



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

- Affordable Housing (Sec. 415)
- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Motion No. 18713 HEARING DATE: OCTOBER 4, 2012

Date: September 27, 2012
Case No.: 2012.0206C
Project Address: 2299 MARKET STREET
Zoning: Upper Market Street Neighborhood Commercial District
 50-X Height and Bulk District
Block/Lot: 3564/091
Project Sponsor: Thomas Tunny
 Reuben & Junius, LLP
 One Bush Street, Suite 600
 San Francisco, CA 94104
Staff Contact: Michael Smith – (415) 558-6322
michael.e.smith@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 703.4, 721.21, 721.49, AND 303 OF THE PLANNING CODE TO ESTABLISH AN APPROXIMATELY 3,300 SQUARE-FOOT, FORMULA RETAIL, FINANCIAL SERVICE USE (D.B.A. BANK OF THE WEST) WITHIN A GROUND FLOOR COMMERCIAL SPACE LOCATED IN THE UPPER MARKET NEIGHBORHOOD COMMERCIAL DISTRICT AND A 50-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On July 14, 2011, Thomas Tunny of Reuben & Junius, LLP, on behalf of Bank of the West (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Sections 703.4, 721.21, 721.49, and 303 to allow a formula retail, financial service use (d.b.a. Bank of the West) within the ground floor commercial space of a mixed-use building that is currently under construction, located within the Upper Market Neighborhood Commercial and a 50-X Height and Bulk District.

On June 14, 2012, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.0206C.

The Department determined the Project to be exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

The 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 the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2012.0206C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

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:

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** 2299 Market Street is a vacant corner lot located on the south side of the intersection of Market, Noe, and 16th Streets in the Upper Market neighborhood. The site was formerly occupied by the Trinity Methodist Episcopal Church that was destroyed by fire in 1981. The property is located in the Upper Market Neighborhood Commercial District just outside the boundaries of the Market/Octavia Plan Area. The property is also located within the area covered by the Upper Market Community Design Plan. The lot has approximately 60'-9" of frontage on Noe Street, 85'-2" of frontage on 16th Street, and 19'-6" of frontage on Market Street along a gore corner. The approximately 7,250 square-foot project site is currently under construction for a five-story mixed-use building with 18 dwelling units, 18 below grade parking spaces, and approximately 4,500 square-feet ground floor commercial space.
3. **Surrounding Properties and Neighborhood.** The Upper Market Street Neighborhood Commercial District, on Market Street from Church to Castro, and on side streets off Market, is situated at the border of the Eureka Valley, Buena Vista, and Duboce Triangle neighborhoods. Upper Market Street is a multi-purpose commercial district that provides limited convenience goods to adjacent neighborhoods, but also serves as a shopping street for a broader trade area. A large number of offices are located on Market Street within easy transit access to downtown. The width of Market Street and its use as a major arterial diminish the perception of the Upper Market Street District as a single commercial district. The street appears as a collection of dispersed centers of commercial activity, concentrated at the intersections of Market Street with secondary streets.

Some areas of the District are noticeably low-rise, automobile oriented lots, with gas stations and single-story commercial establishments with surface parking lots. Just off Market Street there are small-scale residential streets that support the district. In general, the district is a full-service shopping area providing a variety of uses within easy walking distance.

The Upper Market Street district controls are designed to promote moderate-scale development that contributes to Market Street's design and character. They are also intended to preserve the existing mix of commercial uses and maintain the livability of the district and its surrounding residential areas. Large-lot and use development is reviewed for consistency with existing development patterns. Rear yards are protected at residential levels. To promote mixed-use buildings, most commercial uses are permitted with some limitations above the second story. In order to maintain continuous retail frontage and preserve a balanced mix of commercial uses, ground-story neighborhood-serving uses are encouraged, and eating and drinking, entertainment, and financial service uses are limited. Continuous frontage is promoted by prohibitions of most automobile and drive-up uses.

There are currently seven banks located within Upper Market Street NCD/NCT and adjacent Castro NCD combined. These banks include Bank of America, Citi Bank, US Bank and Wells Fargo all on Castro Street, Sterling Bank and Wells Fargo on Market Street, Chase Bank at 15th and Market Streets. Only three of the seven banks listed above are located within the Upper Market Street NCD/NCT.

There are currently nine ground floor vacancies within the Upper Market Street NCD/NCT.

The adjacent property to the east of the subject property is occupied by a single-story commercial building with a restaurant tenant. The property has a rear yard that serves as an outdoor dining area for patrons. The adjacent property to the south is a four-story mixed-use building with a rear yard and ground floor commercial and two dwelling units on the floors above.

4. **Project Description.** The project sponsor is requesting conditional use authorization pursuant to Planning Code Sections 703.4 for a formula retail use, 721.21 for a use size greater than 2,999 square-feet, 721.49 to establish a financial service use, and 303 to establish an approximately 3,300 square-foot, formula retail, financial service use (d.b.a. "Bank of the West") in the ground floor commercial space of a recently approved mixed-use building that is currently under construction.

This would be Bank of the West's first branch in the Upper Market neighborhood and would provide banking services and products to the public, including regular banking services such as deposits, withdrawals, ATMs, and an after-hours drop box. The Project would also facilitate new accounts for both consumer and business clients, offering home mortgages, commercial loans and lines of credit, as well as small business loans. The bank would employ up to eight employees and operate Monday – Thursday: 9:00 a.m. to 5:00 p.m.; Friday: 9:00 a.m. to 6:00 p.m.; and Saturday 9:00 a.m. to 1:00 p.m. The proposed use does not require off-street parking or loading spaces and none is proposed.

5. **Public Comment.** Both the Merchants of Upper Market and Castro (MUMC) and the Duboce Triangle Neighborhood Association (DTNA) submitted a letters supporting the project and the Eureka Valley Promotion Association (EVNA) submitted a letter not opposing the project. The letters from DTNA and EVNA superseded earlier letters of opposition from these organizations to a similar project proposed for the subject space.

A letter of opposition was also received from a neighbor on 16th Street (see attached).

6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Off-Street Parking.** Section 151 of the Planning Code requires one off-street parking for every 500 square feet of occupied floor area up to 20,000 where the occupied floor area exceeds 5,000 square feet, plus one for each 250 square feet of occupied floor area in excess of 20,000.

The proposed use would occupy approximately 3,314 square-feet and is thus not required to provide any off-street parking spaces.

- B. **Off-Street Freight Loading.** Section 152 of the Planning Code requires no off-street loading space for retail uses that are 0 – 10,000 square-feet.

The proposed use would occupy approximately 3,314 square-feet and is thus not required to provide any off-street freight loading space.

- C. **Non-Residential Use Size.** Planning Code Sections 721.21 state that a Conditional Use authorization is required for non-residential use size exceeding 2,999 square feet in the Upper Market Street NCD.

The Project Sponsor intends to occupy approximately 3,314 square feet of ground floor commercial space therefore conditional use authorization is required.

- D. **Financial Service Use.** Planning Code Section 721.49 states that a Conditional Use authorization is required for banks under the use category for “Financial Service” as defined by Planning Code Section 790.110 at the ground and second floors within the Upper Market Street NCD.

The sponsor is seeking conditional use authorization to establish a bank (d.b.a. Bank of the West) within a ground floor commercial space located within the Upper Market Street NCD.

- E. **Signage.** Any proposed signage will be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code.

- F. **Formula Retail Use.** Sections 703.3 and 703.4 places notification requirements and other restrictions on formula retail uses.

The Project is considered to be a formula retail use as defined by Section 703.3(b) of the Planning Code. Conditional Use authorization must be authorized for a formula retail use at the subject site as per Section 703.4.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:
- A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Project will occupy a ground floor commercial space within a newly constructed mixed-use building. The proposed Project will establish a new Bank of the West branch containing approximately 3,300 square feet. There are currently seven banks located within a half mile of the proposed bank. These banks include Bank of America, Citi Bank, US Bank and Wells Fargo all on Castro Street, Sterling Bank and Wells Fargo on Market Street, Chase Bank at 15th and Market Streets. It should be noted that those banks listed above on Castro Street are within the Castro Street NCD which is a different though adjacent district to the subject Upper Market Street NCD. Only three of the seven banks listed above are located within the Upper Market Street NCD/NCT.

The nearest Bank of the West branch is located on 24th Street within the Mission neighborhood. According to the sponsor, the proposed branch would potentially serve customers residing in the Castro, Duboce Triangle, Mission Dolores, Hayes Valley, and Corona Heights neighborhoods.

The bank would employ up to eight employees and operate Monday – Thursday: 9:00 a.m. to 5:00 p.m.; Friday: 9:00 a.m. to 6:00 p.m.; and Saturday 9:00 a.m. to 1:00 p.m.

The sponsor is also seeking conditional use authorization for a use size greater than 2,999 square-feet. The Department finds that creating an approximately 3,300 square-foot commercial space is only minimally larger than the use-size permitted in the District. Furthermore, the project would result in three new small storefronts at the property's Noe street frontage. The smaller spaces would be initially marketed to non-formula retail tenants and their smaller size would make them more attractive and financially feasible for locally owned businesses. The presence of the three smaller retail spaces would also increase the retail diversity of the District. For these reasons the Department feels that allowing the project with the larger commercial space would on balance benefit the overall District.

1. In Neighborhood Commercial Districts, if the proposed use is to be located at a location in which the square footage exceeds the limitations found in Planning Code Section 121.2(a) or 121.2(b), the following shall be considered:
- (i) The intensity of activity in the district is not such that allowing the larger use will be likely to foreclose the location of other needed neighborhood -serving uses in the area; and

According to the Project Sponsor, given the estimated population growth for the neighborhood, there are limited banking opportunities in the neighborhood when compared to the City as a whole. As proposed, the bank would exceed the use size

limitations by approximately 300 square-feet. The odd configuration of the site resulted in a ground floor commercial space with a lot of floor area that is significantly recessed from the street within the southeast corner of the plan. The space at this location is difficult to make use of but is usable for certain uses. The space will be used as offices for the proposed use. The tenant has obtained a long-term lease on the space so it will not sit vacant for a long period of time as other larger spaces have done within the District. The configuration of the space does not preclude it from being reconfigured to suit the needs of potential tenants in the future.

- (ii) The proposed use will serve the neighborhood, in whole or in significant part, and the nature of the use requires a larger size in order to function; and

The closest Bank of the West branch is located on Mission Street with the Inner Mission. The proposed location is intended to serve the immediate neighborhood which has a growing population as more dwellings are being constructed along this transit corridor. The project would also result in three smaller storefronts that are intended to have uses to serve the immediate neighborhood

- (iii) The building in which the use is to be located is designed in discrete elements which respect the scale of development in the district; and

The additional square-footage that the sponsor is requesting would be gained by taking additional space from the interior of the building and therefore would not affect the scale of the building at the street.

- B. The proposed project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the project be detrimental to the health, safety or convenience of those residing or working the area, in that:

- i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The Project would occupy a ground floor commercial space within a new mixed-use building that has 4,484 square-feet of ground floor retail space. The retail space was intended to be divided into two or more spaces each less than 3,000 square-feet. The proposal involves reconfiguring the interior to gain the additional square-footage. The Project would maintain the existing building envelope and site arrangement.

- ii. 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;

The Planning Code does not require off-street parking or loading for a 3,314 square-foot bank. The proposed use is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide. The Project

Site is well-served by public transit. MUNI lines "F Market" and the "K, L, and M metro lines" run near the Project Site, providing transit access from various neighborhoods.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The project would not emit noxious or offensive emissions such noise, glare, dust or odor.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

No additional landscaping is proposed for the site. The Department shall review all lighting and signs proposed for the property in accordance with the Conditions of Approval contained in Exhibit A. Once submitted, staff will share the final signage plan with the Commission as an informational item prior to approval.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The proposed Project is consistent with the stated purpose of the Upper Market Street Neighborhood Commercial District in that the intended use is located at the ground floor, and will provide a compatible convenience service for the immediately surrounding neighborhoods. However, the larger use size is not required to provide the necessary banking-related services for its customers.

- 8. **Planning Code Section 303(i).** With regard to a conditional use authorization application for a formula retail use, the Planning Commission shall also consider, in addition to the criteria set forth in Subsection 303(c) above, the criteria set forth in subsection 303(i) below.

- A. The existing concentrations of formula retail uses within the Neighborhood Commercial District.

A survey of the Upper Market NCD/NCT revealed that 14 formula retail uses are currently found in the district. These businesses include Subway, Walgreens, Max Muscle, Streetlight Records, Check Cashing Store, Crossroads Trading Co., Verizon Wireless, Peet's Coffee, Wells Fargo, Radio Shack, Metro PCS, Sterling Bank, Books Inc., and Sunglass Hut.

- B. The availability of other similar retail uses within the Neighborhood Commercial District.

There are seven existing financial service uses within the Upper Market Street NCD/NCT and adjacent Castro NCD combined. These banks include Bank of America, Citi Bank, US Bank and Wells Fargo all on Castro Street, Sterling Bank and Wells Fargo on Market Street, Chase Bank at 15th and Market Streets. It should be noted that those banks listed above on Castro Street are within the Castro Street NCD which is a different though adjacent district to the subject Upper Market Street NCD/NCT. Only three of the seven banks listed above are located within the Upper Market Street NCD/NCT.

- C. The compatibility of the proposed formula retail use with the existing architectural and aesthetic character of the Neighborhood Commercial District.

From an urban design perspective, a corner storefront is not the most desirable location for a financial use since they lack activity after 5pm. The project has been designed to address this concern by embedding much of the bank at the rear of commercial space and creating smaller commercial spaces at the street frontage.

- D. The existing retail vacancy rates within the Neighborhood Commercial District.

There are nine ground floor vacancies within the Ocean Avenue NCT.

- E. The existing mix of Citywide-serving retail uses and neighborhood-serving retail uses within the Neighborhood Commercial District.

The Upper Market NCD/NCT contains eating and drinking establishments, retail, services and institutions that generally serve the immediate neighborhood. These aforementioned uses are primarily locally-owned, independent uses. Formula retail uses can be found scattered across the district. The proposed use is intended to be primarily neighborhood-serving since there are other Bank of the West locations throughout the City. Also, the creation of three small storefronts offsets the proposed formula retail use.

9. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

NEIGHBORHOOD COMMERCE

Objectives and Policies

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 that has substantial undesirable consequences that cannot be mitigated.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The Project Site is located within a NCD and is consistent with activities in the commercial land use plan because it would provide a neighborhood serving use within a ground floor commercial space.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the City.

The proposed Project, a new Bank of the West branch, is designed to serve the needs of nearby residents. The Project will provide easy access for these customers by locating a bank branch within walking distance of their homes. It will also provide resident employment opportunities to those in the community.

OBJECTIVE 6:

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

Policy 6.1:

Ensure and encourage the retention and provision of neighborhood-serving goods and services in the City's neighborhood commercial districts, while recognizing and encouraging diversity among the districts.

The subject commercial space is new and has never been tenant occupied so no commercial tenant would be displaced by the Project. The Project could make it more difficult for smaller businesses to locate within the District by creating a larger, less affordable tenant space.

Policy 6.9:

Regulate uses so that traffic impacts and parking problems are minimized.

The following guidelines, in addition to others in this objective for neighborhood commercial districts, should be employed in the development of overall district zoning controls as well as in the review of individual permit applications, which require case-by-case review and Planning Commission approval. Pertinent guidelines may be applied as conditions of approval of individual permit applications. In general, uses should be encouraged which meet the guidelines; conversely, uses should be discouraged which do not.

Financial Services

Guidelines for financial services are as follows:

- Financial offices should not be located near other financial service uses or add to an overconcentration of financial services in a single district. In most districts, it is preferable that financial services be at least 500 feet apart. In certain locations, clustering may be appropriate, depending on potential traffic circulation and parking impacts, but in no case should the number exceed the maximum number that would be allowed if all financial services in the district were at least 500 feet from each other. For example, a configuration of clustered financial services where off-street parking is shared might be a more efficient use of land than an even distribution of such financial services. Another example where clustering may be appropriate is in a non-linear area district where a cluster of financial service may provide greater choice and more convenient service to nearby merchants who need such services than an even distribution of financial services throughout the district. In addition to overconcentration within a single district, proximity to financial services in other nearby districts should be considered in evaluating the need and impacts of a new financial service use or a new location for an existing financial service establishment;

There are currently three banks located in the Upper Market Street NCD, Chase, the nearest bank, located at 2112 15th Street at Market Street, is located more than 500 feet from the proposed bank. However, there are limited financial services in the form of ATMs that are located within 500 feet of the proposed bank. The Castro Street NCD is the nearest district and it has four banks within two blocks. There are no Bank of the West branches currently located in the District. The nearest Bank of the West branch is located on 24th Street in the Mission.

- New, expanding or relocating financial service establishments should provide a detailed analysis of the potential impacts on existing transportation systems which serve the location. If significant adverse impacts on traffic and transit volumes and circulation and parking congestion are anticipated, especially on transit-preferential streets, the proposed use should be redesigned to mitigate such impacts (e.g. reducing the project size) or providing off-street parking or the use should be prohibited. The location of limited financial services should be carefully evaluated, as to the potential for double-parking or illegal parking by users of the facilities and the interference with traffic circulation by such vehicles (see Policy 9 for additional guidelines). If the proposed use includes automated teller machines, this evaluation is especially critical in determining the appropriateness of the use and its location;

The Planning Code does not require off-street parking or loading for a 3,314 square-foot bank. The proposed use is designed to meet the needs of the immediate neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide. The Project Site is well-served by public transit. MUNI Metro lines "F, K, L, M" run near the Project Site, linking various neighborhoods along the Market Street corridor. The site is also well served by several local bus routes that run nearby and the neighborhood is served by on-street metered and non-metered parking spaces near the Site.

The bank would have one ATM that would be recessed from the sidewalk and located near the entry to the bank. The location of the ATM provides queuing for patrons in manner that would not obstruct the flow of sidewalk traffic. It would not be feasible for patrons using the ATM to double park in front of the bank because doing so would block the intersection.

- Financial services should provide retail banking services to serve the business community as well as the residential community;

The proposed Project will provide local businesses with retail banking services in addition to banking services to the residential community.

- The location of new, expanding, or relocating financial services should avoid, if feasible, the demolition of sound buildings which are compatible in scale and character with other buildings in the district;

The proposal does not include demolition of the existing structure.

- If new construction is necessary, inclusion of other commercial uses and/or residential units may be desirable. New structures should have continuous retail frontage along the shopping street or mall except where access to upper-level uses, accessory parking, loading or public open space is necessary. New development should be compatible in scale, design and use with the rest of the district;

There is no new construction proposed at the Site.

- In neighborhood commercial districts where drive-up facilities are not permitted, financial offices should be pedestrian oriented. In cases where drive-up facilities are permitted or parking is required, interruptions of the continuous retail frontage should be kept to a minimum, and

There are no drive-up facilities associated with the Project.

- Automated teller machines should be recessed from the sidewalk, when possible, or should be incorporated into limited financial service facilities inside the facility with adequate waiting space for patrons.

One automated teller machines (ATMs) would be provided in a recessed area near the bank entry. The area can be accessed after regular bank hours. Besides the ATMs, a night-drop box will also be provided in the vestibule for after-hour deposits.

10. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the project does comply with said policies in that:

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

The proposal would not affect existing neighborhood-serving retail uses because it would occupy a newly created commercial space. It will provide employment for up to eight people. It will also provide greater choice and more convenient service to nearby residents and merchants.

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

The proposed use will not affect the cultural and economic diversity of the neighborhood because it would not displace an existing use and it would not lead to an overconcentration of financial uses in the District.

- C. That the City's supply of affordable housing be preserved and enhanced,

The Project would not affect the City's existing supply of affordable housing.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The proposed use is well served by public transit and is not expected to be a destination use that attracts patrons from outside the immediate neighborhoods. If driving patrons double-park adjacent to the site it could interrupt the flow of traffic through the adjacent intersection.

- E. 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 Project will not displace any service or industry establishment. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.

- F. That the City achieves the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The Project would occupy the ground floor commercial space within a new mixed-use building. The proposed use would be constructed in compliance with all Building Code requirements to protect against injury and loss of life in an earthquake.

- G. That landmarks and historic buildings be preserved.

The subject property is newly constructed and is not historic or a landmark.

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

The project will have no negative affect on existing parks and open spaces.

11. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

12. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2012.0206C pursuant to Sections 703.4, 721.21, 721.49, and 303 of the Planning Code** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, received **XXXX, XXXX**, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18713. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on October 4, 2012

Linda D. Avery
Commission Secretary

AYES: Commissioners Hillis, Sugaya, Fong, Antonini, Borden, Moore, and Wu

NAYES: None

ABSENT: None

ADOPTED: October 4, 2012

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to establish a financial service use (d.b.a Bank of the West) within the ground floor commercial space of the mixed-use building being constructed at 2299 Market Street, Block 3564, Lot 091 pursuant to Planning Code Sections 703.4, 721.21, 721.49, and 303 within the Upper Market Street Neighborhood Commercial District and a 50-X Height and Bulk District; in general conformance with plans stamped "EXHIBIT B" included in the docket for Case No. 2012.0206C and subject to conditions of approval reviewed and approved by the Commission on **October 4, 2012** under Motion No. 18713. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on **October 4, 2012** under Motion No. 18713.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18713 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use authorization.

Conditions of Approval

PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of

Building Inspection to construct the project and/or commence the approved use must be issued as this Conditional Use authorization is only an approval of the proposed project and conveys no independent right to construct the project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three (3) years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three (3) years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

DESIGN

2. **Signage Program.** Any proposed signage shall be subject to the review and approval of the Planning Department and must comply with Article 6 of the Planning Code. The plans for signage that have been presented to the Commission are for informational purposes only and have not been reviewed for Code compliance. Once submitted staff will share the final signage plan with the Commission as an informational item prior to approval.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

MONITORING

4. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.

OPERATION

5. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the architectural addenda. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org.

6. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works' Streets and Sidewalk Maintenance Standards.
For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>

7. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.
For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org.
For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org.
For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-1012 or 415-5530123, www.sf-police.org

8. **Community Liaison.** Prior to issuance of a Building Permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863

9. **Formula Retail.** The three proposed retail spaces at the Noe Street frontage cannot be leased to a formula retail tenant for a period of five-years beginning at TCO (temporary certificate of occupancy).
For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org .