

# REPLACEMENT



## Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** July 24, 2009

Approved

Date

8/3/09

**COUNCIL DISTRICT:** City-wide  
**SNI AREA:** All

**SUBJECT: AN INTERIM ORDINANCE OF THE CITY OF SAN JOSE 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 FORTH THE FINDINGS TO SUPPORT SUCH TEMPORARY MORATORIUM.**

### RECOMMENDATION

Staff recommends that the City Council approve the interim ordinance establishing a temporary moratorium on the establishment of new bail bond businesses as originally drafted by staff and that the ordinance not include the provision recommended by the Planning Commission allowing relocation of existing bail bond businesses that lose their leases through no fault of their own.

### OUTCOME

Approval of an ordinance for a temporary moratorium would prevent the establishment of new bail bond businesses and avoid potential neighborhood impacts that may be associated with these businesses while the City reviews and 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 analyzing ordinance changes to modify the existing Zoning Ordinance

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requirements applicable to these businesses (see attached). 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.

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 from Jackson Avenue to the area north of 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' property. 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.

In response to these concerns, the Rules Committee directed staff to bring forward an interim ordinance for initiation by the City Council imposing 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. On May 19, 2009, the City Council adopted a resolution to initiate proceedings for such an ordinance and directed staff to set a public hearing on the interim ordinance for the first evening City Council meeting in August and refer the interim ordinance to the Planning Commission for recommendation.

On July 22, 2009, the Planning Commission held a public hearing to consider the proposed ordinance amendment. The Planning Commission voted 5-0-1-1, Commissioner Zito absent and Commissioner Campos abstaining, to recommend approval of the proposed ordinance with an additional provision allowing existing bail bond businesses operating in conformance with all City requirements to relocate to another site if they lose their lease through no fault of their own. (See memorandum from the Planning Commission, dated July 24, 2009, for a summary of the Planning Commission hearing).

## **ANALYSIS**

### **Overview of the Proposed Ordinance**

The proposed interim ordinance (see attached) imposes a temporary moratorium on the establishment of new bail bond businesses. 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 city wide and prohibits establishment of a new bail bond business city wide for which no permits would otherwise be 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. Additionally, under certain circumstances existing bail bond businesses would be allowed to apply for necessary permits in such cases as there is an

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immediate threat to public health, safety compliance is required under an order, or there is a request for modification of the business which does not significantly intensify the use or the site. California Government Code Section 65858 requires a four-fifths vote for adoption of this proposed interim moratorium ordinance.

The proposed moratorium is intended to prevent the establishment of new bail bond businesses while staff analyzes the adequacy of existing Zoning Ordinance regulations for these businesses. As part of this analysis, staff will collect information regarding the operation of existing bail bond establishments to determine their operational characteristics and needs and their potential for land use impacts; assess how other cities regulate this type of use; and seek additional input from neighborhood residents, business interests and the County of Santa Clara. Based on this information, staff will assess available options for retaining or changing the current Zoning Ordinance regulations applicable to bail bond businesses and make a recommendation to the Planning Commission and City Council regarding a preferred approach.

### **Planning Commission Recommendation**

The Planning Commission had recommended that the draft moratorium ordinance be revised to include a provision to allow an existing legally-operating bail bond establishment to relocate to another site if the business loses its lease at its current location through no fault of its own. Staff is concerned that this provision would be very difficult to administer in that there is currently no discretionary permit requirement for establishment of a bail bond business (unless it operates between midnight and 6:00 a.m.) that would provide a forum for such a determination and in that it would be very difficult to determine "fault" regarding loss of a lease. It may be difficult to obtain the necessary information to assess a property owner's reason for non-renewal of a lease or to determine under what circumstances a bail bond tenant would be considered at fault. For example, it may be very difficult for staff to determine fault in the loss of a lease resulting from a hike in the lease rate. For these reasons, staff recommends that this provision not be included in the proposed moratorium ordinance.

### **Moratorium Extension**

Pursuant to California Government Code Section 65858, the initial term of the interim moratorium is limited to 45 days from the date of adoption, 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. Staff will be bringing an additional ordinance to the City Council on August 25, 2009, to extend the moratorium for an additional 22.5 months. Due to existing work load priorities, including the Sign Code Update, the Alum Rock Form Based Zoning, and other streamlining ordinances, additional time will be needed to complete the analyses described in this memorandum, conduct related public outreach, and present a recommendation to the Planning Commission and City Council.

### Conclusion

The proposed interim ordinance will prevent the establishment of new bail bond businesses in San Jose while the City examines its Zoning Ordinance requirements for these uses to determine if new

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regulations are needed, while allowing existing bail bond establishments operating in conformance with all current City regulations to continue to provide bail bond services to the community.

### **POLICY ALTERNATIVE**

Following are the alternative actions available to the Council in regard to this item.

**Alternative # 1:** Do not implement a moratorium and retain existing Zoning regulations for bail bond establishments.

**Pros:** None.

**Cons:** Retaining current provisions would not allow for examination of Zoning Ordinance requirements for bail bond establishments to determine if new regulations are needed.

**Reason for not recommending:** This alternative would not allow for further examination of concerns regarding the existing regulations raised by community residents and representatives of the bail bond industry.

**Alternative # 2:** Change the Zoning Ordinance regulations applicable to bail bond establishments but do not implement a temporary moratorium.

**Pros:** None.

**Cons:** This alternative would not prevent implementation of new bail bond establishments while staff collects data and conducts analysis and public outreach to determine whether and how the City's current regulations for bail bond establishments should be changed, potentially resulting in greater impacts to the surrounding neighborhoods from an increase in the existing concentration of bail bond establishments.

**Reason for not recommending:** This alternative would not address community concerns regarding the concentration and proliferation of bail bond establishments in the near term.

### **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)**

Public outreach for this proposal complies with the City Council's Public Outreach Policy. On March 16, 2009, staff attended a community meeting organized by the District 3 Council Office to discuss community concerns regarding existing bail bond establishments in the area of North First Street. Both community residents and representatives of bail bond establishments participated in the meeting. Community members expressed concern that a growing proliferation of bail bond businesses was negatively impacting the residential neighborhoods in the area.

A public hearing notice for the proposed ordinance was published in the San Jose Mercury News and emailed to a list of business interests, neighborhood associations and community members. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public. A community meeting was held on July 20, 2009 to obtain additional feedback on the proposed interim ordinance from bail bond establishments and community residents. A summary of the community meeting is included in the July 22, 2009 supplemental memo to the Planning Commission. The community meeting and public hearing notices were mailed to approximately 50 bail bond establishments and via email to community members in the North First Street area.

An email from Tina Morrill, a resident of the Vendome Neighborhood, sent after the Planning Commission meeting, is attached. Ms. Morrill indicates support for the moratorium ordinance. Additional correspondence on this item is attached to the memorandum from the Planning Commission to the City Council, dated July 24, 2009.

### **COORDINATION**

Preparation of the proposed ordinance and this memorandum has been coordinated with the City Attorney's Office.

### **FISCAL/POLICY ALIGNMENT**

This project is consistent with applicable General Plan policies which promote compatibility between residential and commercial uses.

### **COST SUMMARY/IMPLICATIONS**

Not applicable.

### **BUDGET REFERENCE**

Not applicable.

HONORABLE MAYOR AND CITY COUNCIL

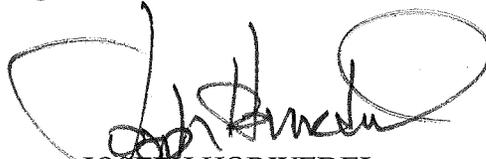
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**CEQA**

The proposed ordinance is categorically exempt pursuant to CEQA Guidelines Section 15061(b)(3) of the California Code of Regulations, File No. PP09-102.



JOSEPH HORWEDEL

Director, Department of Planning,  
Building and Code Enforcement

For questions please contact Carol Hamilton at (408) 535-7837 or Patrice Shaffer at (408) 535-7888.

**Attachments**

Draft Ordinance

Email from Tina Morrill, dated July 22, 2009

**ORDINANCE NO.**

**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**

**WHEREAS**, it is estimated that there are between 50 and 150 bail bonds establishments located in the City, with approximately 20 located in the vicinity of North First Street between Jackson Avenue and Interstate 880; and

**WHEREAS**, residents located near bail bonds establishments recently have raised concerns related to the operations of these establishments, which concerns generally relate to the disruptive behavior of persons seeking bail bond services (such as yelling, physical violence, soliciting money from residents to make bail, and leaving a trail of bail bond literature, drug paraphernalia and beer bottles strewn over front yards of nearby residences) and which behavior occurs at or near these establishments, and the City Council has indicated its concerns about these serious issues raised by the community; and

**WHEREAS**, under current land use regulations bail bonds establishments are treated as personal services uses and allowed to operate prior to midnight and after 6:00 a.m. in the CG Commercial General, CN Commercial Neighborhood, CP Commercial Pedestrian, and CIC Combined Industrial Commercial zoning districts and may operate during other hours with a conditional use permit in those same zoning districts; and

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**WHEREAS**, questions have arisen regarding the appropriateness of treating bail bonds establishments as a personal service use under City's land use regulations, rather than as an office or other type of use; and

**WHEREAS**, the City Council desires the City Administration to review, examine and make a report and recommendation on the appropriate land use regulations applicable to bail bond establishments in light of historical and recent information provided to City in connection with the land use issues posed by the operations of such establishments; and

**WHEREAS**, during such period of review and examination, the community would be in jeopardy of new bail bonds establishments commencing operations under existing land use regulations prior to the potential adoption of new land use regulations intended to preserve and protect the public health, safety and welfare; and

**WHEREAS**, in fairness to all businesses and citizens, the City Council desires to establish a temporary moratorium on the establishment of new bail bonds establishments in City while the City Administration is conducting its review and formulating its report and recommendation on this matter and until such time as the City Council has made a decision on the appropriate land use regulations applicable to bail bonds establishments; and

**WHEREAS**, pursuant to California Government Code Section 65858, City may adopt an ordinance temporarily prohibiting uses that may conflict with a contemplated zoning ordinance amendment that City wishes to study and consider within a reasonable period of time where City finds that there is a current and immediate threat to the public health, safety, or welfare and approval of such uses would result in that threat to public health safety or welfare; and

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**WHEREAS**, the provisions of this Ordinance have been found to be exempt from review under the California Environmental Quality Act of 1970, together with regulations and guidelines promulgated thereunder (including without limitation Section 15061(b)(3) of the CEQA Guidelines), as well as pursuant to the provisions of Title 21 of the San José Municipal Code, under File No. PP09-102, dated April 29, 2009 (the "Exemption"), which exemption determination has not been challenged, protested or appealed; and

**WHEREAS**, the City Council of the City of San José is the decision-making body for this proposed Ordinance; and

**WHEREAS**, this City Council has read, considered and approves said Exemption prior to taking any approval actions on this proposed Ordinance.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSÉ:**

**SECTION 1.** A temporary moratorium is hereby established and imposed as of \_\_\_\_\_, 2009 on the following activities:

- A. The acceptance or processing of an application for any permit, or the issuance of any permit, under the San Jose Municipal Code for the establishment of a new bail bonds establishment; and
- B. The establishment or commencement of a new bail bonds establishment use.

**SECTION 2.** This temporary moratorium shall not prohibit a bail bonds establishment already operating in compliance with all applicable laws from applying to City for development or other permits or approvals necessary: (a) to address an immediate

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threat to public health or safety, (b) to comply with an order of a court or other tribunal of competent jurisdiction, or (c) to modify its business, or the site on which the business operates, in a manner that would not result in a significant intensification of the use of the site, and all such applications submitted pursuant to this Section 2 shall be subject to all laws and policies applicable to the proposed development or other activity described in such application.

**SECTION 3.** For purposes of this Resolution, a "bail bond establishment" means a business that collects a fee for obtaining the release of criminal defendants from jail by pledging money or property as a guarantee that the defendant will appear in court.

**SECTION 4.** This Ordinance and the moratorium imposed hereunder shall become effective as of \_\_\_\_\_, 2009 and shall remain in effect until \_\_\_\_\_, 2009 or until the date that a decision by the City Council on the appropriate land use regulations applicable to bail bonds establishments has been made and, if necessary, effectuated by appropriate legislation, whichever date first occurs. Nothing in this Ordinance precludes the City Council from taking a later action to extend the term of this temporary moratorium in accordance with the provisions of applicable law.

**SECTION 5.** Pursuant to the provisions of California Government Code Section 65858, the City Council of the City of San Jose hereby finds that there is a current and immediate threat to the public health, safety and welfare of City that warrants the establishment of this temporary moratorium of new bail bonds establishments, which finding is based upon all of the following elements:

- A. The community within the vicinity of existing bail bonds establishments located in City have alerted this Council to possible concerns related to the operations of these establishments, which concerns generally relate to

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the disruptive behavior of persons seeking bail bond services (such as yelling, physical violence, soliciting money from residents to make bail, and leaving a trail of bail bond literature, drug paraphernalia and beer bottles strewn over front yards of nearby residences), which activities are alleged to be occurring at and around such establishments; and

- B. This Council has heard these community concerns and desires that they be examined in order to inform appropriate land use regulations applicable to these establishments; and
- C. Without a temporary moratorium prohibiting new bail bonds establishments while these community concerns are being examined and appropriate regulations are being developed, there remains a current and immediate threat that new bail bond establishments are allowed to operate by right prior to midnight or with development permits after midnight in certain locations in City under existing land use regulations and could further establish in City in a manner that would exacerbate and proliferate the current concerns and problematic behaviors identified by the community.

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RD:RG  
07/15/09

**DRAFT**

**PASSED FOR PUBLIC ATION OF TITLE** this                      day of                      , 2009, by the  
following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk

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CC Agenda: 08/11/09  
Item No. 11.\_\_\_\_  
553379\_3

**Shaffer, Patrice**

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**From:** Tina M [tinam777@yahoo.com]  
**Sent:** Wednesday, July 22, 2009 10:27 PM  
**To:** Shaffer, Patrice; Hamilton, Carol  
**Cc:** Henninger, Ragan  
**Subject:** PC Agenda 7-22-09 Item 3.a.

Hello,

My name is Tina Morrill and I am a resident of the Vendome Neighborhood in District 3, San Jose. I completely support the moratorium recommendation proposed to the Planning Commission by Joseph Horwedel.

Unfortunately, I was not able to attend the community meeting last night, nor tonight's Planning Commission meeting, however I want to go on record as showing my support of the recommendation.

Thank you,

Tina Morrill  
Vendome Neighborhood Resident  
408 298 8942

*Please consider the environment before printing this email. Thank you!* 