



# Conditional Use Authorization Appeal

## 1160 MISSION STREET

**DATE:** May 15, 2023  
**TO:** Angela Calvillo, Clerk of the Board of Supervisors  
**FROM:** Rich Hillis, Planning Director – Planning Department (628) 652-7600  
Nicholas Foster, Case Planner – Planning Department (628) 652-7330  
**RE:** Board File No. 230439, Planning Case No. 2022-003331APLCUA  
Appeal of Conditional Use Authorization for 1160 Mission Street  
**HEARING DATE:** May 23, 2023  
**PROJECT SPONSOR:** Hope Gist, Pearl Street Property Company, LLC, 4021 SW 10th Street, #305,  
Topeka, KS 66604  
**APPELLANT:** Mark Gleason, 1414 30th Avenue, #5, San Francisco, CA 94122

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### INTRODUCTION

This memorandum and the attached documents are a response to the letter of appeal to the Board of Supervisors ("Board") regarding the Planning Commission's ("Commission") approval of the application for Conditional Use Authorization under Planning Department Case Number 2022-003331CUA pursuant to Planning Code Sections:

- 202.2: Location and Operating Conditions;
- 210.2: C-3 Use Districts (Downtown Commercial); and
- 303: Conditional Use Authorization.

This memorandum addresses the appeal to the Board, filed on April 17, 2023, by Mark Gleason.

The decision before the Board is whether to uphold, overturn, or amend the Commission's approval of an application for Conditional Use Authorization to allow the proposed project ("Project") at the subject property.

### PROJECT DESCRIPTION

The Project involves a change of use, from Public Parking Garage (a Retail Automotive Use) to Fleet Charging (a Non-Retail Automotive Use), for portions of the ground, second and third floors of an existing, 4-story Public and Private Parking Garage. The Project would convert 61 of the 189 public parking spaces to fleet charging spaces, with 128 spaces remaining as public parking spaces. The Project would not reduce the 175 private parking spaces reserved for residents of the adjoining residential building that are also located within the same parking garage. Further, aside from the installation of EV charging equipment and associated electrical equipment servicing the new fleet charging spaces, no other work is proposed as part of the Project.

## **SITE DESCRIPTION & PRESENT USE**

The Project Site ("Site") is located within the C-3-G (Downtown General Commercial) Zoning District on a through lot with frontages along Mission Street to the south and Stevenson Street to the north. The Site is developed as a 23-story residential tower ("SOMA Grand") containing 246 dwelling units, situated atop a 4-story podium parking garage that was approved by the Commission in December of 2003 through Motion No. 16691-16693 (Planning Case Nos. 2002.0628CEKVX) and constructed in 2008. The parking garage contains 189 spaces for public use and 175 spaces for private use (for the residents of SOMA Grand), totaling 364 parking spaces. The garage contains two vehicular entrances, one accessible from Mission Street, with a second entrance off Stevenson Street.

## **SURROUNDING PROPERTIES AND NEIGHBORHOOD**

The area surrounding the Site is primarily an urban, mixed-use area that includes a diverse range of residential, commercial, institutional, office, and light industrial uses. Offices and institutional uses are commonly located on upper floors along Mission Street, with retail uses located on the ground floors. The Site is situated in between the San Francisco Federal Building to the east (90 7th Street) and the recently completed Trinity Plaza redevelopment project to the west (1188 Mission Street). Building heights vary between two-stories and approximately 25-stories, reflecting the diversity of land uses and building typologies.

## **BACKGROUND**

- On April 25, 2022, the Project Sponsor filed the Application with the Department.
- On March 30, 2023, the Commission considered the Application and voted unanimously to approve the Project.

## **CONDITIONAL USE AUTHORIZATION REQUIREMENTS**

Planning Code Section 303 establishes criteria for the Commission to consider when reviewing all applications for conditional use approval. To approve the Project, the Commission must find that these criteria have been met:

1. That the proposed use or feature, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community; and
2. That such use or feature as proposed will not be detrimental to the health, safety, convenience, or general welfare of persons residing or working in the vicinity, or injurious to property, improvements, or potential development in the vicinity, with respect to aspects including but not limited to the following:
  - a. The nature of the proposed site, including its size and shape, and the proposed size, shape, and arrangement of structures;
  - b. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;
  - c. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust, and odor;
  - d. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting, and signs; and

3. That such use or feature as proposed will comply with the applicable provisions of this Code and will not adversely affect the General Plan.
4. That such use or feature as proposed will provide development that is in conformity with the stated purpose of the applicable use district.

## APPELLANT ISSUES AND PLANNING DEPARTMENT RESPONSES

### ISSUE 1:

The approval of a Fleet Charging Use at the Site, through the creation of garage facilities for an electric delivery fleet in support of delivery vehicles, is ultimately the expansion of a Parcel Delivery Service Use. As a result, the Fleet Charging Use authorized by the Commission failed to include a separate Conditional Use Authorization for Parcel Delivery Service Use.

### RESPONSE 1:

Fleet Charging Use and Parcel Delivery Use are distinct land uses. As defined within Planning Code Section 102, Fleet Charging Use is an *“Automotive Use, Non-Retail that provides electricity to electric motor vehicles through one or more Electric Vehicle Charging Stations that are dedicated or reserved for private parties pursuant to contract or other agreement and are not available to the general public. Fleet Charging is not allowed as an accessory use to any other principal use.”* Whereas Planning Code Section 102 defines Parcel Delivery Service as a *“Non-Retail Automotive Use limited to facilities for the unloading, sorting, and reloading of local retail merchandise for deliveries, including but not limited to cannabis and cannabis products, where the operation is conducted entirely within a completely enclosed building, including garage facilities for local delivery trucks, but excluding repair shop facilities. Where permitted in PDR Districts, this use is not required to be operated within a completely enclosed building.”*

While both Fleet Charging Use and Parcel Delivery Use are categorized as Automotive Uses within the Planning Code, they serve different functions. The essential distinction between the two use definitions is that Fleet Charging Use authorizes electric vehicle charging for private use (not for general public use), whereas Parcel Delivery Use involves the unloading, sorting, and reloading of local retail merchandise for deliveries. As distinct uses, any authorization to establish a Fleet Charging Use does not permit the unloading, sorting, and reloading of local retail merchandise for deliveries at a project site. Conversely, any authorization to establish a Parcel Delivery Use does not permit electric vehicle charging for private use.

Further, both Fleet Charging Use and Parcel Delivery Use are regulated by the underlying zoning district’s use controls. Within the C-3-G Zoning District, a Fleet Charging Use and Parcel Delivery Use are both conditionally permitted uses requiring separate Conditional Use Authorization for each use. The Project Sponsor filed a Conditional Use Authorization application to establish a Fleet Charging Use at the Site but did not include a separate Conditional Use Authorization application to establish a Parcel Delivery Use. The Commission, through Motion No. 21301, approved Conditional Use Authorization for Fleet Charging Use, but did not authorize Parcel Delivery Use at the Site. Any activities at the Site that function as activities listed under Parcel Delivery Use, including unloading, sorting, and reloading of local retail merchandise for deliveries, would violate the Conditions of Approval (Exhibit A). Specifically, Condition of Approval No. 9 (“Revocation due to Violation of Conditions”) would authorize the Zoning Administrator to refer

complaints to the Commission. After being referred, the Commission has the option to hold a public hearing regarding the matter in order to consider revoking the Conditional Use Authorization.

### **SUMMARY RESPONSE**

The Appellant claims that the Project Sponsor, by obtaining Conditional Use Authorization to establish a Fleet Charging Use, has also obtained authorization to operate a Parcel Delivery Service Use. They assert that this is because Parcel Delivery Service Use activities are permitted within garage facilities, per the definition of Parcel Delivery Service Uses; however, what the Appellant fails to highlight is that the Commission did not authorize a Parcel Delivery Use at the Site. To this point, at the March 30, 2023 Planning Commission hearing, the Commission specially asked Department Staff to confirm that the use authorization consideration before them was only for a Fleet Charging Use, and not for any other use. Staff also confirmed that any authorization for Parcel Delivery Use at the Site would require a separate Conditional Use Authorization. After this discussion and considering all the facts in the case as well as public comment, the Commission found the Project necessary, desirable for, and compatible with the surrounding neighborhood. Further, the Commission determined that, on balance, the Project is consistent with the General Plan and Use District and ultimately voted unanimously to approve the Project.

### **CONCLUSION**

For the reasons stated in this document, in the attached Motion, and in the Planning Department case file, the Planning Department recommends that the Board uphold the Commission's decision in approving the Conditional Use Authorization for the Project.