



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Legitimization

June 18, 2013

Jan Michaels
590 York Street
San Francisco, CA 94110

Site Address:	576-590 York Street, aka 2700 - 18 th Street
Assessor's Block/Lot:	4016/002
Zoning District:	PDR-1-G (Production, Distribution, Repair)/68-X
Staff Contact:	Julian J. Bañales (415) 558-6339 julian.banales@sfgov.org

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Suite 400
San Francisco,
CA 94103-2479

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Dear Ms. Michaels:

This letter is in response to your request for a Letter of Legitimization per Planning Code Section 179.1 regarding the property at 576-590 York Street, aka 2700 - 18th Street. This parcel is located on the northwest corner of York and 18th Streets. It is in the PDR-1-G (Production, Distribution, Repair, General) Zoning District and 68-X Height and Bulk District. The request is to legitimize the 15,270 square feet of office use.

Procedural Background

The Department received the request for the legitimization of the office space at 580-590 York Street, aka 2700 - 18th Street on December 19, 2011. 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 April 19, 2013. 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 May 24, 2013.

Eligibility

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

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

Although the request was for 15,270 square feet of office, documentation was presented that only 8,343 square feet of office existed as of December 19, 2011, the date the application was filed with the Planning Department.

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

On April 17, 2008, prior to the Eastern Neighborhoods Area Plan, the subject property was zoned M-1 (Light Industrial). Planning Code Section 219 states that office use is permitted as-of-right in this Zoning District.

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

The property is currently zoned PDR-1-G (Production, Distribution, Repair, General). Planning Code Section 219 outlines what uses are permitted, not permitted, or requires a Conditional Use Authorization in the PDR-1-G Zoning District. Office uses are not permitted pursuant to Planning Code Section 219 in the subject building.

- 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;

At the date of qualification on January 17, 2007,¹ the following outlines the land uses by unit:

First Floor:

- 1. 2700 - 18th Street/580 York Street: Lease documentation indicates that office use existed in this unit as of June 30, 2012. The space at 2700- 18th Street merged with 580 York Street to create one office space on January 1, 2008, and documentation was submitted showing that there was office use in both spaces on January 17, 2007. This unit qualifies for legitimization under Planning Code Section 179.1, for a total of 5,965 square feet of office space at this unit.*
- 2. 576 York Street: Documentation has not been provided indicating that this space was occupied by office use on January 19, 2007. The submitted lease dates from August 1, 2010 – July 31, 2011 and then reverts to a month-to-month lease. No documentation was submitted indicating that office use was in this unit on January 17, 2007. Note that the current tenant is "Head Change Distributors, LLC" and the space is used for "general office purposes, warehouse, shipping and receiving." In order for any space to qualify as office use, this use must be the primary use, not an accessory use (as defined in Planning Code Section 204.3(d)) to the warehouse, shipping and receiving uses. This unit does not qualify for legitimization under Section 179.1, and the 1,520 square feet is not legal office use.*

¹ The Eastern Neighborhoods Plan Area, which rezoned the subject property from M-1 to PDR-1-G, went into effect on January 17, 2009. Section 179.1 states that for a use to qualify for legitimization it must be "regularly operating or function[ing] on a continuous basis for no less than 2 years" prior to the date this section went into effect. Therefore, under this provision, January 17, 2007, is one qualifying date for determining whether a use qualifies for legitimization.

Second Floor:

3. Unit #1: This space has been occupied by office uses since January 17, 2007. Lease documentation indicates that office use existed in this unit as of June 30, 2012. This unit qualifies for legitimization under 179.1, for a total of 866 square feet of office space at this unit.
4. Unit #2: This space has been occupied by office uses since January 17, 2007. Lease documentation indicates that office use existed in this unit as of December 31, 2012. This unit qualifies for legitimization under 179.1, for a total of 530 square feet of office space at this unit.
5. Unit #3: This space has been occupied by office uses since January 17, 2007. Lease documentation indicates that office use existed in this unit as of December 31, 2012. This unit qualifies for legitimization under 179.1, for a total of 420 square feet of office space at this unit.
6. Unit #4: This space has been occupied by office uses since January 17, 2007. Lease documentation indicates that office use existed in this unit as of December 31, 2012. This unit qualifies for legitimization under 179.1, for a total of 562 square feet of office space at this unit.
7. Unit #5: Documentation has not been provided indicating that this space was occupied by office use on January 17, 2007. Lease documentation submitted is for "Ad Infinitum Films" and states that the space is being used for "general office/film post-production purposes". In order for any space to qualify as office use, it must be the primary use, not an accessory use (as defined in Section 204.3(d)) to the film production use. Further, Section 102.2 ("Arts Activities and Spaces") states that arts activities include "production, post-production and some schools of any of the following ... film, video, graphic art." This unit does not qualify for legitimization under Section 179.1, and the 693 square feet is not legal office use.
8. Unit #6: Documentation has not been provided indicating that this space was occupied by office use on January 17, 2007. Documentation submitted indicates that this space is occupied by the building owner and is primarily used for the production of jewelry with office being accessory to that function. In order for any space to qualify as office use, it must be the primary use, not an accessory use (as defined in Section 204.3(d)) to the jewelry production use. This unit does not qualify for legitimization under 179.1, and the 3,020 square feet is not legal office use.
9. Unit #7: Documentation has not been provided indicating that this space was occupied by office use on January 17, 2007. Lease documentation submitted is for "Andrea Schlosser, d.b.a. Charm Day Spa" and states that the space is being used for "general office and day space usage". Under Planning Code Section 218, this is a personal service, not office use. In order for any space to qualify as office use, this use must be the primary use, not an accessory use (as defined in Planning Code Section 204.3(d)) to the personal service use. This unit does not qualify for legitimization under 179.1, and the 600 square feet is not legal office use.

Jan Michaels
590 York Street
San Francisco, CA 94110

June 18, 2013
Land Use Legitimization Letter
576-590 York Street, aka 2700 - 18th Street

In sum, documentation was presented that office use existed as of January 17, 2007 in 2700 - 18th Street (first floor), and unit nos. 1, 2, 3, and 4 (second floor), for a total of 8,343 square feet of office space.

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

As documented above, the unit at 2700- 18th Street (first floor), and nos. 1, 2, 3, and 4 on the second floor, for a total of 8,343 square feet is not accessory office space. However, 576 York Street (first floor), and unit nos. 5, 6, and 7 on the second floor are not primarily used as office but rather, the office use is accessory to arts activities and production uses. Therefore, a total of 5,833 square feet of space does not qualify for legitimization under Section 179.1.

- 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.

Lease documentation indicates that 2700- 18th Street (first floor), and unit nos. 1, 2, 3, and 4 (second floor), have remained occupied during the required period, with only minor vacancies in a few units during periods of tenant turnover.

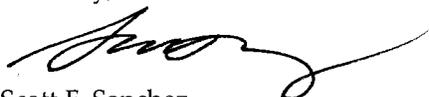
Determination

It is my determination that the request for legitimization of 8,343 gross square feet of existing office space meets all the required criteria of Planning Code Section 179.1 and is therefore deemed to be a legal "Office" as defined in Planning Code 219(a). 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.

The Transit Impact Development Fee as imposed for projects subject to legitimization shall apply to the project.

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

Jan Michaels
590 York Street
San Francisco, CA 94110

June 18, 2013
Land Use Legitimization Letter
576-590 York Street, aka 2700 - 18th Street

cc: Julian J. Bañales
Planning Commissioners
All Parties on the Notification Request List

REUBEN & JUNIUS_{LLP}

EN LEGITIMIZATION APPLICATION §179.1

January 18, 2012

VIA MESSENGER

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

ID # 10170 SE J. BANALES
CHECK # 19866 \$ 588. -

RECEIVED

Re: EN Legitimization Application
2700 19th Street (Block 4023, Lot 004)
Our File No.: 5367.07

JAN 19 2012

CITY & COUNTY OF S.F.
PLANNING DEPARTMENT

Dear Mr. Sanchez:

Our office represents 19th Street Holding Company (“Owner”), the owner of the property located at 2700 19th Street, San Francisco (the “Property”). The Property consists approximately 7,500 square feet of floor area with 9 office suites located on one floor. By this letter, we are seeking a determination that the entirety of the Property, comprising 7,500 square feet, is eligible for legitimization under Planning Code Section 179.1 as office space. Enclosed with this letter are materials that support the legitimization determination, as is explained in detail below.

A. Background

The Property is a rectangular-shaped lot located at the northeast corner of 19th and York Streets. The Property is currently improved two interconnected buildings. The first, 660 York Street, is a two-story building at the very corner 19th and York Streets. Immediately adjacent to the west of 660 York Street is 2700 19th Street, a one story building, which is the subject of this legitimization application. The two buildings are attached and share a ground floor and a main entrance. The main entrance for both buildings is from 660 York Street. The buildings function together as a single office building.

The Property was rezoned from M-1 to UMU pursuant to the Eastern Neighborhoods Area Plan rezoning. 660 York Street, was recently identified by the Northeast Mission/Showplace Square historic resources survey as individually eligible for the California Register. As such, office use continues to be principally permitted throughout the building pursuant to Planning Code Section 803.9(c). 2700 19th Street was given no historic designation by the survey, and therefore office use is not permitted.

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James A. Reuben | Andrew J. Junius | Kevin H. Rose | Tuija I. Catalano | David Silverman | Sheryl Reuben¹ | Jay F. Drake
Daniel A. Frattin | Stephen R. Miller | Lindsay Petrone | John Kevlin | Alison L. Krumbain | John McInerney²

1. Also admitted in New York 2. Of Counsel

This letter of determination of legitimization eligibility request is being made for 9 office suites at 2700 19th Street, for a total of 7,500 square feet of legitimized office space.

Photos of the existing building are attached in **Exhibit A**.

B. Use History and Floor Plans

The Property has been occupied by a variety of office uses in recent years. The occupancy history the Property makes its entirety eligible for legitimization as office. A general tenant history summary for the years 2007 through 2012 is attached as **Exhibit B**. Records of rent payments for each suite for the years 2007, 2008 and 2009 are attached as **Exhibit C**. A floor plan for the Property is attached as **Exhibit D**.

Further evidence of the Property consisting of an office building are (1) a 2008 appraisal of the Property, referred to as “an office building,” attached as **Exhibit E** and (2) a 2004 building permit, approved by a planner, indicating the building’s use as office, attached as **Exhibit F**.

C. Legitimization Analysis

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

Each suite at the Property, with the exception of Suite A, is currently occupied by an office tenant. Suite A is partially occupied by the Owner and is used as an office. The remainder of Suite A is used by the Owner and other office tenants for meeting space. The Owner is continuously marketing Suite A for an office tenant, through word of mouth and through the building’s website www.theyorksf.com (screenshots attached as **Exhibit G**).

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;

The EN Area Plan rezoned the Property to UMU, which does not permit office use on the ground floor. As a one-story building, office use is not permitted at the Property.

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;

All office suites were occupied throughout this time, with the exception of Suite D. Suite D was vacant between July 2008 and March 2009. During that time, the suite had been actively marketed for office tenants, again, through the Owner's individual efforts and the use of the building's website. Since the vacancy lasted less than one year between January 2007 and January 2009, it is still eligible for legitimization pursuant to the ZA's interpretation of "continuous basis."

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

All office uses were the principal use, and not accessory to any other use.

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 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 uses in these suites have not been discontinued or abandoned.

D. Notification Materials

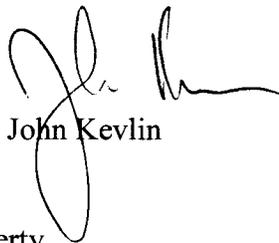
Mailing labels, a 300-foot radius map and a list of owners within 300-foot radius have been ordered and will be provided as soon as we receive them.

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 – Tenant history summary
Exhibit C – Rent roll/rent payment schedule for 2007, 2008 and 2009

Mr. Sanchez
January 18, 2012
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Exhibit D – Floor plans
Exhibit E – 2008 appraisal of Property
Exhibit F – 2004 building permit
Exhibit G – Building's website screenshot

Separately enclosed:
Check for \$588 for the request fee

cc: Anton Haramis