



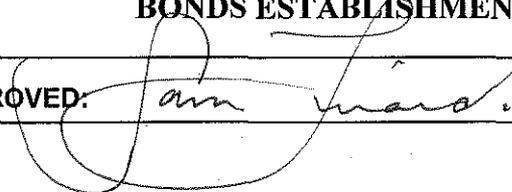
Memorandum

TO: Mayor and City Council

FROM: Councilmember Sam Liccardo

SUBJECT: MORATORIUM ON NEW BAIL
BONDS ESTABLISHMENTS

DATE: May 19, 2009

APPROVED: 

5-19-09

RECOMMENDATION

1. Accept staff recommendation to initiate proceedings for an interim ordinance to establish a temporary moratorium on the establishment of new bail bonds businesses until:
 - a. the City and County can discuss and reach a resolution regarding the best approach to ensuring that bail bonds companies can secure timely release of their clients from custody, while protecting our neighborhoods' quality of life, and
 - b. the City Council has fully considered any proposed changes to Title 20 of the Municipal Code in a properly noticed public hearing, after outreach to the neighborhoods in compliance with Council Policy 6-30. Any proposals to change Title 20 should return to Council through the Planning Commission and the appropriate Council committees, to ensure a public vetting in accordance with long-established procedures.
2. Recommend that the City Manager determine an appropriate approach for the enforcement of the current ordinance based upon her discussions and collaboration with the Santa Clara County Executive.

ANALYSIS

1. Taking A Breath: Room for Middle Ground

In the flurry of political wrangling over this issue, easily overlooked is the fact that the staff direction for Council action today has little to do with any specific proposal to change Title 20 to either allow or prohibit 24-hour uses. Rather, the staff has proposed to merely to take a "time out" from the influx of new bail bonds businesses to allow for conversation, negotiation, and most importantly, fact-gathering, that could assist the City in establishing reasonable land-use regulations governing these businesses. In short, there is ample room in the middle, and it starts with the modest admission that the Council needs more information before it jumps to any conclusions about how land use regulations should apply to these businesses.

In this vein, I have reached out in recent days and weeks to County Supervisors Dave Cortese and George Shirakawa, and Acting County Executive Gary Graves, and I am confident that by allowing

the city and county staff to work together, we can find common ground. As a result of these efforts, Supervisors Shirakawa and Cortese have recently sent letters to the Council backing staff's recommendation for a temporary moratorium on new bail businesses until City and County staff can work together to find an appropriate approach.

The day after Mr. Graves sent his April 30th letter, we talked over the telephone. Mr. Graves conceded that he wrote the letter under the mistaken assumption that the City's imposition of a permit requirement on bail bonds businesses operating after midnight was somehow a recent development. Mr. Graves and I agreed that several options existed that could allow late-night bail bonds operations, such as allowing companies to set up at desks after midnight within the Civic Center campus, in or around the jail. We concluded that call and a subsequent conversation with an understanding that we can work together to find a workable solution.

2. Ensuring Timely Release of Inmates and Uninterrupted County Operations

The opportunity for common ground appears well-supported by the many options available to ensure that inmates have ample opportunity to have their bond paperwork prepared between the hours of midnight and 6 a.m., so that they can be released as soon as the jail opens at 6 a.m.. Beyond the concept of creating satellite "bail desks" in or immediately adjacent to the jail, other options for ensuring timely preparation of bond paperwork exist **within the current, standard practice of many of these businesses:**

For example:

- Some bail companies advertise that they can grant bail bond approvals over the telephone. Jake's Bail Bonds tells customers that "a simple 10-minute phone call will get you approved." (<http://www.bailbyjake.com/index2.html>).
- Many advertise that they will make free "house calls" after-hours upon receiving a request on their 24-hour "800" number, such as San Jose Bail Bonds, (<http://www.sanjosebailbonds.com/>) NorCal Bail Bonds (<http://www.norcalbailbonds.com/services.html>), Abra Cadabra Bail Bonds (<http://www.superpages.com/bp/San-Jose-CA/ABRA-Cadabra-Bail-Bonds-L2060320374.htm>) and Reidy Bail Bonds, (<http://www.reidybailbonds.com>).
- Zig-Zag Bail Bonds and Vu Bail Bonds provide necessary documents to customers on-line, and tell customers who call that they will also make "house calls." (http://www.zigzagsanjose.com/zz_download_forms.html, <http://www.vubailbonds.com/>)

Presumably for these and other reasons, many bail bond businesses don't keep their doors open or offices staffed between midnight and 6 a.m. anyway, based on the published statements of Code Enforcement official Mike Hannon. Of course, customers can also prepare paperwork at a bail office at 6 a.m., within an hour of the opening of the jail. The Bad Boys Bail Bonds website (<http://www.badboysbailbonds.com/FAQs>) advertises that bond paperwork takes a mere 20 minutes to assemble, as others similarly advertise.

Of course, if Council rushes to judgment with a proposal to allow all offices to open 24 hours anywhere in the city without a permit, we'll never know whether these or other approaches might resolve the situation.

3. Factual Context and History

Since 1984, the Council has required commercial businesses to obtain a conditional use permit (CUP) to operate between the hours of 12 midnight and 6 a.m.. To establish a policy for evaluating twenty-four hour CUP's, in 1994, Council adopted Policy Number 6-27, which provides 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." The policy continues, "24 hour uses should not be located within 300 feet from any property residentially zoned, planned or used."

Under the current rules, bail bonds or any other business can operate "by right" in a commercial district between the hours of 6 a.m. and midnight. Operations after midnight, however, require a conditional use permit ("CUP"). These rules are hardly unique to San Jose; even Las Vegas requires a special use permit for 24-hour bail bonds operations.

Nonetheless, many of the bail businesses that set up offices around North First Street have operated without seeking the required permits, even after having known of these requirements for as many as eight years. (see Jeanne Hamilton's October 10, 2001 letter)

Admirably, Aladdin Bail Bonds did seek to comply with the law when they applied for a CUP in 2008. On December 16, 2008, the City Council considered the Aladdin CUP application, and heard from over twenty residents who expressed their frustrations about a host of concerns, including light-night yelling in parking lots, fighting, and all-hours solicitations for money to post bail. The Council considered the testimony of the community, and unanimously refused to allow 24 hour operations. Aladdin operates at that site legally from 6 am to midnight, and has since collaboratively worked with the neighborhood to resolve outstanding concerns.

On March 16, 2009, Planning staff and I met with approximately forty community members at Burnett school (located a stone's throw from two bail bonds businesses). Residents noted the recent proliferation of these businesses, which now exceed twenty in and around that North First Street corridor. Throughout that meeting, community members repeatedly urged us to consider simple land use controls to moderate the concentration and hours of operation of the businesses.

At a Rules Committee hearing in March, several community members spoke out in support of my proposal for a moratorium until land use options could be explored. This matter was set for council to consider the temporary moratorium, as outlined and recommended by the staff report. Notably, this matter was *not* set for Council to consider permanent changes in land use regulations relating to bail bonds businesses; at Rules, staff clarified that substantial outreach and analysis must precede any ordinance changes.

4. The May 15, 2009 Memorandum

Several concerns arise regarding the direction given in the May 15, 2009 memorandum ("May 15th proposal") from Councilmember's Constant, Campos, and Kalra. First, under City Charter Section 411, the Council cannot direct city staff to "discontinue all enforcement action" of an existing ordinance. Such direction would have no legal effect. For that reason, I suggest alternative direction: for the City Manager to continue working with the County Executive, and to enforce the existing

laws in a manner that appropriately reflect a collaborative approach for which our City Manager has demonstrated more than ample aptitude.

Second, instructing staff to “return to Council within 30 days with amendments to Title 20...classifying bail bonds establishments as financial services” undermines the spirit and language of Council Policy 6-30, mandating community outreach. This policy direction could have a significant impact on neighborhoods, because it would allow any bail bonds business to operate 24 hours “by right” without need for a permit, regardless of its proximity to homes, schools, or day care centers. Council Policy 6-30 specifically requires substantial community outreach prior to such changes in policy, “providing the information and opportunities to encourage residents to follow development activity in their neighborhoods and to actively participate in the land use development process.” Before any such proposal goes even to the Planning Commission, Policy 6-30 mandates at least 30 days notice to the affected neighborhoods. Yet this proposal to allow 24-hour use “by right” has had absolutely no public vetting.

Moreover, the notion that this issue should “leapfrog” the queue of proposed ordinances by Planning and City Attorney’s offices for new ordinances ignores the existing workloads on those offices, and the many high-priority items that lie before them. According to staff’s March 18, 2009 memorandum (page 7), community outreach alone would consume 30 hours of staff time, and when combined with the need for data collection, environmental review, and ordinance revision, the process to change Title 20 will require an estimated five months.

4. Putting Our Communities First

Perhaps worst of all, approving those recommendations would give our neighborhoods no opportunity to participate in the process or to meaningfully seek a workable solution. Bail bonds businesses tend to locate near the jail and in low-income communities. Many of those neighborhoods remain sensitive to additional stressors, and seemingly minor impacts on the quality of life can reverberate broadly within the community.

At best, a few dozen residents in the vicinity of North First Street received notice of a proposal for 24-hour “by right” use two days ago via email. Since bail bonds companies operate San José offices in at least two dozen locations outside of District Three (based on a simple “Google Maps” search), none of those communities will have had any notice whatsoever of the impacts of these changes in their neighborhoods. For instance, my own phone calls to two bail bonds companies operating on the East Side revealed that both closed their offices at night, but kept a 24-hour phone line open to respond to customer inquiries. Allowing those offices to open their doors to customers 24-hours without a permit may raise considerable concerns to residents living nearby, and they deserve to be heard.