



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.

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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 Horwedel", is written over a large, faint circular stamp or watermark.

Joseph Horwedel, Director

Planning, Building and Code Enforcement

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