

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

Agenda date: March 13, 2012  
Prepared by: ALH

**ITEM:** 6C

**SUBJECT:** **Planning Application 11-013 Conditional Use Permit, One Year Review**

This meeting is a continuation of the November 8, 2011 hearing where the Planning & Zoning Commission provided a public opportunity to review the market operation. As part of this meeting, the Commission received public testimony and directed that a Subcommittee be formed to understand merchant issues and determine alternative sites.

**SITE:** 1025-1060 Solano

**APPLICANT/**

**OWNER:** Berkeley Ecology Center

**ZONING:** San Pablo Commercial/Commercial Node Overlay

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**STAFF RECOMMENDATION**

Staff recommends that the Planning and Zoning Commission review the farmers' market status report and may take one the following actions:

1. *Approve a renewal of the use permit subject to the following conditions:*
  - Approval is for six months only. The application request shall be reviewed by the Planning & Zoning Commission prior to the 2013 season for condition compliance.
  - The market shall be reconfigured to increase visibility and minimize noise for existing businesses on Solano Ave.
  - Live entertainment is prohibited from the market.
2. *Deny the use permit request*

**BACKGROUND**

The City's Climate Action Plan, adopted by City Council in April 2010, calls for establishment of an Albany Farmer's Market to strengthen the regional food system and serve as a community resource. The overarching goal is to develop a market that attracts shoppers to the commercial sector of Solano and San Pablo, and serves as festive opportunity for the community to obtain quality local, predominately organic foods and goods.

The City issued a Request for Proposals to establish an Albany Farmers Market in June 2010. City staff has been working with the Ecology Center, a local nonprofit, to locate and develop a farmers

market customized to the City of Albany.

The Ecology Center has also worked with the City's Sustainability Committee, who has expressed strong support for establishment of the market. Additionally, a public meeting was held on December 7, 2010 to discuss the proposed event, and support for the market was expressed by attendees.

### **CURRENT SITE**

The applicant was granted approval of a Conditional Use Permit through the Planning & Zoning Commission on February 23, 2011, allowing temporary closure of one block of Solano Avenue, between San Pablo and Adams, for use as a weekly farmers market. Based on the number of factors involved in identifying a viable location and the number of locations explored within the City, the block of Solano Avenue between San Pablo and Adams was the most suitable based on the following:

- Visibility - the site is highly visible
- Adequate space for market vendors - the street is long enough to allow for a sufficient number of vendors to provide a wide diversity of products and a pleasant shopping experience.
- Adequate width of streets - the street width and current market layout allows for adequate accessibility for emergency vehicles, while also ensuring sidewalks remain clear.
- Traffic impacts - the traffic impact has been manageable, according to both residents and Albany Police.
- Residential driveways and accessibility - there are no residential driveways located along the current site.
- Connectivity with Solano Avenue - the current site is located on Solano Avenue
- Usage fees - there are no rental fees for the use of the space.
- Private property issues - there are no private property issues.

The conditional use permit contained traffic control measures to re-route automobile traffic in the area as well as establishing the seasonal dates for operation. The traffic control plan was also reviewed and approved by the Traffic & Safety Committee. The market was held on Wednesday afternoons/early evenings. Operations commenced on May 4, 2011 and the market closed for the season on October 26, 2011.

The Planning & Zoning Commission reviewed the use permit for condition compliance at the November 8, 2011 hearing. At that time, the Commission continued the item to a date uncertain and directed the formation of a subcommittee composed of two (2) Planning Commissioners, staff, and concerned merchants. The subcommittee met on December 6, 2011 to discuss the market. Approximately, five (5) businesses were represented at this meeting and include Albany Hot Tubs, Chroma Salon, Subway, Moore & Associates, and a local acupuncturist. Three (3) property owners also sent letters to the City in opposition to the market.

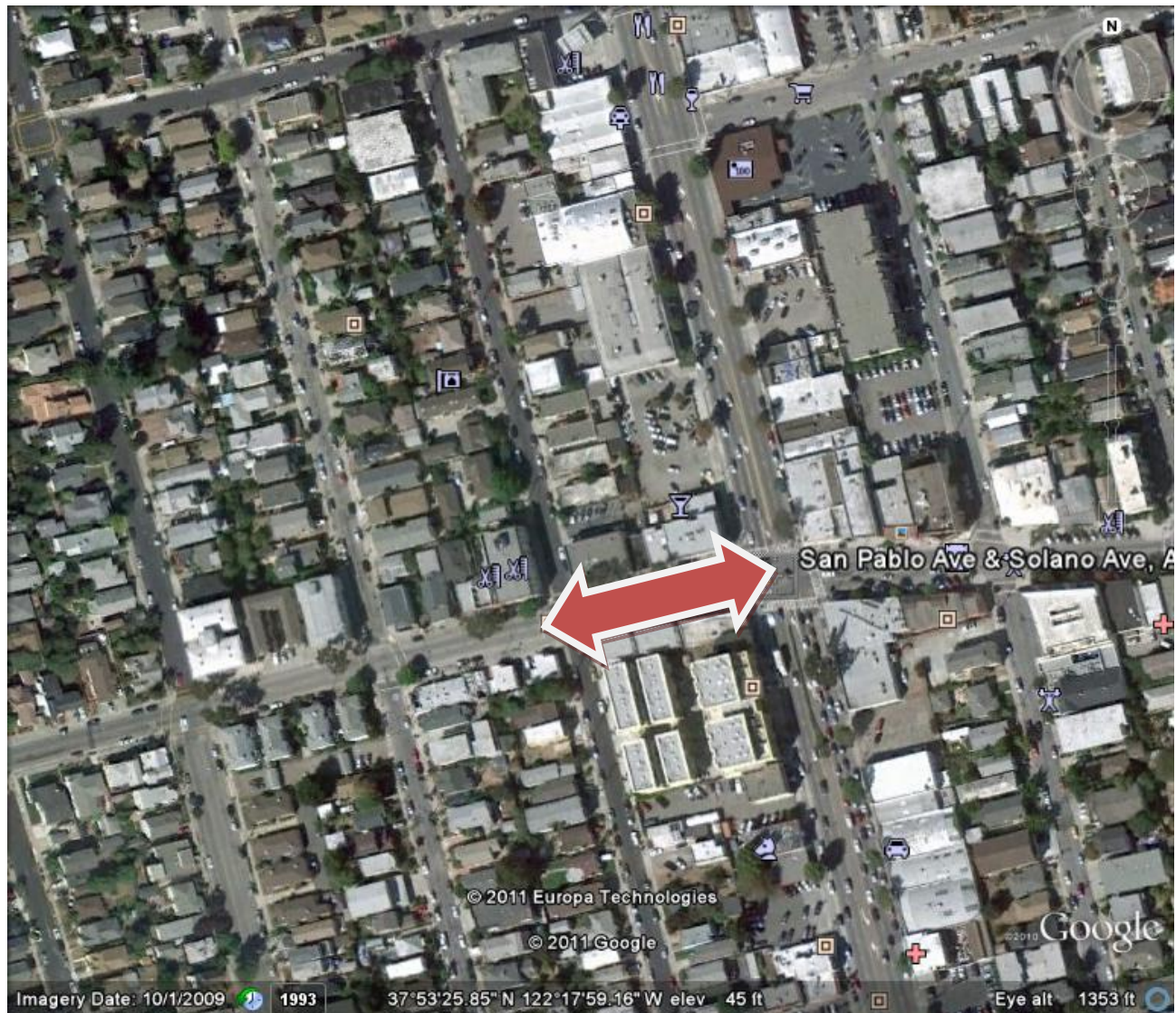
Merchants emphasized the need to revisit alternative locations and reiterated their concerns and opposition to renew the market for another year on Solano Ave.

### **ALTERNATIVE LOCATIONS CONSIDERED**

In the past two months, staff has explored other alternative locations for the market. Unfortunately, an alternative location was not identified. Staff extensively explored the block of Washington St., between San Pablo Ave. and Kains St. Mechanics Bank graciously considered hosting the market. However, Mechanics Bank maintains an ATM drive thru which must be operational twenty-four hours a day. A summary of the locations that were reviewed is provided below, including detail as to why these locations are not entirely viable:

- Key Route Blvd north of Solano Ave
  - Cons: impact on residential driveways, impact on memorial area and trees
- Mechanics Bank parking lot
  - Cons: private property – risk management concerns
- Albany Twin parking lot
  - Cons: private property-- movies are shown that evening and parking lot is used by customers
- Ramona Avenue adjacent to CVS Pharmacy
  - Cons: impact on CVS customers and thru traffic, street width
- Memorial Park
  - Cons: already very active neighborhood park, also due to day of week – competition with Music in the park , neighborhood oppositions, school district concerns
- Albany schools – Oceanview, Cornell, Alley adjacent to Cornell School
  - Cons: cost for use of space, limited parking on school grounds for vendors, conflicting with weeknight school events, limited visibility
- Masonic Avenue north of Solano Ave (to Senior Center)
  - Cons: Senior Center dinner hour, proximity to BART
- Community Center parking lot/Masonic Ave
  - Cons: conflict with classes/events at Community Center, limited space, limited visibility
- Towne Center parking lot
  - Cons: limited space due to customer parking and limited access by northbound traffic, private property
- Beverages & More parking lot
  - Cons: limited space due to customer parking and limited access by northbound traffic, private property
- Bank of America parking lot
  - Cons: limited visibility, limited space, private property

## SITE LOCATION



**Figure 1. Site Location**

### First Year Summary

Staff met with representatives from the Ecology Center in late October to assess market success during the first year. The following information was shared with staff:

- Attendance for the first was steady with 800-1200 patrons attending weekly
- The budget for the first year was on target and vendors see potential in Albany
- Local restaurants purchased produce from the market to serve to patrons
- Current site worked well and market logistics were successful
- Bicycle parking was fully utilized during the market hours
- Local non-profits were able to market at the community booth
- Beverages and More (BevMo) has allowed the market to park trucks and stage in their parking lot during market hours

### Community Comments

To date, the City has received fifty-three (53) e-mails in support of the farmers' market. The comments all express support for the market specifically being able to purchase fresh produce locally, expanding a sense of community and shopping locally. (See Attachment 6)

### Merchant Complaints/Concerns

All previously received merchant letters and correspondence concerning the market are attached to this report (See Attachment 5). The merchants expressed concern about visibility, noise, and a lack of available parking during market hours.

### Maintenance & Clean-up Costs

Notwithstanding Condition #4, Public Works Maintenance staff provided site maintenance for the first year of the market operation. This included delivering barricades the day before the market, and putting "no parking" signage along Solano Ave. twenty-four hours prior to the start of the market. The Ecology Center parked their trucks on Solano Ave. to insure the street was closed to vehicular traffic the day of the market. In addition, Public Works staff removed barricades from the site on Thursday mornings.

For the Ecology Center to absorb full responsibility for market setup, they will have to provide additional staff and truck support. The maintenance and set up provided by the City of Albany was considerably more than anticipated for the market. Consequently, the City has indicated that site set-up, breakdown and maintenance will not be provided moving forward.

The Ecology Center indicated that City of Berkeley does not support weekly market logistics and maintenance as Albany had for this initial year. In Berkeley, the market representatives handle barricades and site maintenance, not City staff.

### Summary of Key Issues

Farmer's markets are regulated under the "Temporary and Seasonal Uses" provision of the Planning and Zoning Code (Section 20.20.090). The Code requires a minor use permit for recurring sales of agricultural, horticultural and other food products and limits sales to two days per week. Due to the location and size of the proposal, staff referred the application to the Commission rather than address the request administratively. The City's conventional use permit conditions are not applicable. Conditions of approval are provided in Attachment 3.

## **ENVIRONMENTAL ANALYSIS**

Staff has determined that the proposed project is categorically exempt from the requirements of CEQA per Section 15304 (e) of the CEQA Guidelines, which exempts minor temporary use of land having negligible effects on the environment.

## **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 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 Zoning Requirements
2. Findings
3. Conditions of Approval
4. Meeting Minutes Excerpt from November 8, 2011 Planning & Zoning Commission hearing
5. Correspondence received from the November 8, 2011 hearing & Subcommittee meeting & Alternative Location Suggestion
6. E-mails received in support of the farmers' market

# ATTACHMENT 1 - ANALYSIS OF COMPLIANCE WITH ZONING REQUIREMENTS

## 20.12 Zoning Districts And Permitted Uses

General Plan: Public right-of-way adjacent to Commercial  
Zoning: Public right-of-way adjacent to SPC (San Pablo Commercial)  
Commercial Node Overlay District

## 20.16 Land Use Classifications

Farmers Market

Surrounding	North - Commercial	East - Commercial
Property Use	South - Commercial	West - Commercial

### 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.

Not applicable.

### 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 discussion of key issues.

20.100.040 Variances.

Not applicable.

20.100.010 Common Permit Procedures.

Public notice of this application was provided on March 2, 2012 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>Necessity, Desirability, Compatibility.</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 commercial development. Additionally, the project meets City zoning standards for location, intensity and type of development. The use will add to the variety and services in the community.</p>
<p>2. <b>Adverse Impacts.</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. No physical changes to the site are required.</li> <li>b. Traffic and parking will be impacted for a portion of one day a week.</li> <li>c. No noxious or offensive emission such as noise, glare or dust will occur from the granting of conditional use permit.</li> <li>d. It is an existing site without need for additional landscaping, service areas and lighting.</li> </ul>
<p>3. <b>Consistency with Zoning Ordinance, General Plan and Specific Plan.</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

1. The Community Development Director shall have the right to modify or revoke this use permit at any time if any of the terms of such permit or the conditions of approval for said permit are violated, or for other good cause deemed necessary to maintain or improve the public right of way or to preserve and protect the health, safety and welfare of the public.
2. The applicant shall manage the farmers market, including recruitment of vendors and diversity of products, in a manner substantially consistent with the description provided by the applicant.
3. The Planning and Zoning Commission shall schedule a public hearing in November 2012 to provide an opportunity to review the operations of the market and make modifications to conditions of approval if necessary to achieve the goals and objectives of the City or to protect the health, safety and welfare of the public. The Commission also reserves the right to review the use permit prior to the identified date if there are compliance or operational issues associated with the market.
4. The applicant shall prepare a traffic control plan, which will be subject to review and approval of the Community Development Department. The applicant shall be responsible for all traffic control during event, including set-up and tear-down of equipment needed for execution of traffic plan, such as traffic barricades.
5. The applicant shall be responsible for managing all trash and recycling and the encroachment area shall be returned to its original condition at the end of the event.
6. The applicant shall prepare written rules, which will be subject to review and approval of the Community Development Department. The rules shall be intended to ensure the successful and safe operation of the Market. Contractor shall provide a set of written rules to all vendors operating within the Market.
7. Installation of banners and other signage is subject to review and approval of the Community Development Department as part of the encroachment permit.
8. Applicant shall provide bicycle parking area/rack(s) that can accommodate at least four bicycles, including bicycles with trailers, in which at least one wheel and frame of each bike can be secured. Rack design and location subject to City review. Rack shall be in a location that is visible to market customers.
9. Modifications to the street or sidewalk must be installed by a licensed contractor subject to issuance of a permit from the Community Development Department. The sidewalk must be restored to its existing condition at the time of termination of the use permit.
10. Improvements shall conform to all applicable ADA, Cal-OSHA, Alameda County Department of Health, and California Building Code requirements.

11. The issuance of the use permit does not represent control of the street or sidewalk area during special events involving street closures (e.g. Solano Stroll, Dinner with Albany, etc.). If requested by the City, all improvements shall be removed 24-hours before special events involving street closures.
12. A sidewalk walkway of at least six feet wide must be maintained between the railing and any tree, sign, post, bench or other sidewalk feature at all times.
13. Installation of furniture and fixtures shall be subject to the review and approval of the Community Development Department. Furniture and fixtures shall be of good quality, durable materials and construction, and shall be properly maintained.
14. No sound amplification device, musical instrument or sound reproduction device shall be operated or used in outdoor dining areas
15. Outdoor dining areas shall be maintained in a clean condition at all times.
16. The applicant shall, at its sole cost and expense, maintain a comprehensive liability insurance policy in an amount specified by the City at all times during the duration of the permit. The applicant for the permit shall furnish the City with a certificate of insurance, duly authenticated, evidencing maintenance of the insurance required under the permit.
17. The applicant must indemnify, defend and hold harmless the City, its officials, officers, agents, and employees from any and all claims, causes of action, losses, injuries or damages arising directly or indirectly from the negligent acts, errors or omissions of the permit holder, its officers, agents, employees, or anyone rendering services on its behalf.
18. This Permit is non-transferable. If ownership or operator of the farmers market changes, this permit terminates automatically. New owner or operator shall submit an application for a new use permit.
19. Pursuant to Government Code Section 66474.9, the applicants (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 applicants of any such claim action or proceeding and cooperate fully in the defense. This indemnity shall include all reasonable costs and attorney's fees incurred in defending any action covered by this section.
20. This Conditional Use Permit and Parking Exception approval shall expire at the close of business on November 22, 2012, (one year from the date on which this approval becomes effective) unless, before expiration of one year, use is commenced. The Conditional Use Permit and 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 November 22, 2011, an application for renewal of the approval is filed with the Community Development Department.

21. Approval is for six months only. The application request shall be reviewed by the Planning & Zoning Commission prior to the 2013 season for condition compliance.
22. The market shall be reconfigured to increase visibility and minimize noise for existing businesses on Solano Ave. The applicant shall work with staff on the revised reconfiguration.
23. Live entertainment shall be prohibited from the market.