



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.

255-269 Potrero Avenue – east side between 16th and 15th Streets, Lot 006 in Assessor's Block 3932 - Request for Legitimization of Office Use pursuant to Planning Code Section 179.1 to determine if the existing 24,928 gross square feet of office use is a legitimate use under the current PDR-1-G (Production Distribution and Repair - General) District and 40/58-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 **255-269 Potrero Ave** 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 24,928 gross square feet of office space at the subject property on or after August 3, 2010, 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 Corey Teague at 415.575.9081 or corey.teague@sfgov.org.

Scott Sanchez
Acting Zoning Administrator

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

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DRAFT Letter of Legitimization

[DATE]

Steven Vettel
Farella Braun + Martel LLP
235 Montgomery Street
San Francisco, CA 94104

RE: 255-269 Potrero Avenue
Block: 3932 Lot: 006

Dear Mr. Vettel:

This letter is in response to your request for a letter of legitimization per Planning Code Section 179.1 regarding the property at 255-269 Potrero Avenue. This parcel is located in the PDR-1-G (Production Distribution and Repair - General) Zoning District with a 40/58-X height and bulk limitation. The request is to legitimize 24,928 gross square feet of existing office on the first and second floors of the subject building.

Procedural Background

The Department received the request for legitimization of office space at 255-269 Potrero Ave on March 15, 2010. 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 August 3, 2010. 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 August 2, 2010.

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 March 15, 2010:

- o *A lease agreement for "all the commercial space to be constructed" in the subject building between the Forderer (Lessor) and Listen.com. (Lessee) on October 4, 1999;*
- o *A modification to the original lease, dated June 18, 2003;*
- o *Building Permit No. 9916213 issued on November 15, 1999, to change the occupancy of the building from manufacturing to office.*

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- 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 *A lease agreement for "all the commercial space to be constructed" in the subject building between the Forderer (Lessor) and Listen.com. (Lessee) on October 4, 1999;*
- o *A modification to the original lease, dated June 18, 2003;*
- o *Building Permit No. 9916213 issued on November 15, 1999, to change the occupancy of the building from manufacturing to office.*

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

The subject office use occupies two separate units within the subject building and is the principal use within those units.

- 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 is currently in operation, and has been regularly operating since initial occupancy of the building as office in 1999.

Determination

It is my determination that the request for legitimization of the existing 24,928 gross square feet of office use on the first and second floors of the subject building (not including any basement level areas), 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. This determination is **not**

Steven Vettel
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[DATE]
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255-269 Potrero Ave

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 pay the applicable legitimization fee of \$2 per gross square foot.

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 Sanchez
Acting Zoning Administrator

cc: Corey Teague, Planner
Steve Wertheim, Planner
Planning Commissioners
Forderer Cornice Works (Property Owner)
All Parties on the Notification Request List

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