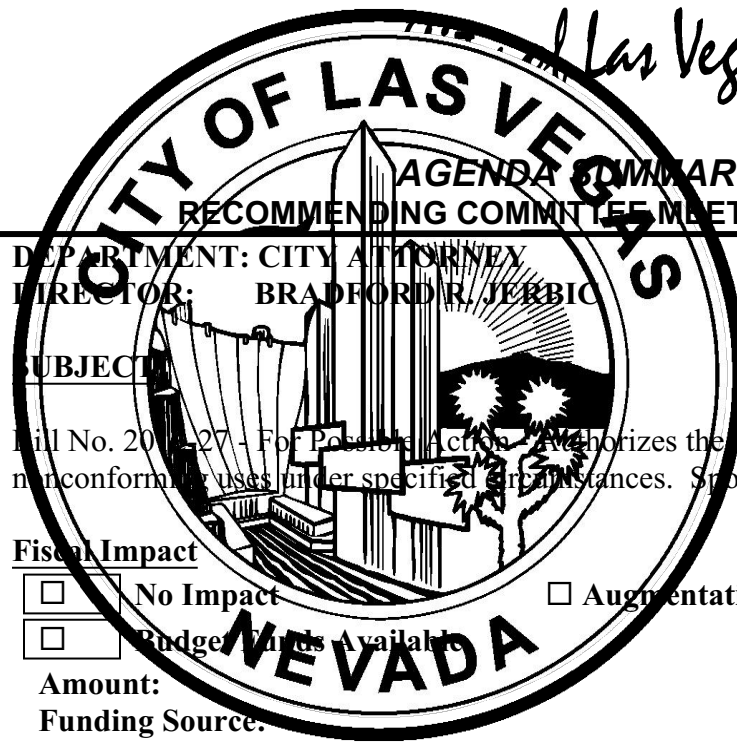




Las Vegas

Agenda Item No.: 7.

AGENDA SUMMARY PAGE
RECOMMENDING COMMITTEE MEETING OF: JUNE 19, 2012

DEPARTMENT: CITY ATTORNEY
DIRECTOR: BRADFORD R. JERBIC

☐ Consent ☒ Discussion

SUBJECT:

Bill No. 2012-27 - For Possible Action - Authorizes the reestablishment of certain types of nonconforming uses under specified circumstances. Sponsored by: Councilman Bob Coffin

Fiscal Impact

☐

No Impact

☐ Augmentation Required

☐

Budget Funds Available

Amount:

Funding Source:

Dept./Division:

PURPOSE/BACKGROUND:

This bill will authorize the reestablishment of certain types of nonconforming uses under specified circumstances. In particular, the bill will apply to tavern and sexually oriented business uses that have been terminated and not yet reestablished because of government licensing and forfeiture actions.

RECOMMENDATION:

This bill should be submitted to a Recommending Committee for review, hearing and recommendation to the City Council for final action.

BACKUP DOCUMENTATION:

1. Bill No. 2012-27
2. Letter from Michael R. Mushkin and Associates and Memo by City Attorney Brad Jerbic submitted at the June 6, 2012 City Council Meeting

Motion made by BOB COFFIN to Approve as do pass

Passed For: 3; Against: 0; Abstain: 0; Did Not Vote: 0; Excused: 0

BOB COFFIN, STEVEN D. ROSS, BOB BEERS; (Against-None); (Abstain-None); (Did Not Vote-None); (Excused-None)

Minutes:

COUNCILMAN ROSS declared the Public Hearing open.

CHIEF DEPUTY CITY ATTORNEY VAL STEED explained the bill would authorize the reestablishment of certain non-conforming uses under specified circumstances. This would apply to taverns and sexual oriented businesses that have been terminated and not yet reestablished because of government licensing actions. The zoning code has provisions that once

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a use that has legally been established but the circumstances of establishing that use are changed so that it would no longer be allowed for a given period of time, as long as that business wants to stay there as a non-conforming use or grandfathered privilege. Ultimately those uses will end and future uses will be conforming. The general policy is to eliminate those non-conforming uses over time. One of the ways that non-conforming uses are stopped is if they are abandoned or terminated or do not reestablish within a given period of time. In this particular case, the Crazy Horse II was shut down by government action. There was an effort made to reestablish within the permissible period of the reestablishment but those were unavailable because of different circumstances. The proposal sets the circumstance where such use can be reestablished.

COUNCILMAN COFFIN referred to statements made in a protest letter regarding monies coming to the City and he does not know what that money would be termed as. If there are monies is that considered a gift or a relief of a fine owed to a person. CITY ATTORNEY BRAD JERBIC replied that it is a donation. The individual would like to see this establishment reopened have offered to pay an amount of monies to the City equivalent to the fine owed by their predecessor would be the income, which was determined to be \$1.461 million. That does not relieve the individual from the obligation to pay the fine to the City.

COUNCILMAN COFFIN asked what is the City's stance on various legal discussion in terms of the fine being paid. CITY ATTORNEY JERBIC explained that when the location of the Crazy Horse II was owned by the federal government, it was anticipated that that was the only significant asset that could be located by the federal government. It was anticipated that it would be sold and the money from that sale would be distributed. The federal court issued an order listing the priorities in which individuals would receive those monies. The City was not first on the list and there was a lot of speculation as to what the building was worth and how much it would have been sold for. It was not realistic that even then there would be enough monies to reach the City. After the property sold the priorities established by the federal court was dissolved. Therefore, the chances for the City to collect the fine are very slim.

Regarding the protest letter, CHIEF DEPUTY CITY ATTORNEY STEED clarified that the action being taken today will not amend the text of Title 19, as it operates independently.

COUNCILMAN COFFIN asked what is the likelihood of another property fitting in this similar situation. CITY ATTORNEY JERBIC replied he could not think of one that would fit the same qualifications. COUNCILMAN ROSS pointed out this item does not specifically address the Crazy Horse II.

CHIEF DEPUTY CITY ATTORNEY STEED discussed with COUNCILMAN BEERS that there is no direct limitation on the City Council adopting special legislation. There is no certainty that another existing or future business qualifies. Many of the ordinances are brought

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forward by a single person who is the immediate beneficiary and there is nothing wrong with that as long as the parameters are there. COUNCILMAN BEERS remarked that this is the framework for a future meeting to actually issue a business license.

COUNCILMAN ROSS was challenged by his religious beliefs to support these types of businesses but these are legal businesses within the City of Las Vegas, and the City Council is tasked with issuing business licenses to these businesses.

ATTORNEY JAY BROWN, 520 South 4th Street, and ATTORNEY MICHAEL MUSHKIN, 4475 S. Pecos Road, appeared on behalf of Carilo Capital Group.

COUNCILMAN COFFIN stated the only reason he agreed to sponsor the bill is because he felt the City had a role play in how the business was closed. When the subject of money came up, he thought the victim share in some of the proceeds offered to the City. The Councilman asked who sets the donation amount. CITY ATTORNEY JERBIC said that the offer that was made by ATTORNEY BROWN'S client was to pay a fine equivalent to that imposed upon MR. RIZZOLO, which was \$2.1 million that was determined based on the number of days involved in the racketeering conspiracy in the federal indictment. After the fine was imposed, MR. RIZZOLO'S counsel challenged the fine in district court arguing that what MR. RIZZOLO pled to was the number of days shorter than those in the indictment and that the fine should only be based on the number of days he actually admitted to, not the number of days alleged in the indictment, which were 1,461 days which brings to the \$1.461 million. The district court agreed with that analysis, the City appealed to the Nevada Supreme Court and the Nevada Supreme Court agreed with that analysis. It is a fine against MR. RIZZOLO for his criminal actions while operating the Crazy Horse II. That fine is today uncollected, and even though the City will receive an amount equivalent to that, it still remains a fine on the books that MR. RIZZOLO still owes and this does not satisfy his obligation.

CITY ATTORNEY JERBIC discussed with COUNCILMAN COFFIN that there is an escrow account set where \$1.451 million has been deposited and upon adoption of this ordinance by the City Council, that money will be transferred to the City Treasurer and placed in the General Fund with the same limitations as any other tax dollar collected on residential property or sale tax. It can only be used for the public purpose of the City of Las Vegas citizens. With respect to trying to share that money with someone else that might have been wronged as a result of actions at the Crazy Horse II, that is not possible, any more than it would be to settle any other lawsuit.

ATTORNEY JAY BORNW verified that the money is in escrow. CITY ATTORNEY JERBIC clarified that the City has not signed off on any escrow money. This is a unilateral offer from ATTORNEY BROWN'S client to make this donation to the City. The City has not accepted the offer and the City Council, City Manager and the City Attorney's staff were briefed on that amount. It is completely within the purview of the City Council to do something else with it.

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COUNCILMAN ROSS felt that this has to be decided at the Council level. He reiterated that the offer amount is not the fine, as MR. RIZZOLO is still responsible for the fine. CITY ATTORNEY JERBIC unequivocally stated that staff has not committed to any amount. The Recommending Committee will make a decision by way of passing or denying the bill, and if the money is accepted by the City and put into the General Fund, there is no commitment by any staff member as to how it is going to be spent. COUNCILMAN COFFIN remarked that his claim would be to put in escrow the sum of \$735,000. No amount should be accepted until the Council has truly passed the bill. ATTORNEY BROWN stated the money was put in an account with Chicago Title to show good faith.

COUNCILMAN BEERS asked if the offer to the City was made in writing. ATTORNEY MUSHKIN replied in the affirmative. COUNCILMAN BEERS verified with CITY ATTORNEY JERBIC that the offer is to contribute a sum to the City Treasurer but until that offer is accepted, the money does not go into the General Fund. COUNCILMAN BEERS asked the offer could be revised to give an amount to the City and an amount to another entity. CITY ATTORNEY JERBIC responded that when the offer came in it was an offer to donate an amount equivalent to the fine to the City. The City cannot say yes or no to that but governments do not generally use their police powers. Giving is a police power to compel somebody to commit to an obligation that they do not have. There is no obligation on behalf of anybody, except MR. RIZZOLO, to take care of damages done to other people, including MR. HENRY. To use governmental power to say a donation will be accepted is different than asking to satisfy an obligation in exchange for the use of governmental powers to adopt this ordinance. Those are very distinctive things and he advised against the latter.

COUNCILMAN BEERS verified with CITY ATTORNEY JERBIC that should the offer be withdrawn and another made it would not satisfy MR. RIZZOLO'S obligation.

COUNCILMAN ROSS clarified that the ordinance does not mention any dollar amount or specific parties and suggested either referring it to City Council with a do pass, a no recommendation or full discussion. CITY ATTORNEY JERBIC pointed out that when the bill was introduced at the last City Council meeting, he provided each Councilmember documents that include a cover letter from ATTORNEY MUSHKIN and a listing of all principals of Canico Capital Group, LLC, and terms of the offer.

ATTORNEY MUSHKIN referred to an historical case regarding the Bicycle Club in California where the federal government through their seizure laws took on certain types of businesses. They have not historically been able to do very well and ended up being sued in the Bicycle Club case and paid out approximately \$20 million.

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CITY ATTORNEY JERBIC stated that it would be inappropriate for the City Council to have discussion with the individual making the offer as to how else that offer should be made or conversations from Council to ATTORNEY BROWNS and his client about making a contribution to MR. HENRY and a contribution to the City.

COUNCILMAN ROSS declared the Public Hearing Closed.

