

Michael Notaro, Esq.



Notaro Law Group
2219 Santa Clara Avenue
Alameda, Ca. 94501

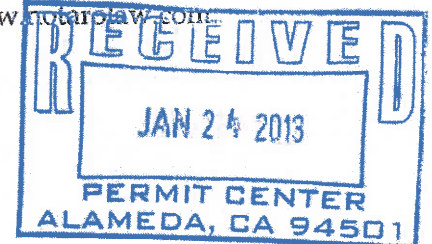
(510) 522-2666 Tel

(510) 522-2602 Fax

www.notarolaw.com

January 22, 2013

Mr Andrew Thomas
Planning Services Manager
City of Alameda Planning Department
2263 Santa Clara Avenue, Room 190
Alameda, Ca. 94501



Via First Class Mail and E-Mail to athomas@ci.alameda.ca.us and egarcia@ci.alameda.ca.us

RE: Request for Hearing to Revoke Conditional Use Permit pursuant to AMC § 5-16.7
Big O Tires Store; 1200 Park Street, Alameda, California, California

Dear Mr. Thomas:

My law firm has been engaged by Mr. Arthur Thoms, owner of the Washboard Laundromat at 1198 Park Street, Alameda, California. Mr. Thoms - and others Park Street businesses - have been harmed by the ongoing use condition violations by the Big-O Tires Store ("Big O") located at 1200 Park Street in Alameda, Ca.

The City of Alameda ("City") reviewed the Big O conditional use application in 1989. Numerous neighbors and local businesses opposed the Big O usage at 1200 Park Street due to inadequate street parking in the area. The intent of the community commercial (CC) zoning district is to provide general retail and service uses with an emphasis on pedestrian friendly establishments. If shoppers have no place to park, it defeats the purpose of the business district.

These parking concerns were considered and incorporated into the final conditional use permit approval for Big O. The Big O use permit at 1200 Park Street, Alameda, Ca. was approved in 1989 with eight (8) express conditions outlined below:

1. All work to be conducted in enclosed structures.
2. Within 60 days of the date of approval of the Use Permit, applicant shall find an alternative long-term parking site for customer cars, as well as for employees. Leasing arrangements made by the applicant shall be reviewed and approved by the Planning Director.

3. Applicant's business vehicle(s) shall be stored on the site, not on adjacent residential streets.
4. The site plan, indicating proposed and existing landscaping, treatment of garbage area and area for old and used tires, the number and placement of tire displays during business hours, and signage shall be subject to Design Review, except no additional public notice to adjacent property is necessary. Applicant shall submit pertinent materials no later than February 17, 1989.
5. Applicant shall install a sign directing customers to turn right toward Park Street from San Jose Avenue exit to alleviate traffic impacts on surrounding residential areas.
6. No recapping or retreading of tires on the premises.
7. No testing of vehicles in residential areas.
8. The Use Permit shall be reviewed by Planning Staff one year from the date of final approval to determine compliance to conditions of approval.

We have documented at least three violations of the Big O conditional use permit:

- **Failure to Secure Offsite Parking Site(s).** Big O has not secured offsite parking for employees, staff and customers. Overflow parking at peak periods saturates metered parking on Park Street and San Jose Avenue, leaving a lack of metered parking for other businesses on Park Street.
- **Work Not Performed within Enclosed Structures.** Big O employees regularly elevate customer vehicles and perform tire repair, replacement and brake work in the parking lot which is hazardous, unsightly and in violation of their use permit.
- **Failure to Install Directional Sign.** Big O has even failed to comply with the most rudimentary requirements – to install a directional sign directing customers to turn right toward Park Street from the San Jose Avenue lot exit. As a result, exiting customers needlessly aggravate traffic impacts within the surrounding residential areas.

Attached to the 1989 Big O use permit application was a property diagram which delineated 14 outside parking spaces on their paved lot. However, Big O has reconfigured their lot to allow parking with up to 20 cars at peak periods. There is now double parking (5 spots + 5 spots) for a total of 10 spaces on the western side of the lot. Vehicles are parallel parked along the north building and often parked to block the Park street entrance to the lot; vehicles which encroach on the sidewalk force pedestrians to walk on the street. At any given time, there are up to 8 additional vehicles being worked on inside the buildings which are shuffled outside after work is complete. The threat of collision is imminent. Inadequate onsite parking poses a serious fire

access and safety threat to employees, customers and unknowing pedestrians traversing the sidewalks.

The Big O use permit was improperly granted based on false representations of the applicant. Big O severely underestimated their own parking requirements; however, the planning board approved the Big O usage (despite vigorous community opposition) by acknowledging inadequate onsite parking and believing the assurances that Big O would locate suitable offsite parking lot in the short term. It is now clear that Big O had **both inadequate onsite parking and inadequate offsite parking** and no intention of securing offsite parking in the short term or anytime.

Big O employees, staff and customer vehicles continue to regularly park in metered areas on Park Street and San Jose Avenue to the detriment of adjacent businesses. The parking problem has accelerated as the Big O business has grown and is greatest during peak periods on Saturday and Thursday and Friday (when street parking is ticketed on Park Avenue).

My client, Art Thoms, has contacted police dispatch on numerous occasions regarding Big O customer cars parked at metered spots on Park Street and San Jose Avenue. He has met with Sargent Simmons as well as the owner of Big O Tires operator, Gary Voss, on numerous occasions. He has written over 20 notes to Voss and police officials to try and address the problem. I have reviewed an exhaustive file documenting scores of specific instances of parking violations by Big O employees and staff.

The City has a fiduciary duty to enforce use permit conditions, penalize safety/code infractions and insure fair access to metered parking on Park Street. The City was required to annually follow up on the Big O use permit conditions (pursuant to item #8). A conditional use permit is a privilege, not a right. Deviant behavior which violates use conditions and endangers public safety justifies revocation of the use permit.

Businesses on Park Street continue to suffer as their customers cannot find parking and they go elsewhere. My client has observed selective enforcement of meter maids who choose to "warn" Big O employee and customer cars before ticketing. Regretfully, the failure of City officials to address ongoing use permit violations combined with lax meter enforcement have emboldened lawless behavior from Big O employees. Art Thoms has been confronted and threatened on several occasions by Big O employees where the police have been called.

City negligence has exacerbated problems that should have been dealt with long ago. We now respectfully ask that the planning department calendar a long overdue public hearing to revoke the Big O use permit for failure to abide by stated conditions. AMC § 30-21.3 provides that in the event of violation of the terms of a conditional use permit, the City Planning Board may, after notice and hearing, revoke any use permit. We request that you notice and schedule a hearing for revocation of the Big-O Tires/Garfinkle use permit within 30 days of this letter. We believe a suspension or reprimand is inadequate due to the pervasive scope of the violations and the longstanding refusal to comply with use condition requirements.

This letter provides a formal demand for a noticed hearing pursuant to Alameda Municipal Code § 5-16.7 within thirty (30) days of this letter.

Please feel free to call my law office at 510-522-2666 with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael R. Notaro", with a long, sweeping horizontal line extending to the right.

Cc:

Arthur and Darlene Thoms

10/28/13

PG 1 OF 2

CITY OF ALAMEDA

ANDREW THOMAS

* ALLEN LAI

WOULD LIKE TO DOCUMENT THE CONTINUING
VIOLATIONS OF USE PERMIT OF BIG O TIRES
1200 PARK ST.

EMPLOYEES PARKED AT METERS

THURSDAY 10/24/13 WHITE MAXIM

8AM - 1PM WHITE BUICK CASPER 995
SAN JOSE AVE.

FRIDAY 10/25/13 OWNER GARY VOSS

CHEVY PICK-UP CA 7513143

8AM - 2PM PARK ST METER.

(PHOTO'S ARE AVAILABLE IF SEND ME YOUR EMAIL
ADDRESS)

COMING OUT OF BIG O TIRES PARKING LOT
ONTO SAN JOSE AVE CONTINUED "RIGHT
TURN ONLY" VIOLATION BY OWNER GARY
VOSS AND EMPLOYEES DRIVING CUSTOMER
CARS. SEVERAL NEAR ACCIDENTS.

ART THOMAS

925-285-8954

CC- WENDEL ROSEN

MICHAEL NOTARO

GARY VOSS

9/23/13

p620f2

GARY VOSS OWNER BIG O TIRE

1200 PARK ST
ALAMEDA, CA 94501

NOT ACCEPTABLE :

2 EMPLOYEE CARS PARKED AT
METERS FRI 9/20/13 7:30 AM - 1 PM +

SAN JOSE AVE

WHITE PICK-UP

WHITE MAXIM

SAT 9/21/13 8 AM - 2 PM +

YOUR TRUCK SAN JOSE AVE METER

WOULD ALSO BE NICE IF YOU AND
YOUR EMPLOYEES OBEYED THE RIGHT
TURN ONLY SIGN THAT TOOK OVER A
DECADE TO REPLACE, HAVE OBSERVED
SEVERAL TIMES → NEAR ACCIDENTS.

OWNER

WASHINGTON

LAUNDRY MAT

1128 PARK ST
ALAMEDA

ART THOMAS

STILL DOCUMENTATING w/ PHOTO'S & LETTERS.

CC WENDEL ROSEN

MICHAEL NOTARO

KAMIGEN LIVERMORE CITY OF ALAMEDA

Michael Notaro, Esq.



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December 5, 2013

Ms. Anagha Dandekar Clifford, Esq.
Wendel, Rosen, Black and Dean, LLP
1111 Broadway, 24th Floor
Oakland, Ca. 94607

Via E-Mail to ADClifford@wendel.com

RE: Big O Tires Conditional Use Permit Compliance
1200 Park Street, Alameda, California

Dear Ms. Clifford:

I am in receipt of your letter dated November 26, 2013, which addresses recent complaints against Big O Tires for failure to comply with their conditional use permit. We acknowledge that Big O has made improvements in their compliance behavior during the last six months, resulting in fewer instances of employees parking personal and customer vehicles in publicly metered spots. In addition, the valet service has helped reduce overflow metered parking on Saturdays.

However, additional changes are necessary for Big O to come into compliance with their 1989 Conditional Use Permit ("CUP") requirements. Mr. Thoms has documented regular instances of both Gary Voss and his employees continuing to park personal and customer vehicles in publically metered parking spots on Park Street and San Jose Avenue. Contrary to your letter, this is more than an isolated one-off exception; the violations continue on a regular basis, with the worst days being Thursday, Friday and Saturday. We hope that with additional effort Big O compliance can be improved.

You are correct that Big O has replaced the "right turn only sign" sign. However, Gary Voss and his employees regularly ignore the sign and turn left out of his parking lot onto San Jose Avenue which is a safety hazard. While we realize the inconvenience of obeying the sign, we hope your client will consider the danger to pedestrians and vehicles. Again, this is a matter that can be improved with additional compliance effort.

All communications regarding this matter constitute privileged settlement communications that are protected by California Evidence Code § 1152 and similar federal laws. My client expressly reserves all rights, whether in law or equity.

Thank you for your prompt attention to these matters. Please feel free to call my law office at 510-522-2666 with any questions or concerns.

Sincerely,

Michael R. Notaro

Cc:

Andrew Thomas

Kathleen Livermore

Arthur and Darlene Thoms

John Russo, City Manager

From: "Michael Notaro" <michael@notarolaw.com>
To: <athomas@ci.alameda.ca.us>
CC: <klivernmore@ci.alameda.ca.us>, "Anagha Dandekar Clifford" <adclifford@wendel.com>
Date: 12/5/2013 10:57 AM
Subject: RE: BIG O TIRES, 1200 PARK STREET CONDITIONAL USE PERMIT
Attachments: Big O Tires CUP Dec 5 2013 Letter.pdf

Michael R. Notaro, Esq.

Notaro Law Group

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Alameda, Ca. 94501

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Website: <<http://www.notarolaw.com/>> www.notarolaw.com

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From: Art Thoms <arthoms@ymail.com>
To: Michael Notaro <michael@notarolaw.com>
CC: Farimah Faiz <FFaiz@ci.alameda.ca.us>, Anagha Dandekar Clifford <adclifford@wendel.com>, Andrew THOMAS <athomas@ci.alameda.ca.us>, Kathleen Livermore <KLivermore@ci.alameda.ca.us>, Lori Taylor <LTaylor@ci.alameda.ca.us>
Date: 12/18/2013 11:26 AM
Subject: Big O tire use permit violation
Attachments: IMG_1360.MOV; Part.002

12/12/13 example of a big O tire employee not obeying right hand turn sign on San Jose Ave., Happens regularly. Use permit Violation. safety hazard

From: "Michael Notaro" <michael@notarolaw.com>
To: "Anagha Dandekar Clifford" <adclifford@wendel.com>
CC: "Andrew THOMAS" <athomas@ci.alameda.ca.us>, "Kathleen Livermore" <KLivermore@ci.alameda.ca.us>, "Farimah Faiz" <FFaiz@ci.alameda.ca.us>, "Lori Taylor" <LTaylor@ci.alameda.ca.us>, <karabo@igc.org>, "Patricia E. Curtin" <PCurtin@wendel.com>
Date: 1/2/2014 12:48 PM
Subject: RE: Additional Big-O Tire CUP Parking Violations
Attachments: photo.jpg

Michael R. Notaro, Esq.

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Alameda, Ca. 94501

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From: Anagha Dandekar Clifford [mailto:adclifford@wendel.com]
Sent: Sunday, December 29, 2013 3:18 PM
To: 'Michael Notaro'
Cc: 'Andrew THOMAS'; 'Kathleen Livermore'; 'Farimah Faiz'; 'Lori Taylor'; karabo@igc.org; Patricia E. Curtin
Subject: RE: Additional Big-O Tire CUP Parking Violations

Mr. Notaro:

In response to the below email and that of Dec. 5th, we appreciate your acknowledgement and awareness of the improvements made by Big-O towards its compliance with the CUP. While challenging, Big O makes every effort to comply with and maintain the spirit and purpose behind the CUP. As you have documented there may be times in which cars are parked at the meters. In the past weeks this may have been exacerbated by extra demand and crowds during the holidays. For any inconvenience this has caused your client, we do apologize. We are making every effort to be good neighbors. Thank you. Please do contact me if you have any questions.

Anagha

From: Michael Notaro [mailto:michael@notarolaw.com]
Sent: Thursday, December 26, 2013 2:45 PM
To: Anagha Dandekar Clifford
Cc: 'Andrew THOMAS'; 'Kathleen Livermore'; 'Farimah Faiz'; 'Lori Taylor';

karabo@jgc.org; Patricia E. Curtin
Subject: RE: Additional Big-O Tire CUP Parking Violations

Michael R. Notaro, Esq.

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2219 Santa Clara Avenue

Alameda, Ca. 94501

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Thank you for considering the environment before printing this e-mail.

From: "Michael Notaro" <michael@notarolaw.com>
To: "Anagha Dandekar Clifford" <adclifford@wendel.com>
CC: "Andrew THOMAS" <athomas@ci.alameda.ca.us>, "Kathleen Livermore" <KLivermore@ci.alameda.ca.us>, "Farimah Faiz" <FFaiz@ci.alameda.ca.us>, "Lori Taylor" <LTaylor@ci.alameda.ca.us>, <karabo@igc.org>, "Patricia E. Curtin" <PCurtin@wendel.com>
Date: 1/21/2014 9:19 AM
Subject: RE: Additional Pictures of Big-O Tire CUP Parking Violations
Attachments: Photo 1.JPG; photo.JPG

Michael R. Notaro, Esq.

Notaro Law Group

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Anagha

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Sent: Thursday, December 26, 2013 2:45 PM

To: Anagha Dandekar Clifford
Cc: 'Andrew THOMAS'; 'Kathleen Livermore'; 'Farimah Faiz'; 'Lori Taylor';
karabo@igc.org; Patricia E. Curtin
Subject: RE: Additional Big-O Tire CUP Parking Violations

Michael R. Notaro, Esq.

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Thank you for considering the environment before printing this e-mail.

ANAGHA DANDEKAR CLIFFORD.

PG 1 OF 2

ANDREW THOMAS

KATHLEEN LIVERMORE

FARIMAH FAIZ

LORI TAYLOR

GARY VOSS

LAURA AJELLO

JAY GARFINKLE.

NATANO LAW GROUP.

FROM ART THOMS

OWNER WASHBOARD

LAUNDRUMAT

1198 PARK ST

ALAMEDA, CA

94501

I RECENTLY SENT A LETTER THAT THINGS AT BIG O TIRE CONCERNING USE PERMIT VIOLATIONS HAD GOTTEN BETTER. WELL LAST THURSDAY + FRIDAY WAS A STEP BACKWARD

FRIDAY 1/24/14 5 EMPLOYEES WERE PARKED AT METERS 7:30 AM - NOON +

GREY 4X4 PICK UP CA 13721A1

BLACK LEXUS CA 5KYD693

BLACK GRAND PRIX CA 2A2898

PARK ST
BIG O TIRE
SIDE OF
STREET

WHITE BUICK CA 5VER995

RED CONVERTABLE

SAN JOSE AVE

THURSDAY 1/23/14 7:30 AM - NOON +

WHITE BUICK CA 5VER995 SAN JOSE AVE METER

GOLD LEXUS CA 4YW088

BLACK GRAND PRIX CA 2A2898

PARK ST METER.

THIS WAS JUST : LAST THURS AND FRIDAY.

PG 2 OF 2

GARY VOSS OWNER OF BIG O TIRE
CHOOSES TO IGNORE THE VIOLATIONS OF
HIS EMPLOYEES. IF HE WAS REALLY SERIOUS
ABOUT COMPLYING WITH USE PERMIT CONDITIONS.
WOULD HIS EMPLOYEES CONTINUE TO PARK AT
THE METERS? NO. HE PARKS AT THE METERS
HIMSELF!

SIMPLE SOLUTION IF EMPLOYEES
CAN'T FIND A PARKING SPOT BECAUSE OF
STREET CLEANING ON PARK AVE: WHEN EMPLOYEE
ARRIVE AT 7:-7:30 AM THERE ARE NO CARS IN
THE LOT. PARK IN THE LOT UNTIL THE
STREET CLEANING RESTRICTIONS END, THEN
MOVE THE CARS. GARY HAS DONE THAT
ON OCCASION WITH HIS PICK UP TRUCK.

I HONESTLY DON'T THINK HE
WOULD DO THAT BECAUSE IT MIGHT DISRUPT OR
AFFECT HIS BUSINESS. THAT IS HIS FOCUS,
NOT CONSIDERATION OF THE NEIGHBORING
BUSINESSES OR COMPLYING WITH USE PERMIT
CONDITIONS.

I HAVE SPENT 5 YEARS,
\$5,000 ON ATTORNEY FEES AND COUNTLESS HOURS
ON THIS AS ONE SMALL BUSINESS OWNER.
WOULD APPRECIATE YOUR HELP

R. T. Thomas

Michael Notaro, Esq.



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March 25, 2015

Mr Andrew Thomas
Planning Services Manager
City of Alameda Planning Department
2263 Santa Clara Avenue, Room 190
Alameda, Ca. 94501

Via First Class Mail and E-Mail to athomas@ci.alameda.ca.us and egarcia@ci.alameda.ca.us

RE: Big-O Tires Conditional Use Permit Violations
1200 Park Street, Alameda, California

Dear Mr. Thomas:

In 2013, I contacted your office regarding continuing use permit violations by Big -O Tires, located at 1200 Park Street in Alameda, Ca. We were lead to believe that Big-O was acting proactively to minimize vehicle congestion by securing off- site parking.

Regretfully, the situation has recently gone from bad to worse. My client, Mr. Arthur Thoms of the Washboard Laundromat at 1198 Park Street, Alameda, has recently observed Big-O service vehicles parked in metered spots (See attached pictures), dangerous vehicle congestion in the Big-O lot, threatening public safety and fire access capacity, and Big-O employees continuing to turn left out of their lot onto San Jose Ave.

These important safety risks have never been addressed or rectified. We believe Big-O Tires must either operate safely within their CUP or find another place to do business. Will it require a serious injury or worse for the City of Alameda to take notice?

The original Big O use permit was improperly granted based on false representations of the applicant. Big O severely underestimated their own parking requirements; however, the planning board approved the Big O usage (despite vigorous community opposition) by acknowledging inadequate onsite parking and believing the assurances that Big O would locate suitable offsite parking lot. Big O has both inadequate onsite parking and inadequate offsite parking, and it is clear by their actions that they have no intent to follow-through on the securing of offsite parking.

The City has a fiduciary duty to insure public safety, yet there has not even been a minimal effort to enforce use permit conditions, penalize safety/code infractions and insure fair access to metered parking on Park Street. A conditional use permit is a privilege, not a right. The City was required to annually follow up on the Big O use permit conditions which they never did. City negligence has exacerbated problems that should have been dealt with years ago.

Please provide a response within 30 days of this letter and inform me of what the City of Alameda will do to insure Big-O Tires comes into compliance with their use permit conditions. Thank you for your prompt attention to this matter.

Please feel free to call my law office at 510-522-2666 with any questions or concerns.

Sincerely,

Michael R. Notaro

Cc:
Arthur and Darlene Thoms
Alameda City Manager

Attachment(s):
Digital Photographs

