:00 a.m. do not apply.

>> And we currently have some bail bonds operations that have CUP?

>> No.

>> And any establishment would have to have a CUP to operate between midnight and 6:00?

>> Personal service businesses, which we think bail bonds, that is how we have interpreted those over the years, as well as retail. A grocery store or target or anything like that, that also would have to have a use permit.

>> How many bail bonds do we have that are open between midnight and 6:00?

>> We're doing that assessment right now.

>> I think that might help us determine --

>> Code enforcement has started with the first five nearest to where the project that triggered the question, heading at first street, started working out from that kind of location, looking at the first five bail bondsmen we came across and had a talk with each of those companies about how they operate. Some of them said they don't operate past midnight and a couple others say they are open 24 hours a day, seven days a week.

>> And where was this? Would I come back to Council Member Pyle's economy, public safety?

>> It would not normally come back to council. City attorneys said that ... we looked at the zoning code and regulations there, staff believes do we have the regulations to allow us to proceed with enforcement for those businesses that don't have use permits that are open past midnight. Bad Boys Bail Bonds is one of those in that group.

>> Council member Constant, you have a question?

>> My question is we've had bail bonds as long as I can remember and we're hearing none of them have cups but many of them have operated for 24 hours for quite some time. So have we not, by just allowing it, give some sort of approval over the years. I can remember about 25, 30 years ago.

>> They're probably various code violations out there where we generally operate on a complaint-driven basis, I think. Code enforcement has noticed and they're seeking to enforce the code, but in this case, and I think that is something that the fact that it hasn't been enforced doesn't make it ... somebody vested or has a right. If the council wants to make a change, the council can ask for a change. The county has gone on record in concern of this because it is not in our common practice to release people from jail in the middle of the night.

>> My follow-up question is is the fact that we haven't been enforcing it or is it more likely that 20 years ago we interpreted them as being general commercial and not personal service and that is why we did not require them to apply.

>> The consistent interpretation has been as a personal business and the planning department is in charge of that.

>> And the city did not always have a requirement for use permits but Bad Boy Bail Bonds has moved into that neighborhood since the late night rules went into place. That was my old neighborhood, I used to live around the corner from that so noticed the change in the number of bail bonds service that have moved in during that time so we do not do proactive code enforcement in the city of San Jose. We're not set up to do that. We would never get past the first block of that building if that is what we focused on.

>> So we're saying it has been a consistent interpretation, what have we found to substantiate that fact when this case may be 10 or 20 years ago.

>> The staff has worked with the attorneying office and the zoning code over that time period.

>> So we don't have anything, any staff reports that delineates this where we can look at something tangible other than just people saying I believe over the last 20 years this is what we've thought? I'm trying to get very definitive and it seems very vague to me and having worked in the downtown area for so many years, especially the old civic center area and knowing these establishments have existed, I would like to see something more than we just think or we remember.

>> I think we can ... the department can come back with something. I can have staff put something together. Again, it is our job to interpret the code and enforce the code. If the council wants to change that, the council can change that and say we want this to be general office use or not require a CUP for personal office or personal business. But that is something that the current interpretation, again, it is represented to me over the years that this is treated as personal business and not general office. If you want to change and make it a question, we can bring that back.

>> That would be a different workload we would bring back. The question that was asked of staff is what do we need to do to regulate the businesses, the bail bonds businesses in that area and deal with the impact being caused to the community and staff looked at it and said we do have the tools for a business use per mitt requirement for businesses open past midnight for these types of businesses some of that

was our response back. But we certainly have to go back and relook at the larger question of how do we want to go back and deal with office uses city wide, do we want to make them subject to late-night regulation same as retail. Do we want to go through and allow bail bonds by right, do we want to go through and specifically call them out. We do have those options and we did do that in the industrial zones about three years ago. It was major effort and took about six months to work through all the interested parties and this is one the community will be very involved with. Any change will have a lot of community involvement in it.

>> I'm definitely not supportive of saying we want to shut down all businesses between midnight and 6:00, I think we should be making more businesses succeed in our city and if they can do it in the middle of the night, all the better for them. I'm not comfortable with what I've heard saying that we have substantiated that we've interpreted all this time. So I understand this is a little slightly different thing so I think I'll go ahead and support this, but I think it's something that we need to look at in the more narrow scope of what have we really done. I just don't want to go on a supposition that somebody remembers it being this way because I don't remember it being this way and people out there doing business for 20 years obviously don't remember it being this way and I personally would like to see something a lot more concrete before I'm going to say this is something we've done for a long time and I don't think it is clear cut the way it has been presented, personally.

>> Council member Pyle.

>> The impression if it isn't broken, let's not fix it, applies in staff. If you're cut substantially in staff, wanted a full court investigation into what would be the best way, I really don't think that is necessary at this time. And because of the unpredictability of your customers, I would imagine this is not a consistent thing night after night people are there between the hours of midnight and 6:00. You could answer it better than I, as an example of that business. That is what we should be looking at.

>> There isn't any rhyme or reason when somebody comes in. Like if you had a family member or somebody, but they have a constitutional right to get out. If we stop this, they're impeding the not only the constitutional right to bail, but the California state right to bail. They've never interpreted it before. This is the first time. I've been operating there for 10 years, we have saved this county millions of dollars from housing costs. If you shut us down these hours, you will be affected and people will have to be released on their own recognizances. Do you want that? You want them running the street --

>> I think you answered the question.

>> Thank you. [LAUGHTER]

>> Do the director, I would like to ask, this came about because the neighborhood was upset about lots of people in the neighborhood, people lingering in the neighborhood. To get a CUP, do you think that it is possible for the 24-hour businesses to apply for and get a CUP? And so I don't, you know, I know that we are complaint driven. I hear what council member constant is talking about but this is something new, but this also sounds like it is something new having this type of business located within a neighborhood and now the neighborhood has initiated the complaint. Maybe you could ... and I don't know what the proper mechanism would be is to do your ... using the strategies we have in place, and working with the businesses to apply for the CUP, because we need to respect the business and also to respect our community. So looking at the city managers office, what would be the best strategy to get back a report on using what we have currently in place to address the small business concerns, but also the community's concerns.

>> I don't know that I have a specific answer for you today but I would like to defer the item so we can have an opportunity to talk some more about how we get to the point, you know, how we get what you you need. I would like an opportunity to talk to staff a little bit more.

>> And what kind of deferral do you think would fit what you just outlined?

>> If you give us ... a conversation with occur in a week and we can come back to you next week with some sort of a plan, if you would like, or two weeks.

>> Okay. I think that ... you know, because there has --

>> The deadline on this. Two weeks.

>> Two weeks.

>> So the recommendation is to defer it for two weeks and get some of the concerns answered that have been heard up here.

>> I'll second that. And I just wanted to echo one comment that nancy made and if it is not broke, don't fix it, and it has been working and we've been having 24-hour bail bonds for 20-plus years and I don't think it is broke and I think we've operated under a set of assumptions both as a city and as individual business

owners and I think we're going down the wrong path personally and I think we're making a mistake on how we're interpreting this. So what's the date two weeks from now?

>> March 25th.

>> As long as it is that week, I will be back so that is good.

>> The 18th.

>> Can we make it the following week? I would like to be part of the conversation.

>> Three weeks.

>> Thank you.

>> That amendment is fine.

>> Seconded it. Okay, we have a motion and second to defer this for three weeks. All those in favor? All those opposed? That motion carries. The next item is 10.2. Resolution of confirming and indicating current support of land use designations on the San Jose ... on the former San Jose medical center site.

>> I just have a question for the city attorney, if I may.

>> Yes. Council member Constant.

>> On this issue, can you remind us, because I know we've seen this a couple times. Are you also in the process of work on an MOU with the property owners and how does that fit in with what we're contemplating here.

>> I'm not privy necessarily to the discussions, I know there is a -- whether back in development or the planning department or both, working with the developer is one thing but what this comes out of is at the time that the council approved the EIR, allowing the demolition of the buildings on site, council member was part of the resolution for this to come back --

>> So is this the subject of that ... any of this subject to the MOU or is this completely separate?

>> It is completely separate. This is analogous of what we did to discourage the ... to have full disclosure if somebody two come in and buy the property they didn't come in with an assumption it was ready to go and that there are major issues to work through. We do have a working group that met this week to deal with county wide health care issues and planning that is part of what some of those issues need to work through. We also had a series of discussion going on through the redevelopment agency that the city attorney mentioned about how they would go through and essentially offset the loss of public clause by public lands in the downtown area. Essentially, mitigation around that, and then working through what we've done through the community process about future development, essentially trying to memorialize all that so there is other work moving ahead separate from this resolution.

>> I wanted to make sure we didn't have two paths criss-crossing when they weren't supposed to. Okay.

>> I have a question for ROMA. Wasn't this a memo by the mayor and council member Liccardo.

>> Yes, it was, back in March, Mayor, and council member Liccardo authored a memo that was adopted by council with the number of direction action items in it, and the specific resolution came about ... idea came about as a way, again, to just track if the land did happen to change hands so it would protect, let's say, a less savvy buyer or buyer unfamiliar with San Jose and what was going on in San Jose and the will of the council, so this resolution was devised for that. And again, council member Liccardo would support a one week deferral of this item because he understands that there are members absent and we had brown act issues where we couldn't talk to you the way we had originally intended when we found out council member Nguyen would be absent today. So one week deferral, and I stress the word deferral, would be acceptable, council member Liccardo, so there can be some additional time to talk to stakeholders and the attorneys to talk to stakeholders. It would come back in one week to be agendized.

>> I understand there was a family --

>> He had a family emergency. We have a representative from the California nurses association with us if you would like for them to comment on their position, they would be one of the stakeholders.

>> Council member Liccardo doesn't believe the resolution is quite in final form yet, and would like additional out reach and communication with the stakeholder so we would make that specific request when it comes back to be agendized next week.

>> A one-week deferral, the mayor can come back. I understand there is a speaker in the audience. If they would like to speak now, they're welcome to, but it looks like we may be deferring it for a week.

>> If you're going to defer it for a week, I will withhold my comments until then. I'm a representative from the California nurse's association to support this resolution.

>> So that is basically, the applicants do not wish to conform to the use, they need not apply.

>> That's not the case. They can apply and I think it is important to state this merely sets forth to the council to continue the zoning, continued recommended use there is concern but that applicants aren't

prohibited from applying and the staff would have to process an application but it is to get out to the world what the current zoning recommendations are.

>> And we don't tie this council's legislative abilities. We could, two weeks later, change our mind and rezone it if that were to happen.

>> That's right.

>> I think we're fine with the deferral at council member Liccardo's request some of that will be the motion.

>> We have a motion and second to defer this for one week. All those in favor? All those opposed? That motion carries. The last item, I believe, is the A 'S stadium and we have a request from the mayor this be deferred to March 11.

>> I second that.

>> We have a motion to defer this item until March 11. All those in favor? All those opposed? That motion carries. And I believe the only thing we have left is open forum. And if we have no speakers, meeting is adjourned. Thank you all for coming.