

# ITEM 7-C

## CITY OF ALAMEDA

### Memorandum

To: Honorable President and  
Members of the Planning Board

From: Andrew Thomas  
City Planner

Date: July 13, 2015

Re: **PLN14-0134 – 1200 Park Street – Applicant: Gary Voss for Big-O Tires.** The applicant requests an amendment to an existing Use Permit (UP88-36) for 1200 Park Street. This project is determined to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15301, Existing Facilities.

### **BACKGROUND**

On January 22, 2013, attorney Michael Notaro, on behalf of his client Art Thoms (owner of Washboard V Laundromat at 1198 Park Street), sent a letter of complaint regarding the operations at Big O Tires at 1200 Park Street. The alleged violations were related to three of the 1988 Use Permit (UP88-36) conditions governing the use of the property by Big O Tires. Specifically, Mr. Thoms raised concerns about the lack of a required sign prohibiting left turns from Big O onto San Jose (condition #5), work being performed on cars in the Big O parking lot (condition #1) and Big O's failure to secure an off-site parking lot (condition #2).

City of Alameda staff contacted Big O to discuss these alleged violations of Use Permit 88-36. On April 29, 2013, Anagha Dandekar Clifford, Wendel Rosen attorney for Big O, sent a letter to Michael Notaro addressing these issues. The "No Left Turn" sign was reinstalled, a description of work performed within the structure versus occasional, quick, minor repair in the parking lot was provided, and a two-month survey of availability of off-site parking lots was detailed. Because the off-site parking lot survey did not yield any results, Ms. Clifford described the new trial valet service Big-O instituted every Saturday to minimize Big-O's impact on street parking within the business district. Big O implemented the valet service in May of 2013.

In the fall of 2013, City staff received several faxes from Art Thoms and a letter from Mr. Notaro detailing continued violations described in the January 22, 2013 letter. On November 26, 2013, Ms. Clifford stated the October 28, 2013 violations were the exception and not the rule. She stated the Saturday valet service had been extended to a daily service as an alternative to the off-street parking requirement. On December 5, 2013, Mr. Notaro copied city staff on a letter to Ms. Clifford acknowledging certain

improved Big O behavior as well as lapses in ideal behavior. Mr. Notaro encouraged continued and more thorough compliance,

On March 12, 2014, Big O submitted an application to amend its 1988 use permit, specifically to remove condition #2 related to an off-street parking lot, and to revise condition #1 related to work outside the structure. This application was suspended in the summer when the nearby Party Warehouse property was put on the market. Big O explained it wanted to pursue the purchase of the Party Warehouse property to gain compliance with the off-street parking lot condition. Over the course of the summer and fall, these negotiations to purchase the property were not completed.

Meanwhile, after the December 5, 2013 letter from Mr. Notaro, several faxes from Mr. Thoms were received in January of 2014. Following those faxes, there were no further complaints until March 25, 2015. In the March 2015 correspondence, Mr. Notaro noted the continued violation of no left turns onto San Jose Avenue and Big O client and employee parking in metered spaces.

In March of 2015, City staff contacted Ms. Clifford again to discuss the renewed complaints. Ms. Clifford explained the negotiations to purchase the Party Warehouse site had indeed failed, and she indicated Big O's desire to continue with the Use Permit amendment.

The purpose of the July 13, 2015 Planning Board meeting is to review compliance with the existing use permit, and consider potential amendments the use permit.

## **ANALYSIS**

The Park Street commercial district is one of the City of Alameda's most successful and oldest commercial districts. The Park Street District provides a wide range of products, services, and goods for Alameda residents and visitors. The success of the Park Street District may be attributed to many factors, but part of its success, may be attributed to its historic commercial buildings that provide an attractive, pedestrian-oriented environment that is not interrupted by individual off-street parking lots for each business.

Given the historic, pedestrian-oriented pattern of development on Park Street, most customers who drive to Park Street must rely on public parking provided by the City of Alameda on the public streets or in City parking lots. The supply of public parking is provided by the City of Alameda as a resource to be shared by all businesses on Park Street for the convenience of their customers. If the supply of public on-street parking becomes compromised, then all businesses on Park Street may be harmed, which in turn will have a detrimental impact on the vitality of the Park Street commercial district and the Alameda community as a whole.

Given the importance of public, shared parking to the vitality of the Park Street District, it is important that:

- Each business do its part to maintain the availability of the public parking supply for customers. Specifically, local businesses should be preserving public on-street parking for customers. They should not be taking up that parking for their employees or for the operation of their businesses.
- Each business operate its business within the confines of the private property on which the business is located. Businesses that need more land to operate their businesses should not be expanding their business operations onto public land that the City of Alameda provides for shared public parking for the benefit of every business in the District.

Since January 2013, staff has been working with Big O and Washboard V Laundromat to seek compliance with Use Permit 88-36. The 1988 Use Permit contains 8 conditions. There are three conditions that are in dispute:

***Condition #1: All work to be conducted within enclosed structures.***

Big O notes that in order to expedite cars off the lot, there are some customers that merely require a quick repair or a discrete task such as a flat tire change or repaired tire installation. These tasks typically take approximately 10-20 minutes. Therefore, Big O has requested that this condition be modified to allow for minor repair outside the structure provided that all safety precautions are taken and that the work is done in an expeditious manner.

Staff has made periodic site visits to independently confirm complaints against Big O. During these visits, staff has been unable to confirm the various activities periodically described by Mr. Thoms. Staff acknowledges the instances that Mr. Thoms has taken pictures of work performed in the parking lot, yet is unable to determine the frequency or total duration of the work.

Although Big O has not been conducting all of its work within enclosed structures, staff believes that the minor repairs conducted by Big O on its own property is not a significant impact to the public health, safety or welfare. For that reason staff does not believe that such a restriction is necessary.

The applicant has suggested that the condition could be modified as follows:

*Condition #1: All work to be conducted within enclosed structures. An exception to this condition is allowed if it entails minor repair work provided that all safety precautions are taken and work on such cars shall not exceed 30 minutes.*

Staff is concerned that the proposed amendment is almost impossible for the City to monitor or enforce. Given the difficult history between the two adjacent businesses, staff does not recommend that the Planning Board create a new condition that will

become the focus of future complaints and disputes over whether a particular job on a particular car took less or more than 30 minutes.

Staff would recommend that the condition be deleted in its entirety. Alternatively, if the Planning Board believes that working on cars in the parking lot outside is negative impact on the public welfare, then staff would recommend that the Planning Board retain the condition in its existing form without adding the additional text about 30 minute jobs.

***Condition #2. Within 60 days of the date of approval of this 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.***

Immediately after the initial January 22, 2013 complaint was filed by Mr. Notaro, planning staff began discussing the off-site parking problem with Big O with the purpose of solving the issue.

On April 29, 2013, Big O's attorney, Ms. Clifford, submitted a report detailing the search for an off-street parking lot. The search did not yield a parking lot to purchase. Big O instead put forward a plan for Saturday valet service. This service was later extended to include peak times during weekdays along with Saturday service.

Big O indicates that problems occur at peak periods, especially with special promotions. They state that they periodically have the need for approximately 5 extra parking spaces. They are requesting permission to legally park cars in metered spaces on the Park Street frontage of their site, north of San Jose Street.

At that time and throughout the last couple of years, staff has made it very clear to Big O that use of the public parking supply for the parking of cars with the "service number hats" waiting for service, or for customer pick up, was unacceptable. Staff believes that Big O must confine its business operations to its private property. Staff cannot support Big O's use of the public parking spaces as an overflow parking lot so that it can service more cars at the expense of the other businesses on Park Street.

For the reasons described above, staff cannot support any proposal that essentially allows a business to take over public parking for the expansion of their business to the detriment of the other businesses or the residents on San Jose Street.

Staff recommends a replacement condition to address the off-street parking lot:

~~*Condition #2. Within 60 days of the date of approval of this 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.*~~ *The use of public parking spaces for the storage of cars waiting for*

service or for customer pick up is a violation of this use permit. Receipt of three verifiable violations of this condition shall be grounds for City Staff to schedule a public hearing before the Planning Board to consider revocation or modification of this use permit.

**Condition #5. Applicant shall install a sign directing customers to turn right toward Park Street from the San Jose Avenue exit to alleviate traffic impacts on surrounding residential areas.**

Staff verified that the “No Left Turn” sign was reinstalled on the driveway exiting onto San Jose Avenue. At a recent interdepartmental meeting, Public Works traffic engineering staff stated there was no public safety requirement for this condition, but that it was probably imposed in 1988 as a courtesy to the adjacent residential neighborhood to the southeast.

Neither the City nor Big O can effectively require that customers obey the sign.

The Planning Board may retain the condition, provided it is understood that providing the sign is deemed compliance, and that the condition does not mean or imply that the City will be monitoring Big O customers and employees to ensure that they are obeying the sign.

### Conclusion

To maintain the success of the Park Street commercial district, it is essential the City and the businesses on Park Street work together to ensure that all businesses are able to be successful. When one business takes advantage of the shared parking supply to its financial benefit at the expense of the other businesses, the vitality of the entire District is threatened. The Use Permit process is a tool to ensure that each business is operated in a manner that protects and preserves the public health, safety and general welfare. When one business operates in a manner that compromises the opportunities for other businesses to be successful, that business is compromising the general welfare of the entire community.

### **PUBLIC NOTICE AND COMMENTS**

Property owners and residents within 300 feet of the project's boundaries were notified of the public hearing and given the opportunity to review and comment on the proposal. As of the writing of this report, staff has received approximately 500 copies of a form letter in support of Big O's request. (One of the 500 letters is attached as Exhibit 6)

### **ENVIRONMENTAL REVIEW**

This project is determined to be Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines Section 15301, Existing Facilities.

### **RECOMMENDATION**

Item 7-C  
July 13, 2015  
Planning Board Meeting

Approve the recommended resolution amending Use Permit 88-36.

Respectfully Submitted,

Andrew Thomas  
City Planner

Exhibits:

1. Resolution Amending Use Permit 88-36.
2. Applicant's supporting Statement dated June 17, 2015
3. Material from Art Thoms and Michael Notaro
4. Additional material from Applicant's attorney, Ahagha Dandekar Clifford of Wendell Rosen
5. Letter from Andrew Thomas to Art Thoms, dated January 29, 2014
6. Letters of Support (approximately 500 received and on-file)