



Memorandum

TO: MAYOR & CITY COUNCIL

FROM: Councilmembers Kansen Chu, Rose Herrera, Sam Liccardo and Nancy Pyle

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 20 OF THE SAN JOSE MUNICIPAL CODE REGARDING BAIL BOND ESTABLISHMENTS

DATE: August 16, 2011

APPROVE

RECOMMENDATION:

Approve staff recommendation with the following change: following the Planning Commissions recommendation, require a 300 foot distance (instead of 200 feet) between any new bail bonds businesses and property zoned for residential uses, public parks, K-12 public and private schools. As with the staff recommendation, no existing businesses will be affected at their current locations.

BACKGROUND

The Staff recommendation allows lawful bail bonds vendors to continue operating, and upsets no reasonable expectations by any of them. Any new restrictions—relating proximity to homes and schools or on first-floor occupancy—apply only to new businesses moving into the North First Street corridor, a neighborhood that has become inundated with bail bonds operators in the last three to five years. We address two of the more debated elements of the staff proposal: the conditional use permit requirement on 24 hour use, and the 300-foot proximity restriction.

A. The City Should Require a Permit for 24 Hour Use, As With Every Other Commercial Business in the City

Since 1984, the City has required that *every commercial business owner* obtain a conditional use permit if they seek to operate between the hours of 12:00 midnight and 6:00 a.m.. That reason alone should suffice to support staff's recommendation that the City continue to mandate a CUP for 24-hour operation of a bail bonds business.¹ The fact that other large cities—such as Los Angeles, Long

¹ Section 20.40.500 of the San Jose Municipal Code states that "no establishment other than office uses, in any commercial district shall be open between the hours of 12:00 midnight and 6:00 a.m. except pursuant to and in compliance with a conditional use permit as provided in Chapter 20.100." While some members of the industry insist that bail bonds services should be considered "office uses," City Staff has long rejected that interpretation of the Municipal Code. Rather, bail bonds vendors routinely open themselves physically to customers who enter and exit the businesses, and have so become categorized as "personal service" uses. Office uses, under the code, do not contemplate substantial customer traffic. For that reason, activity occurs wholly within the office, and the doors need not be opened to the public for business functions—such as filing, faxing, telephone calls, emailing and the like—to occur. Staff's current

Beach, and Las Vegas (*yes, even Las Vegas*) similarly require a permit to operate after midnight in commercial districts, further buttresses Staff's conclusion. In our research, we could not identify a city that did not at least require a permit for late-night bail bonds operations (if they did not prohibit those uses altogether).

In past hearings, some members of the industry have argued that the City's permit requirements somehow implicate a defendant's Eighth Amendment rights against "excessive bail." There's a reason why they cannot point to a single published judicial decision that supports their view: the Constitution has nothing to do with the matter before us.

First, no defendant will suffer the inability to obtain bail as a result of a standard CUP requirement. Any bail bond vendor can open their doors to the public at any hour by simply obtaining a CUP, like any other business. Second, even if the doors remain shut to the public, a bail bonds company can operate anywhere else in the city—processing bond paperwork, taking phone calls, receiving faxed signatures, and communicating by internet—without a permit. Many companies routinely prepare bond paperwork, at all hours, without any need for actual face-to-face interaction, such as by:

- Granting bail bond approvals over the phone²
- Making free "house calls" after-hours³; and
- Transacting necessary documents with customers on-line.⁴

Second, the Constitution remains silent on the question of how bail must be administered. Indeed, several states, including Illinois, Kentucky, Oregon and Wisconsin, *have lawfully abolished any commercial provision of bail services*. The American Bar Association has such concerns about the industry that it has advocated for the nationwide abolition of commercial bail bonds vendors, asserting that all bail-related transactions should occur within the courthouse doors.

We don't suggest or propose anything so severe. We merely seek to continue to require a permit as the City has required of any other commercial business, in a manner no more restrictive than the regulation that any other major city imposes on bail bonds operators.

B. The 300-Foot Proximity Restriction Will Not Affect Any Bail Bonds Vendor Currently Under Lawful Operation, but Will Halt the Increasing Concentration of the Businesses Adjacent to the Hyde Park, Vendome, Hensley, and Rosemary Gardens Neighborhoods.

Staff proposes a 200-foot distance requirement between bail bonds vendors and sensitive uses, such as homes and schools, and between bail bonds businesses. Based upon public input, we propose a 300 foot restriction, for several reasons. First, some of the vendors will choose to seek a CUP to operate 24 hours, and Council Policy 6-27 has long required a 300-foot proximity restriction from homes, and we seek to obtain consistency and clarity among these rules.

proposal allows for a bail bonds vendor to operate 24-hours anywhere else in the City, so long as they truly operate like offices. However, once they open their doors for customers after midnight, a permit is required.

² e.g., Alladin Bail Bonds, Jake's Bail Bonds

³ e.g., San Jose Bail Bonds, Abra Cadabra Bail Bonds, Zig-Zag Bail Bonds, Vu Bail Bonds, and Reidy Bail Bonds

⁴ e.g., Zig-Zag Bail Bonds, Vu Bail Bonds.

Secondly, the hyper-concentration of these businesses along the First Street corridor—a fairly recent phenomenon relative to the purchasing decisions of nearby homeowners—has deterred other neighborhood-serving retail and restaurants from locating there, and has further depressed property values there. Simply, nothing says “blight” like “bail bonds.”

A typical block in the neighborhoods around Hyde Park, Rosemary Gardens, and Hensley has a length of about 825 feet, so a 200-foot proximity restriction could result in as many as four bail bonds vendors locating within a single block. A 300-foot requirement would halve that congestion. As one of the city’s Transit Corridor Commercial Districts, the San Jose 2020 General Plan requires that in the North First Street area, “development should be compatible with existing neighborhoods and not impair the visibility or the character of these neighborhoods.... retail uses are encouraged on the street-level floor....” Street-level proliferation of bail bonds businesses contravenes the General Plan, and undermines the aspirations of the local community for a mix of retail and commercial businesses that will serve their neighborhoods.

Critically, none of these restrictions will affect current bail bonds vendors lawfully operating in their buildings; they remain “grandfathered,” regardless of any new restrictions, and will continue to operate unhindered.

