

# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** May 5, 2009

Approved

*Christine J. Shupley*

Date

*5/5/09*

**COUNCIL DISTRICTS:** Citywide  
**SNI AREA:** ALL

**SUBJECT:** RESOLUTION INITIATING PROCEEDINGS ON ITS OWN MOTION FOR AN INTERIM ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 TO ESTABLISH A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW BAIL BOND ESTABLISHMENTS PENDING REVIEW AND POSSIBLE AMENDMENT OF LAND USE REGULATIONS APPLICABLE TO SUCH ESTABLISHMENTS, SETTING A PUBLIC HEARING ON THE INTERIM ORDINANCE AND REFERRING THE INTERIM ORDINANCE TO THE PLANNING COMMISSION FOR ITS REPORT OR RECOMMENDATION, ALL PURSUANT TO CHAPTER 20.120 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE.

## **RECOMMENDATION**

It is recommended that the City Council adopt a resolution to: 1) initiate proceedings for an interim ordinance to establish a temporary moratorium on the establishment of new bail bond businesses; 2) set a public hearing on the interim ordinance for the first evening City Council meeting in August; and 3) refer the interim ordinance to the Planning Commission for its recommendation.

## **OUTCOME**

A temporary moratorium will prevent the proliferation of new bail bond businesses and avoid potential neighborhood impacts that may be associated with these businesses while the City reviews and possibly amends regulations of Title 20 of the San Jose Municipal Code (the Zoning Ordinance) relative to bail bond establishments.

## **BACKGROUND**

On December 16, 2008, the City Council directed staff to provide a workload assessment to the Rules Committee for an analysis of whether Zoning Ordinance changes might better regulate bail bond establishments. On February 25 and March 25, 2009, the Rules Committee considered reports from staff outlining the current regulations applicable to bail bond establishments and outlining the workload implications of ordinance changes to modify the existing Zoning Ordinance requirements applicable to these businesses (see attached).

The staff analysis clarified that the Zoning Ordinance currently classifies bail bond establishments as personal service uses that are allowed to operate "by right" in all of the Commercial Zoning Districts (except the CO Commercial Office District<sup>1</sup>) between the hours of 6:00 a.m. and 12:00 midnight, but that require a Conditional Use Permit for operation between the hours of 12:00 midnight and 6:00 a.m. The workload assessment concluded that assessing regulations for bail bond uses and preparing an ordinance modifying existing requirements would take approximately 5 months and that this ordinance work could not be accommodated immediately without delaying current pending ordinance efforts.

In its discussion of bail bond establishments, the Rules Committee raised serious questions regarding the existing zoning requirements for bail bond uses; whether they should continue to be regulated as personal service uses or whether they would be more appropriately regulated as office uses or some other type of land use; and whether the active enforcement of current regulations would address concerns that have been expressed regarding these establishments. The Committee also reviewed a letter from County Supervisor George Shirakawa supporting the early morning operation of bail bond establishments and a memorandum from Councilmember Liccardo requesting a temporary moratorium on entitlement of new bail bond establishments (see attached letter and memorandum).

In the course of its deliberation, the Rules Committee heard testimony from residents of the Vendome, Hyde Park and Hensley neighborhoods regarding the increasing proliferation of bail bond businesses in the vicinity of North First Street between Jackson and Interstate 880 and the impact of these businesses on the surrounding neighborhood. Neighborhood residents indicated that the growing concentration of bail bond businesses has severely impacted neighborhood aesthetics, the sense of safety and the quiet enjoyment of residents' properties. They reported that associates of jailed inmates seeking bail bond services in the area loiter for hours, yelling, erupting into violence, even soliciting money from residents to make bail, and then leaving a trail of bail bond literature, drug paraphernalia and beer bottles strewn over front yards of nearby residences. Residents expressed fear that, if left unchecked, the rapid growth of bail bond businesses under the existing zoning regulations would negatively impact livability of their neighborhood to the point that residents would begin to move away. Staff has verified that as many as 20 bail bond establishments are currently located in the vicinity of North First Street between Jackson Avenue and Interstate 880.

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<sup>1</sup> Personal service is not an allowed use in the CO Commercial Office Zoning District.

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In response to these concerns, the Rules Committee directed staff to: 1) contact the County for additional information related to Supervisor Shirakawa's concerns and 2) bring forward the question of an interim ordinance for initiation by the City Council to impose a temporary moratorium on the establishment of new bail bond businesses while the City reviews and possibly amends the current land use regulations governing bail bond establishments.

### **ANALYSIS**

In response to direction by the Rules Committee, the administration contacted the Office of the County Executive for further clarification of the County's concerns regarding the regulation of bail bond establishments. In the attached letter dated April 30, 2009, Gary Graves, Acting County Executive, describes the function of the Department of Correction's Administrative Bookings Unit and expresses concern regarding further restrictions on the operation of bail bond establishments in the late night and early morning hours. Consistent with the Rules Committee direction, the interim ordinance does not prevent existing bail bond establishments that are operating in conformance with existing regulations from applying for a Conditional Use Permit to operate between 12:00 midnight and 6:00 a.m.

The attached resolution would initiate an interim ordinance imposing a temporary moratorium on implementation of new bail bond establishments. As outlined in the draft ordinance to be submitted to the Council under separate cover, the temporary moratorium prohibits the acceptance or processing of any permit, including a building permit, related to the establishment of a new bail bond business and prohibits establishment of a new bail bond business for which no permits are required. The ordinance does not prohibit an existing bail bond establishment that is already operating in compliance with all applicable laws from applying to the City for a Conditional Use Permit to operate between 12:00 midnight and 6:00 a.m.

Pursuant to California Government Code Section 65858, the initial term of the interim moratorium is limited to 45 days, during which time the City Council may extend the moratorium for a total maximum term of two years while the City assesses and potentially modifies land use regulations applicable to bail bond establishments.

### **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
**(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a

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Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Staff will conduct public outreach regarding the proposed interim ordinance following its initiation by the City Council.

**COORDINATION**

The preparation of this memorandum and the associated work was coordinated with the City Attorney's Office.

**FISCAL/POLICY ALIGNMENT**

Not applicable.

**BUDGET REFERENCE**

Not applicable.

**CEQA**

Not a project.

  
Joseph Horwedel, Director  
Planning, Building and Code Enforcement

For questions please contact Carol Hamilton at 408-535-7837.

Attachments:

1. Memorandum from Joseph Horwedel, dated February 19, 2009
2. Memorandum from Joseph Horwedel, dated March 18, 2009
3. Letter from County Supervisor George Shirakawa discussed at the March 25, 2009 Rules Committee Meeting
4. Memorandum from Councilmember Liccardo, dated March 19, 2009
5. Letter from Gary Graves, Acting County Executive, dated April 30, 2009
6. Draft Resolution

# Attachment 1

RULES COMMITTEE: 02-25-09  
ITEM: 10.1



## Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** February 19, 2009

Approved

Date

2-19-09

**SUBJECT:** WORKLOAD ASSESSMENT FOR POTENTIAL FURTHER  
REGULATION OF BAIL BOND ESTABLISHMENTS

### **RECOMMENDATION**

It is recommended that the Rules and Open Government Committee accept the workload assessment for regulation of bail bond establishments.

### **OUTCOME**

Enforcement of the existing Conditional Use Permit requirement for commercial uses operating between 12:00 midnight and 6:00 a.m. will ensure full discretionary review and public input regarding the appropriate location and mitigation for bail bond establishments desiring to remain open past midnight.

### **BACKGROUND**

On December 16, 2008, the City Council considered a Planned Development Rezoning of property located at the northeast corner of North First Street and East Hedding Street to allow a bail bond business (Aladdin Bail Bonds) in an existing building with operation between 12:00 midnight and 6:00 a.m. In commenting on the proposed rezoning, members of the community noted a proliferation of bail bond establishments in the area, expressed concern regarding the impact of these businesses on the neighborhood, and indicated that bail bond establishments should be regulated more stringently than other personal service uses. The City Council approved the Planned Development Zoning, but limited the hours of operation of the bail bond business to between 6:00 a.m. and 12:00 midnight and directed staff to assess whether zoning changes might better regulate bail bond businesses. Following is an analysis of the adequacy of existing regulations applicable to bail bond establishments.

## ANALYSIS

### **Personal Service Use**

A "bail bond" establishment is a personal service use as defined in Section 20.200.880 of Title 20 of the San Jose Municipal Code. A "personal service" includes *"establishments which provide non-medical services of a retail character to patrons which may involve the sale of goods associated with the service being provided."* The service which is provided at a bail bond establishment involves a contract executed directly with the consumer or an agent of the consumer for a bond to provide bail to the court. The retail nature of the service is exhibited by the interaction of the personnel at the bail bond establishment directly with the consumer. Bail bond establishments tend to cluster near the jail and courthouse in accessible locations where walk-in customers can negotiate bail in as short a time as possible. The face to face interaction associated with these businesses is indicative of the higher levels of customer traffic and parking demand associated with a personal service use and sets them apart from businesses in the general business office category. Other uses in the personal service category include check-cashing establishments, tanning salons, interior decorating businesses, weight reduction centers, and beauty and barber shops, all of which provide services directly to the customer at the business location, resulting in greater customer traffic and higher parking demand.

Bail bond establishments are also regulated by the California Department of Insurance along with other businesses that provide insurance or surety bonds. This regulation focuses on the financial aspects of insurance and bond transactions and on matters of professional training and licensing; it does not address the differing land use characteristics of insurance-related businesses. Pursuant to the City's Zoning Ordinance, businesses operating under the aegis of the Department of Insurance are categorized based on their land use characteristics. Those businesses involving retail-related services provided directly to customer at the business location, like bail bond establishments, are considered personal services based on their land use characteristics. Other insurance or surety bond businesses where on-site, face-to-face interaction with customers is not the primary model and where customer service is characterized by phone, mail, and email contact and/or person-to-person interaction outside the office, are considered general business office uses.

The Zoning Ordinance allows personal service establishments "by right" (without a use permit) in the CP Commercial Pedestrian, CN Commercial Neighborhood and CG Commercial General Zoning Districts between 6:00 a.m. and 12:00 midnight. Unlike general business office uses, which are allowed to operate on a 24-hour basis "by right" in all of the conventional commercial zoning districts, personal service uses that open their doors to customers between midnight and 6:00 a.m. require approval of a Conditional Use Permit. Many bail bond establishments provide services to their customers between midnight and 6:00 a.m. and, consequently, require approval of a Conditional Use Permit. Bail bond uses on properties with a Planned Development Zoning, like the Aladdin site, are subject to unique requirements which are often more restrictive than the conventional commercial districts.

### **Late Night Operation**

The Conditional Use Permit requirement for bail bond businesses that operate after midnight ensures adequate discretionary review of these uses. The Conditional Use Permit process provides for staff analysis of the proposed use, public outreach, a public hearing before the Planning Commission, and the option of appeal of the Planning Commission's decision to the City Council. Any Conditional Use Permit or other discretionary approval for an after-midnight operation would be reviewed for conformance with City Council Policy 6-27, *Evaluation of 24-Hour Uses*. This Council Policy specifies that "*Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area*". It sets forth a 300-foot separation requirement from sensitive uses (including residential), which may be increased or decreased on a case-by-case basis depending on intensity of the proposed use, location of other buildings and physical features, neighborhood input, and other relevant criteria. The Conditional Use Permit requirement allows the Planning Commission (or City Council on appeal) to impose conditions on late night uses to mitigate potential impacts on the surrounding neighborhood or to deny a proposed Conditional Use Permit application where evidence indicates that the proposed use will result in adverse impacts on people or property in the surrounding area.

### **Adequacy of Existing Regulations**

The current Conditional Use Permit requirement for bail bond establishments operating after midnight provides adequate discretionary review of these uses through a process that includes ample opportunity for public input and the potential for appeal to the City Council. Bail bond establishments operating during the daytime and evening hours do not raise land use compatibility issues that differ significantly from any other personal service use. The retail component of a bail bond business generates more customer traffic than an office use, but generally the physical layout of these facilities is similar to that of an office. Business is generally conducted entirely within a building and the retail component does not involve large-scale merchandise or equipment that requires loading facilities. The fact that the customers of bail bond businesses are frequently family members or friends of someone who has been arrested is not a land use issue and does not provide sufficient basis for additional Zoning Ordinance regulation.

### **Enforcement of Existing Zoning Requirements**

The public process for the Aladdin Bail Bond business raised concern that a number of bail bond establishments may be operating along North First Street contrary to the requirements of the Zoning Ordinance. Code Enforcement staff has received and responded to five complaints wherein after midnight activity has been alleged. Thus far, three compliance orders have been issued to bail bond businesses requiring these businesses to discontinue business operations between the hours of midnight and 6:00 a.m. until they obtain the required Conditional Use Permit.

**Conclusion**

The current Conditional Use Permit (CUP) requirement for bail bond businesses that are open between midnight and 6:00 a.m. is adequate to ensure that these uses are located and operated such that they do not result in land use impacts on surrounding uses. Bail bond establishments that are not open after midnight are similar to other personal service uses and do not warrant additional regulation. Based on the above analysis, staff concludes that new Zoning Ordinance provisions are not needed for the regulation of bail bond uses and that existing regulations are adequate to address the land use compatibility issues associated with these businesses.

**COORDINATION**

The preparation of this memorandum and the associated work was coordinated with the City Attorney's Office.

A handwritten signature in black ink, appearing to read 'Joseph Herwedel', is written over a large, faint circular stamp or watermark.

Joseph Herwedel, Director  
Planning, Building and Code Enforcement

For questions please contact Carol Hamilton at 408-535-7837.

## Attachment 2

RULES COMMITTEE: 03-25-09  
ITEM: 10.1



# Memorandum

**TO:** RULES AND OPEN  
GOVERNMENT COMMITTEE

**FROM:** Joseph Horwedel

**SUBJECT:** BAIL BONDS WORKLOAD  
ASSESSMENT

**DATE:** March 18, 2009

Approved *Christine J. Stuppey*

Date *3/20/09*

**COUNCIL DISTRICT:** Citywide  
**SNI AREA:** N/A

### SUPPLEMENTAL MEMO

#### REASON FOR SUPPLEMENTAL

This memorandum provides additional information regarding the existing Zoning Ordinance provisions for bail bond establishments and the workload implications of alternative options for regulating bail bond businesses.

#### RECOMMENDATION

It is recommended that the Rules and Open Government Committee accept the workload assessment for regulation of bail bond establishments.

#### BACKGROUND

On December 16, 2008, the City Council approved a Planned Development Zoning to allow the existing, unpermitted, Aladdin Bail Bond establishment to operate between 6:00 a.m. and midnight at the northeast corner of East Hedding and North First Streets. In the same motion, the Council directed staff to provide a workload assessment for an analysis of whether zoning changes might better regulate land use issues pertaining to bail bond establishments. In testimony on the proposed Planned Development (PD) Zoning, neighborhood residents had opposed the bail bond business and its proposal to operate past midnight, describing traffic and noise intrusion into their neighborhood and bail bond customers knocking on their doors in the early morning hours asking for money to bail out a family member.

On March 4, 2009 the Rules Committee considered a staff analysis which outlined the existing land use regulations applicable to bail bond establishments, including the Conditional Use Permit requirement for operation between midnight and 6 a.m. Staff concluded that the existing Zoning Ordinance provides adequate regulation of these businesses. Councilmember Constant expressed concern regarding staff's interpretation of bail bond establishments as "personal service uses" and suggested that these businesses were actually offices. He requested clarification as to whether the staff interpretation had been consistent over time. Additionally, Councilmember Chirco asked staff to return with a report outlining how the "current strategies" (i.e., the current Zoning Ordinance requirements) could be used to meet the needs of the bail bond businesses, while also addressing neighborhood concerns. The Committee deferred the item to March 25, 2009 to allow staff to respond to these questions and to clarify further options available to the City Council for regulating bail bond establishments and the workload implications associated with each. The following analysis provides further clarification regarding the Zoning Ordinance interpretation in regard to bail bond establishments and presents the workload implications of available options for regulating bail bond businesses.

## ANALYSIS

### **Current Zoning Provisions - Bail Bond Establishments as Personal Service Uses**

A complete analysis of the current regulations for bail bond establishments was provided to the Rules Committee in the memorandum on this item dated February 19, 2009. As indicated in that analysis, bail bond establishments are considered personal services in that they involve the retail purchase of a service in a face-to-face transaction between the business and its customer. Other businesses in the personal service category include check cashing services, weight loss centers and interior decorating services.

In October 2001, staff articulated this interpretation in a letter to Clifford Stanley regarding a bail bond business seeking to locate at the northeast corner of East Hedding Street and North First Street (the same site recently rezoned to allow Aladdin Bail Bonds). The bail bond business claimed that it was a "financial institution". Financial institutions were allowed under the PD Zoning of the site at the time and personal service uses were not. The interpretation letter (see attachment 1) states that, pursuant to the San Jose Zoning Ordinance, a bail bond establishment is a personal service use. Although the current assertion by Bad Boy Bail Bonds is that bail bond establishments are office rather than financial institution uses (see attachment 2 letter from Jeff Stanley dated March 10, 2009), the staff analysis included in the 2001 interpretation letter remains relevant and consistent with staff's current interpretation.

Jeff Stanley's letter of March 10<sup>th</sup>, points to a building permit issued in 2003 for interior remodeling of the space occupied by Bad Boy Bail Bonds at 1096 North 1<sup>st</sup> Street and notes that the permit references a remodel to "office" space. The reference in this building permit record is to an "office" building code occupancy group. The occupancy group characterizes the level of building hazard, not the applicable Zoning Ordinance use category. Both the Planning Department and the City Attorney's Office have examined their records and have found no

evidence that bail bond establishments have ever been interpreted as anything other than a personal service use.

In 2004, a Zoning Ordinance amendment approved by the City Council limits ground floor uses in the Downtown. Footnote "g" of Table 20-140 includes bail bond services in a list of personal services that are excluded from the ground floor of buildings in certain areas of the DG Zoning District. Thus the original interpretation became formalized in the Zoning Ordinance. At this point, the Zoning Ordinance recognizes bail bonds uses as a Personal Service use. Should the City Council desire to change the classification of bail bond uses, an ordinance amending and clarifying Title 20 provisions for bail bond services would be necessary. Any such change should be supported by rationale for including bail bonds establishments within a particular use category.

#### **Potential Ordinance Revision Options for Bail Bond Establishments**

Alternatives available to the Council for regulation of bail bond establishments include the following: 1) continue to enforce the current regulation of bail bond establishments as a personal use under the Zoning Code; 2) reclassify bail bond establishments as office uses (which are allowed to operate by right on a 24-hour basis); 3) create a new use category for bail bond businesses and other similar uses and regulate these uses less stringently than personal service uses; or 4) create a new use category for bail bonds businesses and other similar uses and regulate these uses more stringently than personal service uses. Following is a brief discussion and workload assessment for each of these alternatives. A summary comparing the workload implications of the alternative is at the end of this section.

#### **Option 1 - Continue Enforcement of Current Regulations**

The City Council could accept staff's recommendation that the current regulations for bail bond establishments are appropriate and direct staff to continue to enforce these regulations. Under this option, revision of the Zoning Ordinance would not be required. Staff would continue to enforce the current requirements for bail bond establishments. Bail bond businesses wishing to operate after midnight in the CG Commercial General, CN Commercial Neighborhood and CP Commercial Pedestrian Zoning Districts would need to obtain a Conditional Use Permit. Personal service uses, including bail bond establishments, are not allowed in the CO Commercial Office Zoning District. A rezoning would be necessary for bail bond establishments currently operating in the CO District.

There are a number of bail bond businesses located within the vicinity of Hedding and North First Streets due to the proximity of the County jail and courthouse. It is unclear how many of these businesses are currently operating in conformance with the requirements of Title 20. Code Enforcement has begun an investigation regarding the Municipal Code compliance of bail bond establishments for which complaints have been filed. Proactive enforcement would require greater staff resources and would need to be balanced with priorities for enforcement of life/health and safety issues. Bail bond establishments cited for operating after midnight without

a Conditional Use Permit (CUP) would need to apply for and obtain the required CUP or come into compliance by operating between the hours of 6 a.m. and midnight.

Any Conditional Use Permit or other discretionary approval for after-midnight operation of bail bond businesses would be reviewed for conformance with City Council Policy 6-27, *Evaluation of 24-Hour Uses*. This Council Policy specifies that "Twenty-four-hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area". It sets forth a 300-foot separation requirement from sensitive uses (including residential), which may be increased or decreased on a case-by-case basis depending on intensity of the proposed use, location of other buildings and physical features, neighborhood input, and other relevant land use compatibility criteria. The Conditional Use Permit requirement allows the Planning Commission (or City Council on appeal) to impose conditions on late night uses to mitigate potential impacts on the surrounding neighborhood or to deny a proposed Conditional Use Permit application where evidence indicates that the proposed use will result in adverse impacts on people or property in the surrounding area.

Mitigations of the type that could be incorporated into a Conditional Use Permit for a 24-hour bail bond business that is located proximate to residential uses include, but are not limited to the following: 1) construction of a sound wall to reduce noise and limit access, 2) use of removable barriers to ensure that late night customers park as far as possible from residential properties, 3) provision of adequate lighting that is shielded from nearby residential uses, 4) requirements for parking lot monitoring by bail bond businesses to ensure that customers do not create a disturbance, and 5) requirement for daily litter clean-up of the project site and the immediately adjacent public right-of-way. Appropriate conditions depend upon the specific physical configurations and layouts presented in a particular instance.

### **Option 2 – Expand "General Business Office" to Include Bail Bond Establishments**

Option 2 involves revising the Zoning Ordinance to change the definition of general business office to include bail bond uses and other uses with similar land use characteristics. General business office uses are allowed to operate in all of the Commercial Districts on a 24-hour basis without any discretionary review. Under this option, bail bond establishments and other like uses included in the general business office category would no longer be required to obtain a Conditional Use Permit for operation between midnight and 6:00 a.m.; operation on a 24-hour basis would be allowed by right. This option would also allow bail bond businesses and other like uses to locate "by right" in the CO Commercial Office Zoning District.

Option 2 would present challenges associated with the need to identify common land use characteristics that would justify placing bail bond establishments in the business office category while excluding other uses from this category. It would necessitate a detailed analysis of the land use characteristics of both general business office and personal service businesses to determine whether there are distinguishing characteristics that would justify moving bail bond establishments or a larger subset of the personal service category to the general business office category. Field observation to document the land use characteristics of the uses in question would be needed. Likely considerations would include levels of typical traffic generated, for

both business personnel and customers, as well as related noise presented in both categories of uses.

This option has the potential to significantly change the way the Zoning Ordinance regulates commercial uses adjacent to residential neighborhoods, and public outreach would be a key component of the work plan. Such outreach would entail community meetings, circulation of the CEQA document for public review, web-site postings, email notification and a public notice in the newspaper. Option 2 would require preparation of an Initial Study to assess the potential environmental impacts of the proposed change in regulations. This work effort would require approximately 5 months of Planning staff and City Attorney Office attention, resulting in delays for other longstanding priorities (e.g., the Sign Ordinance Update).

### **Option 3 – Enumerate Bail Bonds as a Separate Use Category and Regulate Less Stringently**

Option 3 involves revising the Zoning Ordinance to enumerate bail bond establishments as a separate use or include them in a new, more narrowly defined use category and allow these uses to operate between midnight and 6 a.m. without a Conditional Use Permit.

Option 3 would present challenges associated with identifying those common land use characteristics that would justify singling out bail bond establishments from other personal service uses for deregulation. A detailed analysis of the land use characteristics of the full range of personal service uses would be necessary and would entail field observation. This option would significantly change the way the Zoning Ordinance regulates late night uses proximate to residential neighborhoods and public outreach would need to include community meetings, circulation of the CEQA document for public review, web-site postings, email notification and a published public notice. Option 3 would also require preparation of an Initial Study to assess the potential environmental impacts of allowing late night uses without a discretionary permit. This option would require approximately 5 months of staff time in PBCE and the City Attorneys Office. Again resources diverted to this issue would delay other ordinance priorities of the Council.

### **Option 4 Workload Assessment – Enumerate Bail Bonds as a Separate Use Category and Regulate More Stringently**

Option 4 involves revising the Zoning Ordinance to enumerate bail bond establishments as a separate use or include them in a new, more narrowly defined use category and regulate them more stringently. Potential regulations include: 1) requiring a Conditional Use Permit regardless of the hours of operation in the CG, CN, and CP Commercial Zoning Districts; 2) requiring a Conditional Use Permit in the same zoning districts subject to specific use criteria (such as a minimum distance from sensitive uses or a minimum distance from a like use) or 3) allowing by right in the CG, CN and CP Commercial Zoning Districts (either during daytime hours or on a 24-hour basis) subject to specific use criteria such as a minimum distance from sensitive uses or a minimum distance from a like use. It should be noted that any Conditional Use Permit

requirement would apply to new uses; existing legal non-conforming bail bond establishments (i.e., those that are operating in conformance with current Zoning Ordinance regulations) would be subject to the legal non-conforming provisions of the Zoning Ordinance.

Option 4 would present challenges associated with identifying common land use characteristics that would justify singling out bail bond establishments from other personal service uses for separate regulation. If this analysis identified impacts of bail bond establishments that would justify singling them out for greater regulation, the City Council, in considering the policy decision on this issue, would need to weigh the identified impacts of bail bond businesses operating late at night, against the need to have bail bond businesses open past midnight to provide bail services.

This option would require a detailed analysis of the land use characteristics of the full range of personal service uses would be necessary and would require field observation. This option would require community outreach similar to that of the prior options. It would likely be "exempt" pursuant to the California Environmental Quality Act (CEQA) because it would add new discretionary permit requirements that would be subject to CEQA review. This option would require approximately 4.5 months of staff time and would delay other ordinance priorities of the Council.

### **Workload Implications of Bail Bond Regulation Options**

The staff time for ordinance revision and the length of the process for each of the regulatory options for bail bond establishments are identified in Table 1. Option 1 would not require any staff time for Zoning Ordinance revision. Proactive enforcement of existing Zoning Ordinance regulations, above and beyond the current complaint-based enforcement activity, would require additional staff resources or a reduction in other enforcement efforts. Code Enforcement staff are working to assess the extent of enforcement resources necessary for a proactive level of enforcement.

The staff time for Options 2 through 4 is similar for most of the tasks. Options 2 and 3 would require the greatest staff time due largely to the environmental review that would be necessary for the deregulation of commercial uses operating on a 24-hour basis. The staff time estimates for these options assume an appeal of the Negative Declaration, which would add approximately 20 hours of staff time to the normal CEQA process. Options 2 through 4 would require similar levels of data collection and analysis to determine land use characteristics that would justify modifying existing enumerated use categories or creating new categories. Option 4 requires the least staff time due to the fact that this ordinance, which would increase the level of discretionary review, would not require CEQA review.

The Ordinance Work Plan for the '09 calendar year is tightly stacked with ordinances that are urgently needed. The Sign Ordinance Update and Alum Rock Form Based Zoning are major work items currently under way; the Stevens Creek Sign Ordinance, the Downtown Entertainment Ordinance, and a number of streamlining and green industry ordinances intended to remove barriers to new development or promote green development are vying for the

remaining available staff time. Additional streamlining ordinances that are not expected to be completed this year are waiting in line to be addressed as soon as staff resources are available. Council direction to pursue one of the ordinance revision options discussed in this report would necessitate shifting staff resources and would delay existing ordinance efforts, including the Sign Ordinance Update and the Alum Rock Form Based Zoning.

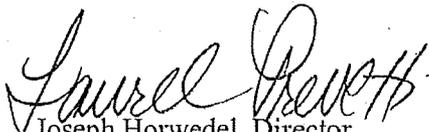
| Tasks                              | Option 1 | Options 2 & 3 | Option 4   |
|------------------------------------|----------|---------------|------------|
| Data Collection & Analysis         | 0 hrs.   | 60 hrs.       | 60 hrs.    |
| Ordinance and Staff Report Prep.   | 0 hrs.   | 40 hrs.       | 40 hrs.    |
| Environmental Review               | 0 hrs.   | 45 hrs.       | 0 hrs.     |
| Community Outreach/Public Hearings | 0 hrs.   | 30 hrs.       | 30 hrs.    |
| Update Title 20 & Planning Info.   | 0 hrs.   | 10 hrs.       | 10 hrs.    |
| Total Hours                        | 0 hrs.   | 185 hrs.      | 140 hrs.   |
| Length of Process                  | N/A      | 5 months      | 4.5 months |

### Conclusion

After analyzing the existing Zoning Ordinance provisions relative to bail bond establishments, staff concludes that existing regulations are appropriate and should not be changed (in that land use compatibility issues arising from operations after midnight are and should be subject to additional review through a CUP process). Staff has now provided a workload assessment for Zoning Ordinance amendment options that would both increase and decrease the regulatory requirements for bail bond businesses. All of these options would require significant investment of staff resources. Direction by the City Council to pursue an amendment to Title 20 to change the requirements for bail bond establishments would delay other ordinance priorities.

### COORDINATION

The preparation of this memorandum and the associated work was coordinated with the City Attorney's Office.

  
Joseph Horwedel, Director  
Planning, Building and Code Enforcement

Attachments

For questions please contact Carol Hamilton at 408-535-7837.



*Department of Planning, Building and Code Enforcement*

JOSEPH HORWEDEL, ACTING DIRECTOR

October 10, 2001

Mr. Clifford Stanley  
Loan Administrator  
Golden State Mortgage Corporation  
1625 The Alameda, Suite 500  
San Jose, CA 95126

**Subject: Zoning Regulations Related to Bail Bond Business**

Dear Mr. Stanley:

This letter is in response to your inquiry about the zoning regulations related to a bail bonds business in San Jose. As we have discussed in previous phone conversations, it is the position of the City that a "bail bond" business is a personal service as defined in Section 20.200.880 of Title 20 of the San Jose Municipal Code. A "personal service" defined includes *"establishments which provide non-medical services of a retail character to patrons which may involve the sale of goods associated with the service being provided."* The service which is provided at a bail bond office is one where a contract is executed direct with the consumer or an agent for the consumer for a bond to provide bail to the court. The retail nature of the service is exhibited by the interaction of the personnel at the bail bond office with the consumer. The bond associated with the service provided is considered a good; similar to airline tickets and/or travel arrangements associated with a trip arranged through a travel agent.

It has been argued that because a bail bond office typically involves money transactions that it is a financial institution. However, the money transaction involved is not for the purpose of saving, investments, or money management which is the case with a financial institution. If the association of a money transaction defined a financial institution, most commercial retail and service establishments could be argued to be financial institutions. The City does not take the position that any establishment where a money transaction is involved is a financial institution.

Other examples of what are considered a personal service establishment in San Jose include, but are not limited to, the following: check-cashing establishments, tanning salons, interior decorating businesses, weight reduction centers, and beauty and barber shops. As you can see, a personal service establishment can and is intended to cover a range of services that are offered

Mr. Clifford Stanley  
Zoning Regulation Related to Bail Bond Business  
October 9, 2001  
Page 2 of 2

direct to the consumer. I hope I have been able to answer the questions you have related to bail bond establishments and how the use is classified for the purposes of zoning in San Jose. If you have any additional questions, please contact me at 408-277-8556.

Sincerely,

/s/

Jean Hamilton  
Senior Planner

Bail bond letter\_Stanley.doc  
PBCE003/Zoning/Zoning Code



"Because your mama  
wants you home"

Corporate Office  
1299 North First Street  
San Jose, CA 95112  
408.501.7891 Phone  
408.453.9993 Fax

San Jose  
1096 North First Street  
San Jose, CA 95112  
408.298.3333 Phone  
408.995.3838 Fax

Oakland  
478 7th Street  
Oakland, CA 94607  
510.663.1000 Phone  
510.663.1005 Fax

Los Angeles  
412 Bachel Street  
Los Angeles, CA 90012  
213.626.6226 Phone  
213.613.1761 Fax

Sanita Ana  
1108 W. Sanita Ana Blvd.  
Sanita Ana, CA 92703  
714-692-8888 Phone  
714-352-2929 Fax

March 10, 2009

Planning Director Joe Horwedel  
200 East Santa Clara Street  
San Jose, CA 95113

RE: City of San Jose Compliance Order  
Case No: 200851930  
Bad Boys Bail Bonds  
1096 N. 1<sup>st</sup> Street

Dear Director Horwedel,

As the CEO of Bad Boys Bail Bonds (BBBB), I'm writing to appeal to your sense of fairness and request that the enforcement of the Compliance Order referenced above be placed on hold pending the outcome of the City Council deliberations with regard to potentially further regulating Bail Bond establishments.

As you are aware, Bad Boys Bail Bonds has been in continuous 24-hour operations at 1096 N. 1<sup>st</sup> Street for nearly 10 years without a single public safety incident, code violation, or complaint from the surrounding neighborhood.

Our industry provides a valuable, constitutionally mandated service in concert with the local criminal justice system. When defendants are released on bond it decreases the costs to the county of housing and caring for defendants, increases the likelihood that the defendant will appear in court on their scheduled date, and improves public safety by ensuring San Jose Police Officers are not spending excess time processing arrestees at a facility backlogged with defendants who can not post bond.

While what I describe in the paragraph above are not "land use" issues, I feel they are important for you to know in the context of creating safe and healthy neighborhoods that are able to provide necessary services to the community.

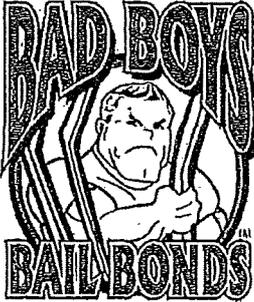
BBBB provides a necessary community service and is not a retail establishment. Our City of San Jose Permit Record (Permit #: 2003-115985-CI) states under the 'Description' section:

*"REMODELING RETAIL STORE SPACE TO OFFICE SPACE. NEW PARTITIONS WALLS, SUSPENDED CEILING, ELECTRICAL FIXTURES, TWO NEW REST ROOMS TO MEET ADA REQUIREMENTS, NEW SINK IN EMPLOYEE COFFEE AREA, NEW A/C UNIT (ROOF TOP), CARPET AND PAINTING ALL OFFICE AREA."*

15:30 lb  
RECEIVED

MAR 16 2009

CITY OF SAN JOSE  
DEVELOPMENT SERVICES



"Because your mama  
wants you home"

Corporate Office  
1299 North First Street  
San Jose, CA 95112  
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213.613.1761 Fax

Santa Ana  
1108 W. Santa Ana Blvd.  
Santa Ana, CA 92703  
714-692-8888 Phone  
714-352-2929 Fax

2/2

Other planning department documents clearly state that we are an office and not a retail establishment. We stock no goods for sale, we do not possess a cash register, we don't generate sales tax and we are heavily regulated by the California Department of Insurance.

BBBB is also not a Personal Service Use as defined by SJMC 20.200.880:

*"Personal services" includes establishments which provide non-medical services of a retail character to patrons which may involve the sale of goods associated with the service being provided. These establishments include beauty or barber shops, shoe repair shops, self-service laundries, tanning salons, tailoring establishments, interior decorating, clothing rental, portrait photography and diet and weight reduction centers."*

Rather, BBBB, which is heavily regulated by the California Department of Insurance, is an Office, general business as defined by SJMC 20.200.813:

*"A general business office is a space within which management level administrative services for firms and institutions are provided; or within which services to individuals, firms; or other entities is provided. Examples of a general business office use include but are not limited to offices within which the following services are provided: real estate, insurance, property management, title companies, investment, personnel, travel, and similar services, and including business offices of public utilities or other activities when the service rendered is a service that is customarily associated with office services."*

I will be providing additional information over the coming weeks in support of our belief that we operate similarly to those businesses in the Office, general business category as opposed to a diet and weight reduction center or self-serve Laundromat business.

I respectfully request that you suspend any and all enforcement action with regard to the Compliance Order referenced above during the time the City contemplates how best to deal with any further regulation of the bail bond industry.

Sincerely,

Jeff Stanley, CEO  
Bad Boys Bail Bonds, Inc.

Attachment 3

County of Santa Clara

Office of the Board of Supervisors

County Government Center, East Wing  
70 West Hedding Street, 10th Floor  
San Jose, California 95110

Tel: (408) 299-5020  
Fax: (408) 295-8042 1100 903 8273

www.supervisorshirakawa.org



George Shirakawa  
Supervisor District Two

March 24, 2009

Honorable Mayor and City Council  
200 East Santa Clara Street  
San Jose, CA 95113

**RE: Rules and Open Government Committee, March 25, 2009  
Agenda Items 10.1, 10.2; Regulation of Bail Bond Establishments**

Dear Mayor Reed and City Council,

It has come to my attention that the City Council will consider a proposal to close bail bond establishments between the hours of 12:00 AM and 6:00 AM. Taking action in support of this proposal could significantly impact the County's budget, public safety operations, and social services delivery system.

If the proposed closing of bail bond establishments is approved as recommended, the costs of detaining and housing those taken into custody during that time span could increase due to the detainees' inability to be released on bond. This action could also result in reallocating public safety resources to address the need for County public safety officers to allocate time to process detainees as opposed to patrolling our streets. Additionally, if detainees are not able to exercise their right to be released on bail, it could impact their employment status, thus potentially resulting in additional demands on our County's social service delivery system.

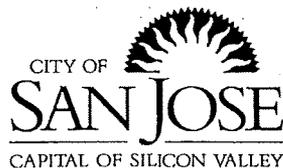
I strongly believe that these issues need to be thoroughly evaluated before the City Council takes action on the proposed closure of bail bond establishments between the hours of 12:00 AM and 6:00 AM. I respectfully recommend that the City and County open a dialogue to address the many potential negative budget and social implications of taking the above referenced action.

Please feel free to contact me directly with any questions. I appreciate the opportunity to share my thoughts.

Sincerely,

George Shirakawa  
Supervisor, District Two  
Chair, Public Safety and Justice Committee

cc: PF



# Memorandum

**TO:** RULES & OPEN GOVERNMENT  
COMMITTEE

**FROM:** Councilmember  
Sam Liccardo

**SUBJECT:** REGULATION OF BAIL BOND  
ESTABLISHMENTS

**DATE:** March 19, 2009

APPROVE

*Sam Liccardo*  
RH

3-19-09

RECOMMENDATION:

Bring to full Council, through the Community and Economic Development Committee, action to:

1. Modify Title 20 of the San Jose Municipal Code to require that bail bonds operations obtain a Conditional Use Permit (CUP) to operate anywhere (including in any commercial zoning district), regardless of the hour of operation.

2. Impose specific restrictions relating to businesses, to:

- Ban the location of any bail bonds business on the ground floor, but allowing them on the 2<sup>nd</sup> floor or above, and
- Limit their geographic proximity to schools, day care centers, homes, and other "sensitive receptors," and
- Constrain the excessive density or proliferation of the businesses within a designated area.

3. Impose a temporary moratorium on any building permits for tenant improvements, sign permits, or other authorizations or entitlements for new bail bonds businesses until the Council's final action on an ordinance requiring a CUP.

4. Explore opportunities for the City or County to lease space to bail bonds businesses on the existing Civic Center plaza campuses, within close proximity of the main jail.

5. Consider use of such structures as the City's former Health Building to generate revenues as part of the City's larger efforts to more efficiently utilize City parcels.

6. Consider allowing such businesses to operate 24 hours at the Civic Center site, thereby providing an incentive for these businesses to leave their 1<sup>st</sup> Street locations when their lease expires.

7. Conduct outreach/coordinate with the County about possible solutions.

8. Continue existing enforcement efforts against unauthorized after-hours operations and illegal signs.

## BACKGROUND

In its February 19, 2009 memorandum, Staff recommends an approach that largely leaves us with the *status quo*. Since bail bonds businesses constitute “personal service” uses--which the Zoning Ordinance allows “by right” in certain commercial and industrial zones so long as they do not operate past midnight—they have proliferated unchecked along North First Street and in nearby neighborhoods.

In its memo, staff asserts that “Bail Bond establishments operating during the daytime and evening hours do not raise land use compatibility issues that differ significantly from any other personal service use.” Nothing could be farther from the truth in the minds of the residents living nearby, and of the parents of children at the public Peter Burnett Academy a block away.

For those living in the neighborhoods surrounding the main jail—including Japantown, Vendome, Hyde Park, Hensley, and Rosemary Gardens—the *status quo* is far from satisfactory. At a March 16, 2009 community meeting, community members lamented the rapid proliferation of additional bail bonds businesses, with three or four emerging in just the past five years. According to community members, the unabated intrusion of these businesses has had severe impacts on neighborhood aesthetics, the sense of safety, and the quiet enjoyment of residents’ property. Each meeting brings a “parade of horrors”: repeated tales of late-night yelling and fights, of bail-bonds literature, drug paraphernalia, and beer bottles strewn over front yards, and even some associates of jailed inmates soliciting residents for contributions to “spring” their buddy “out of the joint.” The highest concentration of these businesses, near Hedding and N. 1<sup>st</sup> Street, lies only a block from the local public school, Burnett Academy.

In the view of one real estate agent, the propagation of so many bail bonds businesses in the neighborhood in the last several years has had a severe adverse impact on housing values, quite independent of the impacts of the current recession. At the community meeting, one upset resident sought to know if the City would compensate her for the proportionate loss in home equity as a result of its *laissez faire* approach to bail bonds businesses. Furthermore, they are taking up prime retail spaces that could otherwise accommodate neighborhood-serving shops and restaurants that would further revitalize the neighborhood.

The City does not require a CUP to operate a bail bonds business before midnight, even though it does impose permit requirements on pawn shops and even sidewalk dining. Massage parlors and adult book stores have geographical restrictions to limit their proximity to schools, homes, and other “sensitive receptors.” Bail bonds businesses do not, and based upon this community testimony it appears that they should.

Other cities have imposed moratoria on new bail bonds businesses and with this memorandum, I seek to determine whether the City can do so, at least in a limited geographic area. Given the growth rate of this industry, the City should “stem the tide” of new bail bonds businesses with a moratorium in this area along North 1<sup>st</sup> Street until a finished ordinance to establish regulations pertaining to the appropriate locality of these businesses can be enacted.

## Attachment 5

# County of Santa Clara

Office of the County Executive

County Government Center, East Wing  
70 West Hedding Street  
San Jose, California 95110  
(408) 299-5105



April 30, 2009

Debra Figone, City Manager  
City of San Jose  
200 East Santa Clara Street  
San José, CA 95113

Dear Deb,

This letter is in response to the City of San Jose's request for information concerning bail bonds establishments and the City's recent decision to require such businesses that operate between the hours of midnight and 6 a.m. to obtain a conditional use permit (CUP). You have asked for the County's potential impacts to a proposed ordinance change that would require bail bonds operations to obtain a CUP to operate anywhere, including commercial zoning districts, regardless of hours of operation.

The Santa Clara County Department of Correction (DOC) receives arrestees 24 hours a day, seven days a week. In response to a budget reduction in FY04, the DOC closed its Administrative Booking Unit between the hours of 1:00 a.m. to 5:00 a.m. This unit is responsible for processing and retaining inmate records, including the processing of bail bonds. As a result, bail bonds are not accepted between 12:00 a.m. to 5:00 a.m.

In most instances, misdemeanors, including public intoxication, resisting arrest, disturbing the peace, and first-time DUI's, are "scited" (issued a citation to appear in Court) by the DOC and released from custody within 6-8 hours from the time of booking; the length of time is due not only for processing but to ensure the defendant is fully sober before they leave custody. Because the majority of misdemeanors are released in this manner, the County's Office of Pretrial Services (which works to facilitate the earliest possible release of inmates) does not interview any misdemeanors at time of booking; instead, they interview all felony arrestees for possible release. If a misdemeanor is not "scited", they would need to bail.

Bail bonds agents have since adjusted to the Administrative Booking Unit being closed for the hours noted above. Frequently, however, bail agents are waiting in line before midnight, hoping to get their bond posted. If their bond is not received before closing, they return at 5:00 a.m. However, we understand that bail agents continue to meet with family members throughout the night to process the necessary paperwork to post bail; then post the bonds at 5 a.m. when the Administrative Booking Unit re-opens.

Generally, it takes two to four hours to process an individual for release so an arrested individual could be released early enough to allow them to resume normal activities, such as returning to work. If bail bonds offices are restricted and forced to close between the proposed hours, they would no longer be

April 30, 2009

able to meet between the hours of midnight and 6 am with family members to post bail and process the required paperwork in time to post bond for an early morning release. Instead, bail agents would have to wait until 6:00 a.m. Such an action would delay the release process, causing a mid-to-late morning release of arrestees. This would, undoubtedly, affect the individual's ability to return to work and potentially jeopardize the individual's employment. Additionally, it jeopardizes the family member's earning potential who is seeking bail bond assistance because they would now have to wait until 6 a.m. to approach such a business. Often family members seeking bail bonds services are low wage earners. Any loss in time or work hours could have detrimental affects on families and children in our community.

Moreover, the City and County have made a number of operational and service cuts to meet budgetary constraints. As the economy rebounds and the County's budget improves, we will begin the process of assessing previously cut services and restore them as appropriate. The restoration of DOC cuts, such as restoring Administrative Booking Unit business hours to coincide with jail operations, may be considered in the future. If the City of San Jose implements a permanent ordinance that restricts bail bonds operations, bail agents would be unable to process bonds even if the DOC restores this service.

The control of the jail inmate population has been an ongoing concern of the County. One mechanism that the DOC has in place to control the inmate population is the timely and early release of arrestees who warrant such release. As the inmate population begins to grow in the future, it is imperative that all release options stay intact to permit the County the ability to control this population. Placing operational restrictions on bail bonds office hours will adversely affect our ability to maintain this option in the future.

In closing, it is my understanding that the City is reviewing an ordinance change to address concerns raised by some neighbors who live close to the County Government Center, and that those concerns are primarily about loud noise and loitering late at night associated with bail bond establishments in the area. I am interested in knowing what the City has done to review the allegations to determine it is in fact the bail bond establishments that are creating disharmony in the neighborhoods and not another issue that should be addressed differently.

Let's discuss this issue tomorrow, Friday, May 1<sup>st</sup>, when we are scheduled to meet.

Sincerely,



Gary A. Graves  
Acting County Executive

c: Board of Supervisors  
Ann Ravel, County Counsel  
Kathy Maniaci, Principal Executive Advisor to the County Executive  
Chief Edward Flores, Department of Correction  
Stacy Goss, Director, Office of Pretrial Services

RESOLUTION NO.

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE INITIATING, PURSUANT TO SECTION 20.120.010 OF CHAPTER 20.120 OF TITLE 20 OF THE SAN JOSE MUNICIPAL CODE, PROCEEDINGS TO ESTABLISH A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW BAIL BONDS ESTABLISHMENTS PENDING REVIEW AND POSSIBLE AMENDMENT OF LAND USE REGULATIONS APPLICABLE TO SUCH ESTABLISHMENTS, SETTING A PUBLIC HEARING BEFORE THE CITY COUNCIL IN CITY COUNCIL CHAMBERS ON THE PROPOSED ORDINANCE, AND REFERRING SAID ORDINANCE TO THE PLANNING COMMISSION FOR ITS REVIEW, REPORT AND RECOMMENDATION

BE IT RESOLVED by the Council of the City of San Jose as follows:

**SECTION 1.** Pursuant to provisions of Chapter 20.120 of Title 20 of the San Jose Municipal Code, the Council of the City of San Jose, on its own motion, does hereby initiate proceedings to adopt that certain proposed ordinance entitled, “**AN INTERIM ORDINANCE OF THE CITY OF SAN JOSÉ ESTABLISHING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW BAIL BONDS ESTABLISHMENTS PENDING THE REVIEW AND POSSIBLE AMENDMENT OF LAND USE REGULATIONS APPLICABLE TO SUCH ESTABLISHMENTS AND SETTING FOR THE FINDINGS TO SUPPORT SUCH TEMPORARY MORATORIUM.**”

**SECTION 2.** The above-mentioned ordinance is hereby referred to the Planning Commission for its report, comment and recommendation pursuant to the provisions of Section 20.120.010 of Chapter 20.120 of Title 20 of the San José Municipal Code, and the

