

## **RESOLUTION NO.**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF POMONA APPROVING OF A CONDITIONAL USE PERMIT (CUP 9239-2018) TO ALLOW THE OPERATION OF A CHARTER BUS COMPANY ON THE 4.37 ACRE PROPERTY LOCATED AT 1326-1352 E. 9<sup>TH</sup> STREET**

**WHEREAS**, the applicant, Durham School Services L.P., submitted an application for a Conditional Use Permit (CUP 9239-2018) to allow operation of a charter bus business on the 4.37 acre property located at 1326-1352 E. 9th Street;

**WHEREAS**, the subject properties are located within the M-2 (General Industrial) Zoning District;

**WHEREAS**, the subject properties are designated “Workplace District” by the City’s General Plan;

**WHEREAS**, Section .580.B of the Pomona Zoning Ordinance, a Conditional Use Permit is required to operate a charter bus business in the M-2 zone;

**WHEREAS**, the Planning Commission of the City of Pomona has, after giving notice thereof as required by law, held a public hearing on March 14, 2018 concerning the requested Conditional Use Permit (CUP 9239-2018) for the project;

**WHEREAS**, the Planning Commission of the City of Pomona has carefully considered all pertinent testimony and the staff report offered in the case as presented at the public hearing.

**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Planning Commission of the City of Pomona, California, as follows:

**SECTION 1.** The Planning Commission exercising their independent judgment has determined that pursuant to the Guidelines for Implementation of the California Environmental Quality Act (CEQA), the project is Categorically Exempt under 15332 (Class 32 – In-fill development projects in urbanized areas) of the CEQA Guidelines in that the proposed project is in an urbanized area and involves the re-use of existing buildings without new construction, and does not involve the use of hazardous substances.

**SECTION 2.** If any part, provision, or section of this resolution is determined by a court or other legal authority with jurisdiction over the subject matter of this resolution to be unenforceable or invalid, the remainder of the entirety of this resolution shall not be affected and shall continue in full force and effect. To this end, the provisions of this resolution are servable.

**SECTION 3.** Pursuant to Section .580.B of the Zoning Ordinance, the Planning Commission must make findings listed below in order to grant the Conditional Use Permit (CUP 9239-2018). Based upon a consideration of the whole record before it including, but not limited to, the staff report, public testimony received at the public hearing on this matter, and evidence made part of the public record, the Planning Commission hereby finds as follows:

1. *That the proposed use at the particular location will contribute to the general well-being of the neighborhood or community.*

The project will provide additional jobs and place an unused property into productive operation.

2. *That such use will not, under the circumstances of the particular case be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity or detrimental to the use, valuation or enjoyment of property or improvements in the vicinity;*

The project will meet all City Codes and standards, and will have appropriate conditions of approval, that will ensure that the project will not be detrimental to the health, safety or general welfare of the community. As discussed in the Project Summary Table, the Zoning Ordinance Consistency section and Land Use Compatibility section, the project will have development characteristics that are compatible with and not detrimental to either existing or proposed surrounding development.

3. *That the site of the proposed use is of adequate topography, size and shape to accommodate said use as well as all yards spaces, walls, fences, parking, loading, landscaping and any other features necessary to allow said use with the land and uses in the neighborhood and make it compatible thereto;*

As discussed in the Project Summary Table, the Zoning Ordinance Consistency section and Land Use Compatibility section, the project will have development characteristics that are compatible with and not detrimental to either existing or proposed surrounding development.

4. *That the site abuts streets and highways adequate in width and improvements to carry traffic generations typical of the proposed use;*

Vehicular access will be via 9<sup>th</sup> Street. A Traffic Study prepared on behalf of the project shows that the existing street network is adequate to handle the traffic generated by the project.

5. *That granting of such conditional use permit will not adversely affect the General Plan of the City and conforms to the provisions of the zoning ordinance.*

The project supports Goal 6F.G1 of the General Plan:

*“Maintain adequate land in the City for workplace uses that contribute to the City’s diverse economy and provide jobs for the City’s residents.”*

The project will provide additional jobs in the city and reuse a currently unused site.

The project supports Goal 6F.G4 of the General Plan:

*“Improve the physical character of workplace districts to complement the transition of the area to lighter industrial/higher technology uses.”*

The landscaping improvements to be implemented will improve the physical character of the site.

The proposed project is consistent with the following objective from the Economic Development Element of the General Plan:

*“It is the policy of the City of Pomona to encourage, with all means possible, the economic development and redevelopment of the private sector.”*

Approving the proposed Conditional Use Permit to allow the operation of a charter bus business would contribute to the diversification of the City’s economy and promote an increased mix of uses.

**SECTION 3.** Based upon the above findings, the Planning Commission hereby recommends that the City Council approve Conditional Use Permit (CUP 9239-2018) subject to compliance with all applicable laws and ordinances of the City as well as the addition of the following conditions, violations of which (or failure to complete any of which) shall constitute grounds for revocation of the conditional use permit or any portion thereof:

**PLANNING DIVISION**

1. The subject property shall be developed and/or used in a manner consistent with the project plans reviewed and recommended for approval by the Planning Commission on February 14, 2018. Any major modifications to the approved project plans shall be reviewed and approved by the Planning Commission as part of a modification to the approved plans. Any minor modifications that do not affect the overall intent of the approved project, may be reviewed and approved by the Development Services Manager.
2. The applicant shall make reductions of all approved resolutions related to the project, which shall be placed on the title sheet of construction plans prior to the Plan Check submittal.

3. Within 30 days of this approval, the applicant shall submit a Landscape Plan Check that demonstrates water-efficient plantings and an irrigation system that is consistent with minimizing water waste as determined by the Development Services Manager.
4. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, law suits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the any action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a court of competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.
5. The approved Conditional Use Permit (CUP 9239-2018) shall lapse and become void if the use authorized is not utilized or where some form of construction pursuant to issuance of a building permit has not commenced by March 14, 2018. The Planning Commission may extend this period for one (1) year upon receipt of a written request by the applicant at least thirty (30) days before the expiration date of this approval.
6. The project shall be subject to an appeal period of twenty (20) days. Written appeals may be filed with the City Clerk by one or more City Council members, the applicant, or any person owning property within four hundred feet of the exterior boundary of the applicant's property.
7. In case of violation of any of the conditions of approval or City law, the property owner and tenant will be issued a Notice of Correction. If said violation is not remedied within a reasonable period of time and/or a subsequent violations of the conditions of approval and/or City law occurs within ninety days of any Notice of Correction, the property owner shall be held responsible to reimburse the City for all staff time directly attributable to enforcement of the conditions of approval and/or City law, including, but not limited to, revocation of the herein Conditional Use Permit.

## **PUBLIC WORKS—TRANSPORTATION AND DEVELOPMENT DIVISION**

### **Land development requirements**

8. Property Owner shall dedicate the necessary real property to accommodate a continuous ADA path of travel across the project's two driveway approaches.
9. Property Owner shall dedicate the necessary real property associated the existing water meters, if no such easements have been previously granted to the City.

### **Improvement plans requirements**

10. Applicant/Developer shall submit **public street improvement plans** to include the following:
  - a. Two new driveway approaches per City standards and ADA requirements; additional right-of-way dedication may be necessary to ensure a continuous ADA pedestrian path of travel.
  - b. New sidewalk on both sides of the property driveway approaches to ensure a continuous ADA pedestrian path of travel.
  - c. Parkway drains per City standards.
  - d. Overlay paving of Ninth Street in compliance with the City standards, along the property frontage; this requirement applies if pavement cuts are required as part of the project, including but not limited to wet and/or dry utility trenching.
  - e. Street lights: refurbish one (1) existing street light with LED luminaire.
  - f. Existing sewer, water and storm drain infrastructure, including laterals.
  - g. Note: The parkway landscaped area shall be maintained by the property owner, as required by the City's Municipal Code Section 46-496.
  - h. Note: Undergrounding of all existing and proposed overhead utility lines to conform with the City of Pomona Municipal Code Section 62-31(b).
  - i. Note: Unobstructed visibility shall be ensured at all intersections and driveways along the project boundaries.
  - j. Note: It is the owner's and the contractor's responsibility to repair all damage to the existing public improvements due to the proposed construction activities and to address all repairs requested by the Public Works Inspector based on the inspector's review of the current condition of the said public improvements.
11. The demolition or relocation of any public improvements (street lights, signs, trees, vaults, catch basins, hydrants, etc.) due to the proposed project construction must be coordinated and agreed upon by the appropriate City departments, shall be designed per City standards and

applicable ADA requirements, and must be reviewed and approved by Public Works Engineering Department.

12. Applicant/Developer shall identify the existence of all City utilities that may be in conflict with the development and submit protection measures to the City Engineer for those City utilities.
13. If future placement of permanent structures conflicts with location of existing public utilities (water, sewer and storm drain), then improvement plans proposing the relocation or abandonment of identified utilities must be submitted, reviewed and accepted by the Public Works Department. No public utility infrastructure shall be removed or modified as part of the onsite demolition plan approved by the Building and Safety Department.
14. **Traffic:**
  - a. The existing Ninth Street traffic access gates, total of two (2), may remain at the current locations, but if the gates need to be modified, a minimum 20-foot setback distance shall be provided beyond the property line.
  - b. Install red curb on Ninth Street along entire property frontage.
15. Applicant/Developer shall implement **stormwater** Good Housekeeping Best Management Practices (BMPs) for the site to ensure that pollutants are not discharged to the municipal storm drain system during construction and throughout occupancy.
16. The final improvement plans, as shown on the Mylar, shall be provided to the City in both hard copy and electronic in AutoCAD v. 2010. Following construction and prior to acceptance of the improvements by the City, the project engineer shall provide hand drafted "AS BUILT" corrections on the original approved Mylars of the final constructed improvements to the satisfaction of the City Engineer. A corrected "**AS BUILT**" plan shall also be provided to the City on disk in AutoCAD v. 2010 and .pdf formats.
17. The plans shall be submitted on 24" x 36" sheet size with a standard City title block, and must correctly identify the property owner, address, legal description, property lines, street centerline, curb-lines, existing and proposed utilities (water, sewer, and storm drain), utility easements, and the public right-of-way areas with dimensions.

#### **Public Works Improvements Permit**

All work in the public right-of-way and City easements is subject to review, approval, and permitting requirements of Public Works Department.

18. **Prior to the issuance of the offsite improvements permit, Applicant/Developer shall post surety bonds for all public improvements, including but not limited to: driveway approaches, sidewalk, curb and gutter, street paving, street light and existing and proposed overhead lines undergrounding.**

19. Permittee shall procure and maintain throughout the period of the Permit the following policies of insurance:
  - a. Commercial General Liability;
  - b. Automobile Liability;
  - c. Worker's Compensation as required by the State of California;

Note: The Commercial General Liability and the Automobile Liability policies shall include the City of Pomona as additional insured.
20. Permittee shall pay fees associated with and possess the City of Pomona Business License.
21. Changes and additions to the proposed work, including but not limited to detail plans for street improvement work, water plans and/or other work associated with this project and due to developer's or City's request shall require additional conditions to be completed by the applicant.

**SECTION 4.** The Secretary shall certify to the adoption of this Resolution and forward the original to the City Clerk.

**APPROVED AND PASSED THIS 14th DAY OF MARCH, 2018**

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LUIS M. JUAREZ  
PLANNING COMMISSION CHAIRPERSON

**ATTEST:**

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EMILY STADNICKI  
PLANNING COMMISSION SECRETARY

**APPROVED AS TO FORM:**

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ANDREW JARED  
ASSISTANT CITY ATTORNEY

STATE OF CALIFORNIA    )  
COUNTY OF LOS ANGELES   ) ss.  
CITY OF POMONA         )

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

"Pursuant to Resolution No. 76-258 of the City of Pomona, the time in which judicial review of this action must be sought is governed by Sec. 1094.6 C.C.P."