

Oakland City Planning Commission

STAFF REPORT

Case File Number CMV10-272 (Compliance)/REV11-0012

August 31, 2011

Location:	1703 Telegraph Avenue (APN 008-0641-005-00)
Proposal:	Review compliance of an Adult Entertainment Activity, add hours
Contact Person/Phone Number:	Lanenna Joiner (510 206 4635)
Owner:	Fred and Patricia Brown
Case File Number:	CMV10-272 (REV11-012)
Planning Permits Required:	Compliance Review for existing Adult Entertainment Activity (merchandise and educational/health workshops), and Request to Revise CMV10-272, Condition 11, to allow extension of Friday and Saturday night hours to 2 a.m. from the current midnight closing
General Plan:	Central Business District
Zoning:	CBD-P Central Business District-Pedestrian Commercial Zoning Districts
Environmental Determination:	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15301
Historic Status:	Potential Designated Historic Property Rated Ec3, no particular interest
Service Delivery District:	Metro
City Council District:	3
Staff Recommendation:	Find the applicant in compliance and grant Revision for business hours to 2:00 am weekends and other nights
Finality of Action:	Appealable to City Council within 10 days
For Further Information:	Contact David Valeska at (510) 238-2075 or dvaleska@oaklandnet.com

SUMMARY

On December 15, 2010, the Applicant, Lanenna Joiner, was granted Planning Commission approval for a Major Conditional Use Permit (CUP) and Variance to establish an Adult Entertainment Activity, which provides retail merchandise and educational/health workshops, at a commercial building located at 1703 Telegraph Ave. in the CBD-P Central Business District Pedestrian Commercial Zone. Numerous Conditions of Approval were attached to the project approval, including the requirement for a Compliance Review within 6 months of commencement of operation (see Staff Report dated December 15, 2010, Attachment "A"). The store opened in February, 2011, and on July 22, 2011 the Applicant filed an application for the required Compliance Review (see Application, Attachment "B"). Concurrent with the Compliance Review, the applicant also requested modification to the permitted hours of operation pursuant to Condition of Approval 11, as further described in the Project-Specific Conditions section of this report (page 2).

KEY ISSUES AND IMPACTS

The Application for Compliance Review includes: (a), a written report regarding the general compliance status of the facility and a list of the project-specific conditions of approval, each followed by a status update; (b), miscellaneous supporting documents. A summary of the General Compliance Report and the status of each condition, along with Staff's comments, is described in this Report.

The Applicant reports that the business ("FeelMore") has had a smooth and trouble-free activation. She states that there have been no incidents requiring law enforcement intervention, and there has been only 1 neighbor complaint

expressed regarding participant conduct, having to do with sidewalk signage (Attachment D).

The Applicant has resurfaced and updated the front of the building. Windows have displayed only Asian stone art and other non-Adult materials, rather than displaying Adult merchandise. The Applicant sweeps the sidewalks and gutters in and around the area as needed. The business is indistinguishable from nearby retail stores.

The following Project-Specific Conditions of Approval made by the Planning Commission, are listed, followed by the Applicant's status updates in **bold-type**:

PROJECT -SPECIFIC CONDITIONS

11. Hours.

Ongoing.

The business, as proposed, may be open to the public for business between the hours of 10 am daily to 11 pm Monday through Saturday, closed Sunday. Any work outside these hours shall solely be staff preparation and not open to the public. After ninety (90) days of operation, the applicant may request of the Zoning Manager, in writing, the ability to open until 12am on Friday and Saturday only, or to be open for limited hours on Sunday, subject to written approval of the Zoning Manager.

Status: The Applicant is in full compliance with this condition. In June, 2011, Zoning Manager approval to extend hours to midnight on Fridays and Saturdays was granted upon request. There has been no request for Sunday hours. The Applicant is requesting additional hours until 2 am on Fridays and Saturdays and on nights when the Fox Theater events extend to midnight, or beyond, in order to attract patrons of other businesses to the store.

12. Window Transparency/Display.

Ongoing

The applicant/property owner shall continue to keep display windows in at least the front 10 feet of the building clear of visual obstructions including, but not limited to window coverage materials, including window frosting or other opaque treatments, any advertising displays, product racks, cardboard, trash, wire mesh/security bars, reflective coatings, or other materials other than text notification of products offered for sale. Display windows shall not include any Adult oriented products and may include non-Adult retail items and miscellaneous event or product announcements of not more than 2 (two) square feet on each side of the entry, or promoting meetings, health seminars etc.

Status: The Applicant is in full compliance with the condition. No windows are obscured. Areas within display windows have been used to showcase Asian stone art and other non-adult items, rather than adult merchandise.

13. Facility Management

a. Ongoing

Lighting shall be maintained providing enough illumination to identify loiterers standing in front of the store and in the parking lot. Such illumination shall remain lit during all hours of darkness when the business is open.

b. Ongoing

The licensees/property owners shall clear the gutter and sidewalks twenty feet beyond the property lines along these streets of litter twice daily or as needed to control litter (sweep or mechanically clean weekly). The licensee shall clean the sidewalk with steam or equivalent measures once per month.

c. **Ongoing.**

Graffiti shall be removed from the premises within 72 hours (3 days) of application.

d. **Ongoing.**

No pay phones are permitted outside the building.

e. **Ongoing.**

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiterers who refuse to leave. Persons hanging around the exterior of the establishment with no apparent business for more than ten minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Action Team.

Status: The Applicant is in substantial compliance with Condition 13. Staff cannot verify that sidewalks have been steam-cleaned but other tasks to protect the environment around the store have been performed and the results are very satisfactory.

14. Trash and litter

Prior to commencement of use and ongoing.

The applicant/property owner shall install and maintain at least one (1), non-flammable trash can located near the entrance of the store. Said trash receptacle shall be emptied as needed to avoid overflow and/or adverse odors.

Status: Weekly staff walk-bys have determined that there is no accumulated or visible trash at the store or on adjacent sidewalks.

15. Limitations on Merchandise and Sales/Activities

Prior to commencement of use and ongoing

As proposed by the applicant, the store may offer for sale Adult items such as adult toys, clothing, videos or recordings, books or magazines as well other items of standard non-Adult oriented products. Samples and/or product storage may be kept in the rear 50% of the store, with display toward the interior long axis of the store, perpendicular to the street, so as to limit visibility of such products from public areas. Additional product sales must fit the Zoning Code definition of "General Retail Sales" or "General Food Sales." Activities inside the store, particularly those visible from the street, must not include exposure of designated anatomical areas as described in the City's definition of "Adult Entertainment Activity," nor sexual acts, or other adult activities which would not normally be associated with "General Retail Sales." The facility shall be open to Adults only, age 18 or older.

Status: The Applicant is in compliance with this condition. Video screens and merchandise boxes face the central axis of the 750 square foot shop, rather than facing the street or display windows. A portion of the merchandise (e.g. old Playboy magazines) originally could be sold in non-adult stores. There have been no adult activities other than General Retail Sales in the store. There are no reports of persons under age 18 being allowed in the store.

16. Other Activities

Ongoing

The applicant is not restricted in exercise of First Amendment rights including free speech, distribution of educational or advocacy literature, holding small meetings (within the capacity of the room as determined

by the Fire Marshall and Building Codes) and similar activities which might be conducted by any cultural or political group in the same manner. No amplified music, voice or video shall be noticeable on the public street or on neighboring properties. There shall be no massage, clothing-optional activities and no interpersonal or direct sexual activities allowed on-site.

Status: The Applicant is in compliance with this condition. There has been no amplified music, voice or other sound impacts. There have been no massage, clothing-optional (nude) activities and no interpersonal or direct sexual activities allowed on-site reported.

17. Sign Modifications

Within 90 Days of Approval

Signs if modified shall receive all required Planning and Building permits.

Status: The Applicant is in sufficient compliance with this condition. Small tasteful window signs have been installed, without adult art or messages. There is no general business sign on the wall or over the door. In the future, additional more permanent signage may be installed on the building wall.

18. Restrictions on Booths

Ongoing

The business shall have no enclosed or partly enclosed booths for the purpose of viewing adult videos or other activity. This condition does not restrict showing of films in the entire main room, not visible from the street, as well as the provision of no more than 1 small fitting room.

Status: The Applicant is in compliance with this condition. There are no enclosed booths.

19. Compliance Review

After Six (6) months of business operation, the applicant shall, (within 21 days of the 6-month anniversary date) submit for a compliance review, and pay all appropriate fees consistent with the then current Master Fee Schedule (currently \$1,310) to assess compliance with all applicable Conditions of Approval. The Compliance Review will be agendized for an upcoming Planning Commission meeting. The Compliance review shall provide an opportunity for the Commission and the public to provide comment on the operation and determine whether there is compliance with conditions of approval or whether any changes to conditions are warranted.

Status: The Applicant is in compliance with this condition. The Compliance review was filed within 21 days of the 6 month period (which concluded June 15, 2011) and required fees were paid.

REVISION TO APPROVAL: ADDITIONAL HOURS REQUEST

The Applicant complies with Condition 11 by closing at midnight, the hours to which the Zoning Manager was authorized to administratively extend pursuant to conditions. However, the Fox Theater District contains clubs, bars, theaters and other facilities which are open after midnight. The walk-in traffic on which the Applicant depends may reach its peak as these neighboring uses finish their shows or otherwise start to close. Therefore the Applicant asks that her business hours be extended to 2 a.m. Friday and Saturday and on Fox Theater late-concert nights including Sundays in order to provide customer access and acquaint potential customers with the store's merchandise.

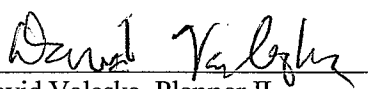
Staff finds that this request is consistent with a night-life district primarily serving adults, and supports the request.

CONCLUSION

Based on the Applicant's statements included in this report, the supporting documentation provided, and since only one comment has been reported to Staff, it is Staff's opinion that the Applicant, "FeelMore," has worked diligently to, and does, comply with the City imposed conditions of approval within those deadlines set by the Planning Commission. If other Adult businesses are allowed in the City in the future, "FeelMore" sets the performance and appearance standard which should be required of such businesses, to distinguish them from the traditional Adult businesses.

RECOMMENDATIONS: Affirm Staff's conclusions regarding the project's compliance with the Conditions of Approval at this time. Note: This affirmation fulfills the requirement for a 6-month Compliance Review in accordance with Condition of Approval #19; however, all other conditions of approval still apply as do enforcement procedures provided for in the Oakland Planning Code. In addition, staff recommends that this Revision allow extension of Friday and Saturday and midweek and Sunday Fox Theater concert evening hours to 2:00 am, from the current midnight closing.

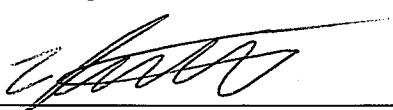
Prepared by:


David Valeska, Planner II

Approved by:


SCOTT MILLER
Zoning Manager

Approved for forwarding to the
City Planning Commission:


ERIC ANGSTADT, Deputy Director
Community & Economic Development Agency

ATTACHMENTS:

- A. Original Staff Report, dated December 15, 2010
- B. Application for Compliance Review, filed June 13, 2011
- C. Photographs
- D. Citizen Comment

Location:	1703 Telegraph Avenue (APN 008-0641-005-00)
Proposal:	Allow an Adult Entertainment Activity (Retail)
Contact /Phone Number:	Lanenna Joiner (510) 206-4635
Owner:	Fred and Patricia Brown
Case File Number:	CMV10-272
Planning Permits Required:	Major Conditional Use Permit for Adult Entertainment Activity (retail merchandise and educational/health workshops) and Variances for Location within 500 Feet of a School and Within 1000 Feet of a Residential Zone
General Plan:	Central Business District
Zoning:	CBD-P Central Business District-Pedestrian Commercial Zoning Districts
Environmental Determination:	Categorically Exempt under California Environmental Quality Act (CEQA) Guidelines Section 15301 (small existing or new commercial facilities); separate and independently exempt under CEQA Guidelines Section 15183 (projects consistent with a community plan, general plan or zoning)
Historic Status:	Potential Designated Historic Property Rated Ec3, no particular interest
Service Delivery District:	Metro
City Council District:	3
Staff Recommendation:	Approve with conditions
Finality of Action:	Appealable to City Council within 10 days
For Further Information:	Contact David Valeska at (510) 238-2075 or e-mail dvalleska@oaklandnet.com

SUMMARY

This application involves the request to establish an Adult Entertainment Activity, a retail shop with health education activities, in an existing commercial building in the Central Business District District. An Adult Entertainment Activity is defined in Planning Code Section 17.09 (Definitions) as "any commercial activity, whether conducted intermittently or full-time, which primarily involves the sale, display, exhibition, or viewing of books, magazines, films, photographs or other materials, distinguished or characterized by an emphasis on matter depicting, describing, or relating to human sex acts, or by emphasis on male or female genitals, buttocks, or female breasts."

Major Conditional Use Permit (CUP) is required in order to establish an Adult Entertainment Activity. A Variance is also required due to proximity to residential zone within a 1,000 feet radius and schools (including Oakland School for the Arts and Youth Radio) within 500 feet of the proposed new business. (The required 500 foot minimum separation between Adult Entertainment Activities would be fulfilled in this case).

PROJECT DESCRIPTION

The applicant proposes to utilize approximately 750 square feet within an existing commercial building. Formerly a wig shop for several decades, the space has display windows above opaque bulkhead walls, in an extended foyer entrance. The name of the business, "FeelMore," is intended to represent both merchandise and the business's educational philosophy. Partnership with San Francisco Sex Information (SFSI, a nonprofit group), and other similar health care resources is proposed.

CITY OF OAKLAND PLANNING COMMISSION



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Case File: CMV10-272
Applicant: Lanenna Joiner, "Feelmore" Inc.
Address: 1703 Telegraph Avenue
Zone: CBD-P

The applicant is modeling this activity after "Good Vibrations" in San Francisco and Berkeley, and other similar Adult retail stores. The business would sell adult sex toys, books, videos etc. from wall shelves, and provide room for small seminars on sexual health education. Larger educational and social groups coordinated by the business would meet at off-site locations in a convention format. The primary market is women aged 25 to 44, although other groups of adults would not be prevented from visiting. There is an adults-only entry policy. There are no massage, clothing-optional or direct sexual activities proposed. The business proposes to operate 7 days a week from 11 am to 11 pm, although midnight on weekends may be requested later (see Condition of Approval #11).

Two employees would provide routine operations, with resource persons for educational activities.

ENVIRONMENTAL REVIEW

Staff has evaluated the project according to the California Environmental Quality Act (CEQA) and determined it is exempt from environmental review for the following reasons:

Section 15301 of the CEQA Guidelines exempts from environmental review small existing or new commercial facilities, respectively, where the building is less than 2,500 square feet in area. The Adult Entertainment Activity is in a 750 square foot existing space, and is not likely to produce measurable physical or other environmental effects. Therefore, the project is determined to be exempt from further CEQA review. Section 15183 provides CEQA exemption for projects consistent with a community plan, general plan or zoning. This project is consistent with plans and zoning subject to CUP and Variance approval.

ANALYSIS

The applicant chose this location due to its proximity to the emerging "tourism area" and specialized adult uses within Downtown, including nearby Oaksterdam University with medical marijuana clinics, and various restaurants, bars and nightclubs approved by the Planning Commission. The nearest Adult store is in Chinatown approximately 1 mile distant.

The applicant's proposal requires a Major Conditional Use Permit (CUP) for Adult Entertainment Activity, and a Variance to be located within 1,000 feet of residential zoning and 500 feet of schools (including Oakland School for the Arts and Youth Radio). It is staff's opinion that the separation provision in the Oakland Planning Code was primarily aimed at restricting the proliferation and concentration of traditional Adult Entertainment Activities, rather than the proposed specialty womens' educational and merchandise shop. While the proposed business would offer customer service and supportive atmosphere for a particular mix of customers which may not be available elsewhere nearby, a Conditional Use Permit remains with the land/building rather than the business. A later business relying on the same Use Permit and Variance would be subject to the same limitations and conditions as stipulated for this proposal. The location is approximately 485 feet from the nearest residential zone (CBD-R) and 235 feet from the theater in the Oakland School for the Arts. The CBD-R zone was recently created as part of the new Central Business District zones (effective April 2010) and was previously zoned C-55 nearby, which was not a residential zone.

In addition, the downtown area, especially nearby along Telegraph and Broadway above 14th Street, has seen a transformation within the last 10 years with an influx of bars, restaurants and residential units (catering primarily to young professionals). At least 2 bars within 6 blocks of the location cater primarily to a gay clientele. Given this transformation, it is not unreasonable to introduce a low-key retail establishment catering to adult items and sensuality. With the business model of the applicant, along

with conditions of approval as accepted by the applicant, this Adult retail activity should not have adverse impacts at this location.

Staff raises the following issues for the project to address:

Proximity to Schools/Youth Oriented Facilities.

The site the applicant has chosen is near youth-oriented facilities which would normally be shielded from Adult Entertainment Activities. Youth Media International is across Telegraph Avenue and functions like a high school extension. Bus stops for these teens are located in this vicinity. The applicant's facility is also nearby an educational facility for foster children; the Oakland Ice Rink which caters largely to families with children; and is within approximately 235 feet of the Oakland School for the Arts High which is housed within the historic Fox Theatre building.

Youth Media International/Youth Radio is a 17-year-old Oakland-based nonprofit public broadcasting studio and educational facility with main entry a block east, at 1701 Broadway. The programs are distributed nationally or regionally to outlets like National Public Radio (NPR), KCBS, KQED etc. At the Oakland headquarters, Youth Media employs approximately 40 adult staff and at any particular time has approximately 40 youth (mainly ages 14 to 18) in workstations and recording studios. Occupancy is primarily 8:30 am to 8:30 pm, covering most of the hours that the applicant's shop would be open.

The Commission should weigh the close proximity of youth activities in the overall character of the district, and whether the facility would meet the Section 17.102.160 findings to not "adversely affect...by engendering sounds, activities, visual depictions or advertisements that create an exterior atmosphere which unreasonably interferes with the operations of such surrounding uses."

Staff suggests that the self-regulation of this business, based on a Good Vibrations-like business model, would have fewer effects than the more typical store and would be compatible. In addition, Youth Radio's side and rear walls which face the applicant's store on Telegraph Avenue do not have entries. The main entry and bus stop are on Broadway, not on Telegraph. One nearby youth business reports that most of their clients are over 18 years of age, and they do not oppose the request. Therefore this issue of distance separation is minimized compared to other possible Adult-oriented activities which may have different and more adverse impacts.

Potential for Replacement by a More Impacting Business Later.

"FeelMore" is a small startup business, with an educational agenda, anticipated to have few impacts on its neighbors. The presentation from the street (flowers in display windows, high-backed chairs and library table in center of the room) is more like a reading room, rather than the traditional covered-window printed-matter advertising of more familiar and generally "seedy" Adult stores.

However, a Conditional Use Permit and Variance runs with the land, not with any particular business. If "FeelMore" is successful and grows out of this space to relocate (or closes), this space could accept an Adult Entertainment Activity which meets the same conditions of approval. The applicant reports a 5 year lease, renewable to 5 more years. Under the First Amendment, the City could not censor content, only "time, place and manner" of business. Thus a store for a niche market of women customers could be replaced by the type of general Adult store familiar from other cities. Such stores have been reported to have blighting effects. However, conditions could limit secondary effects of even such a business, for instance, prohibiting frosted window glass, prohibiting video or personal booths. "FeelMore" agrees to all of these restrictions and they would carry over to a successor tenant.

The Commission should weigh this potential for a change of business in its deliberations.

Neighbors Rights to Privacy

While the applicant has First Amendment rights and represents a constituency in Oakland, other businesses and owners in this vicinity also have rights. One right protected by City Adult Entertainment Business regulations is a right to privacy free from any adverse effects of such a business. Persons not agreeing with FeelMore's point of view or activities should not be required to interact with or be involved with the Activity, which by its very nature is adult and selective. Therefore, the presentation should not impact neighbors more than the prior wig store or other retail sales on this site, the new bars and restaurants in the area or the various medical marijuana clinics nearby. Loitering, noise, window transparency, product displays and other factors can be controlled, pursuant to specific conditions 11 through 19 attached. Staff concludes that the applicant's small business is making efforts to protect neighbor privacy. Further, immediate neighbors are commercial uses on a busy street. The nearest residential units in the newly-adopted CBD-R zone, are in the recently constructed Uptown (Forest-City) development whose zone boundary is approximately 485 feet distant from 1703 Telegraph.

Crime Control

Overall crime statistics for the 17th Street/Telegraph area, (Attachment G, for 90 days prior to November, 2010) were moderately higher than in commercial areas of Temescal and College Avenue/Claremont Avenue (Rockridge) which are not perceived as high crime areas. (The exception was theft, which near 1703 Telegraph Avenue was triple the combined average of Temescal and Rockridge). While some crime does occur in the area,, staff and the applicant believe the proposed store will not significantly contribute to crime levels. Good Vibrations, which is the model the applicant proposes to emulate, has not been reported as a crime source and staff believes FeelMore likewise would not cause crime.

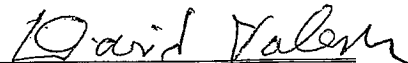
Successor businesses using the CUP may not have the same self-regulation and benefits but would be subject to CUP conditions. Conditions of approval would precisely describe the business as presented by "FeelMore." Conditions would help to prevent transition into a different kind of business with potentially more impacts.

In the Central Business District, this business would reinforce the general-interest adult tourism and may help to bring general retail customers to neighboring commercial uses. The Downtown business association and Youth Radio have been consulted and expressed concerns and/or opposition to the project. Other neighbors are more neutral. While respecting their views, staff concludes that the Findings for the Major CUP and Variance are fulfilled, as further explained in the Findings Section and through proposed Conditions of Approval.

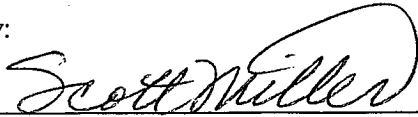
RECOMMENDATION:

1. Affirm staff's environmental determination.
2. Approve the Major Conditional Use Permit and Variance for Adult Entertainment Activity, at 1703 Telegraph Avenue, based on findings and conditions.

Prepared by:


David Valeska, Planner II

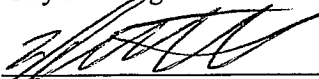
Approved by:



SCOTT MILLER

Zoning Manager

Approved for forwarding to the
City Planning Commission:



Eric Angstadt, Deputy CEDA Director

Community & Economic Development Agency

Attachments:

- A. Findings for Approval
- B. Conditions of Approval
- C. Plans and Photographs
- D. Applicant and Neighbor Correspondence
- E. Applicant Store Examples
- F. Applicant Project Explanation
- G. Crime Statistics, 90 Days Prior, November 2010

ATTACHMENT A: FINDINGS FOR APPROVAL

This proposal meets the required findings under the Oakland Planning Code. Required findings are shown in **bold** type; explanations as to why these findings can be made are in normal type. Note that the general conditional use permit and variance findings are not applicable to Adult Entertainment Activities; rather, "Special" findings must be made, consistent with first amendment protections afforded these activities.

Section 17.102.160B: (SPECIAL) FINDINGS FOR ADULT ENTERTAINMENT ACITIVITIES

A conditional use permit for an adult entertainment activity shall be granted upon a determination that all of the following conditions are present, notwithstanding any conflicting requirements contained elsewhere in the zoning regulations:

- 1. The requested use at the proposed location will not adversely affect the use of churches, temples or synagogues; public, parochial or private elementary, junior high or high schools; public parks and recreation centers; public or parochial playgrounds; residences; child care facilities; elderly residential care facilities; hospitals; medical clinics; colleges; or libraries, all within a five hundred (500) foot radius by engendering sounds, activities, visual depictions or advertisements that create an exterior atmosphere which unreasonably interferes with the operations of such surrounding uses.**

The small floor area, retail-oriented nature and health/education-supporting business plan tend to make this activity very similar in impact to any retail activity. Youth oriented facilities in the area tend to front on Broadway rather than Telegraph Avenue and/or to be focused on older students rather than young minors, although Oakland School for the Arts entries and BART access for students is on Telegraph Avenue near the applicant's site. Conditions of the proposed approval restrict entry by minors. While there are medical clinics and religious facilities in Downtown, few of them are within one block and/or line-of-sight. The facility would cause no sounds, activities, explicit visual depictions or advertisements which could be perceived from off-site and it would blend into the commercial and entertainment-oriented vicinity.

- 2. The requested use at the proposed location is sufficiently buffered in relation to residentially zoned areas within the immediate vicinity such that any obtrusive or distracting environmental factors which may emanate from the use do not adversely affect said areas.**

Rows of commercial buildings separate this facility from residentially zoned and occupied areas, and the activity will not be obtrusive or distracting. The activity will essentially function similar to any retail activity.

- 3. The exterior appearance of the structure will not be conspicuously of a lesser quality (i.e. with respect to such elements as building façade, lighting and signage materials) than the exterior appearance of commercial structures already constructed or under construction within the immediate neighborhood or cause a substantial diminution or impairment of property values within the neighborhood.**

No change in the facility exterior is planned except for modest signs. The windows will remain transparent.

4. The proposed use will not be inconsistent with the adopted general plan for the area.

The General Plan LUTE calls for retail and other services in this Downtown location and the applicant proposes to blend into that category pursuant to CUP conditions and their business model.

5. The proposed site is adequate in size and shape to accommodate the parking and loading facilities, landscaping and other development features prescribed in the planning code or other city regulations or as is otherwise required in order to integrate said use with the uses in surrounding areas.

The site is in the CBD-P zoning district, which does not require additional parking, loading, landscaping or similar changes in order for an activity to occupy existing space.

6. The proposed site is served:

- a. By highways or streets of sufficient width and capacity to carry the kind and quantity of traffic and to accommodate the parking demand such use would generate; and
- b. By other public or private service facilities such as fire protection or trash collection services as are required.

The Central Business District site has all public services, and the change from past retail uses to the applicant's requested activity will not generate significant parking or traffic demand.

SECTION 17.148.050(B)—(SPECIAL) VARIANCE FINDINGS:

A variance for an adult entertainment activity shall be granted upon a determination that all of the following conditions are present, notwithstanding any conflicting requirements contained elsewhere in the zoning regulations:

- 1. That strict compliance with the specified regulation would result in practical difficulty or unnecessary hardship inconsistent with the purposes of the zoning regulations, due to unique physical or topographic circumstances or conditions of design.**

The activity, using a limited-scale business plan modeled in other cities, requires proximity to a certain client base and a location in which there would be minimal secondary effects on neighbors. The Central Business District is one of the few sites which provides the necessary characteristics. The proposed retail activity near a newly designated residential zone (CBD-R) and a charter school in this downtown location is a unique physical circumstance in that the residential designation of the CBD-R (formerly considered non-residential C-51 and C-55) was recently established with no specific intent to restrict appropriate, limited-impact Adult uses. The nearby school location within an historic theater building and in very close proximity to several bars and medical marijuana dispensaries also adds to the unique physical circumstance. Those circumstances, coupled with the applicant's business model to provide an Adult-oriented retail shop without the familiar elements of a "seedy" pornography establishment (such as covered windows, indoor booths, and a secretive atmosphere) which provides a unique

condition of design.

2. **That strict compliance with the regulations would deprive the applicant of privileges enjoyed by owners of similarly zoned property.**

Property owners in Chinatown, Jack London Square, and other neighborhoods have Adult Entertainment Activities and strict compliance with regulations would prevent an otherwise viable Central Business District site from enjoying the same privileges of commerce, First Amendment expression and social gathering. While there are currently no Adult-oriented activities within the CBD-P zone in this immediate area, the applicant's business model of providing a low-key retail shop without elements that typically found in the more familiar "seedy" pornography shops (covered windows, interior booths, etc.) essentially causes her establishment to have the same visual appearance and impacts of a more standard retail activity. In addition, there are very few locations within the City of Oakland that are both commercially zoned (such as the subject CBD-P zone) and more than 1,000 feet from a residential zone. Moreover, variances have been granted for alcoholic beverage sales commercial activities in the CBD and elsewhere, which have similar distance separation restrictions as Adult Entertainment Activities.

3. **The variance will not adversely affect the use of churches, temples or synagogues; public, parochial or private elementary, junior high or high schools; public parks and recreation centers; public or parochial playgrounds; residences; child care facilities; elderly residential care facilities; hospitals; medical clinics; colleges; or libraries, all within a five hundred (500) foot radius by engendering sounds, activities, visual depictions or advertisements that create an exterior atmosphere which unreasonably interferes with the operations of such surrounding uses.**

As noted above, facilities for students in the area generally back up to, or are distant from, this site. Housing, churches and medical clinics in the Central Business District likewise are generally screened by mid-to-high-rise buildings from the applicant's site. The applicant's business plan minimizes secondary effects such as sounds, advertisements etc. as experienced off-site in buildings or on sidewalks. Through the applicant's business model and accepted conditions of approval, the activity will not create sounds, activities, visual depictions or advertisements which unreasonably interfere with surrounding uses. The activity will appear and function as if it were a standard retail activity.

4. **That the variance will not constitute a grant of a special privilege inconsistent with the limitations imposed on similarly zoned properties or inconsistent with the purposes of zoning regulations.**

The approval of Variances for proximity to a residential zone and school in this downtown location for this Adult-oriented use will not grant a special privilege inconsistent with the purposes of zoning regulations for the following reasons: The applicant's business model of creating a low-key retail establishment providing sexually-oriented products and sensuality information coupled with accepted conditions of approval will result in an exterior appearance and impacts very similar to any retail establishment. In other words, the business model that differs greatly from the more familiar "seedy" pornography activity and the conditions of approval more than compensate for the reduced distance from a residential zone and school.

ATTACHMENT B: CONDITIONS OF APPROVAL**STANDARD CONDITIONS:****1. Approved Use.*****Ongoing.***

a. The project shall be constructed and operated in accordance with the authorized use as described in this letter and the plans dated **October, 2010** and submitted **October 25, 2010** and as amended by the following conditions. Any additional uses or facilities other than those approved with this permit, as described in the project description and the approved plans, will require a separate application and approval. Any deviation from the approved drawings, Conditions of Approval or use shall required prior written approval from the Director of City Planning or designee.

b. This action by the City Planning Commission ("this Approval") includes the approval set forth as follows: Major Conditional Use Permit for Adult Entertainment Activity (retail merchandise and educational/health workshops) and Variance for Location within 500 Feet of a School and Within 1000 Feet of a Residential Zone; in particular sale of adult toys and clothing, videos and recordings, magazines and books and other items approved by the Planning Commission; and educational and health care activities including seminars, counseling, demonstrations conducted by health professionals or other similar activities. No live personal exposure of specified anatomical areas listed in the Zoning Code definition of Adult Entertainment Activity (Section 17.09.040 et al.) is allowed, although this requirement does not restrict product packaging on shelves perpendicular to the street within the main store building. No massage or other such activities are permitted by this approval.

Any subsequent or replacement business at this address, reliant upon this Conditional Use Permit and Variance, must also abide by conditions herein.

2. Effective Date, Expiration, Extensions and Extinguishment***Ongoing.***

Unless a different termination date is prescribed, this Approval shall expire **two calendar years** from the approval date, unless within such period all necessary permits have been issued, or authorized activities have commenced in the case of a permit not involving construction or alteration. Upon written request and payment of appropriate fees submitted no later than the expiration date of this permit, the Director of City Planning or designee may grant a one-year extension of this date, with additional extensions subject to approval by the approving body. Expiration of any valid building permit for this project may invalidate this approval if the said extension period has also expired.

3. Scope of This Approval; Major and Minor Changes***Ongoing.***

The project is approved pursuant to the Planning Code only. Minor changes to approved plans may be approved administratively by the Director of City Planning or designee. Major changes to the approved plans shall be reviewed by the Director of City Planning or designee to determine whether such changes require submittal and approval of a revision to the approved project by the approving body or a new, completely independent permit.

4. Conformance with Other Requirements.

Prior to issuance of a demolition, grading, P-job or other construction related permit.

- a. The project applicant shall comply with all other applicable federal, state, regional and/or local codes, requirements, regulations, and guidelines, including but not limited to those imposed by the City's Building Services Division, the City's Fire Marshall, and the City's Public Works Agency.
- b. The applicant shall submit approved plans for project-specific needs related to fire protection including, but not limited to automatic extinguishing systems, water supply improvements and hydrants, fire department access and vegetation management for preventing fires and soil erosion.

5. Conformance to Approved Plans; Modification of Conditions or Revocation

Ongoing.

- a. Site shall be kept in a blight/nuisance-free condition. Any existing blight or nuisance shall be abated within 60-90 days of approval, unless an earlier date is specified elsewhere.
- b. The City Planning Department reserves the right at any time during construction, to require certification by a licensed professional that the as-built project conforms to all applicable zoning requirements, including but not limited to approved maximum heights and minimum setbacks. Failure to construct the project in accordance with approved plans may result in remedial reconstruction, permit revocation, permit modification or other corrective action.
- c. Violation of any term, Conditions or project description relating to the Approvals is unlawful, prohibited and a violation of the Oakland Municipal Code. The City of Oakland reserves the right to initiate civil and/or criminal enforcement and /or abatement proceedings, or after notice and public hearing, to revoke the Approvals or alter these Conditions if it is found that there is violation of any of the Conditions, or the provisions of the Planning Code or Municipal Code, or the project operates as or causes a public nuisance. This provision is not intended to, nor does it, limit in any manner whatsoever the ability of the City to take appropriate enforcement Actions. The project applicant shall be responsible for paying fees in accordance with the City's Master Fee Schedule for inspections conducted by the City or a City-designated third-party to investigate alleged violations of the Conditions of Approval.

6. Signed Copy of the Conditions

With submittal of a demolition, grading and building permit.

A copy of the approval letter and Conditions shall be signed by the property owner and submitted with each set of permit plans submitted for this project.

7. Indemnification

Ongoing

- a. To the maximum extent permitted by law, the applicant shall defend (with counsel acceptable to the City), indemnify, and hold harmless the City of Oakland, the Oakland City Council, the City of Oakland Redevelopment Agency, the Oakland City Planning Commission and their respective agents, officers, and employees (hereafter collectively called the City) from any liability, damages, claim, judgment, loss (direct or indirect) action, causes of action or proceeding (including legal costs, attorney's fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") against the City to attack, set aside, void or annul, (1) an approval by the City relating to a development-related application or subdivision or (2) implementation of an approved development-related project. The project applicant shall reimburse the City for its reasonable legal costs and attorneys fees.

- b. Within ten (10) calendar days of the filing any Action as specified in subsection A above, the project applicant shall execute a Letter Agreement with the City, acceptable to the Office of the

City Attorney, which memorializes the above obligations. These obligations shall survive termination, extinguishment or invalidation of the approval. Failure to timely execute the Letter Agreement does not relieve the project applicant of any of the obligations contained in this condition or other requirements, or other conditions of approval that may be imposed by the City.

8. Compliance with Conditions of Approval

Ongoing

The project applicant shall be responsible for compliance with the recommendations in any submitted and approved technical report and all the Conditions of Approval and all applicable adopted mitigation measures set forth below at its sole cost and expense, and subject to review and approval of the City of Oakland.

9. Severability

Ongoing

Approval of the project would not have been granted but for the applicability and validity of each and every one of the specified conditions and if any one or more of such conditions is found to be invalid by a court of competent jurisdiction this Approval would not have been granted without requiring other valid conditions consistent with achieving the same purpose and intent of such Approval.

10. Job Site Plans

Ongoing throughout demolition, grading, and/or construction and when operating

At least one (1) copy of the approved plans, along with the Approval Letter and Conditions of Approval shall be available for review at the job site at all times.

SPECIFIC PROJECT CONDITIONS

11. Hours of Operation.

Ongoing.

The business, as proposed, may be open to the public for business between the hours of 10 am daily to 11 pm Monday through Sunday. Any work outside these hours shall solely be staff preparation and not open to the public. After ninety (90) days of operation, the applicant may request of the Zoning Manager, in writing, the ability to open until 12am on Friday and Saturday evenings only, subject to written approval of the Zoning Manager.

12. Window Transparency/Display.

Ongoing

The applicant/property owner shall continue to keep display windows in at least the front 10 feet of the building clear of visual obstructions including, but not limited to window coverage materials, including window frosting or other opaque treatments, any advertising displays, product racks, cardboard, trash, wire mesh/security bars, reflective coatings, or other materials other than text notification of products offered for sale. The applicant voluntarily agrees that display windows shall not include any Adult oriented products and may include non-Adult retail items and miscellaneous event or product announcements of not more than 2 (two) square feet on each side of the entry, or promoting meetings, health seminars etc. The front entry door and sidelight, which is set back more than 10 feet from the sidewalk, may contain opaque covering if desired.

13. Facility Management

a. *Ongoing*

Lighting shall be maintained providing enough illumination to identify loiterers standing in front of the store and in the parking lot. Such illumination shall remain lit during all hours of darkness when the business is open.

b. Ongoing

The licensees/property owners shall clear the gutter and sidewalks twenty feet beyond the property lines along these streets of litter twice daily or as needed to control litter (sweep or mechanically clean weekly). The licensee shall clean the sidewalk with steam or equivalent measures once per month.

c. Ongoing.

Graffiti shall be removed from the premises within 72 hours (3 days) of application.

d. Ongoing.

No pay phones are permitted outside the building.

e. Ongoing.

The owner, manager, and employees of this establishment shall make appropriate efforts to discourage loitering from the premises including calling the police to ask that they remove loiterers who refuse to leave. Persons hanging around the exterior of the establishment with no apparent business for more than ten minutes shall be asked to leave. Techniques discussed in the manual entitled "Loitering: Business and Community Based Solutions" may be used and are recommended by the Alcoholic Beverage Action Team.

14. Trash and litter

Prior to commencement of use and ongoing.

The applicant/property owner shall install and maintain at least one (1), non-flammable trash can located near the entrance of the store. Said trash receptacle shall be emptied as needed to avoid overflow and/or adverse odors.

15. Limitations on Merchandise and Sales/Activities

Prior to commencement of use and ongoing

As proposed by the applicant, the store may offer for sale Adult items such as adult toys, clothing, videos or recordings, books or magazines as well other items of standard non-Adult oriented products. The applicant voluntarily agrees that samples and/or product storage may be kept in the rear 50% of the store, with display toward the interior long axis of the store, perpendicular to the street, so as to limit visibility of such products from public areas. Additional product sales must fit the Zoning Code definition of "General Retail Sales" or "General Food Sales." The applicant voluntarily agrees that activities inside the store, particularly those visible from the street, must not include exposure of designated anatomical areas as described in the City's definition of "Adult Entertainment Activity," nor sexual acts, or other adult activities which would not normally be associated with "General Retail Sales." The applicant voluntarily agrees that the facility shall be open to Adults only, age 18 or older.

16. Other Activities

Ongoing

The applicant is not restricted in exercise of First Amendment rights including free speech, distribution of educational or advocacy literature, holding small meetings (within the capacity of the room as determined by the Fire Marshall and Building Codes) and similar activities which might be conducted by any cultural or political group in the same manner. The applicant voluntarily agrees that no amplified music, voice or video shall be noticeable on the public street

or on neighboring properties. The applicant voluntarily agrees that there shall be no massage, clothing-optional activities and no interpersonal or direct sexual activities allowed on-site.

17. Sign Modifications***Within 90 Days of Approval***

Signs if modified shall receive all required Planning and Building permits.

18. Restrictions on Booths***Ongoing***

The applicant voluntarily agrees that the business shall have no enclosed or partly enclosed booths for the purpose of viewing adult videos or other activity. This condition does not restrict showing of films in the entire main room, not visible from the street, as well as the provision of no more than 1 small fitting room.

19. Compliance Review.

After Six (6) months of business operation, the applicant shall, (within 21 days of the 6-month anniversary date) submit for a compliance review, and pay all appropriate fees consistent with the then current Master Fee Schedule (currently \$1,310), to assess compliance with all applicable Conditions of Approval. The Compliance Review will be agendaized for an upcoming Planning Commission meeting. The Compliance review shall provide an opportunity for the Commission and the public to provide comment on the operation and determine whether there is compliance with conditions of approval or whether any changes to conditions are warranted.

Applic#* REV110012 Type: Tract
Date Filed: 07/22/11 Complete By: 08/21/11 Disposition:
NUMBER STREET NAME SUFFIX* SUITE ASSESSOR PARCEL#
Site addr: 1) 1703 TELEGRAPH AV 008 -0641-005-00
2)
3)
Zoning* CBDP GP Use Prcl Cond: X Cond Aprvl: Viol:
Proj Descr: Revision to CMV10-272 to add hours from midnight to 2 am; &
Compliance Determination pursuant to CUP requirement for a
6 month review, for Adult Business (FeelMore)
Envirn Rev: Exempt? (Y/N): Y Sect: 15301 EX ER Applic#:
Track: Lic# Phone# Applicant
Owner: BROWN FRED E & PATRICIA M
Contractor:
Arch/Engr:
Agent: LANENNA JOINER (510)891-0199 X
Applicant Addr: 1703 TELEGRAPH AVE No Fee:
City/State: OAKLAND CA Zip: 94612
Other Related Applic#s:
F3=Ext F23=Dsc F24=Com

Summary of Business

Mission/Vision

Feelmore seeks to provide retail convenience for Oakland Residents as well as providing essential health harm reduction information to the community. By providing a safe space in which to express sexual concerns, in conversation, Feelmore will be free of judgment.

We strive to normalize sensuality, love and communication. Feelmore supports the community by partnering with businesses and community organization to promote harm reduction through information, educational products, literature, and workshops.

Opportunities

Ask most residents and/or women walking the streets of Oakland where they buy their progressive pleasure products, most likely they will say Berkeley or San Francisco. Historically, Oakland has lacked retail experiences that would keep patronage in Oakland. With the lack of alternative and quality retail outlets, Oakland residents continually shop in other cities.

Feelmore gives the City of Oakland an opportunity to shop in its own City for progressive pleasure products that have previously been bought in cities such as Berkeley and San Francisco. Oakland deserves its own comparable pleasure retail store. Feelmore seeks to provide convenience to the Oakland Public by offering items that are eco-friendly, ethnically diverse, and lifestyle supportive.

San Francisco, reportedly, has the highest LGBT population in the State of California; and Oakland, reportedly, has one of the largest diverse LGBT populations in the State of California. And with many San Franciscan residents moving to Oakland, Feelmore also offers an opportunity to those former residents to experience an uninterrupted quality of life as well as retail experience that stops the Retail Leakage for the City of Oakland, for this particular industry.

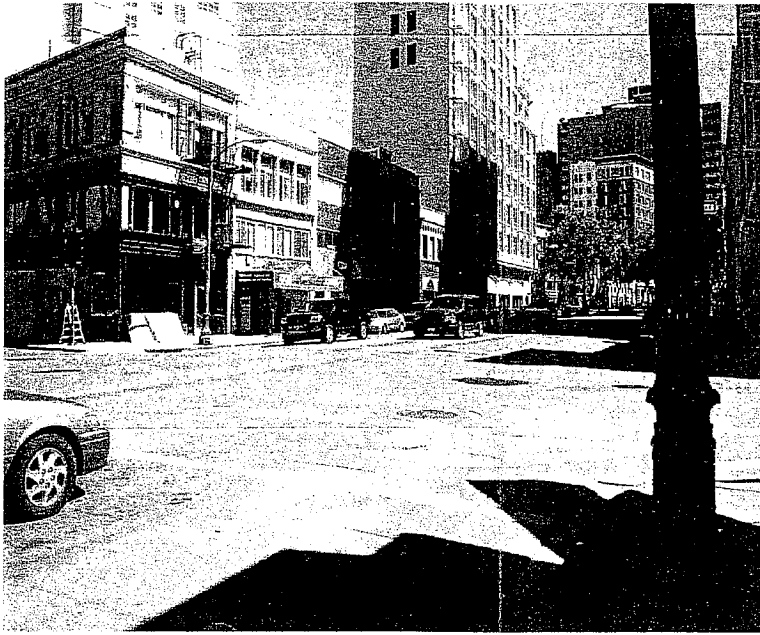
Not only is Feelmore supportive of its Residential Community but equally of its Business Community. The companies 3 key initiatives:

-Cooperative Economics: Inviting other retail businesses and/or social agencies from around the Bay to showcase services to customers of Feelmore. ***Seeks to introduce other businesses to Oakland, if not already, whereby these businesses and/or services could identify potential retail opportunities within Oakland.

-Nordstrom Effect: If a client comes into Feelmore for a product that is not on the shelves and/or we do not carry, similar Oakland retailers will be called prior to using a drop ship retail approach for the item. ***Seeks to spread the wealth of opportunity to other Oakland businesses as well as keeping them competitive.

-Workshops and Outreach: Partnership with San Francisco Sex Information (SFSI), a non-profit in service for over 30 years, to educate the community on safe sex practices and behaviors. SFSI has consistently educated Health Care Providers and Health Resource Center Workers to support their communities with factual and non-judgemental health information.

Feelmore seeks to be an advantages business venture and not a detriment to the Oakland community. Once anyone walks into Feelmore, they will feel at ease in a space that encourages education and communication.



view



east view



(e) Storefront

Valeska, David

From: Haddad & Sherwin [haddad.sherwin@sbcglobal.net]
Sent: Wednesday, July 20, 2011 9:07 AM
To: Valeska, David; erik@youthradio.org; lorie@ppi-ltd.com
Cc: Haddad & Sherwin; Downtown Oakland Association; Marie Deleris
Subject: Re: FeelMore Adult Store, 1741 Telegraph Avenue-Request for Information

Hi David -- We own the building at the southwest corner of 17th Street and Telegraph Avenue (505 17th Street). I have not noticed the store creating any disturbance, and I think the storefront is tastefully designed. However, there are two things I have noticed. First, they have a sandwich board on the street in front of the store saying something along the lines of "it's not just sex," and I'd like to know if that complies with their signage restrictions (especially given the close proximity to Youth Radio and the school, and the fact that pedestrians cannot pass by the store without encountering that sign). Second, Michael and I were at Rudy's at 12:00 a.m. on July 7th and the Feelmore store was open (I thought their hours were limited to 11:00 p.m.). We would ask that both the tenants and the property owners in the vicinity be given your contact information and notice of the hearing, to give them the opportunity to express any concerns they may have. It seems like you could just send a letter to the tenants and owners of each building with your contact information and the Planning Commission hearing information. I am also copying this email to our tenant, Marie Deleris of Entrez! Open House (1645 Telegraph Avenue) so she can let you know her thoughts, as she and her staff are more in a position to see what's happening on the street. Thanks very much for contacting us, and please do not hesitate to let us know if you have any questions, Julia

Julia Sherwin
HADDAD & SHERWIN BUILDING, LLC
505 Seventeenth Street
Oakland, CA 94612
Tel: (510) 452-5500
Fax: (510) 452-5510

Civil Rights • Trial Lawyers
www.haddadsherwin.com

From: Valeska, David
Sent: Tuesday, July 19, 2011 3:35 PM
To: erik@youthradio.org ; haddad.sherwin@sbcglobal.net ; lorie@ppi-ltd.com
Subject: FeelMore Adult Store, 1741 Telegraph Avenue-Request for Information

On or after August 31, 2011 the Planning Commission is expected to hold a hearing about Compliance with conditions of Conditional Use Permit CDV10-272 for the FeelMore adult Store at 1741 Telegraph Avenue.

Please return-email and/or call (238-2075) before the hearing with any issues, concerns, Comments.

While we have not heard any complaints, we are doing outreach to you to hear your thoughts, Thanks.

ATTACHMENT D: Citizen Comment

7/20/2011