

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

Agenda date: 10/11/11
Prepared by: ALH

ITEM: 6B

SUBJECT: Preliminary Review of Personal Services Moratorium/Amendment to the Permitted Uses Table, Section 20.12.040 of the Albany Municipal Code

This is a preliminary review to consider a moratorium on personal service uses including hair salons, nail shops, and massage establishments in the City of Albany. If a moratorium were to be adopted, the Permitted Land Use Tables in Section 20.12.040 would be amended to restrict certain uses to second story space

SITE: Solano Ave.

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission receive the report for the proposed moratorium for personal services and provide feedback. Additionally, staff asks that the Commission provide preliminary feedback on the proposed moratorium and permitted use table changes.

BACKGROUND/PROJECT DESCRIPTION

Staff has attended a series of meetings with representatives from the Solano Ave. Merchants Association and the Albany Chamber of Commerce to listen to concerns about an increase in personal service establishments. Specifically, they have identified hair salons, nail shops, and massage establishments/day spas as businesses which are becoming more common on Solano Ave.

To date, three (3) meetings have been held at City Hall. Meetings have been held on the following dates: 8/30/11, 9/13/11, and 9/27/11. Business representatives expressed concern about the increase of personal service and office businesses at the ground level of Solano Ave. They indicated that the primary goal in working with the City is to have more retail/restaurant uses at the ground level, creating more vibrancy and pedestrian activity on Solano Ave.

During the course of the meetings, two actions were identified by the concerned business owners to help achieve this goal:

1. Bring forward a moratorium on personal service uses including nail shops, hair salons, and massage establishments Citywide.

2. Evaluate existing permitted land use tables (during the moratorium) and amend the tables to possibly require:
 - a. A Conditional Use Permit (CUP) for personal service/office uses to locate in a street level storefront on Solano Ave. These types of uses will be permitted by right on upper levels, but would require a CUP for street level commercial space.
 - b. Restrict a percentage of floor area which would allow incidental uses
 - c. Require a CUP for day spa business

ANALYSIS

Moratorium

Pursuant to California Government Code Section 65858, the City may establish a moratorium prohibiting any uses that may be in conflict with a pending zoning proposal that the legislative body, Planning & Zoning Commission, and Planning Department intends to study within a reasonable time. The City may adopt a moratorium on an urgency basis provided that the City makes findings related to a threat to public health, safety, and welfare.

Currently, there are no land use regulations for personal service businesses. These businesses are permitted by-right in the Solano Commercial (SC) and San Pablo Commercial (SPC) districts. At the present, there are thirteen (13) nail shops, twenty-eight (28) hair salons, and twenty-two (22) massage establishments. (See Attachment 1)

SB 371

California Senate Bill 371 (SB 371) became effective on September 1, 2009 and regulates massage practitioner licensing through the State. Massage practitioners may register with the State of California and obtain one of the following permits:

- “Massage Practitioner” (250 hours of training from a State-approved school)
- “Massage Therapist” (500 hours of training from a State-approved school)

These permits are administered by the Massage Therapy Organization (MTO), a non-profit organization comprised of representatives from various agencies. Massage therapy certificates are issued to qualified applicants who are entitled to practice massage therapy throughout the State of California without having to comply with local background check proceedings. The City requires that this verification be provided as part of the business license process.

Pursuant to the State law, if a municipality chooses to regulate land use requirements for a massage establishment, it must also apply to other similar professional or personal services businesses within the Section 4612 (4) of the Business and Professions Code.

“Nothing in this section shall prohibit a city, county, or city and county from adopting land use and zoning requirements applicable to massage establishments or businesses, provided that these requirements shall be no different than the requirements that are uniformly applied to other professional or personal services businesses.”

Permitted Land Use Tables

Staff reviewed land use regulations of neighboring jurisdictions for comparison purposes. Both Berkeley and Alameda have regulations within their permitted use tables to regulate street level business activity. Both jurisdictions have limited this regulation to specific main street corridors. In Berkeley these regulations are applicable on Telegraph Ave. In Alameda these regulations apply to the Park St. District.

There are several ways to modify the permitted land use tables including:

- Require a Conditional Use Permit for personal service/office uses that would like to locate in a street level storefront. Permit personal service/office uses by right in upper level
- Restrict a percentage of floor area that can be used for incidental services

Alameda Regulations

The City of Alameda has the following regulations to encourage ground level retail.

By Right

- Hairstyling and beauty salons including but not limited to body care services such as manicures, pedicures, make-up facials, waxing, electrolysis, tanning within the Park Street CC district only. Piercing, tattoo and massage services are allowed when accessory to the primary use of hairstyling provided no more than two (2%) percent of the floor area is devoted to the accessory use.
- Office uses (medical and professional) not associated with permitted retail sales of the site, provided that for any building which is on a site adjoining a public street, public alley or public sidewalk, fifty (50%) in depth of the ground floor space directly behind that building frontage closest to the public street, public alley or public sidewalk shall be reserved for retail sales and/or service uses permitted in the district.

Conditionally Permitted

- Day Spa, including massage as an accessory use
- Office use (medical and professional) not associated with a permitted or conditional use in the CC district /and or to be located on a site adjoining a public street, public alley, or public sidewalk and within fifty (50%) percent of the depth of the ground floor space directly behind that building frontage closest to the public street, public alley or public sidewalk

Berkeley Regulations

In the Telegraph Ave. commercial district, additional zoning restrictions were adopted to encourage ground level retail. The following uses are conditionally permitted:

Conditionally Permitted

- Financial Services, Retail (Banks)
- Medical Practitioners, including Holistic Health and Mental Health Practitioners
- Other Professionals and Government, Institutions, Utilities

All use permits the above mentioned uses must conform to the following condition:

“When located on the ground floor adjacent to street frontage, storefront windows required to include a window display or to be transparent and provide pedestrian viewing a minimum of 10 feet into the storefront area.”

In speaking with staff at the City of Berkeley, the use permit regulations have been relaxed within the past year due to economic conditions.

Personal service businesses in the Telegraph Ave. commercial district are capped with no more than ten (10) of these businesses operating within the designated district.

Alcohol Establishment Monitoring Program

An alcohol establishment monitoring program has been discussed with representatives of residential neighborhoods near San Pablo Ave. As it is proposed, existing alcohol establishments would be required to pay a fee for the monitoring program and would be issued program and operating criteria which would regulate business operations. Failure to comply with the operating criteria could result in fines, other possible penalties, and even revocation. Establishments would be charged and evaluated on an annual basis for compliance with the program.

Prior to introducing a potential ordinance, this program would be discussed with the Planning & Zoning Commission, the Police Department, and local alcohol establishment owners as part of a study session.

ENVIRONMENTAL ANALYSIS

Should the Planning & Zoning Commission direct staff to proceed with a moratorium and changes to the land use tables, both actions would be exempt pursuant to Section 15061 (b) (3) where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Attachments

1. List of Nail Shops, Hair Salons, and Massage Establishments in the City of Albany

ATTACHMENT 1-LIST OF NAIL SHOPS, HAIR SALONS, MASSAGE ESTABLISHMENTS

Nail Shops

There are thirteen (13) existing nail shops in the City of Albany which are listed below.

THE NAIL SHOP	1129 SOLANO AVE
LYNN'S NAIL SALON	1174 SOLANO AVE
ALBANY NAIL SALON	1327 SOLANO AVE
ONZEN THE SPA	1365 SOLANO AVE
THE NAIL SHOP #1	1419 SOLANO AVE
NAVEANA NAIL SALON	1481 SOLANO AVE
LISA'S NAIL SALON	510 SAN PABLO AVE
BELLISSIMA	600 SAN PABLO AVE STE 101
BE BE NAIL CARE	701 SAN PABLO AVE
HALI'S NAILS	904 SAN PABLO AVE
LAN NGUYEN	904 SAN PABLO AVE
HOAT T. NGUYEN	915 SAN PABLO AVE
AMY'S NAILS	952 SAN PABLO AVE

Table 1. List of Existing Nail Shops in Albany (13 total)

Hair Salons

There are twenty-eight (28) hair salons in Albany.

FASHION HAIR DESIGN	1021 SOLANO AVE STE A
CHROMA SALON	1049 SOLANO AVE
TRUE COLORS	1051 SOLANO AVE
THE SALON ON SOLANO	1112 SOLANO AVE
BARBARA EVERSOLE	1112 SOLANO AVE # 204
IXIA SALON	1126 SOLANO AVE # 3
HEADS UP HAIR CARE	1151 SOLANO AVE
JC & CO. HAIR DESIGN	1154 SOLANO AVE
MANIJEH KHAJAVI	1154 SOLANO AVE
ALBANY HAIR SALON	1174 SOLANO AVE
MR C'S FOR HAIR	1254 SOLANO AVE

HAIR DYNAMICS	1309 SOLANO AVE
SUNNY'S HAIR STYLES	1391 SOLANO AVE
THAIRAPEUTICS	1396 SOLANO AVE STE A
PAUL PAULSON	1396 SOLANO AVE STE A
SUPERCUTS	1475 SOLANO AVE
HEADS	1490 SOLANO AVE
NINA HOMISAK HAIR DESIGN	1580 SOLANO AVE STE C
BILLY'S HAIR DESIGN	423A SAN PABLO AVE
99 BEAUTY HAIR SALON	600 SAN PABLO AVE STE 104
AZZURE SALON	609 SAN PABLO AVE
MEILIN HAIR AND NAIL DESIGN	753 SAN PABLO AVE
HAIR CUTS ROOM	800 SAN PABLO AVE STE B
ANNA'S BEAUTY SALON	816 SAN PABLO AVE
YOUR HAIR	843 RAMONA AVE
THEL'S NEW HAIR FOCUS	847 CORNELL AVE
STYLE 2000	901 SANTA FE AVE
GOLI HAIR DESIGN	970 SAN PABLO AVE

Table 2. List of Hair Salons in Albany (28 total)

Massage Services

Currently, there are twenty-two (22) licenses for massage establishments in the City of Albany.

PURPLE BAMBOO THERAPY CENTER	1007 SOLANO AVE
ALICE TRUMBLY C.M.T.	1029 SOLANO AVE STE C
TRAN-AMERICA ACAD CHINESE MED	1284 SOLANO AVE
ONZEN THE SPA	1365 SOLANO AVE
MARIAM KINDEL	1391 SOLANO AVE
THAIRAPEUTICS	1396 SOLANO AVE STE A
DONNA M. BATTERMAN	1396 SOLANO AVE STE A
XIN XING THERAPY HEALTH CENTER	600 SAN PABLO AVE STE 106
METTA TRADITIONAL THAI MASSAGE	727 SAN PABLO AVE STE 102B
KATHERINE KENDALL SALON & SPA, LLC	743 SAN PABLO AVE
REBECCA M. BERRIOS	743 SAN PABLO AVE
ACUPRESSURE WELLNESS CENTER	7689 STOCKTON AVE
MICHAEL MCINTYRE, CMT	814 CARMEL AVE

DIANE KOSHLAND	828 SAN PABLO AVE STE 104
H & Y MASSAGE	835 SAN PABLO AVE
VARA HEALING ARTS	850 TALBOT AVE
MASSAGE BY JOHN	850 TALBOT AVE
SOFIA PIZANO	850 TALBOT AVE
DENISE PITTMAN	902 SANTA FE AVE
919 MASSAGE	919 SAN PABLO AVE
STEPHEN BATTERMAN	936 POMONA AVE