



November 28, 2023

Ms. Angela Calvillo, Clerk
Honorable Supervisor Peskin
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2023-005567PCA
Fleet Charging Locations and Parcel Delivery Service Ordinance
Board File No. 230704

Planning Commission Recommendation: Approval with Modification

Dear Ms. Calvillo and Supervisor Chan,

On November 16, 2023, the Planning Commission (Commission) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Fleet Charging Locations and Parcel Delivery Service Ordinance, which was introduced by Supervisor Chan on June 6, 2023, and substituted on October 3, 2023. The proposed Ordinance would amend the San Francisco Planning Code (Planning Code) to prohibit Parcel Delivery Service at Fleet Charging locations. At the hearing the Commission recommended approval with modification.

The Commission's proposed modifications are as follows:

1. Modify the Ordinance to amend the proposed language as follows: "Parcel Delivery Service activity, including unloading, sorting, and/or reloading merchandise for deliveries, is prohibited as part of a Fleet Charging use." And make similar amendments to relevant sections of the Planning Code (sections 204.6, 703, and 803.2),

The proposed amendments are not defined as a project under CEQA Guidelines Sections 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Aaron D. Starr
Manager of Legislative Affairs

cc: Robb Kapla, Deputy City Attorney
Frances Hsieh, Aide to Supervisor Chan
Erica Major, Office of the Clerk of the Board

Attachments:

Planning Commission Resolution
Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 21447

HEARING DATE: NOVEMBER 16, 2023

Project Name: Parcel Delivery Services Definition Ordinance
Case Number: 2023-005567PCA, [Board File No. 230704](#)
Initiated by: Supervisor Chan/ Introduced June 6, 2023; Substituted October 3, 2023
Staff Contact: Jenny Delumo, jenny.delumo@sfgov.org, 628.652.7568
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

RESOLUTION APPROVING A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 102 TO PROHIBIT PARCEL DELIVERY SERVICE ACTIVITIES AT FLEET CHARGING LOCATIONS; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on June 6, 2023 Supervisor Chan introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 230704, which would amend Section 102 of the Planning Code to revise the definition of Parcel Delivery Services to include Fleet Charging for freight or Autonomous Vehicles, as defined, that are primarily engaged in or preparing to deliver parcels or goods, and Parking Garages for use by employees of a Parcel Delivery Service use;

WHEREAS, on October 3, 2023 Supervisor Chan introduced a substitute Ordinance under Board File Number 230704, which would amend Section 102 of the Planning Code to prohibit Parcel Delivery Service activities at Fleet Charging locations;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on November 16, 2023; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission's proposed recommendation(s) is/are as follows:

1. Modify the Ordinance to amend the proposed language as follows: "Parcel Delivery Service activity, including unloading, sorting, and/or reloading merchandise for deliveries, is prohibited as part of a Fleet Charging use." And make similar amendments to relevant sections of the Planning Code (sections 204.6, 703, and 803.2),

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The Commission supports the proposed Ordinance as it is consistent with policies in the Commerce and Industry Element (policy 1.1) and the Transportation Element (policies 14.5 and 14.8).

General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

The proposed Ordinance would indirectly manage the development of charging infrastructure for electric fleets and parcel delivery in a manner that seeks to balance the impacts of commingling these uses under one conditional use authorization.

TRANSPORTATION ELEMENT

OBJECTIVE 14

DEVELOP AND IMPLEMENT A PLAN FOR OPERATIONAL CHANGES AND LAND USE POLICIES THAT WILL MAINTAIN MOBILITY AND SAFETY DESPITE A RISE IN TRAVEL DEMAND THAT COULD OTHERWISE RESULT IN SYSTEM CAPACITY DEFICIENCIES.

Policy 14.5

Encourage the use of alternative fuels for City vehicles, transit vehicles and as feasible, any other motor vehicles as a means of reducing toxic automobile emissions and conserving energy.

Policy 14.8

Implement land use controls that will support a sustainable mode split, and encourage development that limits the intensification of automobile use.

The proposed Ordinance would support electric vehicle infrastructure development consistent with the City's Climate Action goals. The Ordinance would also enable decision makers to better understand the potential intensity of automobile use on a project site.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from

displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

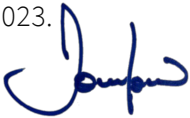
The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on November 16, 2023.



Jonas P. Ionin
Commission Secretary

AYES: Braun, Ruiz, Diamond, Imperial, Koppel, Moore, Tanner

NOES: None

ABSENT: None

ADOPTED: November 16, 2023



EXECUTIVE SUMMARY

PLANNING CODE TEXT AMENDMENT

HEARING DATE: November 16, 2023

90-Day Deadline: December 10, 2023¹

Project Name: Fleet Charging Locations and Parcel Delivery Service Ordinance
Case Number: 2023-005567PCA, [Board File No. 230704](#)
Initiated by: Supervisor Chan/ Introduced June 6, 2023; Substituted October 3, 2023
Staff Contact: Jenny Delumo, jenny.delumo@sfgov.org, 628.652.7568
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 628-652-7533

Environmental Review: Not a Project Under CEQA

Recommendation: Approval with Modifications

Planning Code Amendment

The proposed Ordinance would amend the San Francisco Planning Code (Planning Code) to prohibit Parcel Delivery Service at Fleet Charging locations.

The Way It Is Now:

The definition of Fleet Charging does not specify whether any other land uses may be accessory to that use.

The Way It Would Be:

The Fleet Charging definition would be amended to include the underlined text:

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. Parcel Delivery Service activity, including unloading, sorting, and/or reloading merchandise for deliveries, is prohibited at Fleet Charging locations.

¹ The original ordinance was referred to the Planning Commission with a deadline of September 11, 2023. On September 21, 2023, the Board of Supervisors adopted extension Resolution No. 433-23 (Board File No. 230940) extending the ordinance an additional 90 days, expiring December 10, 2023.

Background

Supervisor Chan first introduced the proposed Ordinance on June 6, 2023 (original Ordinance), in response to two different Conditional Use appeals. One appeal was for a project at 301 Toland Street that would change a portion of an existing building from Wholesale Storage to a Private Parking Garage for Waymo staff, located across the street. The other appeal was for a project at 1160 Mission Street that proposed to change portions of an existing Public and Private Parking Garage to Fleet Charging. The Board of Supervisors (Board) granted the appeal for 301 Toland Street and overturned the Planning Commission's action by denying the application, citing the City's Transit First Policy as justification. The Board also granted the appeal for 1160 Mission Street but did not overturn the Planning Commission's decision. Instead, it added language to the Conditional Use approval motion clarifying that the proposed project was only for Fleet Charging, and not for Parcel Delivery Services. The original Ordinance was intended to address some of the concerns related to those appeals by amending the Planning Code to revise the definition of Parcel Delivery Services to include: (1) Fleet Charging for freight or Autonomous Vehicles that is primarily engaged in or preparing to deliver parcels or goods; and (2) Parking Garages for use by employees of a Parcel Delivery Service use.

On October 3, 2023, Supervisor Chan introduced a substitute Ordinance after conversations with Department staff. The revised ordinance essentially prohibits Parcel Delivery Services as an Accessory Use for Fleet Charging. This change ensures that Fleet Charging approval cannot be used to circumvent the Conditional Use requirement for Parcel Delivery Service. It also solves the issue of discouraging the use of electric vehicles for Parcel Deliver Services, which the previous version of the Ordinance could have done.

Issues and Considerations

Types of Fleets in the Planning Code

Types of vehicular fleets can vary, and include taxis; ride hailing fleets for transportation network companies (TNCs) like Lyft or Uber; autonomous vehicle fleets; fleets for Parcel Delivery Service providers like UPS, FedEx, Amazon, and the United States Postal Service; or City-owned or city-contracted vehicles.

Parcel Delivery Service may include accessory parking for its fleet of delivery vehicles. Whereas Fleet Charging facilities are not for the parking or storing of vehicles, but instead for the electric charging of vehicles that then vacate the facility.

The Fleet Charging definition in the Planning Code applies to facilities that are primarily dedicated to the electric charging of vehicles in a non-retail manner (i.e., private access), and is most often used for autonomous vehicle fleets. The Planning Code also includes specific uses that are primarily dedicated to the parking of vehicles, including Parking Lots/Garages and Vehicle Storage Lots/Garages. Additionally, a Parcel Delivery Service may include accessory parking for its fleet of delivery vehicles. The key distinction for Fleet Charging facilities is that their purpose is not for the parking or storing of vehicles, but instead for the electric charging of vehicles that then vacate the facility (with a caveat for accessory maintenance of those vehicles).

Parcel Delivery Service and Fleet Charging Uses

Parcel Delivery Service is defined in the Planning Code by the activities associated with the distribution of goods and the facilities that support that distribution. The definition does not distinguish between the type of fuel used for delivery vehicles (gas, electricity, or hydrogen). Fleet Charging has a distinct and separate definition in the Planning Code, as described above. Like Fleet Charging, Parcel Delivery Service is not permitted or requires a

Conditional Use authorization in almost all zoning districts, with few exceptions. Meaning a project sponsor would be required to obtain approval from the Planning Commission for any of these uses, including meeting the criteria for a Conditional Use. If a project sponsor obtains approval for Fleet Charging, but instead operates another use on their site (such as Parcel Delivery Service or Private Parking) they would be operating beyond the scope of their approval and would be subject to enforcement action. However, **electric vehicle charging infrastructure that is proposed as part of an existing, expanded, or new Parcel Delivery Service use would not convert that use into a Fleet Charging use** because adding electric vehicle chargers for accessory parking or parking otherwise germane to Parcel Delivery Service does not change the principal use.

General Plan Compliance

The proposed Ordinance is consistent with several policies in the General Plan. For example, this Ordinance would support electric vehicle infrastructure development consistent with the City's Climate Action goals. The Ordinance would also enable decision makers to better understand the potential intensity of automobile use on a project site (Transportation Element policies 14.5 and 14.8). The draft legislation (Exhibit A) provides a fuller discussion of General Plan compliance.

Racial and Social Equity Analysis

Understanding the potential benefits, burdens and the opportunities to advance racial and social equity that the proposed Ordinance provides is part of the Department's Racial and Social Equity Action Plan. This is also consistent with the Mayor's Citywide Strategic Initiatives for equity and accountability, the Planning and Historic Preservation Commissions' 2020 Equity Resolutions, and with the Office of Racial Equity mandates, which requires all Departments to conduct this analysis. Below are some specific issues to consider:

With the understanding that one of the stated goals of the proposed Ordinance is to maximize the capacity and availability of electric vehicle charging infrastructure, this Ordinance could have varying effects on racial and social equity. The availability of electric vehicle charging infrastructure is crucial to the adoption of electric vehicle fleets. Given that average roadways in communities with the highest environmental justice burden tend to have a higher number of vehicle trips than roadways in communities with the lowest environmental justice burden,² this could have the effect of reducing the emissions associated with gas powered vehicles on those roadways. It would also be consistent with the City's Climate Action goals. On the other hand, while some air pollutant effects would be lessened by using electric automobiles, particulate matter from tire, brake, and clutch wear, and road dust suspension are also sources of pollution.³ These are unregulated emissions that could result in inequitable impacts in the areas whether those fleets charge and travel if they are in highly burdened environmental justice areas.

Implementation

The Department has determined that this Ordinance would not impact our current implementation procedures.

² San Francisco Planning Department. *Environmental Justice Information Analysis for the Housing Element 2022 Update*. December 7, 2022. Available at

³ According to the California Air Resources Board, vehicles emit inhalable particles from two major sources: the exhaust system, which electric vehicles can address; and non-exhaust sources including brake wear, tire and road wear, clutch wear and road dust resuspension, which electric vehicles do not address.

<https://ww2.arb.ca.gov/resources/documents/braketire-wear-emissions>, accessed August 2023.

Recommendation

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendation is as follows:

1. Modify the Ordinance to amend the proposed language as follows: "Parcel Delivery Service activity, including unloading, sorting, and/or reloading merchandise for deliveries, is prohibited as part of a Fleet Charging use." And make similar amendments to relevant sections of the Planning Code (sections 204.6, 703, and 803.2),

Basis for Recommendation

The stated goals of this Ordinance are to (1) maximize the capacity and availability of electric vehicle charging infrastructure and (2) avoid inflicting the impacts of Parcel Delivery Service activities on the areas surrounding Fleet Charging locations. While Department staff believe the current definitions for Fleet Charging and Parcel Delivery Service are sufficient to address these concerns, staff support the overall intent of this Ordinance. However, it should be clear whether a project may seek a separate approval for a Parcel Delivery Service use on the same site as a Fleet Charging use.

Recommendation 1: Modify the Ordinance to amend the proposed language as follows: "Parcel Delivery Service activity, including unloading, sorting, and/or reloading merchandise for deliveries, is prohibited as part of a Fleet Charging use." And make similar amendments to relevant sections of the Planning Code (sections 204.6, 703, and 803.2).

As written, the Ordinance would prohibit Parcel Delivery Service as an accessory use to Fleet Charging; however, it could also be read as a prohibition on Parcel Delivery Service uses from being approved separately on the same site as a Fleet Charging use. This seems inconsistent with the goals of the ordinance, and contrary to existing laws and practices. Therefore, Department staff propose that the *italicized/underlined* text above be added to the definition.

Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has not received any public comment regarding the proposed Ordinance.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 230704