



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: August 13, 2009

COUNCIL DISTRICT: City-wide
SNI AREA: All

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW BAIL BONDS ESTABLISHMENTS FOR A PERIOD UP TO TWENTY-TWO (22) MONTHS AND FIFTEEN (15) DAYS, PENDING THE REVIEW AND POSSIBLE AMENDMENT OF LAND USE REGULATIONS APPLICABLE TO SUCH ESTABLISHMENTS, AND SETTING FORTH THE FINDINGS TO SUPPORT SUCH EXTENSION OF THE TEMPORARY MORATORIUM

RECOMMENDATION

The Planning Commission voted 4-0-2-1 (Cahan and Platten absent, Campos abstained) to recommend that the City Council approve the proposed ordinance extending a temporary moratorium on the establishment of new bail bond businesses and accept staff's report regarding the actions that have been taken to alleviate the conditions that led to the proposed moratorium.

OUTCOME

This ordinance extending the proposed temporary moratorium on establishment of new bail bond businesses would allow additional time for the City to review and amend zoning regulations relative to bail bond establishments and avoid potential neighborhood impacts that could result from a continued proliferation/concentration of these businesses while the zoning analysis is underway.

BACKGROUND

On August 12, 2009, the Planning Commission held a public hearing to consider the proposed ordinance amendment. Staff gave a brief presentation regarding the purpose of the proposed moratorium extension ordinance and its relationship to the prior ordinance proposed to establish the moratorium.

August 13, 2009

Subject: Bail Bond Moratorium Extension

Page 2 of 3

Antonina Ettare, a resident of the North 2nd Street area, spoke in favor of the moratorium extension. She indicated that she is a 20-year resident of the area and that three bail bond businesses had been located adjacent to or near her home, two of which were illegal. She emphasized the high concentration of bail bond establishments in her neighborhood and indicated support for the moratorium during the period the City studies whether new zoning restrictions are needed. The Commission then closed the public hearing.

Commissioner Jensen made a motion to recommend that the City Council approve the ordinance as recommended by staff and accept staff's report regarding the actions that have been taken to alleviate the conditions that led to the moratorium. Commissioner Jensen stated that she was surprised that it was not clear how many bail bond businesses there are in San Jose and this moratorium extension will allow staff to review this issue and other issues related to the bail bond establishments.

The Planning Commission voted 4-0-2-1 (Commissioners Cahan and Platten absent, Commissioner Campos abstaining) to recommend approval of the proposed ordinance.

ANALYSIS

See analysis in the memorandum from Joseph Horwedel, Director of Planning, Building and Code Enforcement, to the Planning Commission, dated August 5, 2009.

POLICY ALTERNATIVES

See alternatives analysis in the memorandum from Joseph Horwedel, Director of Planning Building and Code Enforcement, to the Planning Commission, dated August 5, 2009.

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 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.

HONORABLE MAYOR AND CITY COUNCIL

August 13, 2009

Subject: Bail Bond Moratorium Extension

Page 3 of 3

Public hearing notices for the proposed ordinance and the extension were 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 notices, staff reports 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.

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.

CEQA

Exempt, File No. PP09-102.


JOSEPH HOR WEDEL, SECRETARY
Planning Commission

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



Memorandum

TO: PLANNING COMMISSION

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: August 5, 2009

COUNCIL DISTRICT: City-Wide

SNI AREA: All

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE EXTENDING A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW BAIL BONDS ESTABLISHMENTS FOR A PERIOD UP TO TWENTY-TWO (22) MONTHS AND FIFTEEN (15) DAYS, PENDING THE REVIEW AND POSSIBLE AMENDMENT OF LAND USE REGULATIONS APPLICABLE TO SUCH ESTABLISHMENTS, AND SETTING FORTH THE FINDINGS TO SUPPORT SUCH EXTENSION OF THE TEMPORARY MORATORIUM

RECOMMENDATION

Staff recommends that the Planning Commission recommend that the City Council approve the proposed ordinance extending a temporary moratorium on the establishment of new bail bond businesses and accept staff's report regarding the actions that have been taken to alleviate the conditions that led to the proposed moratorium.

OUTCOME

This ordinance extending the proposed temporary moratorium on establishment of new bail bond businesses would allow additional time for the City to review and amend zoning regulations relative to bail bond establishments and avoid potential neighborhood impacts that could result from a continued proliferation/concentration of these businesses while the zoning analysis is underway.

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 requirements applicable to these businesses. In its discussion of bail bond establishments, the Rules Committee raised 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 number 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. The Planning Commission voted 5-0-1-1, Commissioner Zito absent and Commissioner Campos abstained, 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.

In its July 24, 2009 memorandum to the City Council, staff recommended 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.

On August 11, 2009, the City Council is scheduled to consider the interim ordinance to establish the temporary moratorium on bail bond establishments. If approved, the interim ordinance will be scheduled to be considered for adoption at the City Council meeting on August 25, 2009.

Pursuant to Government Code Section 65858 any interim ordinance establishing a moratorium on new bail bond businesses would expire 45 days from the date of its adoption by the City Council. Such an ordinance may be extended for up to 22 months and 15 days provided the moratorium is extended before it expires. Staff is bringing forward this extension ordinance at this time to ensure that it can be effective before expiration of the original moratorium ordinance, should the Council choose to approve and extend the proposed moratorium. Approval of both the interim ordinance and the extension ordinance would require a four-fifths vote of the City Council.

ANALYSIS

Moratorium Extension

Should the City Council adopt an interim ordinance on August 25, 2009 establishing a moratorium on new bail bond businesses, it will be effective on September 25, 2009 and expire on October 9, 2009. This moratorium period does not allow sufficient time for staff to gather information, analyze data, assess alternative regulatory options, conduct public outreach, and present recommendations to the Planning Commission and City Council. Staff has brought forward the currently proposed ordinance (to be transmitted under separate cover) to extend the moratorium for up to 22 months and 15 days to provide sufficient time for staff to return to the Planning Commission and Council with a complete analysis and recommendations for future regulation of bail bond businesses. This time period will allow staff to undertake this analysis concurrent with ordinance work on the Sign Code Update, the Alum Rock Form Based Zoning and other streamlining efforts. Staff will make every effort to complete the work in a shorter period of time, but is recommending the full moratorium term to ensure that an additional extension ordinance is not necessary.

The proposed extension ordinance includes the same limits on new bail bond establishments that staff has recommended be included in the original ordinance. It prohibits the acceptance or processing of any permit, including a building permit, related to the establishment of any new bail bond business and prohibit establishment of any new bail bond business 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. Under certain circumstances existing bail bond businesses would be allowed to apply for necessary permits in such cases as there is an 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.

Report of Actions Taken

Section 65858 (d) of the California Government Code requires the City Council, in extending an interim ordinance, to issue a report on actions taken to alleviate the problem that led to the proposed moratorium. Staff has taken the following actions towards determining what changes to the Zoning Code may be needed to better regulate bail bond businesses:

1. Reviewed and documented the City's current regulations for bail bond establishments;
2. Received input from the public regarding the current operational characteristics of bail bond establishments;
3. Met with representatives of existing bail bond establishments to discuss operational characteristics of their businesses;
4. Summarized the process by which the County of Santa Clara Office of Pretrial Services releases people on bail from the County jails;
5. Initiated a survey of other jurisdictions to identify best practices regarding regulation of bail bond establishments; and
6. Initiated discussions with the Police Department to identify what police statistics may shed light on the operation of bail bond businesses and their potential impact on the surrounding properties.

Conclusion

Assuming that the City Council adopts the interim ordinance to establish the moratorium on new bail bond establishments on August 25, 2009, the proposed ordinance to extend the moratorium would 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 regulations are needed, while allowing existing bail bond establishments to continue to provide bail bond services to the community.

POLICY ALTERNATIVES

The following analysis is provided to clarify potential alternatives to the proposed extension ordinance considered in development of this proposal.

Alternative # 1: Do not extend the proposed moratorium if such moratorium it is adopted by the City Council.

Pros: None.

Cons: Any interim moratorium ordinance approved by the City Council would expire within two weeks of its effective date. The expiration of the moratorium would allow new bail bonds businesses to establish while the City completes the necessary analysis and community outreach to reevaluate existing zoning regulations for these businesses, potentially resulting in greater land use impacts on surrounding properties.

Reason for not recommending: This alternative would allow the moratorium to expire soon after becoming effective preventing it from achieving its objective.

Alternative # 2: Extend any moratorium approved by the City Council for a period of ten months and two weeks.

Pros: None.

Cons: This alternative may not allow sufficient time for staff to complete the analysis, conduct outreach and bring forward a recommendation to the Planning Commission and City Council regarding the regulation of bail bond establishments prior to expiration of the moratorium, and could potentially require adoption of an additional ordinance to further extend the moratorium.

Reason for not recommending: This moratorium length may not be sufficient to allow staff to complete the required work, resulting in the need for an additional ordinance to further extend the moratorium.

GENERAL PLAN CONFORMANCE

The proposed ordinance to extend the moratorium is consistent with applicable General Plan policies which promote compatibility between residential and commercial uses.

PUBLIC OUTREACH

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.

Public hearing notices for the proposed ordinance and the extension were 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 notices, staff reports 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.

Staff received an email from Stephen Inoue (see attached) in response to outreach on the proposed moratorium ordinance. Mr. Inoue suggests that the City designate geographic areas where bail bond businesses are allowed and offers additional recommendations regarding aspects of bail bond businesses that are not regulated by the City. Staff will consider this and other public comments during its analysis of potential ordinance changes.

COORDINATION

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

PLANNING COMMISSION

August 5, 2009

SUBJECT: Bail Bond Moratorium Extension

Page 6

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.


for JOSEPH HORWEDEL
Director, Department of Planning,
Building and Code Enforcement

Attachment:

Email from Stephen Inoue, dated August 3, 2009

Shaffer, Patrice

From: Stephen Inoue [sinoue@yahoo.com]
Sent: Monday, August 03, 2009 3:06 PM
To: Shaffer, Patrice
Subject: Re: Bail bond moratorium extension

Any chance the council will consider reforming the bail process by:

- allowing folks to post bail using a credit card. Try to get this option available as it would expedite posting bail and reduce the need for so many bail bonds men. It would also make things easier and more effecient. Other cities would copy this innovation.

- post info on how to post bail in a brochure and on website. Currently you have no info for folks on how to bail someone. I had to go in person to several places to learn what form of payment is accepted and who to make the cashier check out to. The system encourages folks to use bailbondsmen instead of saving money and having friends and family bail someone out of jail. This would reduce demand for bail bondsmen.

- require bail bonds men to post all fees up front. Too many hidden charges.

- don't limit competition. Why not designate geographic areas that are ok to operate a bail business. Encourage vertical office buildings to rent to bailbondsmen to encourage competitive shopping by consumers.

Reducing competition by placing a moratorium just entrenches the current players into being more monopolistic.

Thanks

Stephen Inoue

Sent from my iPhone

On Jul 31, 2009, at 5:35 PM, "Shaffer, Patrice" <Patrice.Shaffer@sanjoseca.gov> wrote:

On August 11, 2009, the City Council is scheduled to consider an interim ordinance to establish a temporary moratorium on bail bond establishments. Any interim ordinance approved by the City Council establishing a moratorium on new bail bond businesses would expire 45 days from the date of its adoption. Such a moratorium may be extended for up to 22 months and 15 days provided an extension ordinance is approved before the original moratorium expires. Staff is bringing forward this extension ordinance at this time to ensure that it can be effective before expiration of the original moratorium ordinance, should the Council choose to approve and extend the proposed moratorium. Approval of both the proposed original interim ordinance and the current interim extension ordinance would require a four-fifths vote of the City Council.

Public hearings on the ordinance extension will be held as follows:

Wednesday August 12, 2009 at 6:30 p.m. by the Planning Commission
Tuesday August 25, 2009 at 7:00 p.m. by the City Council

Both hearings will be held in the City Council Chambers at City Hall, 200 E. Santa Clara Street, San Jose, California. Please see the attached public hearing notice.

If you have any comments or concerns please feel free to contact Patrice Shaffer at patrice.shaffer@sanjoseca.gov or at (408) 535-7888. Thank you.

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