

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

Agenda date: March 27, 2012
Prepared by: ALH

ITEM: 6a

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

This meeting is a continuation of the March 13, 2012 hearing where the Planning & Zoning Commission reviewed the farmers' market use permit for compliance. The Commission provided direction to the applicant to make modifications to the operation. The market operation is proposed to remain at its current location of Solano Ave, between San Pablo Ave. and Adams St. Changes to the operation include but are not limited to modifications to truck parking, the overall site plan, and modification/inclusion of existing and new project conditions.

SITE: 1025-1060 Solano

**APPLICANT/
OWNER:**

Berkeley Ecology Center

ZONING: San Pablo Commercial/Commercial Node Overlay

STAFF RECOMMENDATION

Staff recommends that the Planning and Zoning Commission review the revised site plan for the farmers' market and may take one the following actions:

1. *Approve a renewal of the use permit subject to the following conditions being determined/included in the renewal:*
 - Approval length to be determined by the Commission (6 months or 1 year) with a recommendation for use permit compliance review
 - Truck parking shall be minimized on the north side of Solano Ave. to increase visibility of existing businesses. The site plan showing a partial elimination of truck parking on the north side shall serve as the new market configuration.
 - Live entertainment shall be located at San Pablo Ave. & Solano Ave.
 - The market shall be monitored for compliance with the City's Noise Ordinance.
 - ADA accessible parking shall be provided on the north side of Solano Ave., either at the corner of San Pablo Ave & Solano Ave. or Solano Ave. & Adams St.
 - Banner signage shall be displayed at San Pablo Ave. & Solano Ave.
2. *Deny the use permit request*

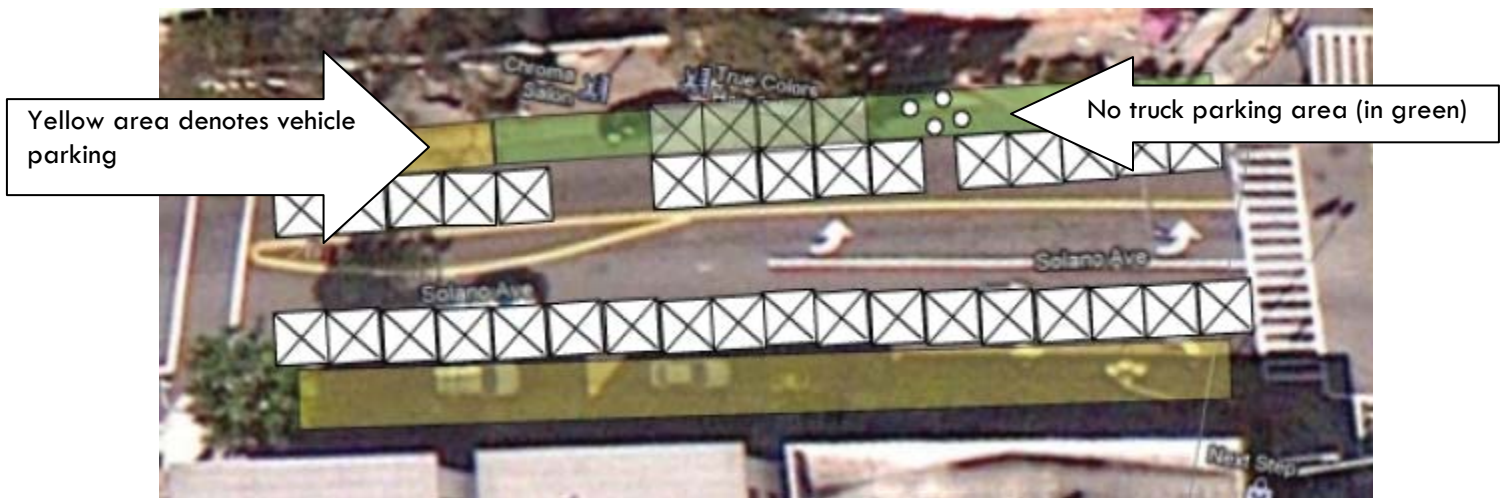
BACKGROUND

The Planning & Zoning Commission recently reviewed the farmers' market request at its March 13, 2012 hearing. At that time, the Commission continued the item to a date uncertain pending the following:

- A new configuration be prepared by the applicant and resubmitted. Trucks shall be eliminated from the site plan to the extent that it is feasible, especially on the north side of Solano Ave.

Revised Site Plan

The applicant submitted a revised site plan eliminating truck parking for a portion of north side of Solano Ave. This new configuration eliminates approximately five (5) trucks from being parked on the north side of the street. Those trucks which are eliminated from the north side will be parked in the Beverages and More parking lot during market hours.



Site Plan 1.

Revised Market Site Plan without truck parking on the north side of Solano Avenue

The applicant also prepared an illustrative site plan without parking at the market for comparison purposes. (See Attachment 6) According to the applicant, this configuration is not an option for the following reasons:

- If all vehicles were to be removed, 1 hour would not be enough time for set-up.
- This layout would reduce the number of stall spaces in the market by 10%.
- This layout reduces the emergency vehicle access lane to 10 feet at certain critical locations.
- Existing off-street parking options are not sufficient to accommodate all vendor vehicles.

Additionally, the applicant has cited the vehicle parking as providing additional security for vendors to lock valuables and avoid clutter from collecting during the market hours.

Additional Project Conditions & Efforts

The applicant has also suggested the following conditions and efforts to help address concerns identified by merchants presented in previous public testimony. Conditions related to live performances and signage location are included in the draft conditions.

- Limit musical performances to quiet, unamplified music
- Limit Musical performances to within 50 feet of San Pablo Ave
- Create a banner advertising businesses located on Solano between San Pablo and Adams to be displayed on market days
- Create an incentive program to encourage market shoppers to patronize businesses in the immediate vicinity of the market during.

The applicant has also indicated that if the use permit is renewed, the 2012 market season will commence in late May 2012.

SITE LOCATION

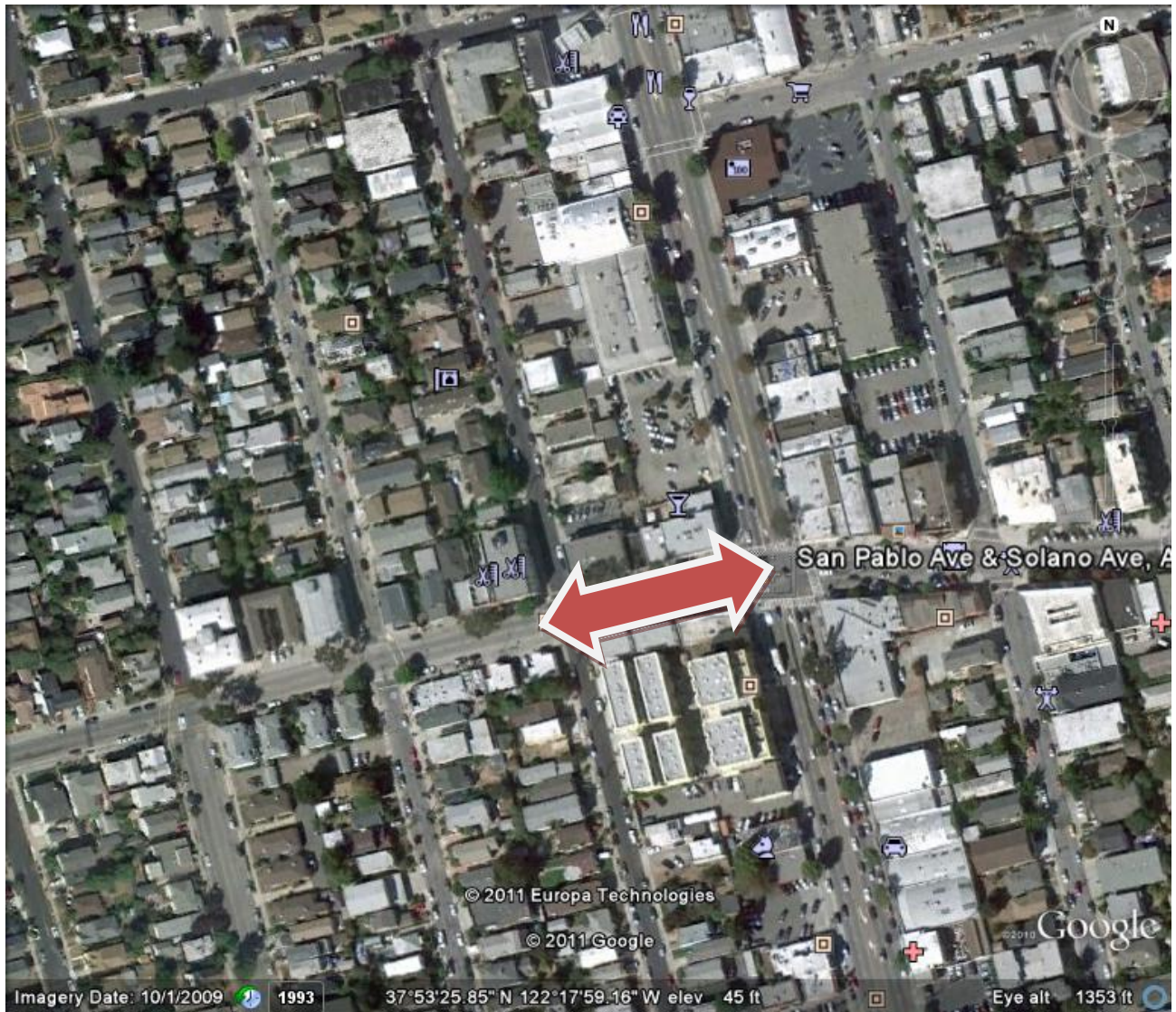


Figure 1. Site Location

Community Comments

To date, the City has received many 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 9)

Merchant Complaints/Concerns

All previously received merchant letters and correspondence concerning the market are attached to this report (See Attachment 10). The merchants expressed concern about visibility, noise, and a lack of available parking during market hours.

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. Alternative Location Analysis
5. Alternative Site Plan 1
6. Alternative Site Plan 2
7. Letter received from the Ecology Center March 21, 2012
8. Letter received March 21, 2012 from the owner of Albany Sauna & Hot Tubs
9. Merchant Correspondence
10. Citizen Correspondence

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 16, 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)

<i>Required Finding</i>	<i>Explanation</i>
<p>1. <i>Necessity, Desirability, Compatibility.</i> <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. <i>Adverse Impacts.</i> <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"> a. <i>The nature of the proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;</i> 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> c. <i>The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;</i> d. <i>Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;</i> 	<ul style="list-style-type: none"> a. No permanent physical changes to the site are required. b. Traffic and parking will be impacted for a portion of one day a week. c. No noxious or offensive emission such as noise, glare or dust will occur from the granting of conditional use permit. d. It is an existing site without need for additional landscaping, service areas and lighting.
<p>3. <i>Consistency with Zoning Ordinance, General Plan and Specific Plan.</i> <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, 2012, an application for renewal of the approval is filed with the Community Development Department.

21. Truck parking shall be minimized on the north side of Solano Ave. to increase visibility of existing businesses. The site plan showing a partial elimination of truck parking on the north side shall serve as the new market configuration.
22. Live entertainment shall be located at San Pablo Ave. & Solano Ave. The entertainment shall be quiet and non-amplified.
23. The market shall be monitored for compliance with the City's Noise Ordinance.
24. ADA accessible parking shall be provided on the north side of Solano Ave., either at the corner of San Pablo Ave & Solano Ave. or Solano Ave. & Adams St.
25. Banner signage shall be displayed at San Pablo Ave. & Solano Ave.

ATTACHMENT 4

ALTERNATIVE LOCATIONS ANALYSIS

Staff 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