

**CITY OF ALBANY  
PLANNING AND ZONING AGENDA  
STAFF REPORT**

Agenda date: 9/13/11  
Prepared by: ALH

**ITEM/**

**SUBJECT: Planning Application 11-038: Conditional Use Permit El Autlense Taco Truck at 601 San Pablo Avenue (Hotsy Totsy)**

The applicant is seeking approval of a Conditional Use Permit to allow a full-time operation of the El Autlense Taco Truck subject property is a 5,000 square foot lot with an existing 1,556 square foot building on San Pablo Ave. No significant changes to the exterior of the existing building are proposed.

**SITE: 601 San Pablo Avenue**

**PROPERTY OWNER: Michael Valladares**

**APPLICANT: Rodrigo Anguiano**

**ZONING: San Pablo Commercial (SPC)**

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**STAFF RECOMMENDATION**

Staff recommends that the Planning and Zoning Commission approve the request for a conditional use permit to allow a food truck operation on the public right of way located in front of at 601 San Pablo Avenue with Conditions.

**BACKGROUND/PROJECT DESCRIPTION**

The subject property is a 5,000 square foot corner lot with an existing 1,556 square foot one-story building currently used as a bar. The building sits on the southeast corner of San Pablo Avenue and Garfield Ave. Off-street parking is located at the south and east sides of the property, creating a total of six (6) off-street parking spaces. Additionally, there is on-street parking on San Pablo Ave., Garfield St., and surrounding streets.

**ENVIRONMENTAL ANALYSIS**

Staff has determined that the proposed project is categorically exempt from the requirements of California Environmental Quality Act Guidelines (CEQA) per Section 15301, "Existing Facilities" of the CEQA Guidelines, which exempts projects that involve negligible expansion of an existing use.

## SITE LOCATION



**Figure 1. Site Location: 601 San Pablo Ave.**

## ANALYSIS

### Proposed Operation

The applicant is requesting approval of a Conditional Use Permit to allow the Taco El Autlense to operate outside of the Hotsy Totsy at 601 San Pablo Ave. The truck had been operating without a business license, Thursday-Sunday from the hours of 9pm-2am. Patrons may purchase food from the truck and are encouraged to bring the food into the bar for on-site consumption. Due to the popularity of the business, they are seeking approval of a Conditional Use Permit to operate from the hours of Wednesday-Monday, 11:30 am-12 am. The truck will arrive at 11 am for set up and clean-up and clear the area no later than 1 am.

The truck has been parked on the south side of the lot adjacent to the neighboring fence shared with the property at 605 San Pablo Ave. It measures approximately 20 ft. x 6 ft. and runs on a generator during the proposed hours of operation (the truck engine will remain off). Currently, the truck has one trash can and the truck employees clean the lot twice a shift. With the proposed schedule, there will be two new cans installed with continued lot/property cleaning during the hours of operation.

### Conditional Use Permit

Section 20.100.030 (B) (4) allows the Community Development Director to refer the use permit review process to the Planning and Zoning Commission due to unique or unusual circumstances. Currently, there are no provisions in the Municipal Code for mobile food operations. Due to the recent popularity of food trucks, it is expected that more trucks may express interest in establishing business operations in the City of Albany. Since this application will establish a precedent for mobile food vending in Albany, it was decided that the Planning & Zoning Commission shall review the application request and condition as appropriate.

### Neighbor Response to the Proposed Use Permit

After the public notice was distributed to neighbors within 300 ft. of the subject site, staff received four (4) different inquiries from citizens. This includes (3) neighbors on Garfield St. and the property owner of 605 San Pablo Ave.

Staff received an e-mail from a neighboring resident which included proposed "good neighbor" conditions. (See Attachment 5) This includes posting signs at the entrance/exit to remind patrons they are walking in a residential neighborhood and signage around the truck and property reminding patrons to place trash within the proper receptacles. These suggestions have been incorporated into the Conditions of Approval.

The property owner of 605 San Pablo Ave. sent a fax to the Community Development Department on Thursday September 8, 2011 expressing concern about the truck and complaints he has received from his tenants related to noise and rowdiness. (See Attachment 6)

Due to the highlighted concerns as well as close proximity to a residential neighborhood, staff is requesting that the truck be parked on the public right of way in front of the Hotsy Totsy. As part of this relocation, a Condition of Approval has been included which requires the applicant to enter into an agreement with the City to indemnify and hold the City harmless. A cursory review of other food truck ordinances revealed that indemnity and hold harmless agreements are standard practice in neighboring jurisdictions.

Staff worked with the Police Department (PD) to address potential concerns and review the Conditions of Approval. The PD expressed concerns related to noise and provided Conditions of Approval to address the issue. Additionally, staff requested a summary of calls for service and noise related complaints from the Police Department within the past year. This search yielded four (4) calls received by the Police Department related to noise (two complaints), juveniles in the general outdoor vicinity being asked to leave area, and a rowdy patron. Four complaints within a one-year are window is considered relatively minor.

### Special Conditions

Due to the precedent setting nature of this application, special conditions have been included. Special Conditions include site cleanliness, signage reminding patrons to be respectful of surrounding neighbors, and noise restrictions associated with the business. (See Attachment 3)

### Appeals:

The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council if such appeal is filed within 14 calendar days of the date of action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

### Attachments:

1. Analysis of Compliance with Zoning Requirements
2. Findings
3. Conditions of Approval
4. Application
5. E-mail from Michael Green, Garfield St. resident about the proposed project
6. Fax from David Mueller, property owner of 605 San Pablo Ave.

## ATTACHMENT 1 - ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

### 20.12 Zoning Districts and Permitted Uses

General Plan: General Commercial  
Zoning: SPC (San Pablo Commercial)

### 20.16 Land Use Classifications

Surrounding	North - SPC	East - R-3
Property Use	South - SPC	West - SPC

#### 20.20.080 Secondary Residential Units.

Not applicable.

#### 20.24.020 Table Of Site Regulations By District.

Not applicable.

#### 20.24.030 Overlay District Regulations.

Not Applicable

#### 20.24.040 Hillside Residential Regulations.

Not applicable.

#### 20.24.050 Floor-Area-Ratio.

Not applicable.

#### 20.24.060 Setback Areas, Encroachments.

Not applicable.

#### 20.24.100 Distances Between Structures.

Not applicable.

#### 20.24.110 Fences, Landscaping, Screening.

See Discussion of Issues.

#### 20.24.130 Accessory Buildings.

Not applicable.

### 20.40 Housing Provisions

Not applicable.

### 20.44 Non-conforming Uses, Structures and Lot

Not applicable.

### 20.48 Removal of Trees

Not applicable.

20.52 Flood Damage Prevention Regulations

Not applicable.

20.100.030 Use Permits.

See Analysis.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on September 2, 2011 in the form of mailed notice to property owners and occupants within a 300-foot radius, and posted in three locations.

20.100.050 Design Review.

Not applicable.

**ATTACHMENT 2 - FINDINGS**

**Findings for Conditional Use Permit approval (Per section 20.100.030.D of the AMC)**

Required Finding	Explanation
<p>1. <b><i>Necessity, Desirability, Compatibility.</i></b>  <i>The project's size, intensity and location of the proposed use will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.</i></p>	<p>The General Plan designates this area for General Commercial. The project meets City zoning standards for location, intensity and type of development. The site currently is operating as bar.</p>
<p>2. <b><i>Adverse Impacts.</i></b> <i>The project's use as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or physically injurious to property, improvements or potential development in the vicinity, with respect to aspects including but not limited to the following:</i></p> <ul style="list-style-type: none"> <li>a. <i>The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;</i></li> <li>b. <i>The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;</i></li> <li>c. <i>The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;</i></li> <li>d. <i>Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;</i></li> </ul>	<ul style="list-style-type: none"> <li>a. The proposal is in scale and harmony with existing development near the site. It is an already developed site.</li> <li>b. There already exist 6 parking spaces on-site, and no changes will be made to the parking configurations. There is sufficient space for 6 ft. x 20 ft. truck which still allows adequate site circulation and no loss of parking.</li> <li>c. The applicant has indicated that the truck will operate with the use of a generator and does not require the engine to operate.</li> <li>d. There is existing fencing around the perimeter of the site as well as some tree coverage between the properties.</li> </ul>
<p>3. <b><i>Consistency with Zoning Ordinance, General Plan and Specific Plan.</i></b> <i>That such use or feature as proposed will comply with the applicable provisions of this Chapter and will be consistent with the policies and standards of the General Plan and any applicable specific plan.</i></p>	<p>The proposed project will not be detrimental to the health, safety, convenience and welfare of those in the area and would not adversely impact property, improvements or potential future development in the area.</p>

## **ATTACHMENT 3 - CONDITIONS OF APPROVAL**

### **SPECIAL PROJECT CONDITIONS**

**SP 1-** Signs shall be placed at the entrances/exits reminding patrons they are in a residential neighborhood should be quiet while exiting and returning to their cars.

**SP 2-** Signage reminding patrons to keep clean and dispose of trash in designated receptacles shall be placed on/in the vicinity of the truck and outside the bar.

**SP 3-** Two new trash receptacles shall be located outside and the property shall be kept clean at all times.

**SP 4-** Sounding a horn or other device to signal arrival, or playing any music or other sound on board, or using excessively noisy equipment is prohibited.

**SP 5-** The storage container located in a designated parking space at the southeast corner of the subject property shall be removed from the site entirely.

**SP 6-** The Planning & Zoning Commission reserves the right review the Use Permit at any time to insure compliance with all project conditions. Failure to comply with the Conditions may result revocation of the Use Permit subject to public notification and formal public hearing.

**SP 7-** The Use Permit shall be subject to review and possible revocation if the Police Department determines there are law enforcement concerns regarding the operation of the food truck.

**SP 8-** Permitted business operation hours are Wednesday-Monday, 11:30 am-12 am. The applicant shall contact the Community Development Department of any modification to the hours of operation.

**SP 9-** The business operation shall comply with Section 17-1 "Smoking Pollution Control" of the Albany Municipal Ordinance.

**SP 10-** If new permanent signage is proposed for the food truck, it must be submitted to the Community Development Department for administrative review.

**SP 11-**The applicant shall enter into an agreement to indemnify and hold harmless the City, its officers and employees from any and all damages or injury to persons or property proximately caused by the act or neglect of the applicant or by hazardous or negligent conditions maintained at the applicant's sales location.



## GENERAL PROJECT CONDITIONS

### **Gen-1 - Project Approval.**

This Conditional Use Permit for 601 San Pablo Avenue, as substantially provided in the staff report, may be modified by conditions herein. Plans include the report and project correspondence, as presented to the Planning and Zoning Commission on September 13, 2011. For any condition herein that requires preparation of a Final Plan where the project developer has submitted a conceptual plan, the project developer shall submit final plan(s) in substantial conformance with the conceptual plan, but incorporate the modifications required by the conditions herein for approval by the City.

### **GEN-2 - Project Approval Expiration.**

This Conditional Use Permit approval will expire on September 13, 2012 unless a building permit has been issued and construction diligently pursued. The approval may be renewed by the Community Development Director for a period up to an additional two (2) years, provided that, at least ten (10) days prior to expiration of one (1) year from the date when the approval becomes effective, an application for renewal of the approval is filed with the Community Development Department. The Community Development Director may grant a renewal of an approval where there is no change in the original application, or there is no request to change any condition of approval.

### **Gen-3 Fees.**

The applicant shall pay all City and other related fees applicable to the property, as may be modified by conditions herein. Fees shall be based on the current fee structure in effect at the time the relevant permits are secured, and shall be paid prior to issuance of said permit or prior to any City Council final action approval. Notice shall be taken specifically of Plan Check, Engineering, Fire and Inspection Fees. The project developer shall also reimburse the City for direct costs of planning; building and engineering plan check and inspection, as mutually agreed between the City and developer.

### **GEN-4 Appeals.**

The Albany Municipal Code provides that any action of the Planning staff may be appealed to the Planning and Zoning Commission, and any action of the Planning and Zoning Commission may be appealed to the City Council as per the procedures described in Section 20.100.080. The City Clerk will then schedule the matter for the next available City Council meeting.

### **GEN-5 Requirement for Building Permit.**

Approval granted by the Planning and Zoning Commission does not constitute a building permit or authorization to begin any construction or demolish an existing structure. An appropriate permit issued by the Community Development Department

must be obtained prior to constructing, enlarging, moving, converting, or demolishing any building or structure within the City.

**GEN-6 Fire Department Approval.**

As part of a building permit application, the applicant shall submit written documentation that all requirements of the Albany Fire Department have, or will be, met to the satisfaction of the AFD.

**GEN-7 Engineering Approval.**

As part of a building permit application, the applicant shall submit written documentation that all requirements of the Public Works Department have, or will be, met to the satisfaction of the City Engineer.

**GEN-8 Construction Hours.**

Construction activity shall be restricted to the hours of 8:00 a.m. to 6:00 p.m. Mondays through Saturdays, and 10:00 a.m. to 6:00 p.m., Sundays and legal holidays, unless otherwise approved in writing by the City Engineer for general construction activity. Failure to comply with construction hours may result in stop work orders or other administrative actions.

**GEN-9 Archeological Remains.**

In the event subsurface archeological remains are discovered during any construction or preconstruction activities on the site, all land alteration work within 100 feet of the find shall be halted, the Community Development Department notified, and a professional archeologist, certified by the Society of California Archeology and/or the Society of Professional Archeology, shall be notified. Site work in this area shall not occur until the archeologist has had an opportunity to evaluate the significance of the find and to outline appropriate mitigation measures, if deemed necessary. If prehistoric archeological deposits are discovered during development of the site, local Native American organizations shall be consulted and involved in making resource management decisions.

**GEN-10 Modifications to Approved Plans.**

The project shall be constructed as approved. Planning staff may approve minor modifications in the project design, but not the permitted land use (per Municipal Code Section 20.12). A change in an item requiring discretionary approval and any other changes deemed appropriate by the Planning staff shall require further Planning and Zoning Commission approval through the Design Review process.

**GEN-11 Hold Harmless Agreement.**

Pursuant to Government Code Section 66474.9, the applicant (including any agent thereof) shall defend, indemnify, and hold harmless, the City of Albany and its agents, officers and employees, from any claim, action, or proceeding against the City or its agents, officers or employees to attack, set aside, void, or annul the City's approval concerning this application, which action is brought within the time period provide for in Section 66499.37. The City will promptly notify the applicant of any such claim action or proceeding and cooperate fully in the defense.

**GEN-12 Public Improvements Standards.**

Public improvements shall be designed and constructed in accordance with the City's Standard Specifications and Standard Details, unless specifically waived in writing by the City Engineer.

**GEN-13 Title 24 Standards.**

All construction shall be designed and built in accordance with California Title 24 disabled accessibility standards. Appropriate details and specifications shall be incorporated into the plans and submitted at time of building permit application.

**GEN-14 Energy Conservation Standards.**

All buildings shall be designed in accordance with the State of California energy conservation standards for non-residential buildings. The necessary plans and documentation shall be submitted at time of building permit application.

**LIGHTING CONDITIONS**

**LGHT-1 Exterior Lighting.**

All exterior lighting shall be installed in such a manner that glare is directed away from surrounding properties and rights-of-way. If required, exterior light fixtures shall be equipped with "cut off" lenses to minimize light and glare spill over onto adjacent properties.

**LGHT-2 Shielding of Lighting.**

All accent lighting shall be directed downward and, if necessary, fixed with cut-off lenses to ensure that no glare spills onto neighboring properties.

**LANDSCAPING CONDITIONS**

**LNDSC-1 Tree Preservation.**

All existing trees on the site shall be preserved to the fullest extent practicable. Removal will be allowed only upon prior written approval from the Community Development Department.

## **PARKING CONDITIONS**

### **PARK-1**

All parking solutions shall conform to the approved plans as shown in the plans, as described in condition GEN-1 and maintained available for parking as shown on approved plans.

## **SIGN CONDITIONS**

### **SIGN -1 Signage Design Review Approval.**

All construction/installation of signage shall conform to the approved sign plan and color samples approved the Community Development Department.

**Appeals:** The Albany Municipal Code provides that any action of the Planning and Zoning Commission may be appealed to the City Council, if such appeal is filed within 14 days of the date of the action. Appeals may be filed in the Community Development Department by completing the required form and paying the required fee. The City Clerk will then schedule the matter for the next available City Council meeting.

## Anne Hersch

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**From:** Michael Green [michael@ceh.org]  
**Sent:** Wednesday, September 07, 2011 9:31 AM  
**To:** Anne Hersch  
**Cc:** Green, Melanie (melaniemillergreen@gmail.com)  
**Subject:** hearing on September 13th re: Hotsy Totsy Food Truck Use Permit

Hello,

I must work that evening, and cannot come to the hearing. I hope that this can be put into the record.

I live at the corner of Garfield and Kains: very close to the Hotsy Totsy. I have children aged 2 and 4 and a small house near the street (as all the houses are in this neighborhood).

Customers of the Hotsy Totsy park in front of our house every night. When they return to their cars, it is often very late and they are often very drunk. It is common for us to find trash from the food truck in our front yard in the mornings, as well as being woken by people hanging out by their cars talking very loudly. We have not only had people leave their trash from the food truck in our yard, but also had them throw-up in our yard.

I have spoken to the owner of the Hotsy Totsy about this on three separate occasions. During the third conversation, I asked him to put up a sign by the exit asking customers to be quiet and respectful of families living in the neighborhood. He agreed to do so during that conversation, but never did it.

If they are going to be permitted to have the food truck always there, it seems only fair to the neighbors that the agreement at a minimum requires that they do the following:

- \*put up signs at both exits of the Hotsy Totsy that strongly says to be quiet and respectful of their neighbors and their children, who may be sleeping
- \*put a sign on the food truck that asks people to not leave trash anywhere in the neighborhood, but only place it in the trashcan provided by the food truck
- \*as part of their nightly procedure (every night, as a part of the permit), Hotsy Totsy and/or food truck staff go into the neighborhood 200 feet from the Hotsy Totsy on Garfield and Kains and pick up trash left by their customers.

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Michael Green  
Center for Environmental Health  
[michael@ceh.org](mailto:michael@ceh.org)

<u>Main Office</u>	<u>NYC Office</u>
2201 Broadway	6 East 39th Street, 12th Floor
Oakland, CA 94612	New York, NY 10016
510-655-3900 x302	212-689-6999

[Web](#) | [Action Center](#) | [Facebook](#)

# FAX COVER SHEET

**DATE:** 9/8/11

**FROM:** David C. Mueller / OWNER - 605 San Pablo Ave.  
**FAX:** (559) 661-4495

**TO:** Anne Hersch, City of Albany  
**FAX:** 510-548-5797

**Number of pages including this cover sheet:** 1

**MESSAGE:** Re: My property at 605 San Pablo (10 apt. units)

Please be advised that the proposed use permit for a "Food Truck" in the parking area of the Hotsy Totsy Bar is of great concern to me and my 10 tenants and will provide a negative impact on my property.

Previously, when the truck was parked on the Hotsy Totsy property and serving food, several of my tenants complained to me about loud talking, music and rowdiness in the area between the Hotsy Totsy structure and my building. There is only 5 feet from the Hotsy Totsy property line to my building.

It seems that the bar business should be confined to the inside of the building with no secondary exterior business allowed.

Your serious consideration is appreciated.