



March 9, 2023

VIA EMAIL AND MAIL

Mr. Jonathan Frankel
Atlantis Group
2488 Historic Decatur Road, Suite 220
San Diego, CA 92106

SUBJECT: DETERMINATION OF THE CITY PLANNER TO ALLOW AUTOMOBILE SALES WITHIN REGIONAL SHOPPING CENTER GENERAL PLAN DESIGNATION, AND GENERAL COMMERCIAL (C-2) ZONES

Dear Mr. Frankel:

The Community Development (CD) Department is in receipt of your letter on February 23, 2023, on behalf of the Carlsbad Forum Shops (Forum) requesting an interpretation under if Carlsbad Municipal Code Section 21.53.040 related to uses allowed in the Green Valley Master Plan and the C-2 General Commercial Zone. The site and requested use are subject to the following regulations:

General Plan - The property is designated as a Regional Shopping Center in the city's General Plan. Regional Commercial is stated in Table 2-4 of the General Plan to have examples of anchor tenants such as, "...several high-volume retail uses, including general merchandise, automobile sales, apparel, furniture, home furnishings, etc."

Carlsbad Municipal Code - The Forum property is designated P-C Planned Community in the Carlsbad Municipal Code. CMC 21.38.020 specifies that uses in this zone are established by applicable Master Plan. The property is within the Green Valley Master Plan, which establishes that the uses in Planning Area 2 are subject to zones allowed under the C-2 General Commercial zone as outlined in Chapter 21.28 of the Carlsbad Municipal Code. CMC 21.28.01 (C) authorizes the City Planner to determine uses that are substantially similar to the uses allowed to an allowed use if it falls within the "intent and purposes" of the zone. There is not a definition of Automobile Dealerships within the Carlsbad Municipal Code and it is not included as a permitted use in any zone. The C-2 zone does allow "Retail, wholesale or service businesses catering directly to the consumer" and "Auto repair" as permitted. Three specific plans within the city list automobile sales as an allowed use referring to the use as either as "Automobile Sales" or "Automobile Dealer". These locations are for larger dealerships, or multiple dealerships (such as Car Country Carlsbad) where there is a combination of uses (such as sale and maintenance) and parking for inventory in one location. Use of Specific Plans to regulate multiple dealerships in one location will continue to be appropriate and is unchanged by this determination.

CONCLUSION

In review of the evidence submitted and the city's existing regulatory documents, and in acknowledgement that over time and as California transitions from being able to sell gas cars in 2035, some forms of automobile sales are now much more similar to a conventional retail operation out of a storefront in a regional commercial center. In this newer model of operation, direct customer sales from a retail storefront are substantially similar to other sales of larger items that are then delivered directly to the customer's address, such as furniture or appliances.

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These are allowed and assumed to be included in the definition of "Retail, wholesale or service businesses catering directly to the consumer."

Therefore, it is the determination of the City Planner that automobile sales that have an on-site inventory less than or equal to five vehicles are consistent with "Retail, wholesale or service businesses catering directly to the consumer" as allowed as a permitted use in the C-2 zone. In general, off-street parking for retail and service-related uses must not impact the neighborhood or the site design and circulation, and therefore will need to be provided for consistent with the requirements under CMC 21.44.020 (Table A) as "Retail uses"; and any inventory parking cannot impact parking for other uses within a larger property without being replaced. The February 23, 2023, letter addressed to the City Planner also indicated that repairs and maintenance are to be completed at an offsite service center. Please note that "automobile repair is a permitted use in the C-2 zone and unaffected by your request nor by this determination. This determination does not modify any other requirements for any other Discretionary Actions that may be needed to process a land development application, or other requirements of other sections of the Carlsbad Municipal Code; including but not limited to the need to obtain city approvals for a Site Development Plan, Coastal Development Plan, or Business License.

This determination may be appealed to the Planning Commission pursuant to CMC §21.54.140 within ten days of the date of this letter. Appeals must be submitted in writing to the Community Development Department; attention City Planner at 1635 Faraday Avenue, Carlsbad, 92008 along with a payment of \$786. Please be advised that the filing of such appeal within such time limit does not stay any requirements, agreements, deadlines, or enforcement action that may otherwise apply to this project or property.

If you have any questions regarding this matter, please feel to contact me at 442-339-2717 or via email at Eric.Lardy@Carlsbadca.gov

Sincerely,



ERIC LARDY, AICP
City Planner

Attachments:

A – Letter dated February 23, 2023

c: Jeff Murphy, Community Development Director
Mike Strong, Assistant Community Development Director
Cliff Jones, Principal Planner



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San Diego, CA 92106

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February 23, 2023

Mr. Eric Lardy, City Planner
City of Carlsbad
1635 Faraday Avenue
Carlsbad, CA 92008

VIA EMAIL: Eric.Lardy@carlsbadca.gov

Subject: City Planner interpretation of retail sales at Carlsbad Forum Shops

On behalf of ownership of Carlsbad Forum Shops (the "Forum"), thank you for the opportunity to submit this request for a City Planner interpretation regarding proposed EV car sales at the Forum. Pursuant to Carlsbad Municipal Code ("CMC") Section §21.53.040, "if an ambiguity arises concerning the appropriate classification of a particular use...it shall be the duty of the City Planner to make an interpretation and thereafter such interpretation shall govern".

Land use regulations, zoning, and design guidelines associated with the Forum are currently promulgated via the Green Valley Master Plan (the "Master Plan"), approved in 1995. The current zoning of Planned Community further denotes the applicability of the Master Plan. The Forum is located within Planning Area 2 ("PA2") of the Master Plan. Allowed uses within PA2 are found at page VI-16 of the Master Plan. The Master Plan notes that all uses in the C-2 General Commercial zone of the City are permitted at the Forum. Allowed uses in the C-2 zone are found in Table A of CMC Section §[21.28.010](#). Retail uses are permitted by right. However, Chapter [21.04](#) of the Zoning Ordinance does not define "retail". As such, a City Planner interpretation pursuant to [CMC §21.53.040](#) is appropriate to resolve this ambiguity.

We respectfully request that the proposed EV car sales at the Forum be determined to be a retail use permitted by right.

The sale of vehicles has changed dramatically in the past decade. In particular, electric vehicle manufacturers have transitioned to a direct to consumer ("DtC") retail sales model whereby consumers enter a typical retail storefront, place an order for a vehicle, and take delivery of the vehicle at their residence or office. No inventory is stored on site at the retail location. Repairs and maintenance are completed at an offsite service center. Unlike traditional car sales, the EV manufacturer does not sell via a 3rd party dealer who may sell a variety of other car brands. In all material respects, the transaction is identical to placing an

order for any other consumer product, like a new iPhone or a jacket, from an existing retail storefront located within the Forum.

In the absence of a definition within the CMC, reference to other sources is appropriate. According to Merriam-Webster dictionary, retail is defined as *“the sale of commodities or goods in small quantities to ultimate consumers”*. The proposed EV car sales at the Forum meets this definition, by selling individual EV’s directly from the manufacturer to the ultimate user.

Finally, as a matter of policy, it is in the City’s interest to promote the sale and use of electric vehicles. The City’s climate action plan (“CAP”) recognizes that the transition to zero emission automobile use is a critical component of achieving overall GHG emission reduction goals. Making EV’s more easily accessible to Carlsbad residents will further the policy objectives of the CAP. Furthermore, EV car sales provide an opportunity to advance economic development objectives within the City. According to the 2022-2023 annual budget, of the City’s 25 largest generators of sales tax revenues, 52% (13) are engaged in auto sales. Tesla, which has just one retail location in the City, is included on this list. Ensuring the economic vitality and financial sustainability of critical City services is supported by EV car sales at the Forum and the significant sales tax revenue generated by this retail use.

Thank you for your consideration of this request. Please do not hesitate to contact me regarding this matter.

Sincerely,



Jonathan Frankel

cc: Mr. Jeff Murphy
Mr. Mike Strong

Attachment: Green Valley Master Plan