



# Memorandum

**To:** Mayor and City Council

**From:** Councilmember Pete Constant  
Councilmember Nora Campos  
Councilmember Ash Kalra

**Subject:** SEE BELOW

**Date:** May 15, 2009

**Approved:**

**SUBJECT: RESOLUTION INITIATING PROCEEDINGS ON ITS OWN MOTION FOR AN INTERIM ORDINANCE PURSUANT TO CALIFORNIA GOVERNMENT CODE SECTION 65858 TO ESTABLISH A TEMPORARY MORATORIUM ON THE ESTABLISHMENT OF NEW BAIL BOND ESTABLISHMENTS PENDING REVIEW AND POSSIBLE AMENDMENT OF LAND USE REGULATIONS APPLICABLE TO SUCH ESTABLISHMENTS, SETTING A PUBLIC HEARING ON THE INTERIM ORDINANCE AND REFERRING THE INTERIM ORDINANCE TO THE PLANNING COMMISSION FOR ITS REPORT OR RECOMMENDATION, ALL PURSUANT TO CHAPTER 20.120 OF TITLE 20 OF THE SAN JOSÉ MUNICIPAL CODE.**

## Recommendation

We recommend that the City Council not initiate proceedings for an interim ordinance to establish a temporary moratorium on the establishment of new bail bond businesses and further direct staff to:

1. Return to Council within 30 days with amendments to Title 20 of the San José Municipal Code classifying bail bonds establishments as financial services.
2. Discontinue all code enforcement action against bail bonds establishments for operation between the hours of 12:00 midnight and 6:00 am until the City Council determines the appropriate classification for bail bonds establishments.

## Background

Bail bond establishments serve a critical role in the criminal justice system. They assist arrestees in fulfilling their constitutional rights to post bond. Furthermore, the appearance rate for defendants released on bond is more than double that of defendants released on their own recognizance. The Santa Clara County Jail is located in San José. San José bail bonds establishments serve the vast majority of detainees in the County. Although the County Jail does not currently release detainees between the hours of 1:00 am and 5:00 am, bail bond agents do meet with the family members or friends of arrestees in order to process the paperwork necessary to secure bond during those hours.

## Analysis

This is an issue of public safety, because the County Jail has limited space and relies on the population management that is possible through the timely release of inmates. When the jail is full, the County has no option but to release inmates on their own recognizance. Defendants released on their own recognizance are more than twice as likely to skip their court dates and answer for the charges against them.

According to a letter dated April 30<sup>th</sup> from Acting County Executive Gary Graves, the proposed moratorium and contemplated permanent restriction on bail bonds establishments' hours of operation will adversely affect the County's ability to release detainees in a timely fashion. Timely release is necessary to avoid over-population in the County jail. He stated it will further negatively affect the ability of detainees and their family members to secure release in time could potentially jeopardize their employment, further compounding their problems and increasing the likelihood of additional criminal activity.

This is the wrong time to be proposing a moratorium on any business in San José. The staff memo and anecdotal accounts from neighbors reference a proliferation of bail bonds establishments, but there is no evidence that an overwhelming number of businesses are in the pipeline for approval. A moratorium on new businesses of any kind is an extreme response, in this case, to a perceived problem. Further, the restriction on the hours of operation is inconsistent with restrictions on other similar financial services and will result in the layoffs of bail bond employees who serve a critical role in helping families navigate the criminal justice system without loss of employment.

### **Conclusion**

The proposed moratorium is unnecessary and will have a detrimental effect on the economy, public safety and families of detainees. The only evidence of a problem is perceived and anecdotal. The City should first determine if there is a problem and then what the causes are before responding with such an extreme measure.