



# 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 **May 15, 2013**.

**435-437 Potrero Avenue – east side between 17<sup>th</sup> and Mariposa Streets, Lot 022 in Assessor's Block 3974 - Request for Legitimization of an Internet Services Exchange** pursuant to Planning Code Section 179.1 to determine if approximately 10,000 gross square feet of Internet Services Exchange on the entirety of both floors of the existing two-story building is a legitimate use under the current UMU (Urban Mixed Use) Zoning District and 58-X Height and Bulk District.

The subject site is within a 300-foot radius of your property.

#### 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 **435-437 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 approximately 10,000 gross square feet of existing Internet Services Exchange at the subject property (see attached **draft** letter) on or after **May 15, 2013**, 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](mailto:corey.teague@sfgov.org).**

Scott F. Sanchez  
Zoning Administrator  
April 15, 2013

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

Reception:  
**415.558.6378**

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## DRAFT Letter of Legitimization

May X, 2013

David Silverman  
Reuben, Junius & Rose LLP  
1 Bush Street, Suite 600  
San Francisco, CA 94104

<b>Site Address:</b>	<b>435-437 Potrero Avenue</b>
<b>Assessor's Block/Lot:</b>	<b>3974/022</b>
<b>Zoning District:</b>	<b>UMU</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>

Dear Mr. Silverman:

This letter is in response to your request for a Letter of Legitimization per Planning Section 179.1 regarding the property at 435-437 Potrero Avenue. This parcel is located in the UMU Zoning District and a 58-X Height and Bulk District. The request is to legitimize the existing "Internet Services Exchange" use on the entirety of both floors in the existing two-story building totaling approximately 10,000 gross square feet.

### **Procedural Background**

The Department received the request for legitimation of office space at 435-437 Potrero Avenue on October 15, 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 April 15, 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 15, 2013.

### **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 documents, business tax documents, building permits, utilities bills, and insurance documents indicate that the entirety of the subject building has been used as an "Internet Services Exchange" (d.b.a. RCN Telecom Services and Astound) since approximately May 30, 2000.*

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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 permitted an Internet Services Exchange with a Conditional Use Authorization.*

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

*The subject property is located in the UMU Zoning District, which prohibits an Internet Services Exchange.*

- 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 documents, business tax documents, building permits, utilities bills, and insurance documents indicate that the entirety of the subject building has been used as an "Internet Services Exchange" (d.b.a. RCN Telecom Services and Astound) since approximately May 30, 2000.*

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

*The subject Internet Services Exchange is the principal use and is 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.

*Lease documents, business tax documents, building permits, utilities bills, and insurance documents indicate that the building remained occupied until June 2010. Since that time, no new use was established in the building, and it has been actively marketed as an Internet Services Exchange. Therefore, the Internet Services Exchange use was not discontinued and abandoned pursuant to the provisions of Planning Code Section 183.*

## **Determination**

It is my determination that the request for legitimization of the existing approximately 10,000 gross square feet of Internet Services Exchange on the entirety of both floors in the existing two-story building as shown on the submitted plans meet all the required criteria of Planning Code Section 179.1. Therefore, the subject gross floor area is deemed to be a legitimate Internet Services Exchange space as defined in Planning Code Section 209.6(c). A Notice of Special Restrictions shall be filed on the subject property documenting the specific building area legitimized as Internet Services Exchange in this letter and

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May X, 2013  
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435-437 Potrero Avenue

documented on the submitted plans on file with this request, prior to the approval of a site or building permit establishing such Internet Services Exchange. This determination is **not** a project approval, or in any way a substitute for the Building Permit Application for the change of use to Internet Services Exchange.

Please note that a Conditional Use Authorization and subsequent Building Permit Application must be approved to legally convert the subject gross floor area to Internet Services Exchange. 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.

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  
Philip Blix, Property Owner  
William Spencer  
Planning Commissioners  
All Parties on the Notification Request List

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