



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Joseph Horwedel

SUBJECT: BAIL BONDS WORKLOAD
ASSESSMENT

DATE: March 18, 2009

Approved *Christine J. Stuppoy*

Date *3/20/09*

COUNCIL DISTRICT: Citywide
SNI AREA: N/A

SUPPLEMENTAL MEMO

REASON FOR SUPPLEMENTAL

This memorandum provides additional information regarding the existing Zoning Ordinance provisions for bail bond establishments and the workload implications of alternative options for regulating bail bond businesses.

RECOMMENDATION

It is recommended that the Rules and Open Government Committee accept the workload assessment for regulation of bail bond establishments.

BACKGROUND

On December 16, 2008, the City Council approved a Planned Development Zoning to allow the existing, unpermitted, Aladdin Bail Bond establishment to operate between 6:00 a.m. and midnight at the northeast corner of East Hedding and North First Streets. In the same motion, the Council directed staff to provide a workload assessment for an analysis of whether zoning changes might better regulate land use issues pertaining to bail bond establishments. In testimony on the proposed Planned Development (PD) Zoning, neighborhood residents had opposed the bail bond business and its proposal to operate past midnight, describing traffic and noise intrusion into their neighborhood and bail bond customers knocking on their doors in the early morning hours asking for money to bail out a family member.

On March 4, 2009 the Rules Committee considered a staff analysis which outlined the existing land use regulations applicable to bail bond establishments, including the Conditional Use Permit requirement for operation between midnight and 6 a.m. Staff concluded that the existing Zoning Ordinance provides adequate regulation of these businesses. Councilmember Constant expressed concern regarding staff's interpretation of bail bond establishments as "personal service uses" and suggested that these businesses were actually offices. He requested clarification as to whether the staff interpretation had been consistent over time. Additionally, Councilmember Chirco asked staff to return with a report outlining how the "current strategies" (i.e., the current Zoning Ordinance requirements) could be used to meet the needs of the bail bond businesses, while also addressing neighborhood concerns. The Committee deferred the item to March 25, 2009 to allow staff to respond to these questions and to clarify further options available to the City Council for regulating bail bond establishments and the workload implications associated with each. The following analysis provides further clarification regarding the Zoning Ordinance interpretation in regard to bail bond establishments and presents the workload implications of available options for regulating bail bond businesses.

ANALYSIS

Current Zoning Provisions - Bail Bond Establishments as Personal Service Uses

A complete analysis of the current regulations for bail bond establishments was provided to the Rules Committee in the memorandum on this item dated February 19, 2009. As indicated in that analysis, bail bond establishments are considered personal services in that they involve the retail purchase of a service in a face-to-face transaction between the business and its customer. Other businesses in the personal service category include check cashing services, weight loss centers and interior decorating services.

In October 2001, staff articulated this interpretation in a letter to Clifford Stanley regarding a bail bond business seeking to locate at the northeast corner of East Hedding Street and North First Street (the same site recently rezoned to allow Aladdin Bail Bonds). The bail bond business claimed that it was a "financial institution". Financial institutions were allowed under the PD Zoning of the site at the time and personal service uses were not. The interpretation letter (see attachment 1) states that, pursuant to the San Jose Zoning Ordinance, a bail bond establishment is a personal service use. Although the current assertion by Bad Boy Bail Bonds is that bail bond establishments are office rather than financial institution uses (see attachment 2 letter from Jeff Stanley dated March 10, 2009), the staff analysis included in the 2001 interpretation letter remains relevant and consistent with staff's current interpretation.

Jeff Stanley's letter of March 10th, points to a building permit issued in 2003 for interior remodeling of the space occupied by Bad Boy Bail Bonds at 1096 North 1st Street and notes that the permit references a remodel to "office" space. The reference in this building permit record is to an "office" building code occupancy group. The occupancy group characterizes the level of building hazard, not the applicable Zoning Ordinance use category. Both the Planning Department and the City Attorney's Office have examined their records and have found no

evidence that bail bond establishments have ever been interpreted as anything other than a personal service use.

In 2004, a Zoning Ordinance amendment approved by the City Council limits ground floor uses in the Downtown. Footnote "g" of Table 20-140 includes bail bond services in a list of personal services that are excluded from the ground floor of buildings in certain areas of the DG Zoning District. Thus the original interpretation became formalized in the Zoning Ordinance. At this point, the Zoning Ordinance recognizes bail bonds uses as a Personal Service use. Should the City Council desire to change the classification of bail bond uses, an ordinance amending and clarifying Title 20 provisions for bail bond services would be necessary. Any such change should be supported by rationale for including bail bonds establishments within a particular use category.

Potential Ordinance Revision Options for Bail Bond Establishments

Alternatives available to the Council for regulation of bail bond establishments include the following: 1) continue to enforce the current regulation of bail bond establishments as a personal use under the Zoning Code; 2) reclassify bail bond establishments as office uses (which are allowed to operate by right on a 24-hour basis); 3) create a new use category for bail bond businesses and other similar uses and regulate these uses less stringently than personal service uses; or 4) create a new use category for bail bonds businesses and other similar uses and regulate these uses more stringently than personal service uses. Following is a brief discussion and workload assessment for each of these alternatives. A summary comparing the workload implications of the alternative is at the end of this section.

Option 1 - Continue Enforcement of Current Regulations

The City Council could accept staff's recommendation that the current regulations for bail bond establishments are appropriate and direct staff to continue to enforce these regulations. Under this option, revision of the Zoning Ordinance would not be required. Staff would continue to enforce the current requirements for bail bond establishments. Bail bond businesses wishing to operate after midnight in the CG Commercial General, CN Commercial Neighborhood and CP Commercial Pedestrian Zoning Districts would need to obtain a Conditional Use Permit. Personal service uses, including bail bond establishments, are not allowed in the CO Commercial Office Zoning District. A rezoning would be necessary for bail bond establishments currently operating in the CO District.

There are a number of bail bond businesses located within the vicinity of Hedding and North First Streets due to the proximity of the County jail and courthouse. It is unclear how many of these businesses are currently operating in conformance with the requirements of Title 20. Code Enforcement has begun an investigation regarding the Municipal Code compliance of bail bond establishments for which complaints have been filed. Proactive enforcement would require greater staff resources and would need to be balanced with priorities for enforcement of life/health and safety issues. Bail bond establishments cited for operating after midnight without

a Conditional Use Permit (CUP) would need to apply for and obtain the required CUP or come into compliance by operating between the hours of 6 a.m. and midnight.

Any Conditional Use Permit or other discretionary approval for after-midnight operation of bail bond businesses 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 land use compatibility 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.

Mitigations of the type that could be incorporated into a Conditional Use Permit for a 24-hour bail bond business that is located proximate to residential uses include, but are not limited to the following: 1) construction of a sound wall to reduce noise and limit access, 2) use of removable barriers to ensure that late night customers park as far as possible from residential properties, 3) provision of adequate lighting that is shielded from nearby residential uses, 4) requirements for parking lot monitoring by bail bond businesses to ensure that customers do not create a disturbance, and 5) requirement for daily litter clean-up of the project site and the immediately adjacent public right-of-way. Appropriate conditions depend upon the specific physical configurations and layouts presented in a particular instance.

Option 2 – Expand “General Business Office” to Include Bail Bond Establishments

Option 2 involves revising the Zoning Ordinance to change the definition of general business office to include bail bond uses and other uses with similar land use characteristics. General business office uses are allowed to operate in all of the Commercial Districts on a 24-hour basis without any discretionary review. Under this option, bail bond establishments and other like uses included in the general business office category would no longer be required to obtain a Conditional Use Permit for operation between midnight and 6:00 a.m.; operation on a 24-hour basis would be allowed by right. This option would also allow bail bond businesses and other like uses to locate “by right” in the CO Commercial Office Zoning District.

Option 2 would present challenges associated with the need to identify common land use characteristics that would justify placing bail bond establishments in the business office category while excluding other uses from this category. It would necessitate a detailed analysis of the land use characteristics of both general business office and personal service businesses to determine whether there are distinguishing characteristics that would justify moving bail bond establishments or a larger subset of the personal service category to the general business office category. Field observation to document the land use characteristics of the uses in question would be needed. Likely considerations would include levels of typical traffic generated, for

both business personnel and customers, as well as related noise presented in both categories of uses.

This option has the potential to significantly change the way the Zoning Ordinance regulates commercial uses adjacent to residential neighborhoods, and public outreach would be a key component of the work plan. Such outreach would entail community meetings, circulation of the CEQA document for public review, web-site postings, email notification and a public notice in the newspaper. Option 2 would require preparation of an Initial Study to assess the potential environmental impacts of the proposed change in regulations. This work effort would require approximately 5 months of Planning staff and City Attorney Office attention, resulting in delays for other longstanding priorities (e.g., the Sign Ordinance Update).

Option 3 – Enumerate Bail Bonds as a Separate Use Category and Regulate Less Stringently

Option 3 involves revising the Zoning Ordinance to enumerate bail bond establishments as a separate use or include them in a new, more narrowly defined use category and allow these uses to operate between midnight and 6 a.m. without a Conditional Use Permit.

Option 3 would present challenges associated with identifying those common land use characteristics that would justify singling out bail bond establishments from other personal service uses for deregulation. A detailed analysis of the land use characteristics of the full range of personal service uses would be necessary and would entail field observation. This option would significantly change the way the Zoning Ordinance regulates late night uses proximate to residential neighborhoods and public outreach would need to include community meetings, circulation of the CEQA document for public review, web-site postings, email notification and a published public notice. Option 3 would also require preparation of an Initial Study to assess the potential environmental impacts of allowing late night uses without a discretionary permit. This option would require approximately 5 months of staff time in PBCE and the City Attorneys Office. Again resources diverted to this issue would delay other ordinance priorities of the Council.

Option 4 Workload Assessment – Enumerate Bail Bonds as a Separate Use Category and Regulate More Stringently

Option 4 involves revising the Zoning Ordinance to enumerate bail bond establishments as a separate use or include them in a new, more narrowly defined use category and regulate them more stringently. Potential regulations include: 1) requiring a Conditional Use Permit regardless of the hours of operation in the CG, CN, and CP Commercial Zoning Districts; 2) requiring a Conditional Use Permit in the same zoning districts subject to specific use criteria (such as a minimum distance from sensitive uses or a minimum distance from a like use) or 3) allowing by right in the CG, CN and CP Commercial Zoning Districts (either during daytime hours or on a 24-hour basis) subject to specific use criteria such as a minimum distance from sensitive uses or a minimum distance from a like use. It should be noted that any Conditional Use Permit

requirement would apply to new uses; existing legal non-conforming bail bond establishments (i.e., those that are operating in conformance with current Zoning Ordinance regulations) would be subject to the legal non-conforming provisions of the Zoning Ordinance.

Option 4 would present challenges associated with identifying common land use characteristics that would justify singling out bail bond establishments from other personal service uses for separate regulation. If this analysis identified impacts of bail bond establishments that would justify singling them out for greater regulation, the City Council, in considering the policy decision on this issue, would need to weigh the identified impacts of bail bond businesses operating late at night, against the need to have bail bond businesses open past midnight to provide bail services.

This option would require a detailed analysis of the land use characteristics of the full range of personal service uses would be necessary and would require field observation. This option would require community outreach similar to that of the prior options. It would likely be "exempt" pursuant to the California Environmental Quality Act (CEQA) because it would add new discretionary permit requirements that would be subject to CEQA review. This option would require approximately 4.5 months of staff time and would delay other ordinance priorities of the Council.

Workload Implications of Bail Bond Regulation Options

The staff time for ordinance revision and the length of the process for each of the regulatory options for bail bond establishments are identified in Table 1. Option 1 would not require any staff time for Zoning Ordinance revision. Proactive enforcement of existing Zoning Ordinance regulations, above and beyond the current complaint-based enforcement activity, would require additional staff resources or a reduction in other enforcement efforts. Code Enforcement staff are working to assess the extent of enforcement resources necessary for a proactive level of enforcement.

The staff time for Options 2 through 4 is similar for most of the tasks. Options 2 and 3 would require the greatest staff time due largely to the environmental review that would be necessary for the deregulation of commercial uses operating on a 24-hour basis. The staff time estimates for these options assume an appeal of the Negative Declaration, which would add approximately 20 hours of staff time to the normal CEQA process. Options 2 through 4 would require similar levels of data collection and analysis to determine land use characteristics that would justify modifying existing enumerated use categories or creating new categories. Option 4 requires the least staff time due to the fact that this ordinance, which would increase the level of discretionary review, would not require CEQA review.

The Ordinance Work Plan for the '09 calendar year is tightly stacked with ordinances that are urgently needed. The Sign Ordinance Update and Alum Rock Form Based Zoning are major work items currently under way; the Stevens Creek Sign Ordinance, the Downtown Entertainment Ordinance, and a number of streamlining and green industry ordinances intended to remove barriers to new development or promote green development are vying for the

remaining available staff time. Additional streamlining ordinances that are not expected to be completed this year are waiting in line to be addressed as soon as staff resources are available. Council direction to pursue one of the ordinance revision options discussed in this report would necessitate shifting staff resources and would delay existing ordinance efforts, including the Sign Ordinance Update and the Alum Rock Form Based Zoning.

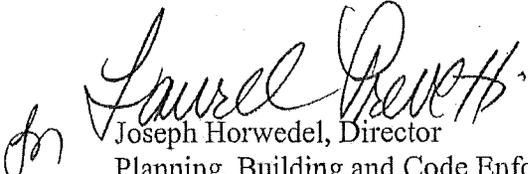
Tasks	Option 1	Options 2 & 3	Option 4
Data Collection & Analysis	0 hrs.	60 hrs.	60 hrs.
Ordinance and Staff Report Prep.	0 hrs.	40 hrs.	40 hrs.
Environmental Review	0 hrs.	45 hrs.	0 hrs.
Community Outreach/Public Hearings	0 hrs.	30 hrs.	30 hrs.
Update Title 20 & Planning Info.	0 hrs.	10 hrs.	10 hrs.
Total Hours	0 hrs.	185 hrs.	140 hrs.
Length of Process	N/A	5 months	4.5 months

Conclusion

After analyzing the existing Zoning Ordinance provisions relative to bail bond establishments, staff concludes that existing regulations are appropriate and should not be changed (in that land use compatibility issues arising from operations after midnight are and should be subject to additional review through a CUP process). Staff has now provided a workload assessment for Zoning Ordinance amendment options that would both increase and decrease the regulatory requirements for bail bond businesses. All of these options would require significant investment of staff resources. Direction by the City Council to pursue an amendment to Title 20 to change the requirements for bail bond establishments would delay other ordinance priorities.

COORDINATION

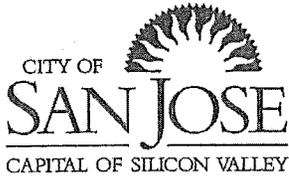
The preparation of this memorandum and the associated work was coordinated with the City Attorney's Office.


Joseph Horwedel, Director
Planning, Building and Code Enforcement

Attachments

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

Attachment 1



Department of Planning, Building and Code Enforcement

JOSEPH HORWEDEL, ACTING DIRECTOR

October 10, 2001

Mr. Clifford Stanley
Loan Administrator
Golden State Mortgage Corporation
1625 The Alameda, Suite 500
San Jose, CA 95126

Subject: Zoning Regulations Related to Bail Bond Business

Dear Mr. Stanley:

This letter is in response to your inquiry about the zoning regulations related to a bail bonds business in San Jose. As we have discussed in previous phone conversations, it is the position of the City that a "bail bond" business is a personal service as defined in Section 20.200.880 of Title 20 of the San Jose Municipal Code. A "personal service" defined 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 office is one where a contract is executed direct with the consumer or an agent for 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 office with the consumer. The bond associated with the service provided is considered a good; similar to airline tickets and/or travel arrangements associated with a trip arranged through a travel agent.

It has been argued that because a bail bond office typically involves money transactions that it is a financial institution. However, the money transaction involved is not for the purpose of saving, investments, or money management which is the case with a financial institution. If the association of a money transaction defined a financial institution, most commercial retail and service establishments could be argued to be financial institutions. The City does not take the position that any establishment where a money transaction is involved is a financial institution.

Other examples of what are considered a personal service establishment in San Jose include, but are not limited to, the following: check-cashing establishments, tanning salons, interior decorating businesses, weight reduction centers, and beauty and barber shops. As you can see, a personal service establishment can and is intended to cover a range of services that are offered

Mr. Clifford Stanley
Zoning Regulation Related to Bail Bond Business
October 9, 2001
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direct to the consumer. I hope I have been able to answer the questions you have related to bail bond establishments and how the use is classified for the purposes of zoning in San Jose. If you have any additional questions, please contact me at 408-277-8556.

Sincerely,

/s/

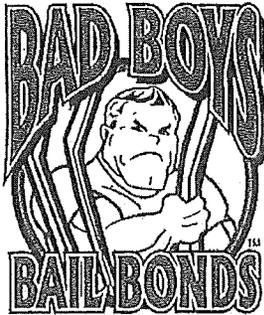
Jean Hamilton
Senior Planner

Bail bond letter_Stanley.doc
PBCE003/Zoning/Zoning Code

Attachment 2

15:30 16

RECEIVED



"Because your mama wants you home"

Corporate Office
1299 North First Street
San Jose, CA 95112
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408.453.9993 Fax

San Jose
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1108 W. Santa Ana Blvd.
Santa Ana, CA 92703
714-692-8888 Phone
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March 10, 2009

Planning Director Joe Horwedel
200 East Santa Clara Street
San Jose, CA 95113

MAR 16 2009

CITY OF SAN JOSE
DEVELOPMENT SERVICES

RE: City of San Jose Compliance Order
Case No: 200851930
Bad Boys Bail Bonds
1096 N. 1st Street

Dear Director Horwedel,

As the CEO of Bad Boys Bail Bonds (BBBB), I'm writing to appeal to your sense of fairness and request that the enforcement of the Compliance Order referenced above be placed on hold pending the outcome of the City Council deliberations with regard to potentially further regulating Bail Bond establishments.

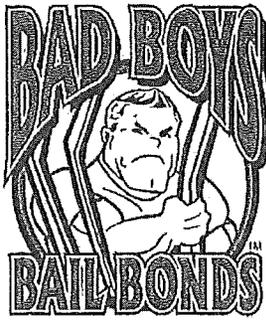
As you are aware, Bad Boys Bail Bonds has been in continuous 24-hour operations at 1096 N. 1st Street for nearly 10 years without a single public safety incident, code violation, or complaint from the surrounding neighborhood.

Our industry provides a valuable, constitutionally mandated service in concert with the local criminal justice system. When defendants are released on bond it decreases the costs to the county of housing and caring for defendants, increases the likelihood that the defendant will appear in court on their scheduled date, and improves public safety by ensuring San Jose Police Officers are not spending excess time processing arrestees at a facility backlogged with defendants who can not post bond.

While what I describe in the paragraph above are not "land use" issues, I feel they are important for you to know in the context of creating safe and healthy neighborhoods that are able to provide necessary services to the community.

BBBB provides a necessary community service and is not a retail establishment. Our City of San Jose Permit Record (Permit #: 2003-115985-CI) states under the 'Description' section:

"REMODELING RETAIL STORE SPACE TO OFFICE SPACE. NEW PARTITIONS WALLS, SUSPENDED CEILING, ELECTRICAL FIXTURES, TWO NEW REST ROOMS TO MEET ADA REQUIREMENTS, NEW SINK IN EMPLOYEE COFFEE AREA, NEW A/C UNIT (ROOF TOP), CARPET AND PAINTING ALL OFFICE AREA."



"Because your mama
wants you home"

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714-352-2929 Fax

2/2

Other planning department documents clearly state that we are an office and not a retail establishment. We stock no goods for sale, we do not possess a cash register, we don't generate sales tax and we are heavily regulated by the California Department of Insurance.

BBBB is also not a Personal Service Use as defined by SJMC 20.200.880:

"Personal services" 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. These establishments include beauty or barber shops, shoe repair shops, self-service laundries, tanning salons, tailoring establishments, interior decorating, clothing rental, portrait photography and diet and weight reduction centers."

Rather, BBBB, which is heavily regulated by the California Department of Insurance, is an Office, general business as defined by SJMC 20.200.813:

"A general business office is a space within which management level administrative services for firms and institutions are provided; or within which services to individuals, firms; or other entities is provided. Examples of a general business office use include but are not limited to offices within which the following services are provided: real estate, insurance, property management, title companies, investment, personnel, travel, and similar services, and including business offices of public utilities or other activities when the service rendered is a service that is customarily associated with office services."

I will be providing additional information over the coming weeks in support of our belief that we operate similarly to those businesses in the Office, general business category as opposed to a diet and weight reduction center or self-serve Laundromat business.

I respectfully request that you suspend any and all enforcement action with regard to the Compliance Order referenced above during the time the City contemplates how best to deal with any further regulation of the bail bond industry.

Sincerely,

Jeff Stanley, CEO
Bad Boys Bail Bonds, Inc.