



SAN FRANCISCO PLANNING DEPARTMENT

SAN FRANCISCO ZONING ADMINISTRATOR NOTICE OF INTENT TO RENDER A DETERMINATION UNDER PLANNING CODE SECTION 179.1

LEGITIMIZATION OF USES LOCATED IN THE EASTERN NEIGHBORHOODS

Notice is hereby given to the general public that an application involving the property described below was filed with the Planning Department for review as set forth in the Planning Code. The Zoning Administrator has reviewed the application and will render a determination at the end of a 30 day notification period (on or after November 16, 2011).

208 Utah Street (a.k.a. 201 Potrero Avenue) – southwest corner of Utah and 15th Street, Lot 017 in Assessor's Block 3932 - Request for Legitimization of Office Use pursuant to Planning Code Section 179.1 to determine if the existing 48,731 gross square feet of office use is a legitimate use under the current PDR-1-G (Production Distribution and Repair - General) Zoning District and 40-X Height and Bulk District.

Legitimization

Planning Code Section 179.1 allows the "legitimization" of certain existing land uses that did not obtain a use permit from the City—particularly office and housing—that were previously permitted in specific zoning districts, but are no longer permitted under the recent Eastern Neighborhoods rezoning. As part of the Eastern Neighborhoods rezoning process, the City determined it was desirable to allow these uses to legitimize. Legitimization requires evidence to show that such a use has been operating without the benefit of required permits for a certain period of time.

The Project Sponsor for 208 Utah Street (a.k.a. 201 Potrero Avenue) provided substantial evidence that meets the minimum criteria set by Planning Code Section 179.1(b). The Zoning Administrator intends to issue a Letter of Legitimization for 48,731 gross square feet of office space at the subject property on or after **November 16, 2011**, but seeks written comment prior to making a final determination. Once the Zoning Administrator makes a determination, it is then appealable to the Board of Appeals within 15 days of issuance.

You are not obligated to take any action. For more information regarding the proposal, or to express concerns about the project, please contact the Planner named below as soon as possible.

Please note that the subject site is within a 300-foot radius of your property and this notice fulfills the notice requirement for Legitimization determinations per Planning Code Section 179.1. **For further information, contact Kimberly Durandet at 415.575.6816 or Kimberly.durandet@sfgov.org.**

Scott F. Sanchez

A handwritten signature in black ink, appearing to read "Scott F. Sanchez".

Zoning Administrator

(Date of Notice: October 17, 2011)

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377



SAN FRANCISCO PLANNING DEPARTMENT

Draft Letter of Legitimization

October 17, 2011

Harry O'Brien
Coblentz, Patch, Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111-4213

Site Address:	208 Utah Street (a.k.a. 201 Potrero Ave)
Assessor's Block/Lot:	3932/017
Zoning District:	PDR-1-G Zoning District 40-X Height and Bulk District
Staff Contact:	Kimberly Durandet, (415) 575-6816 or kimberly.durandet@sfgov.org

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Dear Mr. O'Brien,

This letter is in response to your request for a Letter of Legitimization per Planning Code Section 179.1 regarding the property at 208 Utah Street (a.k.a. 201 Potrero Ave). This parcel is located on the southwest corner of Utah and 15th Streets in the PDR-1-G (Production Distribution and Repair - General) Zoning District and 40-X Height and Bulk District. The request is to legitimize 48,732 gross square feet of existing office on the second, third and fourth floors of the subject building.

Procedural Background

The Department received the request for legitimization of office space at 208 Utah Street (a.k.a. 201 Potrero Ave) on January 26, 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 October 17, 2011, 2011. 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 November 16, 2011.

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;

The following documentation indicates the office use existed as of January 26, 2011:

- Suite 200:
 - A lease agreement and holdover request for "rentable square feet" for 2,200 square feet in the subject building between LUI SF 208 Utah, L.P. (Lessor) and Trulia, Inc. (Lessee) from November 1, 2009 through October 15, 2010.
 - The space was vacant and actively marketed from October 16, 2010 through July 17, 2011.
 - Data Connection Limited (d.b.a. Metaswitch Technology) is the current leaseholder as of July 18, 2011 for Suites 200 and 250 totaling "15,995 square feet of rentable area" through February 28, 2019. Suites 200 and 250 are currently occupied by Metaswitch Technology.
- Suite 210:
 - A lease agreement for approximately 4,280 rentable square feet of space located on the second floor and known as suite 210 in the subject building between LUI SF 208 Utah L.P. (Lessor) and Senior Educators Limited (Lessee) from June 22, 2009 through September 30, 2011. Topspin Media, Inc. has subleased the space from Senior Educators Limited from November 1, 2010 through September 29, 2011. Suite 210 is currently occupied by Topspin Media.
- Suite 250:
 - A lease agreement for "approximately 12,586 rentable square feet" in the subject building between Potrero Hill Investors (Lessor) and The San Francisco Chronicle (Lessee) from February 1, 2001 through December 2010.
 - December 2010 through July 2011 tenant improvement were made pursuant to Building Permit Application No. 201103152070.
 - Data Connection Limited (d.b.a. Metaswitch Technology) is the current leaseholder as of July 18, 2011 for Suite 200 and 250 totaling "15,995 square feet of rentable area" through February 28, 2019. Suites 200 and 250 are currently occupied by Metaswitch Technology.
- Suite 310:
 - A lease agreement for "9,695 rentable square feet on the third (3rd) floor" in the subject building between LUI SF 208 Utah, L.P. (Lessor) and Trulia, Inc. (Lessee) from April 1, 2007 through March 31, 2011.
 - Suite 310 has been vacant since April 1, 2011 and is currently actively marketed by Grubb and Ellis, Co-Star commercial listing database, and tours are conducted on a regular basis.
- Suite 350:
 - A lease agreement for "a portion of the third floor...which area contains approximately 10,266 rentable square feet" in the subject building between Potrero Hill Investors (Lessor) and Workshare Technology (Lessee) from February 1, 2001 through January 31,

2012 (per sixth and seventh amendments to the original lease). Suite 350 is currently occupied by Workshare Technology.

- Suite 400:
 - A lease agreement between Potrero Hill Investors (Lessor) and Workshare Technology (Lessee) was amended to add "5,546 rental square feet on the fourth floor" from September 1, 2007 through January 31, 2011 (per sixth and seventh amendments to the original lease dated February 1, 2001).
 - Suite 400 has been vacant since February 1, 2011 and is currently actively marketed by Grubb and Ellis, Co-Star commercial listing database, and tours are conducted on a regular basis.
 - Suite 410:
 - A fourth amendment to a lease agreement for "approximately 5,751 rentable square feet of space located on the fourth (4th) floor" in the subject building between 208 Utah Associates (Lessor) and Randall/Lamb Associates. (Lessee) from May 1, 2004 through April 30, 2012. Suite 410 is currently occupied by Randall/Lamb Associates.
 - Suite 450:
 - A second amendment to a lease agreement for "approximately 4,720 rentable square feet of space located on the fourth (4th) floor" in the subject building between LUI SF 208 Utah, L.P. (Lessor) and Flixster Inc. (Lessee) from January 1, 2007 through May 31, 2012. Suite 450 is currently occupied by Flixster Inc.
 - Suite 460:
 - Declaration of Gery Gomez stating that the lease agreement for "approximately 3,000 rentable square feet" of space located on the southwest side of the fourth floor in the subject building between Potrero Hill Investors (Lessor) and San Francisco Development Inc. (Lessee) from June 1, 1997 continued month to month through December 31, 2008.
 - Suite 460 has been vacant since January 2009 and is currently actively marketed by Grubb and Ellis, Co-Star commercial listing database, and tours are conducted on a regular basis.
- 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 does not permit office use.

- iv. The land use either has been (1) regularly operating for 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;

The following documentation indicates the office use has been regularly operating for no less than 2 years prior to January 19, 2009:

- o *Suite 200:*
 - *A lease agreement for "approximately 2,200 rentable square feet of space located on the second floor" in the subject building between Potrero Hill Investors (Lessor) and Lunamira, Inc. (Lessee) from November 1, 2006 through November 30, 2007.*
 - *A lease agreement for "approximately 2,200 rentable square feet of space located on the second floor" in the subject building between Potrero Hill Investors (Lessor) and Lunamira, Inc. (Lessee) from January 1, 2008 through December 31, 2008.*
 - *A sub-lease agreement for "approximately 2,200 of office space known as Suite 200" in the subject building between Lunamira, Inc. (Lessor) and Proximic, Inc. (Lessee) from July 31, 2008 through December 31, 2008.*
 - *A lease agreement for "Rentable Square Footage of the Premises" for 2,200 square feet in the subject building between LUI SF 208 Utah, L.P. (Lessor) and Proximic, Inc. (Lessee) from January 1, 2009 through August 31, 2009.*
- o *Suite 210:*
 - *A lease agreement for "approximately 4,280 rentable square feet of space located on the second floor" in the subject building between Potrero Hill Investors (Lessor) and RAZZ, Inc. (Lessee) from November 15, 2006 through November 14, 2008.*
 - *The subject space was vacant from November 14, 2008 through June 22, 2009 but was actively marketed.*
- o *Suite 250:*
 - *Suite 250 consists of approximately 12,586 square feet. 9,646 square feet of space has been determined by the Zoning Administrator to be legally existing office use. The remaining portion is approximately 2,940 square feet and is subject to legitimization.*
 - *A lease agreement for "approximately 12,586 rentable square feet" in the subject building between Potrero Hill Investors (Lessor) and The San Francisco Chronicle (Lessee) from February 1, 2001 through December 2010.*
 - *A sublease and second amendment to the lease agreement for 12,586 rentable square feet in the subject building between The San Francisco Chronicle (Lessor) and Edusoft Inc. (Lessee) from April 1, 2004 through January 31, 2009.*
- o *Suite 310:*

- *A lease agreement was entered into in February 2007 for "9,695 rentable square feet on the third (3rd) floor" in the subject building between LUI SF 208 Utah, L.P. (Lessor) and Trulia, Inc. (Lessee) for occupancy from April 1, 2007 through March 31, 2011.*
 - *Suite 350:*
 - *A lease agreement for "a portion of the third floor...which area contains approximately 10,266 rentable square feet" in the subject building between Potrero Hill Investors (Lessor) and Workshare Technology (Lessee) from February 1, 2001 through January 31, 2012 (per sixth and seventh amendments to the original lease).*
 - *Suite 400:*
 - *A lease agreement for "approximately 5,546 rentable square feet of space located on the fourth floor" in the subject building between Potrero Hill Investors (Lessor) and Vamoose, Inc. (Lessee) from May 1, 2005 through April 30, 2007.*
 - *A lease agreement between Potrero Hill Investors (Lessor) and Workshare Technology (Lessee) was amended to add "5,546 rental square feet on the fourth floor" from September 1, 2007 through January 31, 2011 (per sixth and seventh amendments to the original lease dated February 1, 2001)).*
 - *Suite 410:*
 - *A fourth amendment to a lease agreement for "approximately 5,751 rentable square feet of space located on the fourth (4th) floor" in the subject building between 208 Utah Associates (Lessor) and Randall/Lamb Associates. (Lessee) from May 1, 2004 through April 30, 2012.*
 - *Suite 450:*
 - *A second amendment to a lease agreement for "approximately 4,720 rentable square feet of space located on the fourth (4th) floor" in the subject building between LUI SF 208 Utah, L.P. (Lessor) and Flixster Inc. (Lessee) from January 1, 2007 through May 31, 2012.*
 - *Suite 460:*
 - *A lease agreement for "approximately 3,000 rentable square feet" of space located on the southwest side of the fourth floor in the subject building between Potrero Hill Investors (Lessor) and San Francisco Development Inc. (Lessee) from June 1, 1997.*
 - *Declaration of Gery Gomez stating that the above lease agreement continued month to month through December 31, 2008.*
- v. The land use is not accessory to any other use;

The subject office use occupies 9 separate units within the subject building and all are principal uses within those units.

Harry O'Brien
Coblentz, Patch, Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111-4213

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Draft Land Use Legitimization Letter
208 Utah Street (a.k.a. 201 Potrero Ave)

- 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.

The documentation and site inspection indicate the office use has not been discontinued or abandoned.

Determination

It is my determination that the request for legitimization of the existing 48,732 gross square feet of office use on the second, third and fourth floors of the subject building per the attached plans, meets 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 A, 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.

Please note that before a Building Permit Application may be approved to legally convert the subject gross floor area to office, this project must obtain Planning Commission approval for Office Allocation pursuant to Planning Code Section 321 and 322 and must pay the applicable legitimization fee of \$10.50 per gross square foot (TIDF and Jobs-Housing Linkage Fees).

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: Kimberly Durandet, Planner
Steve Wertheim, Planner
Planning Commissioners
208 Utah and Associates (Property Owner)
All Parties on the Notification Request List

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