

# ITEM 9-B

## PLANNING BOARD STAFF REPORT

**DATE:** November 9, 2009

**TO:** Honorable President and Members of the  
Planning Board

**FROM:** Andrew Thomas, Planning Services Manager  
510.747.6881  
athomas@ci.alameda.ca.us

### PROPERTY

**ADDRESS:** Alameda Towne Centre  
2217 South Shore Center – Trader Joes  
325 Park – Big 5  
2310 South Shore Center – Petco  
2227 South Shore Center – Safeway  
2300 Otis Drive –Walgreens  
2249 South Shore - Panera  
2201 South Shore Center - Kohls

### APPLICATIONS:

**PLN09-0054 Consideration of a Use Permit to Allow additional Truck Delivery Hours at the Trader Joes Store.** The Trader Joes store is requesting use permit approval to allow truck deliveries between the hours of 6:00 AM and 11:00 PM.

**PLN09-0073 Consideration of a Use Permit to Allow additional Truck Delivery Hours at the Big 5 Sporting Goods Store.** The Big 5 Sporting Goods store is requesting use permit approval to allow truck deliveries between the hours of 6:00 AM and 11:00 PM.

**PLN09-0259 Consideration of a Use Permit to Allow additional Truck Delivery Hours at the Petco Pet Supply Store.** The Petco Pet Supply store is requesting use permit approval to allow truck deliveries between the hours of 6:00 AM and 11:00 PM.

**PLN09-0349 Consideration of a Use Permit to Allow additional Truck Delivery Hours at the Safeway Store.** The Safeway Store is requesting use permit approval to allow truck deliveries between the hours of 6:00 AM and 11:00 PM.

**PLN09-0348 Consideration of a Use Permit to Allow additional Truck Delivery Hours at the Walgreens Store.** The Walgreens store is requesting use permit approval to allow truck deliveries between the hours of 6:00 AM and 11:00 PM.

**PLN09-0353 Consideration of a Use Permit to Allow additional Truck Delivery Hours at the Panera Bread Store.** The Panera Bread store is requesting use permit approval to allow truck deliveries between the hours of 6:00 AM and 11:00 PM.

**PLN09-0330 Consideration of a Use Permit to Allow additional hours of operation at Kohls Department Store.** The applicant, Kohls, requests use permit approval to allow additional store hours of operation on certain mornings before 7:00 am and on certain weekend and holiday nights until 12:00 midnight.

**Consideration of proposed changes to City Truck Routes.** The applicant, the City of Alameda, is requesting that the Planning Board consider initiating a General Plan and Alameda Municipal Code Amendment by asking staff to evaluate and develop recommendations for potential changes to the City Truck Routes to reduce evening truck activity and noise along truck routes.

**ZONING DISTRICT:** C-2/PD Central Business District /Planned Development

**GENERAL PLAN:** Community Commercial

**EXECUTIVE SUMMARY:**

The Alameda Towne Centre businesses, the residents of the adjacent neighborhoods, and city staff have been considering how best to protect the neighborhoods adjacent to truck routes from truck noise and provide for the supply, delivery, and retailing needs of the business community. Large trucks that travel through the City on the designated truck routes adversely affect Alameda residents living along the City's truck routes and in residential buildings immediately adjacent to the shopping center. Although most businesses are able to restrict delivery hours to the normal business hours of 7:00 am to 10:00 pm, Trader Joes, Big 5, Panera Bakery, Safeway, Walgreens, and Petco have each applied for use permits to allow for additional delivery hours to accommodate their business's needs.

Kohl's at Alameda Towne Centre is requesting approval for extended hours of operation for certain days to accommodate their special sales days throughout the year. This request does not include a request for extended delivery hours. To minimize conflicts between residential areas and business operations, businesses in Alameda cannot stay open for business past 10 pm or open before 7:00 am without use permit approval. Currently, Safeway, Walgreens, and all restaurants at Alameda Towne Center have approval to be open for business after 10:00 pm. These permits allow the businesses to remain open for customers but do not include approval for truck deliveries.

Staff is recommending that the Planning Board:

- 1) Delivery Hours: Approve use permits to allow extended hours for truck deliveries for Big 5, Trader Joes, Safeway, Walgreens and Petco, but limit those hours to the hours of 6:00 AM and 11:00 PM.
- 2) Kohls Hours of Operation: Approve a use permit allowing the Kohl's store to stay open for business:
  - Until 11:00 PM for up to 85 days per year,
  - Until midnight for up to 36 days per year between November 1 and January 1 each year,
  - Until midnight for one day a year for a "sales tax holiday" sale between January 1 and November 1.
  - Before 7:00 AM on two days a year: the Friday after Thanksgiving (4:00 AM opening) and the Saturday before Christmas (5:00 AM)
- 3) Truck Routes: Consider initiation of further evaluation of proposed changes to the City of Alameda Truck Route Map.

**BACKGROUND:**

In September of 2008, the Planning Board approved a staff recommendation to allow any business at Alameda Towne Centre that is more than 200 feet from a residence to accept deliveries 24 hours a day and allow all businesses at Alameda Towne Centre to remain open for business until 12 midnight.

On October 7, 2008, the City Council held a hearing regarding the late night deliveries and late night hours of operation for businesses at Alameda Towne Centre. The City Council:

- Rejected staff's proposal to allow all businesses at Alameda Towne Centre to remain open until and 12:00 midnight.
- Rejected staff's proposal to allow all businesses over 200 feet from residential areas to accept truck deliveries 24 hours a day.
- Required that any business requesting to stay open for business beyond 10:00 PM to apply for a use permit individually.
- Required that any business requesting truck deliveries after 10:00 PM to apply for a use permit individually.
- Allowed all restaurants at the Centre to stay open until 12:00 midnight.
- Allowed Kohl's to stay open for business between 6 am and 12:00 midnight during the holiday season starting around Thanksgiving and ending after Christmas.<sup>1</sup>

When discussing their concerns with the staff proposal, the Council explained that they preferred that use permits be issued to individual businesses instead of to the shopping

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<sup>1</sup> The October 7<sup>th</sup> Council discussion can be reviewed on the City of Alameda webcast at [www.ci.alameda.ca.us](http://www.ci.alameda.ca.us) (Item 6B at approximately hour 6- minute 12 on the tape).

center as a whole because enforcement of use permit conditions would be more direct and therefore more effective. If use permits are granted to an individual business and that business violates a condition of that permit, then the City can cite that business directly or revoke that business's use permit. If the use permit is granted to the shopping center as a whole, then the City would need to cite the shopping center management which would then need to find a way through their existing leases to penalize the business that is actually causing the problem.

In the spring of 2009, Trader Joes and Big 5 Sporting Goods applied for use permits for additional truck delivery hours. Trader Joes requested approval for truck deliveries between 6:00 am and 11:00 PM; Big 5 requested 24 hours, two days a week.

In April 2009, the Planning Board considered the requests, continued the items to a future date, and asked staff to address the following questions when the requests came back to the Planning Board for final consideration:

- If "after hour truck delivery" use permits are to be considered on a case-by-case basis, what factors or findings should be considered to support approval for after hours deliveries for one business and denial for a different business?
- Given limited city resources, how can the City's code enforcement division enforce late night limitations at Alameda Towne Centre?
- What control or regulatory authority does the city have over independent truckers, delivery companies, or any truck traveling through the city at any time during the night or day? Does denying a use permit for after hours delivery, prevent a truck delivery driver from driving down a truck route in the middle of the night?

Since the April Planning Board hearing, the shopping center management (Harsch LLC.) has increased enforcement of the "7 to 10" window for deliveries, and four other tenants (Petco, Safeway, Walgreens, and Panera Bakery) have requested use permits for extended delivery hours.

During this period, staff communicated to Harsch and the individual applicants that to preserve the quality of life for nearby residents, staff would not recommend approval of any use permit that included deliveries after 11:00 pm or before 6:00 am. (The rationale for staff's position is described below under the Analysis section of this report.) Based upon this information, Petco and Big 5 amended their request to comply with the staff recommendation, and all six delivery use permits are for the same delivery window of 6:00 am to 11:00 pm.

Also during this period, staff began receiving complaints about Kohls staying open for business for special sales events past 10:00 pm. Staff contacted Kohls to inform them that their permit did not allow extended hours until Thanksgiving. In response, Kohls submitted a use permit to modify their hours of operation for special sales events to

include additional dates throughout the year. Their application is only for extended hour of operation and does not include a request for extended truck delivery hours.

### **ANALYSIS:**

#### **Truck Deliveries:**

Under current City codes and the current permits for Alameda Towne Center, all truck deliveries must occur between the hours of 7:00 AM and 10:00 PM (the "7 to 10" rule). Most of the businesses at the center receive their deliveries during normal business hours; however, there are a number of businesses such as grocery stores, coffee shops, and bakeries, which require early morning deliveries or late night deliveries. As described above, the City has received six applications to date. When evaluating the various applications, considering the Planning Boards questions in April, and talking to neighbors and the businesses community, staff found that:

Criteria for Evaluating Individual Applications From a land use, planning, environmental, or transportation perspective, it is extremely difficult to make the finding that one business should be allowed to have late night truck deliveries on Wednesday, but another business should not be allowed to have late night deliveries on Thursday. The impacts of a late night truck delivery on Thursday is no better or worse than the impacts of a late night delivery on Wednesday. Likewise, it is difficult to argue that the impact of making one business amend their schedules is more or less difficult on that business than on another business.

In contrast, it is much easier to evaluate the relative merits of particular truck delivery hours. For example, a proposal to accept truck deliveries during the day is the best proposal because it has least noise impact on the neighbors during the sensitive evening hours. A proposal to allow trucks as early as 6 am or as late as 11:00 pm is not as good as during normal business hours, but it is better than a proposal to allow trucks at 3:00 am. Therefore, staff concluded that the merits of a truck delivery use permit application should focus on the proposed hours of delivery and not on the merits of the individual business. A truck delivery at 5 pm is always better than a truck delivery at 5 am, and a truck delivery at 3 am for a grocery store is just as much a disruption to a neighborhood as a delivery for a shoe store at 3 am.

Regulating and Enforcing Use Permit Conditions. Staff is in agreement that enforcement will be more effective if the enforcement is handled directly between the City and the business with the use permit. However, given the City's limited resources, the City's ability to enforce late night restrictions even on individual businesses is extremely limited.

The City has one full time code enforcement inspector. The City cannot have a code enforcement officer monitoring the shopping center in the middle of the night, and that officer is not available to respond to a late night calls from residents about a late night delivery at a particular business. The Police Department may cite a business that is in

