



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Legitimization

February 10, 2014

J. Gregg Miller, Jr.
Coblentz Patch Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111-4213

Site Address:	3130 20 th Street
Assessor's Block/Lot:	4083/002
Zoning District:	UMU
Staff Contact:	Corey Teague, (415) 575-9081 or corey.teague@sfgov.org

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Dear Mr. Miller:

This letter is in response to your request for a Letter of Legitimization per Planning Section 179.1 regarding the property at 3130 20th Street. This parcel is located in the UMU Zoning District and a 58-X Height and Bulk District. Pursuant to your original request dated January 13, 2012, and your supplemental request dated July 19, 2013, the request is to legitimize the existing office use on a portion of the third floor in the existing three-story building, which totals 12,758 gross square feet.

Procedural Background

The Department received the request for legitimation of office space on the second and third stories of the existing building at 3130 20th Street on January 13, 2012. The Department received a supplemental request for legitimation of office space on only a portion of the third floor of the existing building on January 13, 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 December 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 January 20, 2014.

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;

The following office uses/tenants occupied the third floor of the subject building as detailed below:

Suites 308, 350, and 380

In 1998, The University of California ("UC") expanded its presence in the subject building by leasing, pursuant to two separate leases, 1) approximately 5,620 square feet of space on the third floor, consisting of Suites 351-390, and 2) an additional approximately 1,823 square feet of space on the third floor, consisting of Suites 310-312 (later renumbered to Suite 380). In 2005, UC added an additional approximately 1,961 square feet of space on the third floor by leasing Suite 308 pursuant to a third separate lease that commenced August 1, 2005.

In early August 2010, UC consolidated its three leases of space on the third floor by allowing its lease of Suites 310-312 to expire, renaming the space constituting Suites 310-312 as Suite 380, and adding Suite 380 to its lease of Suites 351-390 by means of Amendment to Lease Number Three. The separate lease of Suite 308 was not changed. As of the date of the original request (January 13, 2012), UC continues to lease Suites 308, 380 (formerly Suites 310-312), and 351-390.

Suite 304

Meadow is a branding, graphic, and interactive design firm. According to signed lease and business registration documentation, Meadow occupied Suite 304 from August 1, 2003 to the date of the original request (January 13, 2012).

Suite 311

According to signed lease documents, 1) Peter Allen (d.b.a. PBA Music Publishing) occupied Suite 311 from March 1, 2004 to February 28, 2006, 2) Leather Gloves Online occupied Suite 311 from March 1, 2006 to July 31, 2007, and 3) Streetside Stories occupied Suite 311 from August 1, 2007 to the date of the original request (January 13, 2012).

- 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 property containing the subject building is located in the UMU Zoning District, which prohibits office use on the ground floor pursuant to Planning Code Section 803.9(h), except those specific office uses listed in Section 843.65A, and only permits one floor of a two-to-four-story building to be used as office space. General office use may be permitted in the entire building within the UMU Zoning District if it is a historic building that meets the criteria of Section 803.9(c). However, the subject building does not meet the criteria of Section 803.9(c).

The project proposed to select the second floor of the existing building as its designated office floor, pursuant to Planning Code Section 803.9(h). Therefore, office space on the third floor of the existing building cannot be permitted under the current provisions of the Planning Code.

- 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;

As detailed in Section (i) above, signed lease and business registration documents demonstrate that office space operated continuously in the subject suites for no less than 2 years prior to January 19, 2009, the effective date of Planning Code Section 179.1, to the date of the original request (January 13, 2012).

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

The subject office uses are principal 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.

Signed lease and business registration documents indicate that the subject suites remained occupied during the required period.

Determination

It is my determination that the request for legitimization of the existing 12,758 gross square feet of office use on a portion of the third floor in the existing three-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 on file with this request, 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 a Building Permit Application must be approved to legally convert the subject gross floor area to office. Additionally, the relevant impact fees outlined in Section 179.1(g), and elsewhere in the Municipal Code, shall be assessed as part of the Building Permit Application.

J. Gregg Miller, Jr.
Coblentz Patch Duffy & Bass LLP
One Ferry Building, Suite 200
San Francisco, CA 94111-4213

February 10, 2014
Land Use Legitimization Letter
3130 20th Street

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, Assistant Zoning Administrator
Brad Koch, Twentieth Streets Associates, LP
Planning Commissioners
All Parties on the Notification Request List

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January 13, 2012

ID # 10156 - SE J. BANAGES
 CK # 1051178 \$588.-

Via Hand Delivery

Mr. Scott F. Sanchez
 Zoning Administrator
 San Francisco Planning Department
 1650 Mission Street
 San Francisco, CA 94103

Re: 3130 – 20th Street, San Francisco; Application and Request for Office Use
 Legitimization Under Section 179.1 of the Planning Code

Dear Mr. Sanchez:

(4083/002)

This firm represents Twentieth Street Associates, LP, a California limited partnership (“Owner”), which is the owner of the above-referenced property (the “Property”). We submit this letter and enclosed materials pursuant to Section 179.1 of the San Francisco Planning Code (the “Code”). A list of the enclosed materials is attached at Exhibit A to this letter. Also enclosed is check no. 1051178 in the amount of Five Hundred Eighty-Eight Dollars (\$588.00), which represents the San Francisco Planning Department’s (the “Department”) current fee for issuing a letter of determination. Pursuant to Section 179.1 of the Code, we request that the Zoning Administrator determine that the current uses on the entire second floor and a portion of the third floor of the Building (as defined below) are eligible to obtain the permits necessary to legitimize the office use. These uses occupy a total of 32,081 square feet of gross floor area. We are not seeking a determination as to any of the space on the first floor of the Building.

I. Information Regarding the Property.

A. Background Information about the Building.

The Property is located on Assessor’s Block 4083, Lot 002. A building commonly known as 3130 – 20th Street, San Francisco, California 94110 is located on the Property (the “Building”). Portions of the Building contain office uses which the Owner seeks to legitimize. The Building

was constructed in 1949. The Building contains approximately 55,415 square feet of gross floor area¹ and is three stories (approximately 40') tall.

B. Current and Prior Uses At the Building.

i. Current and Prior Uses Generally.

Uses on the first floor consist primarily of light industrial uses and warehousing. The Owner is not seeking to legitimize the uses on the first floor.

The second floor, which contains approximately 18,274 square feet of total gross floor area, is leased entirely to the San Francisco administrative offices and instruction rooms of Making Waves, an after-school program that serves underprivileged youth. The San Francisco branch of Making Waves provides San Francisco students in fifth through eighth grade with skilled tutors who coordinate small-groups in reading, writing, vocabulary development, and study skills under the guidance of a certified teacher. The San Francisco branch also provides independent school tuition support and daily individualized academic support and attention for high school students. Students regularly meet with teachers, counselors, and tutors; participate in literacy programs; and receive on-site college and career counseling and test preparation assistance, as well as tutoring. The Owner is seeking to legitimize the entire second floor.

The third floor, which contains approximately 18,274 square feet of total gross floor area, is leased to a variety of tenants. However, the Owner is seeking to legitimize only a portion of the third floor consisting of 12,758 square feet of gross floor area. This portion of the third floor is currently leased to the Regents of the University of California ("UC"), a design firm called Meadow, and a non-profit called Streetside Stories, which provides literacy arts programs for 5th through 8th graders. All of the third floor tenants use their space for offices.

A chart summarizing the leasing history of the space that the Owner desires to legitimize is attached to this letter at Schedule 1. The Owner intends to continue using the second and portions of the third floors of the Building for office use following the termination of any of the leases for such.

C. Zoning and Use History.

i. Zoning and Use Prior to Adoption of the Eastern Neighborhoods Plan.

When originally built in 1949, Beakins moving company used the property for vehicle storage, maintenance, warehousing, and offices. More recently and prior to the Eastern Neighborhoods re-zoning, the Property was located in the M-1 zoning district in which office and light industrial

¹ Gross floor area is defined in Section 102.9 of the Planning Code.

uses were principally permitted. In light of the flexibility of the prior M-1 zoning, a mixture of light industrial and office-type uses have existed in the Building over the last thirty years.

a. Second Floor.

From 1986 through July of 2008, UC leased all of the first and second floors of the Building and most of the parking area. UC used the first floor as a maintenance center and the entire second floor for office uses. After UC moved out of the second floor in 2008, the Owner leased all of the second floor to Making Waves. The term of the Making Waves lease commenced in September 2009. During the time period between the end of UC's lease term and the commencement of Making Waves' lease term, the space was vacant and marketed for lease as offices.

b. Third Floor.

In 1998, UC expanded its presence in the Building by leasing, pursuant to two separate leases: (i) approximately 5,620 square feet of space on the third floor, consisting of Suites 351-390 and (ii) an additional approximately 1,823 square feet of space on the third floor consisting of Suites 310-312, later renumbered Suite 380. In 2005, UC added an additional approximately 1,961 square feet of space on the third floor by leasing Suite 308 pursuant to a third separate lease that commenced August 1, 2005. In early August 2010, UC consolidated its three leases of space on the third floor by allowing its lease of Suites 310-312 to expire, renaming the space constituting Suites 310-312 as Suite 380, and adding Suite 380 to its lease of Suites 351-390 by means of Amendment to Lease Number Three. The separate lease of Suite 308 was not changed. As of the date of this letter, UC continues to lease Suites 308, 380 (formerly Suites 310-312) and 351-390. UC uses such space for office uses.

Meadow has been a tenant of Suite 304 since August 1, 2003. Meadow is a branding, graphic and interactive design firm. Meadow uses its space for office uses.

Streetside Stories has been a tenant of Suite 311 since August 1, 2007. Prior to Streetside's tenancy, Leather Gloves Online leased Suite 311 from March 1, 2006 to July 31, 2007 for office uses. Prior to Leather Gloves Online's occupancy, Peter Allen, an individual, leased Suite 311 from March 1, 2004 to February 28, 2006 for office uses. Streetside uses its space for office uses.

The Owner desires to legitimize the office uses on the second and third floors pursuant to Section 179.1 in order to establish the legal right to maintain such uses in the future under the UMU zoning controls, which are far more restrictive than the former M-1 zoning.

ii. Zoning and Use under the Eastern Neighborhoods Plan.

Under the Eastern Neighborhoods Plan, the Property has been re-zoned as UMU. Under Section 179.1 of the Code, a property owner is allowed to legitimize existing office uses in the UMU zoning districts if certain conditions are met. The Planning Department and the Planning Commission have stated that where computers are the predominant means for creating the user's product (whether the product is, for example, software, hardware design, animation, or architectural plans) or conducting business, the use would be treated as an office use. The Planning Department's and Planning Commission's position on this issue is embodied in Section 890.70 of the Code which lists the various types of uses that are considered office uses.² In addition, the Code treats the use of space by design professionals as an office use.³ As described earlier in this Lease, the second and third floors contain a mix of administrative and design professional offices. The Owner desires to legitimize the office uses that are located on the second floor and a portion of the third floor pursuant to Section 179.1 of the Planning Code in order to preserve the right to continue the office uses in the future, including after the termination of the any existing lease for such space.

II. The Office Uses at the Property are Eligible for Legitimization Under Section 179.1 of the Code Because They Satisfy Section 179.1's Test for Eligibility.

A. The Test for Eligibility.

The Zoning Administrator should determine that the office uses at the Property are eligible for legitimization. Section 179.1(b) of the Code sets forth the test for eligibility. Under the criteria

² Section 890.70 provides:

(a) "Office use" shall mean space within a structure or portion thereof intended or primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or provide to others at that location services including, but not limited to, the following: Professional; banking; insurance; management; consulting; technical; sales; and design; and the non-accessory office functions of manufacturing and warehousing businesses; all uses encompassed within the definition of "office" in Section 219 of this Code; multimedia, software development, web design, electronic commerce, and information technology; all uses encompassed within the definition of "administrative services" in Section 890.106 of this Code; and all "professional services" as proscribed in Section 890.108 of this Code excepting only those uses which are limited to the Chinatown Mixed Use District.

(b) "Office use" shall exclude: retail uses; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods.

³ Section 890.28 of the Code, entitled Design Professional, describes such use as: "An office use which provides professional design services to the general public or to other businesses and includes architectural, landscape architectural, engineering, interior design and industrial design services. It does not include (1) the design services of graphic artists or other visual artists which are included in the definition of arts activities described in Section 102.2 of this Code; (2) the services of advertising agencies or other services which are included in the definition of professional service activities described in Section 890.108 of this Code or administrative services, financial services or medical service activities as identified in Sections 890.106, 890.110 or 890.114 of this Code."

of Section 179.1 applicable to the Property, in order to be eligible for legitimization: (i) the use must be located within an Eastern Neighborhoods UMU zoning district, (ii) the use must exist as of the date of application for eligibility, (iii) the use would have been principally permitted under the Code as of April 17, 2008, (iv) the use would not be permitted under the Code, as amended by the adoption of the Eastern Neighborhoods plan, (v) the use has been regularly operating on a continuous basis for no less than two years prior to the adoption of Section 179.1, (vi) the use is not accessory to another use, and (vii) the use has not been discontinued or abandoned pursuant to Section 183 of the Code. Section 179.1 also requires that the applicant submit certain materials that provide a factual basis for the applicant's assertion that it meets the eligibility test.

B. The Office Uses at the Property Satisfy the Applicable Eligibility Criteria.

The office uses at the Property satisfy the applicable criteria for eligibility under Section 179.1(b)(2):

i. The property must be located in a UMU zoning district.

As shown on the attached zoning map, the Property is located within the UMU zoning district within the Eastern Neighborhoods Project Area. Therefore, Section 179.1 applies to the Property.

ii. The use must exist as of the date of the application.

As shown in the attached lease excerpts and other materials for UC, Making Waves, Meadow, and Streetside Stories, and Streetside's two predecessors, Leather Gloves Online and Peter Allen: (a) the office uses on all of the second floor and the designated portion of the third floor exist as of the date of this application and (b) the office uses on the second floor and the designated portion of the third floor have existed for many years prior to the date of this application.

a. The Second Floor.

Specifically, regarding the second floor, as noted earlier in this letter: (1) UC leased the entire floor for office use from 1986 until July 2008 and (2) Making Waves has leased the entire second floor since the fall of 2009. During the period between the expiration of UC's lease and the commencement date of Making Waves' lease, the space was marketed for lease as office space.

b. The Third Floor.

Specifically, regarding the third floor: (1) as noted earlier in this Letter, UC has been a tenant on the third floor of the Building since 1998, expanding its presence on the third floor in 2005; (2) Meadow has been a tenant on the third floor since August 2003; and (3) Streetside Stories has been a tenant on the third floor since August 2007. Prior to Streetside's tenancy, Leather Gloves Online leased the Streetside Stories space from March 1, 2006 to July 31, 2007.

Prior to Leather Gloves Online's occupancy, Peter Allen, an individual, leased Suite 311 from March 1, 2004 to February 28, 2006.

iii. The use would have been principally permitted under provisions of the Code in effect as of April 17, 2008.

As per Section 219 of the Code, as in effect prior to the adoption of the Eastern Neighborhoods legislation, office use was a permitted principal use in the M-1 zoning district (see attached Eastern Neighborhoods zoning map amendment showing M-1 zoning previously applicable to the Property - Block 4083; Lot 002). The Property was zoned M-1 prior to the adoption of the Eastern Neighborhoods re-zoning.

iv. The use would not be permitted under the Code currently.

Pre-existing office uses are no longer permitted to exist in the UMU in the manner that was previously allowed under the prior M-1 zoning.

v. The use has been operating on a continuous basis in the Building.

Per the attached lease excerpts and other materials and as also described in Section II.B.i of this letter, the second and third floor office uses have been regularly operating on a continuous basis for no less than two years prior to the adoption of Section 179.1. In fact, office uses on the second floor and the designated portion of the third floor of the Building have existed continuously since the mid 1980s and the late 1990s, respectively.

vi. The office uses are not accessory uses.

Per the attached leases, and as described earlier in this letter, the office uses on the second and third floors of the Building are not accessory to another use.

vii. The uses have not been discontinued or abandoned.

As the leases covering the second and third floor spaces for which the Owner has requested an eligibility determination demonstrate, the office uses occupying all of the second floor and the designated portion of the third floor of the Building have not been discontinued or abandoned. In addition, for over twenty-five years, the second floor space for which the Owner is requesting a determination of eligibility has been continuously used for office. Furthermore, for well over ten years, the portion of the third floor space for which the Owner is requesting a determination of eligibility has been continuously used for office. It is the Owner's intention to continue using the second and third floor office portions of the Building for office use following the termination of any of the leases or the earlier cessation of any office tenant's activities at the Building.

Mr. Scott F. Sanchez
January 13, 2012
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Because the current office uses on all of the second floor and a portion of the third floor satisfy all the tests for eligibility under Section 179.1, the office uses in the spaces described herein are eligible for legitimization. In addition, the enclosed materials support the proposition that the office uses at the Property are eligible for legitimization. The leases and other materials all establish the existence of a lengthy period of continuous office use in the spaces at issue.

Accordingly and pursuant to Section 179.1(e), we respectfully request that the Zoning Administrator give notice of the intent to render a determination and, following the expiration of the applicable notice period, issue a written decision in which the Zoning Administrator determines (i) that office uses in the entire second floor of the Building and the designated portions of the third floor of the Building, as described in this letter, are eligible for legitimization as an office use under Section 179.1 of the Code and (ii) that the Owner may proceed to obtain legitimization from the San Francisco Planning Commission pursuant to Sections 179.1(f)(1) and 321(b)(4) of the Code for such uses as to the space such uses currently occupy, as outlined on the attached floor plans.

Respectfully Submitted,


J. Gregg Miller, Jr.

Encls.

cc: Brad Koch (w/ encls.)