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>> Commissioner Bit-Badal: Good evening. My name is Edesa Bit-Badal. Vice chair of the Planning Commission. Sitting in for Hope Cahan, 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, August 10, 2011. Please remember to turn off your cell phones. The 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, please 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 audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4.A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and Appellants may make a five minute presentation. The chair will call out names on the submitted speaker card in the order received. As your name is called, line up in front of the microphone at the front of chamber. Each speaker will have up to two minutes. After public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. A 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 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 has 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. So now we have the roll call. Roll call, let the record reflect that the commissioners Cahan and Platten are absent. 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 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 the public hearing the Planning Commission may determine either to proceed with remaining agenda 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. The decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. Staff.

>> Thank you, Madam Chair. I'd like to recommend that the Planning Commission defer its consideration of item 3 E on the agenda this evening, Planning Commission bylaws amendment. This item was referred to the city council Rules Committee and the item has not come up on the Rules Committee agenda yet. The latest information that I have is that the Rules Committee will be considering this item sometime in September. And again, they're not going to consider this item in particular but they're considering a broader item, pertaining to boards and commissions and the impact on staff workload.

>> Commissioner Bit-Badal: Thank you. Moving on to consent calendar. Oh do we have a motion?

>> Move to defer.

>> Second.

>> Commissioner Bit-Badal: All approving, say aye, or actually -- so second? Consent calendar. 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. Consent calendar. We have one item on the consent calendar. And it is: CPA97-002-02. Conditional use permit amendment for the timely renewal of an existing auto dismantler business on a .68 gross acre site in the HI heavy industrial Zoning district. Located on the east side of north 15th street, 410 feet southerly of Charles Street. Do we have any speaker cards? Do we have a motion?

>> None.

>> Commissioner Bit-Badal: Does anybody want to speak on this item from the audience? This item is on consent calendar, there's no need unless you want to pull it and discuss it.

>> Second.

>> Commissioner Bit-Badal: All favoring say aye. Great, the motion passed. Thank you. Moving on to public hearing. Generally, the public hearing items are considered by the Planning Commission in the order 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. Item number 3A. CP11-036. Conditional use permit to install a columbarium within an existing religious reassembly building on a .61 gross acre site, no exterior changes are proposed, in the D.C. downtown primary commercial zoning district located on the southwest corner of north 2nd street and East St. John street.

>> Thank you, Madam Chair. As said, this is a conditional use permit to install a columbarium within an existing religious assembly building. The existing site is located within a city landmark number 6, within the downtown core, as stated there was no -- there are no exterior changes proposed. The proposal is strictly within the interior of the building and does not extent any historical facades in any way. Staff recommends approval with conditions noted on the report.

>> Commissioner Bit-Badal: Thank you, do we have any cards on this item? Is the applicant here? You may have five minutes if you would like to make a presentation on this project.

>> If there is nothing to -- if there are no questions I have nothing to address.

>> Commissioner Bit-Badal: Okay, great. So we don't have any other cards? We do not have any cards and it seems like there are no speakers on this item. We'd like to place a motion to close the public

hearing? Second? And all accepting, say aye. Great. So at this point either staff or I would entertain a motion. Commissioner Kline.

>> Commissioner Kline: Move to approve 3A.

>> Commissioner Bit-Badal: Do we have a second on this item? Second? All approval? Please say aye. Aye, thank you, motion approved. Item number 3B. Conditional use permit and determination of public convenience or necessity to allow the offsale of alcoholic beverages at a full service grocery store at an existing building on an approximately 4.0. CP which is pedestrian commercial zoning district, located and/or on Northwest corner of Foxworthy avenue and meridian avenue. staff.

>> Thank you, Madam Chair. As stated this is a conditional use permit that includes a determination of public convenience or necessity to consider the offsale of alcohol at a full service grocery store. The existing facility is vacant, was formerly a grocery store, a new grocery or the is proposing to move in there. But will not be reusing the liquor license from the previous tenant and so therefore, is subject to the demonstration of public convenience or necessity process. This project is exempt from CEQA, staff is able to make the required findings that are noted in the zoning code with respect to offsale of alcohol. However we're not able to make all four of the required findings as mandated under title 6 with respect to the public convenience or necessity in that one of the findings requires that we make a determination that the site is within -- that is not within 150 feet of residential uses. This site is directly next door to a brand-new residential project and doesn't meet that requirement therefore staff is obliged to recommend denial of the proposal. And recommends that the Planning Commission do the same. Thank you.

>> Commissioner Bit-Badal: Thank you, staff. Is the applicant here? Sir, you have five minutes to speak. Up to.

>> I'll only be a minute. Ladies and gentlemen, thank you for your time this evening. My name is Scott Raymond. I'm a construction manager for grocery outlet. I understand that we will be denied tonight because of our proximity to a residential area. However we will be applying for an appeal to the city council of course. I would

like to mention a few things about our project just so you know about it and our policy regarding beer and wine policies. The project itself we are going to invest approximately \$2 million into the building, using partially local contractors. When the store is open we are going to employ approximately 40 local individuals to staff the store. The -- our policy on beer and wine is that it is a convenience for our customer. It being a convenience we are only going to use about 2% of our sales floor for beer and wine. Basically, our shoppers are going to be able to do their grocery shopping, pick up a six pack or a 12 pack of beer and a bottle of wine. It will only be six pack or 12 pack of beer and bottles of wine. We don't do any singles. No 42-ounce, no 12-ounce. No singles whatsoever. So a six pack or 12 pack only. We do have about 18 closed circuit cameras within the store. One of those will always be on the beer and wine section. We also put our beer and wine section away from the front door. That way if somebody's trying to snatch and grab something, they have to cross through the entire store, get caught on all these cameras and pass our checkstands in order to get out the front door. So security is not going to be an issue for us. We only operate from about 8:00 a.m. to 8:00 p.m. or 9:00 a.m. to 9:00 p.m. No late tonight liquor stores. I understand you guys have to vote against it. I really wish you wouldn't because I don't want to have to make another speech to the city council. However it is what it is. Do you have any questions for me?

>> Commissioner Bit-Badal: Do we have any -- Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair and thank you for pronouncing my name correctly. So you will be employing 40 people. What if the city council did not you know accept your appeal either? How many would that number go down to?

>> You know we feel it is a convenience for our customer but it is a necessity for us to open. We feel that if we aren't able to fully sell to our customer, including the beer and wine that they want, then we'll lose customers to a different chain. And so we would consider not opening the store whatsoever.

>> Commissioner Kamkar: Okay. And is the reason why you don't -- why you're not taking the previous I guess persons beer and wine license?

>> Unfortunately in our investigation, we found out about that license about two days before it was to expire. And the owner of that license kind of dilly dallied and we weren't able to take it. We did pursue that avenue first. So if we could have we would have.

>> Commissioner Kamkar: I see. Is it your understanding had you found out in time and had you been able to work out a deal and didn't have to go through this you would have had the beer and wine license that you are pursuing?

>> Absolutely.

>> Commissioner Kamkar: Okay, thank you.

>> Commissioner Bit-Badal: Thank you, commissioner, any other comments? Thank you sir.

>> Thank you.

>> Commissioner Bit-Badal: It looks like there are no other comments on this. Staff any other comments?

>> We have nothing to add at this time.

>> Commissioner Bit-Badal: We have Commissioner Kline.

>> Commissioner Kline: I'd like to move to deny 3B as detailed by staff and just to say all the good luck to the grocery store when it does get approved.

>> Commissioner Bit-Badal: Second? Actually, Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. A question for staff. So is it only because of the 150 foot that you're recommending denial?

>> Generally it's been the past practice of the city to encourage grocery stores, full service grocery stores especially large ones. This since it had an existing license, it's probably one the staff would have supported but it's really one of technicality because they couldn't buy the license and because we can't make that one finding you know puts us in a difficult situation of having to recommend denial but that --

>> Commissioner Kamkar: Account commission overrule your denial or is it a mandatory denial?

>> Unfortunately it is a mandatory denial. Should this be appealed to the City Council there are other findings they can make. They are not subject to that same finding. They are able to make alternative findings that would allow this to move forward.

>> Commissioner Kamkar: Thank you. You know I support the motion with the caveat that, you know, hopefully the city council will change the denial, you know, as I see in the plan. 7Eleven is much closer to the residence and if they have a license then it doesn't make sense, you know to deny this license. So, you know, I will be supporting the motion, thank you.

>> Commissioner Bit-Badal: Thank you, commissioner. Any other comments? I would agree with commissioners as well. I will be supporting this motion, it's a very basically clear, that you would have to appeal it and hoping that the city council will approve your project. With that, light please. The motion was unanimous. Item 3C. PDC 10-027. Planned development rezoning from A(PD), planned development zoning district to A(PD), planned development zoning district to allow the addition of a two-story accessory structure consisting of a home office over a two car garage, to be constructed in the north 19th street frontage property line on a .29 gross acre site currently zoned for single family, duplex and bed and breakfast uses, located at the Northwest corner of Jackson street and north 19th street. Staff.

>> Thank you, Madam Chair. The proposal is for a 1470 square foot two-story accessory structure. The accessory structure is located at the rear corner of the property, approximately two feet from the front setback line along 19th Street. And direct with zero setback on the rear property line which abuts the side property line of an existing single family house. This project is a city landmark, as identified on the City's historic inventory. The accessory structure however has no relevance to the matter of the historic structure, one way or the other. Staff is recommending denial of this proposal because we feel that the structure is excessively tall. It has a 14-foot ceiling height for the garage and second floor on the -- up above which is the same size as the first floor. It's right at the property line of an adjacent house and the structure itself is probably comparable to actually primary structures within the neighborhood. On the 19th Street side it has a nominal setback of only a couple of feet. In a block that is basically typified by front setbacks that are closer to 25 feet. Staff has worked with the applicant to try to modify the proposal, propose a different type of structure that's one-story, in keeping with city policies for accessory structures, and my understanding is that the applicant has not been willing to modify the proposal, and the proposal is essentially the same as it was when it was first filed. So for that reason because it's going to cause a significant impact on adjacent property, and not be comparable to the setbacks of other structures along 19th Street, staff recommends denial of this planned development zoning. Thank you.

>> Commissioner Bit-Badal: Thank you staff. Is the applicant here? Great. Sir, you have five minutes. And please, state your name -- please state your name once you get there, thank you.

>> Might I get four and a half minute warning just so I know I don't go over just in case is that possible?

>> Commissioner Bit-Badal: Yes.

>> I probably won't use all that time. I practiced this.

>> Commissioner Bit-Badal: You will have five minutes after as well.

>> My name is Eric Thacker Madam Chair. Thank you for this opportunity. Although I disagree with their conclusion, I recognize that staff, especially Lori Moniz, has spent time making my proposal complete and of high quality. Eight years ago I purchased the brier rose bed and breakfast at 807 Jackson street and returned it to single home status and addressed any inadequate renovation that had happened to date. I know the importance of this property to the greater north side neighborhood from neighbors who stopped by or I meet at gatherings. So I went through the process to have the house declared a city landmark and work closely with the historic preservation officer to make sure it would remain what is arguably the cornerstone historic structure of north side. I'm dedicated to historic preferential preservation. A former land marks commissioner and now a board member of PAC SJ. When deciding to do this project I asked my neighbors for their input. My neighbors have two major concerns and requests. Both are highlighted in the letters you have received. Number one design the structure to reflect the elements of the original carriage house and number two do not questionable activity next to the existing driveway. So I modeled my design after the original carriage house at 895 Jackson street which thankfully is still existing. It once was part of my property but was separated from the Morrill house by a long driveway and is in the design concept before you. It reflect but does not duplicate exactly the exterior design of the original carriage house. It is compatible with the landmark in both massing and location. It applies the secretary of interior's standards for preservation. It is supported by the 13th street NAC and the PAC SJ has stated they believe it is compatible with the surrounding neighborhood. Two on lifts above them. the design is a four car so I can retrieve my who historic cars that are stored in Sunnyvale and keep them at home. The second floor is designed as a home office to use today but also to serve the function if and when I decide to reopen the property as a B and B in the future. To address the problem of the blind drive, the design makes the carriage doors flush with the side fence and to minimize environmental impact, my plan is to use salvaged materials in the construction. I would like to respond to the observes raised by staff about possibly blocking the street or sidewalk while waiting for the garage doors to open. Right now to open the gate requires to you often the property on the Jackson street side go to the back of the lot remove the bar and open the gate. A much more time consuming process than opening automatic doors. To date there have been zero complaints of blocked sidewalks or traffic. Concern was raised about the deck on the second floor. That is actually the landing for the stairway and entry to the office. Even standing there one would see only see the roof of the neighbor's house or the steeple of the adjacent garden shed. You should have photos of that exact vantage point ahead of you. Did you receive

thighs? I September them in rather late, thank you. Regarding accessory structures being one story, in this case historic detail would contradict that. I have constructed a structure many of which look to be well above 1,000 feet. As you can see from the last set of photographs the actual original carriage house is also two-story. Thus a two-story structure is in keeping with the property. Another reason for the chosen foot print is to provide a large enough work space for the restoration work that is never ending and for storing salvage materials used in that work. I would like to respond to the characterization that I have been unwilling to modify my project. From the time I submitted my request for a director's hearing to this meeting tonight staff has consistently indicated that away they would support is just compliance with the existing zoning, a one story structure with a 20 foot setback. That size and setback would solve none of the challenges I explained earlier nor blocked sidewalk nor concerns of my neighbors. The current design meets the need for historic landmark the ongoing maintenance of that landmark and the varying input from my neighbors. I ask you to join my neighbors, 13th street NAC and PAC SJ in supporting it.

>> Commissioner Bit-Badal: I was just going to give you a 30 second warning.

>> Good.

>> Commissioner Bit-Badal: We have Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Make me understand. You addressed you know the option of going from the Jackson street side, going to the back of the lot and opening the gate. But you didn't explain how you are going to not back up the traffic. How is your garage door going to operate?

>> It will be automatic.

>> Commissioner Kamkar: Okay. Would it be one of those roll-up doors?

>> No it will be carriage doors in keeping with the style of the house. Side to side.

>> Commissioner Kamkar: Would it be --

>> On sliders.

>> Commissioner Kamkar: On sliders, automatic. So you would be able to pull into the sidewalk maybe so the traffic can pass by until your door opened and go through or -- there's not much room?

>> The range of much remotes are quite far so it would probably be open by the time I reach the driveway anyway.

>> Commissioner Kamkar: Okay, thank you.

>> Commissioner Bit-Badal: Thank you commissioner. Any administer questions of the applicant? Thank you sir. We have three speakers for this item. First speaker is going to be Jennifer Bealer. And after that, we have Jennifer Kim and John Rigier. Would you please line up so we won't spend time calling names again. Thank you. And please, state your name again.

>> I'm Jennifer Bealer. I prefer Jen now. Thank you for having me and listening to me speak. I moved to San José two years ago and I've had the pleasure of watching this house become what it has become. It's been quite an amazing process. They've literally picked this house up off the foundation and you know rebuilt everything, used the old bricks to create the same effect and the last summer they painted it. And it was breathtaking. The entire neighborhood is just watched this house just get life breathed back into it. It's been quite amazing. And as far as the neighborhood, like I think that he had mentioned something about the looks of the neighborhood. But this particular block, this particular corner are lined with Victorians and it's beautiful and it should be kept that way and I think this would fit nicely with it. I look forward to seeing it and it needs to be the two stories because everything in that neighborhood, those Victorians are two stories. That's how it looks. You need that steeple top. So is there any --

>> Commissioner Bit-Badal: Thank you. Are there any questions? No. Thank you. Jennifer Bealer -- I mean Jennifer Kim, sorry.

>> Hi, how are you?

>> Commissioner Bit-Badal: Hi, would you please state your name again.

>> Jennifer Kim. 5th generation San José so I've watched it grow and it's just been absolutely beautiful to see all the renovations that have been done and the building and the growth that San José has had. In this particular project that Mr. Thacker has planned my concern is the safety in the area, that we want him to do this project, the side down 19th street between 19th and Jackson, there's very overgrown trees. And there's been several times when I've been walking through the neighborhood and there's been people parked there either partying or being more than inappropriate within their cars where I've had to say something and they finally giggle and drive off. But it feels very unsafe in that area and I think with building this and having something that kind of says no, you know this is an area that's being used will take away that problem away and bring more safety onto that street. So thank you.

>> Commissioner Bit-Badal: Thank you. Do we have any questions? Thanks, ma'am. Next speaker is John Rigier. Would you please state your name.

>> I'm John Rigder. I'm the person who owns the carriage house in question that this is to be designed after. Eric has done, in my opinion, a wonderful thing in this neighborhood. It is a pleasure to own the other piece of the history, and to see him rebuild that other piece of history on his property. I have great concern that you've heard from others about making a deep drive here. I think that would be absolutely crazy. You would end up with serious problems of people being able to hide in that slot. This needs to be literally on the lot line, with doors going up or going sideways, so that you don't have problems with the place for people to hide. It's really -- I'm surprised by the arguments I read in staff's report. I do work for the public side. I have dealt with Planning

Commissions over the years, and one of the questions that struck me is, wait a minute: This is now being deemed living space on the second floor? It's an office. It's not living space. His arguments in terms of needing the height to put the lifts in is, again, to keep the footprint from being bigger and allowing him to store two classic cars as well as his own cars to help with street parking. I'm highly respectful of where he wants to go with this and just honored as heck that somebody's going to copy my carriage house. So please, I would ask you to look at this really, really seriously. I've lived in this neighborhood for 22 years. I was born in San José. I bought this carriage house for a reason. I was married at the bed and breakfast. I danced my or our wedding dance or my wife and I did on the cement patio between the two houses. We have a gate that goes between us. That's how close this is. So -- and again in keeping with the neighborhood, please, these are both Victorians.

>> Commissioner Bit-Badal: Thank you sir.

>> Let's keep it, these are the two story is not out of keeping.

>> Commissioner Bit-Badal: Thank you sir. Any questions from the commissioners? No. The applicant has up to five more minutes if he has anything to add or any comments. Okay, great. Okay, staff.

>> Staff would like to clarify --

>> Commissioner Bit-Badal: Excuse me. I have to move to close the public hearing. Second? All agreeing say aye. Great. We have question? Excuse me. Commissioner Abelite.

>> Commissioner Abelite: Before the opportunity went away I should have asked the question. I do want to ask the previous speaker, are you saying that the actual structure that is being modeled on this site exists somewhere else in your -- on a property you own?

>> Commissioner Bit-Badal: And the speaker has to come to the mic and speak to respond.

>> Commissioner Abelite: I'm talking to the person who just spoke, John Richter.

>> I understand your question. The site, one site over, is 895 East Jackson street and that is the location of the original carriage house which he is modeling this after.

>> Commissioner Abelite: So it already exists and it's on your property?

>> It already exists. It is modified and was done so many, many years ago. But he is not building it in the modified form it's in. He is building it to the original design.

>> Commissioner Abelite: And does yours have historic value?

>> I would say based on its age, yes. It goes back on the maps almost as far as his does.

>> Commissioner Abelite: Is it designated?

>> It is not designated, if you would like to look at it in fact, the oldest listing I've found is 1905. I believe it goes back further than that from the maps I've looked at.

>> Commissioner Abelite: Okay, thank you.

>> Commissioner Kline: I have a question for the same speaker.

>> Commissioner Bit-Badal: Commissioner Kline.

>> Commissioner Kline: How tall is your house?

>> Oh, you're watching me calculate. It's got to be, well, it's --

>> Commissioner Kline: 22, 23? Two stories or one?

>> It's two-story, so absolutely two-story.

>> Commissioner Kline: 22, 24?

>> Probably closer to 26.

>> Commissioner Kline: And is it setback from the street in the front?

>> Yes but not terribly far. The setback's probably oh, probably 18 feet.

>> Commissioner Kline: 18 feet?

>> 18, 20 feet.

>> Commissioner Kline: Second back from the side?

>> It's a narrow lot. This is about ten feet to each side.

>> Commissioner Kline: Looks like ten feet to me.

>> I take it back, on one side ten, 15 feet on the other side, maybe six.

>> Commissioner Kline: I'm looking at Google. About six, ten feet. That's all, thank you very much.

>> Commissioner Bit-Badal: Any more questions? Thank you sir. Now, motion to close. We have a motion from Commissioner Kline. And second from Commissioner Kamkar. All approving say aye. Staff.

>> Thank you, Madam Chair. Staff appreciates the fact that Mr. Thacker is attempting to try to build a structure that's going to be a match set with his house. The photograph I put up there was the original carriage house that had been moved to the neighboring property and basically they convert it to a single family house. You can tell by looking at the plate lines while it's been lifted to create a basement the proposed accessory structure is a little bit different because the existing structure has probably a fairly low ceiling, probably about eight feet, similar 8 foot ceiling on the interior height on the second floor and so the new structure is considerably taller given the fact that the ground floor is accommodating the lift for the autos. I think the issue in question for staff really is not so much the design of the structure and does it have the character and the trim and so forth that would be in keeping with the house, that's not really the issue. Really the issue is the placement and the overall height. Because of the fact it's a fairly tall structure in its own right the accessory structure is about the same size as many of the -- the actual houses in the neighborhood. Staff feels it's really inappropriate to put a building that's this tall, taller than most single family houses that new builders build these days to put that right at zero property line next to adjacent side yard. Staff feels an incredible imposition from a visual standpoint on that additional property. I don't think we have that adjacent property owner here to speak about that. And while the -- there are issues raised with activities that may be occurring along curbside in front of the property, the situation that we would normally expect to see with a accessory structure is not necessarily along the driveway but deep enough to meet the 23 feet to provide a car to park in front of. But it's really in keeping with the setbacks of the adjacent houses which all have similar setbacks. And so any accessory structure that gets built ultimately the appropriate thing is to have a setback that's going to be in keeping with the rhythm that's established on that streetscape. If it were on the other interior corner might be a little bit different but because of the fact this accessory structure is going to be a major contributor to the streetscape staff feels it's important to have some reasonable setback and that some of the issues maybe that were raised as problems with loitering and so forth might be able to be addressed with perhaps some tree trimming and some better lighting and some other things in front of the building. And we feel that those are probably better options as opposed to building such a tall structure so close to the street and the adjacent house.

>> Commissioner Bit-Badal: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I normally don't go against staff's recommendation because you two are so professionals, around all the reasons that you bring make sense. This particular case, to be honest with you, I'm more moved by the residents, by the letters and by the reasons they bring. I know one of the things that we like to do at city is to have less asphalt and more green space. So by not having a 23-foot driveway which has to be from concrete or asphalt or something equivalent, we can dedicate that same distance, that same area to backyard and more landscape and more green -- greenery. The other thing is, by having eyes on the street, some of the issues, I understand the tree trimming, the lighting and everything may also take away these issues. But I give a lot of credence to when the residents of an area talk. And they're telling -- they're saying they like what he's proposing, what Mr. Thacker is proposing and they talk about some of the issues that are on the street. Then the last reason is, pride of ownership. Mr. Thacker has proven to me he takes pride in where he lives. And he wants to make it better. And for all those reasons, I, Madam Chair would like to make a motion. Hopefully I get a second here. Is to recommend approval to the city council of a planned development rezoning from planned development zoning standards to A(PD), zoning standards to allow the addition of a two-story accessory structure consisting of a home office over a two-car garage to be constructed in the North 19th street frontage property line on a .29 gross acre site currently zoned for single family duplex and beds and breakfast uses as recommended by the I guess applicant I have to say some since the staff is recommending denial. Thank you.

>> Commissioner Bit-Badal: Do we have a second on this motion? Okay, the motion failed. Commissioner Abelite.

>> Commissioner Abelite: I'd like to ask staff real quick. So there is a structure that exists at that exact location, where that proposed structure is. If that's -- if he wanted to rebuild that and sort of modernize it, does he have any vested right to do any work that would strongly resemble what's already there only improving it and making it more modern?

>> Some of the options, the planned development zoning is a custom zoning that was done that facilitated the renovation of the house and actually its initial conversion to a bed and breakfast facility. And it shows basically a 400 square foot single story accessory structure that overlays part of the footprint of the proposed structure. It has about I think a 23, 25-foot setback from the street. That could be renovated. That could be enlarged. The zoning does limit accessory structures to one story, specifically, so that's why any proposal for a two-story would require a rezoning in order to change that. But this is a one-third of an acre lot. There are I think probably ample opportunities to accommodate you know an office type of use. Even a large garage in a first floor configuration that isn't going to wipe out large trees that isn't going to be placed right at the sidewalk and isn't going to be such a substantial impact on an adjacent single family house next door.

>> Commissioner Abelite: All right. I mean my concern is, I mean I totally I do admire everything he's doing for the community and the neighborhood and for the house and for the preservation. My fear is we would be setting a precedent breaking rules in historic structures, particularly where it doesn't have a value from landmark perspective. I have to say I'm going to have to support staff's recommendation in this item and that being said I'm prepared to make a motion.

>> Commissioner Bit-Badal: Public hearing is closed, sir.

>> Commissioner Abelite: That being said, I'm prepared to make a motion for discussion purposes, of course but I'd like to recommend denial to the city council of a planned development rezoning, from A(PD), planned development zoning district to A(PD), planned development zoning district to allow the addition of a two story accessory structure to be constructed on north 19th street is frontage property line on a .29 gross acre site currently zoned for single family duplex and bed and breakfast uses as recommended by staff.

>> Commissioner Kline: Second.

>> Commissioner Bit-Badal: Would you like to speak to your motion sir?

>> Commissioner Abelite: Again I think there are a lot of larger scale properties that exist throughout San José that we have a very clear set of rules with respect to encroachment, heights versus proximity to property lines and how that may or may not invade side neighbor uses and that's all done with a lot of thought and guideline established a long time ago and also as part of the Willow Glen large-scale house projects. I mean there's a lot of thought to these things. I have no bias against this particular applicant but I just don't see us moving forward and approving this project as is. Given the size of this project I think there is other opportunity to build and support something else that staff might be supportive of making it all single story in the back up to 14 feet, flatten out the roof heights. I know that you're trying to store more cars there but you know that isn't enough of an argument to allow a 14-foot plate height on the first floor. So with that being said that's why I made the motion I did. Thank you.

>> Commissioner Bit-Badal: Commissioner Kline.

>> Commissioner Kline: Yeah this is actually kind of harder than I thought it was because the applicant did such a great job on this property. I actually grew up in Downtown San José not too far from there went to San José high school, know the neighborhood very well. I think the project overall is a fantastic project, 100% support. I can't make the findings necessary to support this particular application. And it's really important to separate in my mind the wanting to get this approved and help the applicant, but at the same time I have to put the applicant aside. It's not about the applicant. It's not about how good he is or what he's trying to do. It's not about the neighbors. This is a land use issue. This piece of property has been here for a long time. It's going to be here for a long time we hope. This structure is going to be here for a long time. He could sell it tomorrow. I know that he probably won't but he could sell it tomorrow. The neighbors can move out tomorrow. So it's not about the neighbors. It's not about the applicant. It's about creating findings that can stick with the property forever. I cannot make the findings to have a zero setback on even the side of the property. I can't have findings here which are physical, you have to look at physical things, what physical is there that creates an exception to the rules? There is nothing here that creates an exception to the rules. On either the setbacks or the height. Having historic cars is not an exception to the rule. The next owner will not have historic cars. So there's nothing here I can actually put my hat on even though I want to. So there's no physical findings I can make to allow me to vote for this. And

there's so many other options that the applicant hasn't seen -- seem to have explored. Why couldn't it be setback? Not the full 20 or whatever, but a little bit. Why couldn't it be brought down a little bit? Seems like there is a lot of options here that the applicant could take advantage of. So even though I want to approve this, because of the historic nature of the building and the factor that I want to support the applicant, I really can't.

>> Commissioner Bit-Badal: Thank you, commissioner. Next is Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I heard the applicant wanting to correct a misunderstanding of ours, and I would ask if -- I would like to put in a motion, to reopen the public hearing just to make sure that, you know, we understand all the issues and don't vote without having you know the full knowledge. So I don't know how the motions would go but --

>> Commissioner Kline: You can't open the public hearing. There's already a motion on the floor.

>> Commissioner Kamkar: I'm sorry?

>> Commissioner Kline: You can't open the public hearing there's already a motion on the floor.

>> Commissioner Kamkar: Can I withdraw the motion, unfriendly motion? No. Well I wouldn't be able to support the motion then because you know I haven't -- I don't know what the applicants are trying to tell us.

>> Commissioner Kline: I think the applicant is trying to tell us the next door neighbor actually supports the project. I think that's what the --

>> Commissioner Kamkar: Right, see I can't go by your assumption.

>> Commissioner Kline: Is answer is no, so take that off.

>> Commissioner Kamkar: I can't go by your assumption. I want to hear from the applicant. Is there no way to -- would you take back your motion?

>> Commissioner Abelite: I'd be willing to withdraw the motion and I'm willing to entertain your opportunity to open up --

>> Commissioner Kamkar: I appreciate it.

>> Commissioner Abelite: So I hereby withdraw the motion.

>> Commissioner Bit-Badal: So would the second, the person that did the second agree with that?

>> Commissioner Kline: I would actually make the motion to reopen up the public hearing. I don't think the applicant got the opportunity to speak for the five minutes.

>> Commissioner Bit-Badal: We gave him the opportunity but he decided to not accept it. We have a motion to reopen the public hearing. Do we have a second? For purpose of specific comment from the applicant only. Do we have a second on the floor?

>> Commissioner Abelite: Second.

>> Commissioner Bit-Badal: All approving say aye. Would would the applicant please approach the proceed yum and briefly give a comment.

>> Thank you for this opportunity. I just wanted to correct two errors in staff's response. Number one there is no existing structure. There was -- it was zoned for an existing structure, but there is -- there is a small tiny wood shed there, but there's no existing structure that's there, that would be movable. So whatever I would build would be from scratch. The second error was that the original carriage house next door, 895 Jackson Street does not

have a basement and it was not raised so it's in its original position relative to the ground. And then the third response is, the third clarification is, the neighbors that I have heard feedback from, they -- although their concern isn't with a 20 foot setback or ten foot setback from a term from a drive standpoint their concern is for any kinds of an alcove at all that leads to that kind of behavior that was described. And the neighbor who is directly impacted by this who is directly next door who is right next to the shed or to the garage has submitted a letter of approval. I -- he was willing to come tonight but I didn't want to ask him because he gets up at 4:00 in the morning and I've heard Planning Commission meetings go quite late. So I didn't want to impose upon him so I'm hoping that his letter stands for itself. Any questions?

>> Commissioner Bit-Badal: Thank you, sir.

>> Commissioner Kline: Move to close public hearing.

>> Commissioner Bit-Badal: Great. All end up approving this?

>> Commissioner Kline: Yes.

>> Commissioner Bit-Badal: Great, now at this point I will entertain a motion again.

>> Commissioner Abelite: Do you want me to reread the motion again?

>> Commissioner Bit-Badal: Yes.

>> Commissioner Abelite: I would like to recommend denial to the city council of a planned development rezoning from A(PD), planned development zoning district to A(PD) planned development zoning district to allow for the addition of a two story accessory structure consisting of a home office over a two-car garage to be constructed in the North 19th street frontage property line on a .29 gross acre site currently zoned for single family duplex and bed and breakfast uses as recommended by staff.

>> Commissioner Kline: Second.

>> Commissioner Bit-Badal: Any comments, any first comments? We have Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Question for counsel. What happens if this motion doesn't get the required four votes?

>> Renee Gurza: Thank you, Madam Chair, so it does take a quorum to transact business for the Planning Commission, and that is four votes. So if the motion fails to pass by four votes, you would either have to defer the item, or it would go forward without your recommendation. But you do have, in our zoning code, 60 days to complete a public hearing. So what the commission has done in the past, when it cannot garner a quorum, is that it has deferred it to the next meeting with the hopes that the additional, the two additional members will be here. That does mean that the recommendation would not go to the city council. So for example, if there were some sort of time sensitivity, what we have had commissioners do in the past is go ahead and say I will be supporting the motion because I want to move this item forward. However I would like it noted in the transmittal that my vote to join so that we would have a quorum is so that the item can move forward to the planning -- I'm sorry, to the city council. So again, can you defer it, which means that the item would come back at your next meeting which would mean a delay for the applicant in getting to the decision-maker which is the city council in this instance. Does that answer your question, so there are two options.

>> Commissioner Kamkar: Right, it does, thank you. And with that, then, I would like to exercise the option that you said, and that would be to support the motion, to make sure we don't hold up the applicant, but with my, you know, comments, included, that I think in this one instance, the applicant was able to show the benefit of what he's proposing. He has the consent, and support of his neighbors, and I think his plan satisfy a lot of the other goals of the city council. For example, open space and more, you know, greenery than more hard surfaces. So for those reasons, I'll support the motion with those other comments hoping that city council will reverse our decision, I guess. Thank you.

>> Commissioner Bit-Badal: Thank you. And at this point, actually I will just make a comment. I want to say thank you to the applicant for making the changes to the house. I mean, improving the house and the neighborhood really makes a difference to have responsible homeowners in the city and really takes individuals like you to make a difference. But at this point I will support staff's recommendation. This was a really difficult decision because obviously the need to make sure that we're encouraging such homeowners such as yourself to make a difference in their neighborhood and make their house better and encourage their neighbors to improve their homes, but at the same time, the guidelines clearly state, and I feel that it's not going to be a good fit at this point. So with that, let's vote by light. Motion passes unanimously. Next item is Bail bonds ordinance. item 3D. An ordinance of the City of San José amending title 20 of the San José municipal code to amend section 20.40.100 of chapter 20.40, commercial zoning districts, to add new part 1.5 to chapter 20.80, specific use regulations and to add a new section 20.200.114 to chapter 20.200 definitions all to establish land use regulations pertaining to bail bond establishments. This ordinance is citywide. Staff.

>> Laurel Prevetti: Thank you very much Madam Chair. The ordinance in its recommendation to city council consists of proposed regulations for bail bond establishments. We do have the main jail here within the City of San José and a few years ago, the council acknowledged that there was an expansion of a lot of bail bond businesses in that particular area. And as a result, they established a moratorium that essentially stopped the ability of new bail bond establishments from locating anywhere in the City of San José. That moratorium started on October 9th, 2009, and expires on August 24th, 2011. So clearly, the ordinance before you today, there will be a little bit of a gap because the council is scheduled to consider this on August 23rd. If they act, it will be set in motion about 45 days or so later. So there will be a gap. And what happens during the gap is that the previous or current zoning regulations would essentially be in effect. We do have rules, I don't want there to be a perception that we don't have rules once the moratorium expires. But the question is: How can we improve the rules that are in our current zoning code to balance the need for this business within our community, accessible to the jail and its patrons, while also maintaining high quality neighborhoods that are also within close proximity. With that staff held a community meeting back in May and invited both the bail bond establishments and the neighborhood. We had a very draft proposal that we got feedback. And based on the community input as well as the input from the

businesses, staff has a proposal for your consideration. And I'm basically just going to walk through the staff report. So you're welcome to follow along. First of all, we first need to decide as we did with medical marijuana, which zoning districts are appropriate for this use. So staff is proposing that we would continue to allow bail bond uses in the current zoning districts where personal service uses are allowed. And those are three commercial districts, the CN neighborhood, the CP commercial pedestrian, and the CG, commercial general. So that would essentially be the only zoning districts. If someone were to do a planned development zoning, that specifically enumerated bail bonds, that would also be a possibility. But we're talking about what would be the rules going forward. We less recognized that we might want to put into place some distance requirements. This was particularly based on some of the input that we were getting from the community meeting. So staff is proposing as a starting point a 200 foot distance between new bail bond establishments. So essentially we don't want them to be concentrating essentially in an already -- in an area that already has them. We also looked at a 200 foot distance to properties zoned for residential uses. 200 feet from public parks. As well as from public and private schools. So again we modeled the 200-foot based on other ordinances where we have distance requirements. In terms of ground floor prohibition, this was an idea that actually came from the community back in 2009, when the council was considering the moratorium, and the thought was that in neighborhood areas, particularly near the main jail, retail and restaurant opportunities are limited. So we need to make sure that the ground floor is protected for retail and restaurants, but again, allow the bail bond establishment to be up on the second floor. So that is part of the proposal. Again, bail bonds would be welcome, but would be -- new ones would need to be located on the second floor. We are defining, by streets, what we're calling a main jail area, to distinguish between the immediate area and the rest of the city. And so for purposes of this ordinance, we're suggesting that the main jail area be bounded by highway 87, Rosemary street, 6th Street, empire street and Hawthorne street. Empire and Hawthorne jog across first so that's why we have the two streets as southern boundary. In terms of late night activity as you know as our Planning Commission we do require a conditional use permit for activity that happens between the hours of midnight and 6:00 a.m. This has been a law on our books since 1984. So within the main jail area, we are recommending that new bail bond establishments or existing ones that wish to operate after midnight all obtain a conditional use permit. For those areas outside of the main jail area we are considering an incentive essentially to locate outside the main jail area by allowing bail bonds without a conditional use permit only if all four criteria are satisfied. And that is, that they meet all the other provisions of the proposed ordinance,

that the bail bond establishment does not exceed 2,000 square foot of floor area, that the late night activity does not involve any customers, or deliveries, employee errands or other back-and-forth that might be disruptive. We did get testimony a couple of years ago that the bail bonds operations, that the nature of the business after midnight is mostly by phone and not by customers. So that was trying to respect the testimony that we got earlier. And then of course, that it's consistent with all other aspects of the zoning code. So with that, that is the proposed before you. We have had questions, as you've seen, from the letters as well as some of the testimony you might hear. What happens to the existing businesses that are already out there? And it's very complex because we have some businesses that have been there for decades, essentially, and could very well have legal nonconforming status. That means that when they -- at the time that they were established, they met the rules of the zoning code, and that might even include the ability to operate after midnight. So there may be some legal nonconforming. That situation would continue, would not be altered by this ordinance. We also have bail bonds that have recently moved into the North First Street area, some of them do not meet existing zoning rules. Those are currently illegal. Our code enforcement office has been monitoring those businesses. They have elected not to force closure pending the outcome of this ordinance. If the council were to approve this ordinance as-is we suspect that most of those illegal businesses would be -- would remain illegal and therefore need to close or relocate per the provisions of this code. So once we know what the rules are going to be, we'll be working with our code enforcement office to make sure that the rules are handled equitably. I do have a chart for the commission that summarizes this -- the complexity of what's legal, what's legal nonconforming. So I will distribute it for your reference, and do I have some copies for the public that I will put down below, while we're taking public testimony. So staff is certainly here to's questions. We do have a fair number of speaker cards so we're eager to get the public testimony. Thank you.

>> Commissioner Bit-Badal: I believe Commissioner Kline has a question.

>> Commissioner Kline: Yes, this is pretty straightforward but a quick question. On the legal nonconforming use the ones that have been there are legal and meet zoning you and but they're going to be nonconforming when we pass this, is this nonconforming relative to land or is it the property owner or is it the business? How -- when

would that flip? When would trigger basically they have to go and basically close down if one of these things happen? Is it land or property owner?

>> Laurel Prevetti: It runs with the land. So sometimes what we've found is the bail bond establishment may change its name, et cetera. But as long as it's been in continuous use without any disruptions of service from the time it was legally established it would remain legal nonconforming. Once there's a break and it goes on for at least six months they lose that legal nonconforming status and it would be -- that property would then be subject to the current zoning rules that are in place.

>> Commissioner Kline: So six months?

>> Laurel Prevetti: Yes.

>> Commissioner Kline: Thank you, great answer.

>> Commissioner Bit-Badal: Okay now we have several speaker cards. I'm going to call the first three. The first person is Jeffrey Stanley. Second person is Eric Shanehauer. And third one is Tina Morrill. Please come forward and stand in the queue. Thank you. And Mr. Jeffrey Stanley if you could state your name again.

>> Yes, thank you, Madam Chair. Jeffrey Stanley, and commissioners, I'm with bad boys bail bonds, we're one of the largest bail agencies in California. We employ over 150 employees. Our corporate office, we have two corporate offices here on first street and we have a retail location. This ordinance would dramatically affect our business, and the other businesses around us. Bail is guaranteed to us under the U.S. and the state constitution. I don't know if the planning department has looked at the constitutionality about hindering people from obtaining bail, but that's a very serious issue. I don't know if the Planning Department has talked to the county because I've talked to the county Board of Supervisors and they are not in support of this. And what happens here at the city is going to affect the rest of the county. I understand the issue with a lot of residences in the area, that they don't want to have a bail bond agency here. But the question is where do you want your bail bond agencies around the

city? And to better address the issue and to help our customers, and for public safety, you want them around the jail. They've talked about issues with some of the bail bond agencies. Those issues do not exist. It's one of the lowest crime rate areas for the cities is around the jails and around the sheriff's office. Our office is right across the street. You take a look at this ordinance. It almost makes it impossible for somebody to open up a bail agency here in San José. Everybody is, within 200 feet of a residence. Everybody here, you're not going to find a bail office that's 200 feet from the other -- so it would be impossible. Which I think is unfair competition. As far as using the telephone to conduct bail, this city doesn't want people or bail agencies to conduct bail or underwrite bail over the telephone because it's going to be a public safety issue. What happens, if you're -- my time.

>> Commissioner Bit-Badal: Your time is up sir. Sorry.

>> Any questions?

>> Commissioner Bit-Badal: Do we have any questions?

>> Thank you.

>> Commissioner Bit-Badal: Thank you for your time. Mr. Shanehauer.

>> Good evening, vice chair Bit-Badal. Members of the commission. My name is Eric Shanehauer I'm here as a concerned resident of the Vendome neighborhood. We the neighbors in this area have seen a massive proliferation of bail bond agencies. When you walk up my house up first street six blocks, here is what you see, bail bonds, bay bonds, bail bonds, bay bonds, bail bonds, bay bonds, and bail bonds. That's all in a six-block distance along North First Street. Our point is: We must require the distribution of these businesses farther throughout the city and not have overconcentration in one neighborhood. We understand bail bonds are an essential part of the justice system. We also understand that this ordinance does not impact one iota any of the bail bondsmen sitting in the audience. If they're operating legal today, they will continue to operate under this ordinance. If they're operating illegally today,

they're going to be legally under the ordinance. Anyone's current status as a business person remains the same under this ordinance. All this ordinance does is force and require proper separation from sensitive uses, and proper distribution of businesses throughout the area. So we strongly support staff's recommendation. They've come up with a great framework. We have two suggestions. The first is: In terms of the 200 feet, I think if you look at it in the practical world, a city block in our neighborhood can be 800 feet long. And so if you had one bail bonds every 200 feet you could have four on one city block. That just seems like too much overconcentration to us. So I would suggest 300 feet as a more appropriate dimension. And so on a block like this sample, with 300 feet could you have two bail bonds per city block. That seems reasonable. And lastly --

>> Commissioner Bit-Badal: Sir your time is up. Sorry. But we do have a question for you. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Yes. Could you educate me as to some of the issues, you know, I mean it's not just a presence but it's what they do that probably bothers you. Can you explain, can you give me a little more detail on that?

>> The -- the neighborhood has experienced nuisance concerns with many of these businesses, especially the late night activity, where customers would come usually a group of family members or whoever it might be, and there's loitering out in front. Oftentimes when it comes to bail, it's a very emotional issue. You have domestic disputes, you have other conflict between the parties who are coming to these businesses. So issues of noise have been a problem. Parking on residential streets in front of people's home, litter in front of the businesses. So those kinds of nuisances have occurred. But to me, personally, the bigger problem is, the perception of our neighborhood. We all want to have an ideal neighborhood street with shopping, retail, restaurants. And having this overconcentration of one type of business that, let's face it, isn't particularly desirable to have in your neighborhood, it doesn't -- it doesn't feel right. What -- how would you feel if you had 26 of these businesses on the Alameda, or on Blossom Hill road or in Evergreen village. I mean, you wouldn't want to see all of this concentration all in one place. We're saying, spread it around.

>> Commissioner Kamkar: Okay, thank you very much.

>> Commissioner Bit-Badal: Thank you. And Commissioner Abelite has a question as well.

>> Commissioner Abelite: I just wanted to hear your other recommendation. Had you a 300 foot recommendation and there was -- you ran identity of time.

>> The other was, in the draft, in the draft, the way the staff has drafted the ordinance, they have set up a dual process. If you are within the main jail zone you have to get a C.U.P. for 24-hour use. And although we'd rather not have 24 hour use it's better to have some public process. And for outside the main jail zone, you can have 24-hour by right as long as you meet criteria. So my suggestion is that this one criteria highlighted in orange here which governs how they operate as a good neighbor, that this criteria also apply to any C.U.P. being sought in the bail zone. In other words if that's an important criteria to have for bail bonds operating 24 hours in other parts of the city then that criteria, that one criteria about operating as a good neighbor should also apply for any C.U.P. sought within the main jail zone. Because as I understand it, they would be applying for a C.U.P. for a 24-hour use. The city has a 24-hour use policy. I assume those policies will apply. Unfortunately if you look at the 24-hour use policy, it doesn't -- it doesn't address a bail bonds type of operation. And it doesn't have any guideline on what the expectation of their operation should be. So it would be good, in this ordinance, to add that criteria. Anyone seeking a C.U.P. in the main jail zone would have that criteria, or requirement, as part of their C.U.P. should the deciding body which would be you, should they approve it. And I should note that the 24-hour use policy has a separation criteria of 300 feet from residential uses. So the 200 feet, the staff has indicated is, quote, commonly used, most of your separation policies are far more than 200 feet. 24-hour uses is 300 feet. Offsale of alcohol it's 500 feet. So most separations are much greater than 200 feet in other policy aspects.

>> Commissioner Bit-Badal: Thank you. Before I call on the next speaker I would like to have the following three speakers come forward, as well: Don Comer, Eric Cantee and Jeff Daugherty. And at this point, Tina Morrill please and please state your name.

>> Hi good evening, my name is Tina Morrill and I'm a resident in the Vendome neighborhood. First I would like to start out by saying I am not against bail bonds businesses. They do provide a service, absolutely. And I completely agree with the one gentleman from Bad Boys bail bonds. They're a necessity. My concern is, the proliferation. Having too many businesses in a concentrated area. I think that this ordinance is definitely going in the right direction. Do I have a couple of suggestions that I'll outline in a minute. One of the things though, that I did you know when I think about a proliferation of businesses in one area, I think about okay, well, who are the people that live in the area? So let's see. So one of the things that I did was, I looked at the median income of -- on using the census tract from the city's Website and you'll notice that okay. So this particular area that we're talking about, there's a very large pocket of the lowest income. And so I don't think it's a good idea to, building on what Eric had said as far as perception, have a bunch of only bail bonds businesses. And I'm afraid that having so many, it's going to discourage other types of businesses coming in. Sandwich shops, bookstores, things that residents that this main jail area like. So that was a concern to me and I wanted to call that out. I am in agreement with Eric Shanehauer as far as the C.U.P. criteria, I'd like that included in the ordinance. What would that be for 24-hour use? And I do like the idea of having that third bullet point, that he pointed out. It's on page 3 of your ordinance. And then also, the distance requirements. I'm in agreement with that as well. I think it should be from 200 to 300. Especially given the fact that already there are so many businesses that are considered legal, or legal nonconforming. That's my story. Thank you.

>> Commissioner Bit-Badal: Do we have any questions? Thank you. Next speaker is Don Comer. And if you would please state your name.

>> My name is Donald Kilmer. I'm the attorney for bad boy bail bonds. Bad boy hires me to sue counties and cities that interfere with their businesses. We've successfully sued Los Angeles, city and county in the past. For interfering with my client's ability to basically provide bail services to his clients. What I'm particularly concerned with in this particular case is, since my client provides a fundamental right or access to a fundamental right to people he's kind of in the same position as a bookstore. And I'm wondering if the city or the Planning Commission has done a secondary effects analysis on this ordinance similar to what would be required if you are infringing on

bookstores? And if you have done the study, the secondary effects analysis is a copy of it available that I might be able to look at?

>> Commissioner Bit-Badal: Counsel please.

>> Renee Gurza: Thank you, Madam Chair. We haven't done a secondary effects analysis but we have done an analysis with regard to the eighth amendment right and the scope of the City's ability to provide access to bail, and to guarantee access to bail. But regulate in some minor way the location or the separation requirements. While still maintaining access to the bail.

>> So there's been no secondary effects analysis report done?

>> Renee Gurza: Not that I'm aware of unless the police department have additional information.

>> All right, that's the only question I have, thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker is Eric cantee. Excuse me. Would you please state your name.

>> Eric cantu. All right would I like to ask the city here to reject the proposal as it stands. I've been in business for eight years. In the City of San José. And I pride myself in the service that I provide to the community. The first gentleman who spoke who opposed or is in support of this motion, in this -- or I'm sorry not motion, the ordinance, in the ordinance it states that there's 80 bail bond companies that operate within San José. I feel that that's an exaggerated number as well. Meece -- he laid down pictures of 14 bail establishments of which three of the pictures are duplicates. So I don't feel that there's a saturation of bail bonds for there being 13 bail bond companies I counted before I came here within the area you guys are stating the main jail area. 13 bail bond establishments that service a county of 1.7 million, I don't feel that that's a saturation. I understand it's a location issue as well but I file it you know highly discriminatory because you guys are trying to regulate an industry based

on the service provided when -- as previously stated, it's, you know, it's a right to bail. A constitutional right. As well, they want other companies to be in the area, just as long as it's not a bail bond company. As well they want it to be moved in somebody else's backyard as long as it's not in their backyard. So you know to me I understand their issues and whatnot and I don't think it's a bail bond issue as much it is a jail issue. Being the fact that you find fishermen near oceans and lakes and stuff like that, attorneys near Courthouses, bail bondsmen it's only natural that we operate near the jail so that way we can service our clients at the most effective means being near to where their loved ones are. And also, I don't know which way you're leaning but I -- you know there definitely I think this should be shot down but --

>> Commissioner Bit-Badal: Thank you sir your time is up. But we have a question for you. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Question for you.

>> Sure.

>> Commissioner Kamkar: If you could address the issues that Mr. Shanehauer you know brought up regarding nuisance, parking issues, loitering. You know, noises you know and you know I just want to make sure you know that we would regulate any business that is not a good neighbor.

>> Sure.

>> Commissioner Kamkar: It's not -- we're not picking on bail bonds, you know, but if you operate your business in a way that you're not a good neighbor and neighbors come to us and say help, you know, we would --

>> So you're --

>> Commissioner Kamkar: So we're not picking on you you know.

>> So your question is to address the nuisance.

>> Commissioner Kamkar: The nuisance the parking --

>> I feel the nuisance you know that's just it's in any area. I mean I live in Gilroy personally and I get littering in our neighborhood. It is not our bail bond customers, our bail bond clients. There's a light rail who delivers people thousands daily who walk to their homes. We can't go by with a pooper scooper and pick up their dumping. That is a city across not in his neighborhood. I didn't get his name, I don't know where he lives but in the area I live I have a landscaper out twice a week to keep the landscape professional. I don't allow loitering. There is free parking in the rear which is just for my clients and it's no traffic problems. There's no -- there's no nuisance. I mean you can contact the San José police department and see how many times a police officer -- police officer has had to come to my establishment, I've been there eight years and there's not one instance where we've needed to -- we're a very professional industry.

>> Commissioner Kamkar: That's great, you're maybe one of the ones that are operating legally, more power to you. This regulation isn't going to be affecting your business.

>> I'm not worried about our business, I have the utmost respect to our industry, it's battled many negative stereotypes. We're trying to rewrite our industry and this obligates is a blow to us.

>> Commissioner Kamkar: Thank you.

>> Commissioner Bit-Badal: Thank you. I'm going to call on the next three speakers as well. We have Antonio La Mont Buffy Oste and Steve Sparacino. Next speaker is Jeff Daugherty but please state your name.

>> Hi there, my name is Jeff Daugherty, I'm co-owner of all probail bonds, we are arguably the fastest growing bail bond agency in the state and we've achieved that growth through really concentrating on professionalism and

affordability of our business. We prides ourselves in creating a professional, clean, safe office environment, in which we can conduct business and provide the services to our clients, many of whom are San José residents. We employ a staff of 100 people statewide, eight of which in our San José office, and most of whom are San José residents as well. We pride ourselves in being good community members, good neighbors that will not tolerate unruly behavior in and around any of our offices in San José. We operate 24 hours a day, given that many of our clients are, as others have mentioned, are in need of our services 24 hours a day. We submitted to the Planning Commission via law firm of Rutan and Tucker a few of our concerns over the ordinance mainly relating to ensuring that we can continue to operating our business as we currently do, including being able to see our customers on a 24-hour basis, without any limitations on ground floor or distance requirements. On a side note, the -- I don't know how the commission would propose to address the requirement with the distance, as far as who was established first, who would stay, who would go. Nor, I guess, is it my issue to figure out. But it just would seem very cumbersome to me to try to go and apply this in retrospect. We understand we will need to seek a conditional use permit and respectfully request that the 24 hour policy be revisited and ensure a fair, reasonable process which respects the particular needs of our clients. Thank you.

>> Commissioner Bit-Badal: Thank you. Do we have any questions? Thank you so much, sir. Antonio. Would you please state your name. Full name.

>> Hi, my name is Antonina.

>> Commissioner Bit-Badal: Ma'am your last name as well.

>> My name is Antonina Atari. I live in the Hyde Park neighborhood near first and Hedding. I believe I speak for most if not all of the residents in my neighborhood in supporting the zone change. We had been requesting the city to look at the high concentration of one -- this -- the bail bonds businesses that have been encroaching in our community. It is an adult business, and has been loosely regulated, until the neighbors took action. Also, I want to point out that the principal of Peter Burnett middle school wrote a letter to the city addressing her concerns with the impression young students were seeing with the advertisements they were coming upon while walking to and

from school. Peter Burnett is between second and third street. As residents we have been putting up with customer traffic and late night activity in our neighborhood streets due to these businesses. I want to emphasize that we have been having a problem with it but we had a 20-month moratorium so it's been quiet. Moving forward with the resolution, with this resolution will of will finally start the transformation process with a more balanced community with a mixture of business and residential. Please consider voting yes for this proposed change. Do you have any questions?

>> Timm Borden: Thank you, ma'am, we don't have any questions. Next speaker is La Mont buffy Oste. Please state your name.

>> Hi, La Mont buffy Oste. Thank you, Madam Chair. I'm in the bail bond business since 1975. I'm the owner of buffy Sparacino bail bonds located there at that business establishment has been 1961. We have some people here whose grandfather started that business. I've been there since 1987. Of which at no time have we ever had any officer or any complaint in our business. I sit next door to an apartment building of approximately 25 apartments. We have never had any problems with them complaining against us. And I would be curious to see what police reports that you might have to show that we are a nuisance. Of which I don't think there are any. I think we do have people roaming the neighborhoods. And I have actually had a person next door, in my apartment building there, next to me, who would inform me that there are people roaming in his -- around his apartment building, and my building. And I question him, I say who are they? He says well these are people that are getting off the bus. And the light rail station, sitting right in front of us. These are not our clients. These are not people we're dealing with. These are people that are getting public transportation. Our folks are normally well respected people. Who are trying to get loved ones out of the jail system. They're not there roaming and they're not there causing a nuisance and partying and drink -- drunkenness. So I'm curious where this is coming from and where are these complaints and I'd like to see them because I don't think there are. I think there are people that are concerned about their lives in this area.

>> Commissioner Bit-Badal: Thank you sir, your time is up. Commissioners, have any questions? None. Thank you. Next speaker is Steven sparacino. Would you please state your name.

>> Sure, I'm Steve Sparasino I'm a bail bondman in the area. I want to address, I'm obviously not in favor of this proposed ordinance change. I want to address the memorandum, where it addressed the intended objectives of the ordinance change. Number 1 was to provide reasonable regulations to govern the appropriate location of bail bond establishments. As stated before by some of the other speakers, obviously the appropriate location for us is around the Courthouse, the jail and both of the largest pleasing agencies, the sheriff's department and the police department both being on mission and younger. As you would find, hotels and rent car places around the airport or restaurants and bars around the HP pavilion. We also quick google search of 95112 zip code, you'll also find 101 defense attorney firms but I don't notice a complaint about proliferation of their firms. Lastly I just wanted to address where the intent was to retain business opportunities for uses other than bail bond establishments. That opportunity is there now. I just wanted to show currently, with the moratorium in place now, people are not -- people are not renting. And this is what you're getting down first Street as proposed in the district that you're talking about. I'm sorry. Can I get -- and these are ground floor, both retail and commercial office space. On a very short 30-minute walk, let's see, are we on? There we are. Vacant, for lease. On and on and on it goes. There is nobody, there is no occupancy rate down there. So you're just going to contribute to a problem that the area of San José is already having a problem with now in filling office space. And preventing -- and unfairly targeting an industry that I'm very, very proud of three generations in. Grandmothers, mothers, fathers, brothers, sisters are who come to our office. Very few criminals actually come to our office, the most financially secure of their family is the ones who are underwriting these bonds. Empty, empty, empty, empty, empty, all retail.

>> Commissioner Bit-Badal: Thank you, sir. Your time is up.

>> All righty.

>> Commissioner Bit-Badal: Appreciate it. Next speaker is, Mr. Bill mains. And if there's anybody else please let me know because this is the last speaker card we have for this item. Would you please state your name.

>> Hi, my name is Bill mains, thank you. Just want to make a comment that there are nuisances in the neighborhood that happen sometimes. I don't -- I personally don't always call the police when that happens. I often take it upon myself to address the issue. If there's littler I clean it up and pick it up. If there's noise complaints I step outside to see what's going on. Usually when they see me they either move on or it ends by the time I go back into the house to make a call to the police. Other instances that happen, I think my neighbors also try to take care of it themselves. We have pride of ownership in the neighborhood. We see it as our responsibility to try to address that ourselves first. It is our fault that we shouldn't have called the police or we should have called the police to see more record of the nuisance going on. But I just want to make clear as a resident who lives in the neighborhood, there are instances that occur and we often time deal with it ourselves, again maybe we shouldn't have done that. Maybe we should have called the police but that's what we do.

>> Commissioner Bit-Badal: Thank you, sir. And oh actually we have a question for you, sir. Would you please return? Oh, not for him, well, thank you. There are no questions.

>> Commissioner Abelite: I actually have a question.

>> Commissioner Bit-Badal: Oh you do?

>> Commissioner Abelite: The previous speaker, Steven Sparasino, I just have a question for him before we close public hearing, I'd rather get it out of the way now.

>> Yes, sir.

>> Commissioner Abelite: Thank you for coming down. So it sounds like you're multigenerational in the business. You've been around for a while in this business, is that right?

>> Yes, sir.

>> Commissioner Abelite: I'm not familiar with how this business works and I just want to have an understanding of how it particularly transacts, I want to have that understanding as it relates to even after midnight to 6:00 a.m. I don't understand how any of that works so teach me.

>> Sure. So typically our phone calls are going to come from the defendant himself in custody at the jail Jane getting to get it released or it's going to go from a cosigner a family member who wants that loved one out. We would have whoever that co-signer is come to our office, they're going to sign a set of documents that essentially they secure the bond and secure that person's release and then they leave. And shortly thereafter the defendant is let or is released from the main jail and he is up -- and at that point he needs to find a ride home.

>> Commissioner Abelite: So to be clear, so how does he get -- how does the jurisdiction actually find out that bond has been posted? Does the jurisdiction actually find out that bond has been posted does the person --

>> We physically go down to the jail, the administrative branch of the jail and give them the bond.

>> Commissioner Abelite: Right. Once you securitized it with a relative, you actually get out of your office, walk down the street and present that to the jurisdiction?

>> That is correct.

>> Commissioner Abelite: And typically the real customer, probably, just leaves from there and goes off into the -  
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>> Absolutely and as you can imagine somebody being released from jail the last thing he wants to do is stick around. Because his -- the reality of people loitering and hanging around in that area is slim. Very slim.

>> Commissioner Abelite: On a percentage basis how many of the people that are jailed actually come back to your office that same night, or does it -- does it happen?

>> It happens from -- from time to time but typically, it wouldn't happen until the following morning.

>> Commissioner Abelite: Okay, all right. Thank you.

>> Commissioner Bit-Badal: Thank you. With that, I'm going to entertain a motion to close the public hearings portion of our -- and all approving please say aye. Aye. Staff.

>> Laurel Prevetti: Thank you, Madam Chair. In response to some of the testimony that we've heard I would like to just clarify for the commission and for the benefit of the public that the city did coordinate the preparation of this ordinance and the community meeting with the county of Santa Clara. Informing both the county executive's office as well as all of the supervisors about the pending ordinance. So they have been very much aware of the direction that we've been heading, and really deferred to the city council to make its decision. And we have welcomed their comment and they may still choose to provide comment to date. I haven't received anything in writing. With respect to the suggestions of one of the speakers to microphone the ordinance to increase the distance requirement from 200 to 300, that is certainly a consideration that the Planning Commission could make as part of its recommendation to the city council. Again, we are trying to balance 200 feet is what we have in our adult use ordinance. 150 feet is what we have in our alcohol ordinance. So again, you know, and again, 300 feet is shown in other ordinances as the speaker had mentioned. So we kind of went towards the smaller distance, but again, it could be part of your recommendation that you might have a different footage. With respect to including that third bullet of the staff report as an element for conditional use permits within the jail area, you know, each conditional use permit is a discretionary act where we create the conditions targeted to that particular business. And so to have something this blanket within the bail -- within the main jail area may actually not necessarily serve the needs of the city nor of the businesses. So I think what we're trying to do is figure out what are the absolute -- if we're going to have a situation where we don't allow -- where we don't even have a C.U.P. at all, what are the bare minimum requirements? And so that's why the bar is so high. Because there would not be a public hearing. These would be neighbors, and I know we have bail bond establishments actually very close to City Hall that are outside the main jail area. Presumably that business could operate without 24 hour -- without a

C.U.P. if they meet all those criteria. So that would be -- that would be something to consider. So to also then ask for essentially citywide no late activity that would at all involve customers seem to be pretty -- pretty limiting. So that's just staff's perspective. But again that's something that you may choose to discuss and comment on for the benefit of the city council. And again I think the businesses have spoken well for themselves. We work very closely with the city attorney's office to make sure that all legal considerations are factored into ordinances before they get to this point. So I would defer to Renee and then I hope that I have clarified for the record the status of legal versus illegal, legal nonconforming et cetera and if the commission has further questions about that complexity I'm happy to answer it. But let me ask Renee if there is anything further she wishes to add for the record.

>> Renee Gurza: In terms of legal issues that arose during public testimony, the only two I heard, there is definitely great concern by the existing businesses that once the ordinance is adopted, that they are not required for example to not be within 200 feet of another business. In other words, they're saying look, if we're here and we're operating legally and we meet these standards are we going to be put out of business? The answer is no. I think director alluded to that earlier. That so long as that business established itself legally and is legally operating, in all likelihood they should be entitled to legal nonconforming status. Of course the big caveat is, if they establish themselves legally and are operating legally. I think there was one attorney speaker who alluded to or had asked the city, have you done a secondary impacts or a secondary effects analysis. And to my knowledge the city has not done one. I'm not aware that it is legally required. So secondary impacts, just so you know the study that he's asking for, when the city regulates adult businesses that do have First Amendment protection, there is a body of case law that explains that you actually have some broader authority to regulate adult businesses, adult bookstores, nude dancing, expressive activity that has some protection under the First Amendment, if you can identify a secondary impact. Well, this ordinance before us in no way implicates free speech. We're not intending to stifle the First Amendment expression of bail bonds. Businesses we're not regulating their signage with this ordinance. There's really no expressive activity of any kind so the secondary impacts study that the attorney alluded to is not applicable in this case because First Amendment expression isn't being regulated. And again, the jurisprudence that he alluded to is really under a different constitutional amendment. So I hope that answers all the legal issues that might have arisen during the testimony.

>> Commissioner Bit-Badal: Counsel, just for the benefit of the public, would you explain what it means to be legal? Do they have to have a business license to operate? What does it take to be legal?

>> Renee Gurza: What it takes to be legal or illegal?

>> Commissioner Bit-Badal: No legal.

>> Renee Gurza: When the business has established itself, I think that's why the director of planning has prepared that chart for you. What it means to be legal will be contingent upon when the business was established. So for example, I think the director earlier this evening alluded to the fact that the requirement to obtain a C.U.P. for operations after midnight and before 6:00 a.m. came into effect in 1984. So if there are businesses out there, operating past midnight, without a C.U.P., but they legally began operating, and have been operating, without a C.U.P. prior to the city having a requirement, then they may have legal nonconforming status even as to that requirement. So the answer to your question was, would be, I would refer to the chart, and I think there are some copies available for the public. Because you can see that what it means to be legal is dependent upon many different factors. And so the director of planning has tried to summarize the most common elements that will affect persons that are currently existing.

>> Commissioner Bit-Badal: Thank you. And we have commissioner Norm Kline.

>> Commissioner Kline: Question for staff real quick. There are two items. One is the third element that has been talked about. The late night activity does not involve any customers, deliveries, employee errands or other arrivals between bail bonds establishments between the hours of mid nightly and 6:00 a.m. From my understanding of the business model that makes that business impossible to actually operate because their whole purpose is to actually bring customers in and send errands out to the various agencies to put the bonds and write the paperwork. So I'm not sure how this actually makes sense. The question is, what thought did staff have actually in coming up with this?

>> Renee Gurza: I'll let the director, I was about to answer it as well. Again, those criteria are, if you want to operate by right, after midnight and not come in for a C.U.P.

>> Commissioner Kline: Right.

>> Renee Gurza: And so again both the director and I had our light on. But the thought is, that if you're basically operating in a fashion that after midnight you're not going to be creating, you're not going to have activities that create the noise, the traffic, et cetera, the planning division was trying to articulate those elements that might pose after-midnight concerns.

>> Commissioner Kline: But that's not what this says. I can understand that certain delivers can definitely be put in there noisy trucks, there's a lot of things we do to prevent impacts in neighborhoods but their business model is customers coming in after midnight. That's a whole part of the business.

>> Renee Gurza: I'll let the director speak to that. But we actually did receive testimony, information from the bail bonds industry that there are some businesses that operate over the telephone and the computer. I'll let her speak to that. Again this is to note, this is if you want to operate without coming in to get a permit, it doesn't say that you can't operate. It just says that if you don't meet that criteria you may have impacts so you may need to come in for a C.U.P.

>> Laurel Prevetti: If I may Madam Chair, just to elaborate. If you are outside the main jail area and you cannot meet one or more of these criteria, or subelements of them you still have the option to get a conditional use permit, so if it's still available to them, if you know -- and this third criterion actually is probably the most important, because it's the coming and going that really does affect neighborhoods. And if, as this process continues, if we find that it really is not reasonable in the City of San José to have a, by-right instance of after midnight activity, then that might be a future modification to the ordinance, where we would just hold with the existing requirement

of a C.U.P. for all businesses after midnight. So we were trying to create an incentive. If it's not viable, or if the commission has other ideas. We just thought we would try it.

>> Commissioner Kline: The second question I had was the ground floor prohibition. Again I grew up kind of in that neighborhood so I know some of -- there's not a lot of second-story buildings in that neighborhood actually that are commercial. There are some but not a lot. And then with the restrictions has there ever been an analysis of what percentage, actually, you know could actually -- what percentage of properties could actually have this particular business? We did that sort of with the marijuana, I was kind of curious if that type of knowledge was done with this?

>> Laurel Prevetti: We haven't done a parcel by parcel existing building inventory analysis. I think what you'll find in those neighborhoods is really a mix. We do have the single story character from our past. But really our future is one of buildings that are going to be much taller. So along the north first Street corridor we expect to see buildings three, four, five, six, eight, ten, 12 stories in height. So there will be ample opportunities. Again we are looking at regulation that will hopefully live on just beyond the immediate term.

>> Commissioner Kline: Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Question for staff. So what if they are legal, they were established, you know, within the time frame and but then they have let's say like a violation of city added half a bathroom without the permit. How -- you know does the ordinance take care of those issues, you know, or will they now be considered ah you're in violation and lose everything?

>> Laurel Prevetti: Right, so it's kind of a -- we have a lot of different codes obviously in San José and all cities do. So we have the zoning code, and whether or not it immediacy the zoning code. And so it's really against that metric that we're talking about legal, is it in the right zoning district? Does it have the right permits, et

cetera. When it comes to building code issues like you know, unpermitted construction, code enforcement also enforces those issues. But that doesn't affect the legal status of the business. It doesn't affect the zoning. That's correct, they may still need to correct the problem but it would not affect their legal status.

>> Commissioner Bit-Badal: Commissioner Abelite.

>> Commissioner Abelite: This is for staff as well. It's to do with the CU permit process. Let's say you know it sounds like after mid tonight to 6:00 a.m. is a vital component of their business model in some cases if they're not online. So I'm assuming C.U.P. might if this -- if or when this zoning ordinance gets approved, then it's going to be a trigger point where they need to come in and apply for a C.U.P. Or can they be applying for a C.U.P. right now, and then in anticipation of the zoning ordinance being adopted in maybe a month and a half, and can they get through a C.U.P. process at least in front of us within like 90 days? Does that feel about right?

>> Renee Gurza: So again, it depends on the particular business. Because if there is -- if there are businesses out there operating in the correct zone, and at the time that they commence their business, they did so in compliance with all of the laws that we had in effect at that time, and there was no C.U.P. requirement, there's nothing in this ordinance that now says, we changed the rules on you. You now need to come in for a C.U.P. If they are legally operating, we're not changing those rules for them. The one caveat is, we do have something in our zoning code called the adverse zoning ordinance, where you are operating legally, and you did comport with all the rules in effect at the time and you are really creating a nuisance, the burden is on the city to show that you know yes you did commence your operations legally but you are creating a problem. And believe it or not, those adverse impact cases come to the Planning Commission. So you can see how often we do them. I don't know that you've ever -- well I think you may have had one but it was a long time ago. So the city understands that where there are businesses out there, and they're endeavoring to comply with federal, state and local laws, whatever apply to them, the City's not going out to undermine those businesses even though they're complying with the laws to put them out of business. So again, if they're legally operating, just because now, under this ordinance, if they started tomorrow, or you know the day after the ordinance went into effect, they would need a

C.U.P., if they commenced their businesses when this ordinance was effective, it doesn't mean that they're going to need to come in. They're known as nonconforming.

>> Commissioner Abelite: 87 but I guess I didn't hear the answer or maybe I didn't lay out the question properly. Let's say these businesses are operating legally within the time frame of when they went into business. Everything is fine the only exception being they may be violating the post-midnight rule and that's still vital to them. My question had more to do with that sort of scenario. Can they actually make application next week and see it?

>> Renee Gurza: They commenced their business after 1984 and operated after midnight, the code at that time required that they get a C.U.P. to operate past midnight. The business may be legally conforming outside of the midnight to 6:00 a.m. But if they're operating outside the mid hours of midnight and 6:00 a.m. and they commenced doing that after we had a line place placed that they needed a C.U.P. they would need to come in for a C.U.P. for the after midnight uses. Or I'm sorry, after midnight operations.

>> Laurel Prevetti: And to further clarify, the moratorium is still in effect. So essentially, it would be while we are open for business, and would certainly take the applications, I think until we have clarity with respect to these regulations, we would not at all be able to complete our analysis and provide a recommendation to you as the governing body of conditional use permits. Until the council has acted on the ordinance. So again, we would prefer to kind of let the rules be known, and then, we'll process them as expeditiously as possible.

>> Commissioner Bit-Badal: Commissioner Kline.

>> Commissioner Kline: I was going to make a motion but I don't want to step on anyone else's comments here. Okay, seeing none I'm going to try a motion here. It's a little bit different. I'm going to preface it a liberal. Number one I think this is a critically needed business and I think it's important for members of society and no way I'm going to reflect here should diminish that. If properly run, no bail bonds business should be a nuisance at all so I don't think that's an issue, a nuisance. It kind of reminds me of another city I was the city council person

on and the mayor on. A set of businesses came into town and they basically took over a certain part of our town. And they were sucking the life of our town. And it was so bad that we had to slap a moratorium real quickly. And then we put an ordinance in place to make sure that they couldn't be within a certain distance of each other. And it was a horrible situation and that type of business was, real estate offices. Okay? So it's not necessarily the type of business we're talking about. It's necessarily sometimes just the concentration of businesses of the same type in the same location that's driving out other businesses. And I understand the issue of empty store fronts but hopefully that's more of the nature of the economy at the moment and the stock market and not necessarily that particular location in town. So I don't -- I think that the staff did a pretty good job. I don't see anything here I really object to except the one thing. I think the ground floor prohibition seems to be just a stretch beyond -- I can make any findings over. I don't know why, and I haven't seen any statistics, of why you would prevent a bail bonds to be on a ground floor. It seems like a retail kind of thing to me. You want to drive someplace, walk through, walking upstairs, I'm not sure why that would be a necessity. I haven't heard any facts to support prohibiting it from a ground floor. So that's one thing. Same thing, at the same time I think the 300 makes a little bit more sense than 200. So give you ground floor I'd like to push them further apart. I wouldn't want to see a whole bunch of ground floors bail bonds kind of in a row like a real estate office would be in a row, same type of issue, you don't want them too close together, you want to spread them out. So I'd like to make the motion to accept this ordinance as staff recommended without the ground floor prohibitions, but to extend the feet wherever appropriate where the ordinance is from 300 versus 200.

>> Commissioner Bit-Badal: Do we have a second? Any more discussions on this item?

>> Yes, I actually.

>> Commissioner Bit-Badal: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. My understanding of the ground floor area was just in the downtown area or the other places, ground floor was okay, right?

>> Laurel Prevetti: Yeah, it was actually just in the main jail area that we would have that limitation.

>> Commissioner Kamkar: Sorry I meant the main jail area. And as the director pointed out one of the reasons is we would like those opportunities for more restaurants and more other types of you know activities and this, we shouldn't just look at this situation now, we should look at it ten years from now when hopefully we have other buildings and developments along that light rail corridor, you know which is very critical for us. So, you know, as of right now, I wouldn't be able to support the motion, you know, with the caveat that you put in there. You know, hopefully you would be amenable to changing that. Thank you.

>> Commissioner Bit-Badal: Commissioner Abelite.

>> Commissioner Abelite: Well, actually I'd like to have Commissioner Kline to have an ability to understand what Commissioner Kamkar just said.

>> Commissioner Kline: I actually agree with Commissioner Kamkar. The fact is that we want to -- we want spread out the businesses, that's why the 300 was in place, to spread them out so it wouldn't be so concentrated in one area. But exchange of spreading out I didn't see any evidence why they couldn't be on the first floor. Sure, you want to have a lot more different types of varieties. That's why we went from 200 to 300. But none at all on first floor doesn't seem to make any sense to me. I mean I guess you could make a case somehow but I agree 100%, there should be more different types of businesses at your town level including bail bonds. That's all.

>> Commissioner Kamkar: If I may address?

>> Commissioner Bit-Badal: Yes please.

>> Commissioner Kamkar: Okay thank you. My understanding is this ordinance would apply to new businesses. So if you're already at a -- on a floor space and you're overconcentrated, you know we're not pushing them to second floor, we're saying any new ones should be on second floor in this overconcentrated area. So I

actually, you know, understand. And I do by the way agree with your 300, would limit, that's not the one that I'm objecting to. It's just -- it's just that you know ground floor would be open to new businesses is the one that I'm objecting to.

>> Commissioner Bit-Badal: Commissioner Abelite.

>> Commissioner Abelite: Yes, actually Commissioner Kline's motion was exactly what I had in my head as well. I did like the idea of -- or I didn't like the idea of limiting the opportunity sites to be on ground floor, you know lets say they go through a C.U.P. and they have to operate after midnight. If customers have to find their way to a second floor structure it might be within a closed office building tower that the doors close after 9:00 or 10:00 at night and customers will have a real problem accessing into that location, so that I felt Commissioner Kline's amendment dropping it down to the first floor but spreading it out was perfectly appropriate and handled that little objection in my own mind. So that's why I child in on the second so quickly. I think it's a well written or well discussed motion and I hope you would reconsider that.

>> Commissioner Bit-Badal: I would like to ask staff to clarify, if we do not get four votes, what would be the next step?

>> Renee Gurza: First of all I want to thank Commissioner Kline for making his motion so clear because it would be pretty easy to draft. My understanding is that the next steps would be that the director, as the director always does, would transmit your recommendation to the city council for consideration. And if they agreed on the wisdom of it, then the ordinance would be so amended.

>> Laurel Prevetti: And since we have only four commissioners with us this evening, if we do not have a unanimous vote, those same options that counsel had laid out earlier of deferral, or considering another motion, or voting in unison with the comments, I'm going to be doing a transmittal that gives the council the breadth of the comments from all the commissioners. So you have several options, if you find there are elements of the motion on the floor that you cannot support.

>> Commissioner Bit-Badal: Well, for me, this is a -- it seems like it's a complicated issue for office. What really complicates this is I don't know how many of them are illegal, how many are legally conforming, or legal, how many of them are going to be staying there because of this law or how many are going to have to leave basically. Not the ones that have been there since before 2001, I'm talking about the ones between 2001 and 2009. I have one example of a business that is before us, and that was the one with the letter, all-propro bail bonds. That really complicates the issue. We have to find out exactly how many businesses are being impacted by this and if this is going to cause most of these businesses to leave that site. This kind of does remind me of medical marijuana discussion we were having because really need to know how the zoning will affect the existing businesses. With that, I believe that there are a lot of courses, Commissioner Kline said these are critically needed businesses. Nobody wants them, obviously. You want everybody to be law abiding. Nobody has to be bailed out of jail, right? But that's not how our society or any society is. And there is a need for such business. And as I understood in the past, that most people who do visit bail bonds are not the criminals themselves. They are usually the parents, sisters or cousins or those who do have assets to bail, not the criminals but those who have caused -- who have been jailed basically, to bail them out. I think it in some sense also it makes sense that these businesses are close to jails. I mean as we stated before, attorneys are going to be close to the Courthouses. Of course bail bonds are going to be situated close to jails. However, I also am a big believer in balancing neighborhood needs, and patrons' needs. I will ask staff in terms of making sure the comments are included, that before the next city council meeting, where this ordinance is going, that there's a clear understanding of how many of these existing businesses are going to be in jeopardy and how many of them will need C.U.Ps. If they're - - counsel has a comment. Please.

>> Renee Gurza: I was actually going to echo, for clarification, one of the comments of the speaker. I'd never -- I hadn't thought of it this way but one of the speakers had noted for you that this ordinance isn't going to make -- isn't going to change the status of anyone who's out there. If they're legal, they're legal, this ordinance doesn't affect them. If they're illegal, they're illegal whether this ordinance is adopted or not and they are subject to code enforcement activity. So in terms of your concern about how this ordinance is going to impact existing businesses, in one sense not at all. Because if you are legally operating you get to continue to legally operate. And if you're

illegally operating, this ordinance isn't going to make you legal. So we'll have to decide as a city how we can expend our code enforcement resources to deal with that situation.

>> Commissioner Bit-Badal: Thank you for the clarification. I guess my issue has been and this has been what I've been trying to figure out exactly. You know, if you're trying to balance the need between the first floor and making sure that we don't have overproliferation of bail bonds on first floor, and I understand staff's mindset and community's mindset is to make sure that we have spaces open and available for restaurants and retail to support existing neighborhoods. That's one sense. But if with this proposal we're going to be closing most of the bail bonds, it would make sense to go with Commissioner Kline's motion. I think at this point, I will state no, on the motion at hand, and the reason is, erring to the side of the neighborhood. But I definitely would like to see more clarification in terms of how many of these businesses are going to be in business, if this ordinance passes by the city council. And I think they need to know that, as well. So individually if they can come forward to the Planning Department, and ask what their status is, and if they're going to be in business or not, that way, by the time that this proposal goes before the city council, there is a much clearer vision of how many of these businesses are going to be closed and how many of them are going to be operating to serve the community. Thank you. And with that I will ask for light -- oh, we do have two more commissioners who would like to speak. Commissioner Abelite.

>> Commissioner Abelite: I just want to kind of talk a little bit about what you just said about how many we're going to close. You know we have a rather large city, if some nonlegally operating units are forced to close and they would be forced either way because whether they're code enforcement gets them now with no change in the zoning code or they get them four or five months later, either way they should be closed. But the city is huge. There's no -- no way, shape or form are we restricting the number of units. All we're changing is the commute of going from their new location to the jail, may have increased three to five minutes. So we're not shutting and pushing these businesses out of the city at all. We're strictly dedensifying them right around the jail and maybe some of them may have to locate a couple minutes more out. There are opportunity sites, it increases 50 square of the distance. It's huge. I agree with what you are saying. We're not closing them. We're just displacing a few that are not legal.

>> Commissioner Bit-Badal: Commissioner Kline.

>> Commissioner Kline: I agree. But I want to emphasize the fact that I think we can come to an agreement on this. I think we're awfully close. We're not closing any of the businesses. That ones that are legal are still there. We're not affecting their operations, in this ordinance, the existing businesses. The new businesses coming in town, the only issue seems to be the retail on the first floor and by extending it 300 feet and bringing it down to the first floor I thought that was a decent compromise by retaining the business on the first floor. The question then becomes if we can't come up with an action item is it better for us to defer this until more Planning Commissioners come in and discuss it and maybe we have a real vote or is it better to just send our comments up the way it is to city council? And that's an interesting question. I think we should talk about which way we want to go and maybe we can come up with a consensus on that. I think we ought to get the motion out of the way or ask for another motion and figure out what we want to do. Another motion is, to defer. I don't want to call the motion, that's ridiculous with four people but I want to get the motion out of the way.

>> Commissioner Bit-Badal: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I'd like to make a friendly amendment to Commissioner Kline's motion. And that is, you know, I'll go with the 300 foot thing, 300 foot separation. But for the rest of it, you know defer back to what staff had recommended, including no new first-floor in the main jail area. The current first floor on main jail area, 13, 14, whatever the number is, can stay but any new ones would be subject to this -- to this ordinance. And as far as the concern of Commissioner Abelite that if it's on the second floor and the building may close, door may close you know there would be a button where you push you say hey I'm down here. Buzz the door open. You know so I'm sure they would address those issues and if that's closed, there's 13, 14 other ones within you know very easy walking distance that can service them. So that's my friendly amendment.

>> Commissioner Kline: I'm not going to go along with the friendly amendment for a very specific reason. I think preventing bail bonds which is a legal entity from having a place on the first floor is overbearing for that business model. Totally understand having too many of them within a certain location. I absolutely agree with that. But I

don't see any evidence, nothing -- no findings have been presented to us that say that first floor causes a problem just because it's first floor. So without that evidence, I have a hard time supporting that motion. I mean if there was evidence, I'd bring it out I'd be happy to hear it. But the only evidence I've heard so far is it's impacting the retail nature of the block or the blocks, that you want more businesses, different types of businesses there. And I agree with that 100% and that's why go from 200 to 300, spread them out a little bit but I don't see any reason why bail bonds couldn't be part of the mixture of businesses in that block. So I agree with you. I just really think it does need to be on the first floor otherwise, we are taking a real part of their business away from them without justification.

>> Commissioner Bit-Badal: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you. I do understand your point. But I think in this particular case, this is an extraordinary case where you have a light rail and several stations right there and that is an opportunity that I think we should not miss. If this was an ordinary street, if this was not in the main jail area, or such a -- you know first street corridor, I understand. But I think, you know, that light rail, you know, is the determination factor for me and the two stations that it has up on either side of this corridor if you will.

>> Commissioner Bit-Badal: With that, we have one more speaker. Is Commissioner Abelite.

>> Commissioner Abelite: I just have to say with respect to the 300 foot spacing increment, I think that is going to be a big controller on this ordinance. I don't think the first floor, second floor issue is -- may not even come into play at all, frankly, given the density along that street. I mean, I'm happy to hear all the debate going on but I think the fact that there's a 300 foot increment embedded into the motion, I think that really handles 90% of the possible cases we're going to see. So I still -- I still agree with the original motion and hopefully we can move in that direction.

>> Commissioner Bit-Badal: Thank you and with this, I will ask for lights. And the motion was 2 no and 2 for. And the motion fails. So at this point, I'm going to ask commissioners to entertain another motion. We have Councilmember Kalra.

>> Commissioner Kline: Move to defer this to next meeting.

>> Commissioner Bit-Badal: Do we have a second? All approving say aye. Actually, let's do this by light, actually. This motion did not pass again. 3 to 1 vote. Commissioner -- Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I'd like to propose another motion. And that -- and that would be, recommend staff's recommendation, and the only change would be to change the 200 foot to the 300 foot spacing for any new businesses.

>> Commissioner Bit-Badal: Do we have a second? Motion fails. Lack of second. Counsel.

>> Renee Gurza: So I was also going to photo for the commission, since the motion to defer also failed, there is a provision in our zoning code that if you fail to make a report and recommendation it's deemed a recommendation of denial but it still allows your of the council to take it up without your report and recommendation.

>> Laurel Prevetti: Madam Chair, I might say that if that is the outcome of the night, all the testimony and all the recommendations would move forward with the rationale that you put on the record. So the council would still have the full benefit of all your thoughtful deliberation this evening.

>> Commissioner Bit-Badal: Great, thank you. Staff and counsel, so with that --

>> Renee Gurza: So with that it appears that on this particular proposed ordinance, the Planning Commission does not have a report or recommendation because the commission failed to come up with a motion on a recommendation that would garner a quorum of the commission.

>> Commissioner Bit-Badal: Thank you for the clarification. Commissioner Kline.

>> Commissioner Kline: I think it's really important for us to do our job in an expedient way. The speed of business doesn't matter, if we can't get anything done here. So one -- one idea is make a motion that incorporates the 300 with a strong recommendation to evaluate the first floor again, with evidence, one way or the other, of more community outreach More -- a little bit more staff work unfortunately, to see if it's justifiable or not. And if I see some heads I'd love to make that motion.

>> Commissioner Bit-Badal: Counsel please.

>> Renee Gurza: So if I hear Commissioner Kline correctly, it sounds like the motion would be something like motion to approve the staff recommendation but for the ground floor recommendation. Which --

>> Commissioner Kline: No, that would include the 300 feet separation.

>> Renee Gurza: Right, the staff recommendation as modified with the 300 feet but no recommendation on the ground floor requirement requesting that that be further studied?

>> Commissioner Kline: That would be a good way of saying it, yes.

>> Commissioner Bit-Badal: Do we have a second? Oops, thank you. Commissioner Abelite or actually Commissioner Kline did you want to make that motion?

>> Commissioner Kline: Yes, that's the motion I would make.

>> Commissioner Abelite: I'll second it, and I agree, I think we should move it up and let them, let city council and staff with the assistance of staff, come to a conclusion as to whether this is really a large scale item or maybe we're arguing about something we don't -- we shouldn't be and we can move on. So I'll support the motion.

>> Commissioner Bit-Badal: Any other comments? No. I agree with the motion, because it will have a more study to it. And that's something that I really believe in. I really want to have clarity, and obviously I don't have it tonight. But by the time this goes to the City Council I want to make sure that our decision makers will have clarity, so they can make the right decision for the whole community. Not only for our neighborhoods but also, for those who will be using the services of bail bonds. With that I will support that motion. Light please. Good news, the motion passed, unanimously. Thank you. Now, moving on to item number 4, 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 or placed on the agenda. In response to public comment, the 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. We do have one card. From a Mr. Roland Lebraun. Would you please state your name. and you have two minutes to speak. Three minutes.

>> Thank you. Madam Chair, members of the committee, good evening, my name is Roland Lebraun. My wife and I live on Miller drive and I'm speaking to you on our behalf and our neighbors this evening. Manila drive is immediately adjacent to an unincorporated area of Santa Teresa county park. I'm addressing you this evening in the hope that you can help us address a list of issues with the county's plans for the eastbound reconstruction at 372 Manila drive. I'd like to start by highlighting three violations of the Secretary of State's standards of reconstruction of these record buildings. Number 1, the county proposes to reconstruct the barn in a different location by moving it three feet, okay, three feet to the right, which is to the West. And three feet forward to the street. That's a definite no no. You cannot move a historical building, period. Second, the field that you see in front of the green is a historical Ohlone Indian burial ground. And you have to do an archaeological study before you do

any kind of an excavation. And if you don't that's a violation of section 2. Third, the county proposes to attach a 14 by 16 goat shed to this barn. That's a definite violation of section 6 because you don't build something that wasn't there before. Our street has been the subject of multiple arson attacks over the years including our own house. The last incident occurred three weeks ago and is currently being investigated by the arson investigation unit. Even so the county refused to specify a class A fire-rated roof, a fire alarm or sprinkler system in the reconstruction plans. Last but not least, we'd like the city to invest the county's collection of a storm drain to the city sewer system. Opposite number 341 Manila drive. The Santa Teresa spring discharges approximately 30 gallons per minute to this storm drain all year round. And over 100 gallons a minute during the winter storms. We have requested that they reroute this water to the Coyote-Alamitos Canal, and have been denied. Any help you can give us in this direction is appreciated, thank you.

>> Commissioner Bit-Badal: Thank you. Do we have any questions? No, oh actually, Commissioner Kline.

>> Commissioner Kline: No, no questions, it's a question to staff, and I guess that's after. What jurisdiction and what kind of direction can we give him at this point? We obviously can't talk about it so --

>> Laurel Prevetti: Right, the nature of the comments really pertain to a county park which is the jurisdiction of the county of Santa Clara. And they really have their own rules with respect to how they operate. They still need to comply with CEQA, do all of the necessary analysis. So you know, it's -- this is really a matter for the county. The city does not typically get involved in county matters.

>> Commissioner Kline: Okay, thank you.

>> Commissioner Bit-Badal: Thank you staff. And that looks like that was the only petition we have and I'm going to move on to item number 5, referrals from city council boards commissions or other agencies. Staff.

>> Laurel Prevetti: We have no referrals tonight. Thank you.

>> Commissioner Bit-Badal: Thank you. And moving on to number 6, good and welfare. Report from city council.

>> Laurel Prevetti: Thank you. City council started its session last week and at that time, they did consider the development agreements and zonings that you heard in July and all of those items were approved. Thank you.

>> Commissioner Bit-Badal: Thank you. Next item is commissioners report from the committees. Norman, one is Norman Y. Mineta San José international airport noise committee. Commissioner Cahan is not here. And envision San José 2040 general plan update. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I believe our next meeting is on either August 22nd or August 29th. I guess August 22nd. So it would be not this coming Monday, but next Monday. And so no report at this time.

>> Commissioner Bit-Badal: Thank you. Moving on to item 6 C, review and approve synopsis from 7-he 27-11.

>> Commissioner Kline: Move to approve.

>> Commissioner Bit-Badal: Second? Do we have -- all please say aye. And moving on to the motion of course passed. Moving on to item 6 D. Subcommittee formation reports and outstanding business. Any -- no report. And item 6 E commission calendar and study session. Are there any changes, staff?

>> Laurel Prevetti: Madam Chair, if I may, as Commissioner Kamkar mentioned, we are finishing up the general plan update. And on September 28th, is the day that you will be considering the certification of its environmental impact report as well as making a recommendation on the entire update process. While you've had members of the commission participate, we want to make sure that the full commission is comfortable and conversant with the proposed plan. And for that, we are thinking of adding a study session on your meeting for September 14th. However, it would be part of the regular session. It would not be a 5:00 study session, because we would be

getting into the substance of the plan. We want to be able to identify the nature of the policies, et cetera. So we would suggest that it be the last item on the agenda. But again just to have an opportunity for you to have some dialogue with the staff before you have the -- your actual recommendation hearing on the 28th. That would be staff's recommendation.

>> Commissioner Bit-Badal: Thank you, any comments from commissioners? Commissioner Kline.

>> Commissioner Kline: In this study session is this going to be a public study session where the public will have an opportunity to discuss before we -- and will it be kind of a committee of the whole or will we still be in a more formal setting?

>> Laurel Prevetti: We would conduct the meeting here but we've got the opportunity for public comment. That's why we would want to hold it as part of your regular session so you'd have the benefit of the public's comment and then it's again staff would intend to make a very brief presentation. But really just to answer questions and make sure that you felt comfortable with the materials.

>> Commissioner Bit-Badal: Okay, thank you. With that, that was the last item. And do I have the motion to adjourn? Second? Oh, I missed --

>> Commissioner Abelite: I hit my light.

>> Commissioner Bit-Badal: Oh, Commissioner Abelite.

>> Commissioner Abelite: So may I suggest if we do this pre-GP study session maybe we think about limiting speaker comments to one minute that night. We might get hit with 30 or 40 or 50, I don't know how many we are going to get hit with. It seems to be more of a study session oriented, orientation for us. So anyway I'm just putting it out there. Maybe the chair might consider that, that night. Thank you.

>> Commissioner Bit-Badal: Thank you for your comments. Staff is taking notes. So we had a motion to adjourn the evening and we had second? All agreeing, say aye. Thank you, and have a great evening.