



# SAN FRANCISCO PLANNING DEPARTMENT

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## Letter of Legitimization

August 2, 2012

John Kevlin  
Reuben & Junius, LLP  
1 Bush Street, Suite 600  
San Francisco, CA 94104

<b>Site Address:</b>	<b>1550 Bryant Street</b>
<b>Assessor's Block/Lot:</b>	<b>3923/006</b>
<b>Zoning District:</b>	<b>PDR-1-G</b>
<b>Staff Contact:</b>	<b>Corey Teague, (415) 575-9081 or <a href="mailto:corey.teague@sfgov.org">corey.teague@sfgov.org</a></b>

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Dear Mr. Kevlin:

This letter is in response to your request for a Letter of Legitimization per Planning Section 179.1 regarding the property at 1550 Bryant Street. This parcel is located in the PDR-1-G Zoning District and a 68-X Height and Bulk District. The request is to legitimize the existing office use on portions of floors one through nine in the existing ten-story building, totaling 92,753 gross square feet.

### Procedural Background

The Department received the request for legitimation of office space at 1550 Bryant Street on January 19, 2012. Staff reviewed the request and associated materials and the Zoning Administrator issued a 30-day public notice of the intent to issue the Letter of Legitimization on June 29, 2012. The public notice also included a draft letter for review, and was sent to 1) all owners of property within 300 feet of the subject property, 2) all current tenants of the subject property, and 3) all individuals and neighborhood associations that had requested to receive such notice. Additionally, notice was posted on the site during the notification period. The notification period expired on July 30, 2012.

### Eligibility

The land use proposed for legitimation is deemed eligible if it meets the following criteria:

- i. The land use existed as of the date of the application;

*Lease documentation and marketing materials indicate that office use existed in each of the relevant units as of January 19, 2012. Specific tenants and general leasing times are listed in a timeline matrix attached as Exhibit A.*

- ii. The land use would have been principally permitted or permitted with conditional use authorization under provisions of the Planning Code that were effective on April 17, 2008;

*Prior to the Eastern Neighborhoods rezoning, the subject property was located in the M-1 Zoning District, which principally permitted office uses.*

- iii. The land use would not be permitted under current provisions of the Planning Code;

*The subject property is located in the PDR-1-G Zoning District, which prohibits office uses except in designated landmark buildings.*

- iv. The land use either has been (1) regularly operating or functioning on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1, or (2) functioning in the space since at least April 17, 2008, and is associated with an organization, entity or enterprise which has been located in this space on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1;

*Lease documentation and marketing materials indicate that the office use has been regularly operating for no less than 2 years prior to January 19, 2009, the effective date of Planning Code Section 179.1. Specific tenants and general leasing times are listed in a timeline matrix attached as Exhibit A.*

- v. The land use is not accessory to any other use;

*The subject office uses are principle uses and are not accessory to any other uses within the building.*

- vi. The land use is not discontinued and abandoned pursuant to the provisions of Planning Code Section 183 that would otherwise apply to nonconforming uses.

*Leasing documentation and marketing materials indicate that the relevant units have remained occupied during the required period, with only minor vacancies in a few units during periods of tenant turnover.*

## **Determination**

It is my determination that the request for legitimization of the existing 92,753 gross square feet of office use on portions of floors one through nine in the existing ten-story building as shown on the attached plans meet all the required criteria of Planning Code Section 179.1. Therefore, the subject gross floor area is deemed legitimate office space as defined in Planning Code 870.90. A Notice of Special Restrictions shall be filed on the subject property documenting the specific building area legitimized as office space as listed in this letter and documented on the proposed plans, attached as Exhibit B, prior to the approval of a site or building permit establishing such office space. This determination is not a project approval, or in any way a substitute for a Building Permit Application for the change of use to office space.

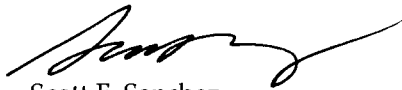
John Kevlin  
Reuben & Junius, LLP  
1 Bush Street, Suite 600  
San Francisco, CA 94104

August 2, 2012  
Land Use Legitimization Letter  
1550 Bryant Street

Please note that before a Building Permit Application may be approved to legally convert the subject gross floor area to office, this project must (1) undergo an Annual Limit review for office space before the Planning Commission pursuant to Planning Code Section 321, and (2) pay the relevant impact fees outlined in Section 179.1(g), and elsewhere in the Municipal Code.

APPEAL: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of the Letter of Legitimization. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Scott F. Sanchez  
Zoning Administrator

cc: Corey Teague, Planner  
Adam Chall, TMG Partners  
Planning Commissioners  
All Parties on the Notification Request List

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# REUBEN & JUNIUS<sub>LLP</sub>

## EN LEGITIMIZATION APPLICATION §179.1

January 18, 2012

### VIA MESSENGER

Mr. Scott Sanchez  
Zoning Administrator  
1650 Mission Street, 4<sup>th</sup> floor  
San Francisco, CA 94103

ID #10172 SE J. BANALES  
CK # 19865 X 588. -

**Re: EN Legitimization Application  
1550 Bryant Street (Block 3923, Lot 006)  
Our File No.: 5185.02**

Dear Mr. Sanchez:

Our office represents AE-HAMM'S PROPERTY OWNER, LLC ("Owner"), the owner of the property located at 1550 Bryant Street, San Francisco (the "Property"). By this letter, we are seeking a determination that certain suites located on various floors of the Property are eligible for legitimization under Planning Code Section 179.1 as office space. The total floor area of the office space we are seeking to legitimize is 92,753 square feet. Enclosed with this letter are materials that support the legitimization determination, as is explained in detail below.

### **A. Background**

The Property is a irregular-shaped, through lot located between Bryant Street and Florida Street, with the closest cross-streets being Division Street and 16<sup>th</sup> Street (Block 3923, Lot 006). The Property is currently improved with a ten-story office building. The building fronts onto Bryant Street. The building was originally constructed in 1953.

The Property was rezoned from M-1 to PDR-1-G pursuant to the Eastern Neighborhoods Area Plan rezoning. This letter of determination of legitimization eligibility request is being made for a total of 92,753 square feet at the Property.

In short, the Property is an office building. It is comprised of office suites that look like spaces used for office tenants. These spaces in no way appear similar to spaces used for light industrial uses. The building is 10-stories tall, and therefore is not suited to the uses permitted and encouraged by the PDR-1-G zoning. All vacancies throughout the building are continuously being marketed as office suites by the building's commercial broker.

Photos of the existing building are attached in Exhibit A.

**B. Building History**

The Property was originally constructed in 1953 and used as a brewery (Hamm's Brewery) until 1975. The building went unused for several years until it was expanded and remodeled as an office/showroom building in 1984. A negative declaration and variance for off-street parking was issued for the conversion. In 1986, the remodel project was modified to change the amount of showroom space, for which a CEQA note to file and a new variance for off-street parking were issued. In 1992, due to the multiple approvals and the complexity of the uses of the building, the then-owner requested that the Zoning Administrator ("ZA") determine the official uses and associated floor areas at the Property recognized by the Planning Department. In that letter, the ZA recognized the following uses:

Offices	80,000 square feet
Service and other business	39,800 square feet
Restaurant	6,000 square feet
Retail	9,000 square feet
<u>Wholesale</u>	<u>53,600 square feet</u>
Total Floor Area	188,400 square feet

In 2004, the Property was granted another variance for off-street parking, due to the expiration of a valet parking agreement that the previous variances had been based upon.

The 1983 negative declaration, the 1983 variance, the 1983 certificate of final completion, the 1986 CEQA note to file, the 1986 variance, the 1992 ZA letter and the 2004 variance are all attached as Exhibit B.

Over the course of the years since the building expansion and remodel in 1984, the Property has increasingly been used as office. For over a decade, virtually the entire building is used as office. John Jensen, of the firm Grubb & Ellis, is the dedicated broker for the building, and is continuously marketing all available suites to potential office tenants. **By this application, we respectfully request that you make the formal determination that 92,753 square feet of space at the Property is eligible for legitimization as office space.**

Currently, there are approximately 56 tenant suites in the building. Due to floor plates that have been broken up into various-sized suites over the years, the number of suites has changed over time. Attached to this letter as Exhibit C is an excel spreadsheet that provides a suite-by-suite analysis of the use history at the Property. Each suite is placed in one of three categories: (1) eligible for legitimization as office space, (2) part of the 80,000 square feet of previously-entitled office space, or (3) non-office space.

Leases for legitimizable suites, as well as leases showing office uses in the pre-entitled office suites, are attached as Exhibit D, and are broken down by suite and in chronological

order. For those suites that had a significant period of vacancy between January of 2007 and January of 2009, or that are currently vacant, materials evidencing the marketing of the suites for office tenants during those periods are attached as **Exhibit E**.

A January 2007 rent roll and December 2011 rent roll for the Property are attached as **Exhibit F**. Current floor plans are attached as **Exhibit G**.

**C. Legitimization Analysis**

*i. The land use existed as of the date of the application;*

Each suite proposed for legitimization as office use is either currently occupied by an office tenant, or is actively being marketed by Grubb & Ellis for an office tenant. See the attached legitimization analysis spreadsheet for details. Marketing materials for those suites eligible for legitimization but currently vacant are attached as well.

*ii. The land use would have been principally permitted or permitted with conditional use authorization under provisions of the Planning Code that were effective on April 17, 2008;*

Prior to the EN rezoning, the Property was located in the M-1 (Light Industrial) Zoning District. This district principally permitted office use.

*iii. The land use would not be permitted under current provisions of the Planning Code;*

Upon the conclusion of the EN rezoning process, the zoning district classification for the Property was changed to the current PDR-1-G (Production, Distribution and Repair - General) designation. In the PDR-1-G district, office uses are not permitted.

*iv. The land use either has been (1) regularly operating or functioning on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1, or (2) functioning in the space since at least April 17, 2008, and is associated with an organization, entity or enterprise which has been located in this space on a continuous basis for no less than 2 years prior to the effective date of Planning Code Section 179.1;*

Each suite proposed for legitimization as office use was either occupied continuously from January 19, 2007 through January 19, 2009, or complied with the ZA's interpretation regarding the definition of "continuous basis," which allows for vacancies up to a year during this period when the spaces are actively marketed for office tenants and there has been at least two years of office use in the space. See the attached legitimization analysis spreadsheet for details. Marketing materials for those suites that had a vacancy lasting less than one year during this period are also attached.

v. *The land use is not accessory to any other use;*

All of the spaces proposed for legitimization are stand-alone suites, and the tenants that have occupied them have used the space principally as office use. The only exception to this is the first floor conference room and the penthouse, which is a large, open area conference room on the top floor. These spaces are used by all office tenants in the building, as well as building management.

vi. *The land use is not discontinued and abandoned pursuant to the provisions of Planning Code Section 183 that would otherwise apply to nonconforming uses.*

During all relevant times, no period of non-use of the suites proposed for legitimization as office space has occurred for three or more years and no non-office use has been established in those suites. As a result, the office space in the suites proposed for legitimization has not been discontinued or abandoned.

#### **D. Notification Materials**

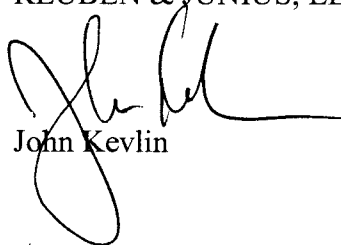
Mailing labels, a 300-foot radius map and a list of owners within 300-foot radius are also enclosed with this application.

#### **E. Conclusion**

In addition to the evidence and other documents identified above, I have also enclosed a check for \$588 for the letter of determination fee. Please contact me if there is anything else you need from me or have any questions.

Very truly yours,

REUBEN & JUNIUS, LLP



John Kevlin

Encls.: Exhibit A – Photographs of the Property  
Exhibit B – Historic Planning Department documents  
Exhibit C – Suite-by-suite legitimization analysis  
Exhibit D – Lease history for office suites  
Exhibit E – Marketing materials for various vacancies  
Exhibit F – January 2007 and December 2011 rent rolls  
Exhibit G – Current floor plans of Property

Mr. Sanchez  
January 18, 2012  
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Separately enclosed:  
Check for \$588 for the request fee  
Notification materials