

File No. 190165 Committee Item No. 5
Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Transportation Committee Date June 17, 2019

Board of Supervisors Meeting Date _____

Cmte Board

<input type="checkbox"/>	<input type="checkbox"/>	Motion
<input type="checkbox"/>	<input type="checkbox"/>	Resolution
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Legislative Digest
<input type="checkbox"/>	<input type="checkbox"/>	Budget and Legislative Analyst Report
<input type="checkbox"/>	<input type="checkbox"/>	Youth Commission Report
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Introduction Form
<input type="checkbox"/>	<input type="checkbox"/>	Department/Agency Cover Letter and/or Report
<input type="checkbox"/>	<input type="checkbox"/>	MOU
<input type="checkbox"/>	<input type="checkbox"/>	Grant Information Form
<input type="checkbox"/>	<input type="checkbox"/>	Grant Budget
<input type="checkbox"/>	<input type="checkbox"/>	Subcontract Budget
<input type="checkbox"/>	<input type="checkbox"/>	Contract/Agreement
<input type="checkbox"/>	<input type="checkbox"/>	Form 126 – Ethics Commission
<input type="checkbox"/>	<input type="checkbox"/>	Award Letter
<input type="checkbox"/>	<input type="checkbox"/>	Application
<input type="checkbox"/>	<input type="checkbox"/>	Public Correspondence

OTHER (Use back side if additional space is needed)

<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Referral CEQA 022019</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Referral PC 022019</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>CEQA Determination 030719</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Referral PC 051519</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Referral CEQA 051519</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>Referral SBC 052019</u>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<u>PLN Transmittal 060319</u>
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Erica Major Date June 13, 2019
Completed by: Erica Major Date _____

[Planning Code - Legitimization Program for Non-Residential Uses at 3150-18th Street]

Ordinance amending the Planning Code to establish a legitimization program for certain non-residential uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in single-underline italics Times New Roman font.
Deletions to Codes are in ~~strikethrough italics Times New Roman font~~.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. Findings.

(a) The Planning Department has determined that the actions contemplated in this ordinance comply with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 190165 and is incorporated herein by reference. The Board affirms this determination.

(b) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this ordinance will serve the public necessity, convenience, and welfare, for the reasons set forth in Planning Commission Resolution No. 20453, and incorporates such reasons by this reference thereto. A copy of said resolution is on file with the Clerk of the Board of Supervisors in File No. 190165.

1 (c) On May 23, 2019, the Planning Commission, in Resolution No. 20453, adopted
2 findings that the actions contemplated in this ordinance are consistent, on balance, with the
3 City's General Plan and eight priority policies of Planning Code Section 101.1. The Board
4 adopts these findings as its own. A copy of said Resolution is on file with the Clerk of the
5 Board of Supervisors in File No. 190165, and is incorporated herein by reference.

6 Section 2. Article 1.7 of the Planning Code is hereby amended by adding Section 192,
7 to read as follows:

8 **SEC. 192. LEGITIMIZATION OF CERTAIN LAND USES AT 3150 18TH STREET.**

9 (a) Intent. The purpose of this Section 192 is to establish a time-limited program whereby
10 existing land uses at 3150 18th Street (Assessor's Parcel Block No. 3573, Lot No. 106), which have
11 operated without required permits, may be permitted notwithstanding the zoning controls imposed by
12 Planning Code Section 210.3.

13 (b) Legitimization Program for Certain Land Uses. Any Non-Residential or PDR Use at 3150
14 18th Street that otherwise is not permitted pursuant to Planning Code Section 210.3 may be established
15 as a Legal Non-conforming Use, if it meets all of the following requirements:

16 (1) If the use is an Office Use, any building permit for such Office Use will be subject to
17 Mandatory Discretionary Review by the Planning Commission;

18 (2) As of January 15, 2019, it was operating in that location;

19 (3) As of January 15, 2019, it had a lease with the owner of 3150 18th Street, or it had a
20 written agreement with an entity who has such a lease with the owner to operate in that location; and

21 (4) Applications for all appropriate permits from any City or State agency to legalize
22 the use are filed within 90 days of the effective date of this Section 192, and the applicant diligently
23 pursues the permit(s) until they are issued.

24 (c) Notice.

25

1 (1) Notice by Planning Department. *The Planning Department shall post notice of this*
2 *legitimization program on its website to describe its contents and requirements in order to assist*
3 *tenants at 3150 18th Street with participation in this program. The notice shall also inform the public*
4 *about the uses principally and conditionally permitted in PDR-1-G Districts, as set forth in Planning*
5 *Code Section 210.3.*

6 (2) Notice by Owner. *The owner of 3150 18th Street shall provide written notice to any*
7 *prospective tenant at this property about the uses principally and conditionally permitted in PDR-1-G*
8 *Districts, as set forth in Planning Code Section 210.3, prior to entering into any lease with the tenant.*
9 *The owner of 3150 18th Street shall also provide written notice to its current tenants at this property*
10 *regarding the legitimization program established by this Section 192, and such notice shall specify the*
11 *date on which this Section 192 will sunset under subsection (g).*

12 (d) Determination of Applicability.

13 (1) Initial Determination. *The Planning Department shall initially determine, through*
14 *the review of a building permit, whether a land use at 3150 18th Street meets the conditions set forth in*
15 *this Section 192. Evidence relevant to said determination may include, but is not limited to, the*
16 *following: rental or lease agreements, building or other permits, utility records, business licenses,*
17 *permit applications submitted by a tenant to a City or State agency, permits issued by a City or State*
18 *agency, and tax records.*

19 (2) Monitoring and Reporting. *To ensure that any Non-Residential Use continues to*
20 *meet the conditions set forth in this Section 192, the owner of 3150 18th Street shall, upon request,*
21 *provide the Planning Department with information about the uses at the property and copies of the*
22 *written notices it has provided to prospective and current tenants under subsection (c)(2).*

23 (e) Limitation of Enlargement, Intensification, or Discontinuance. *Enlargements,*
24 *Intensifications, or Discontinuances of eligible uses that follow the legitimization program authorized*
25

1 by this Section 192 shall be subject to the relevant controls applicable under Sections 178, 181, 182,
2 and 183 of this Planning Code.

3 (f) **Compliance with Other Requirements of the Planning Code.** Non-Residential Uses that
4 follow the legitimization program authorized by this Section 192 shall comply with all applicable
5 requirements of the Planning Code, other than those requirements from which they are specifically
6 exempted under this Section 192, but such uses shall not be subject to any applicable impact fees
7 imposed by Planning Code Article 4.

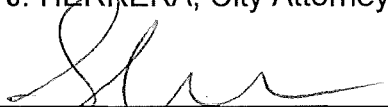
8 (g) **Sunset; Abandonment of Legitimized Uses.** Unless readopted, this Section 192 shall
9 sunset ten years after its effective date. Upon such date, all Legal Non-conforming Uses established
10 through this Section 192 shall lose such non-conforming status, and shall be considered abandoned
11 pursuant to Section 183.

12 Section 3. No Retroactive Effect. This ordinance shall have no retroactive effect and
13 does not forgive or waive enforcement of any violations that occurred prior to the ordinance's
14 effective date.

15 Section 4. Effective Date. This ordinance shall become effective 30 days after
16 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
17 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
18 of Supervisors overrides the Mayor's veto of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By:

23 
24 ANDREW SHEN
25 Deputy City Attorney

n:\legan\as2019\1900414\01355040.docx

LEGISLATIVE DIGEST

(Substituted 05/07/19)

[Planning Code - Legitimization Program for Non-Residential Uses at 3150 18th Street]

Ordinance amending the Planning Code to establish a legitimization program for certain Non-Residential Uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

The Planning Code does not currently establish a legitimization program for uses at 3150 18th Street.

Amendments to Current Law

The legislation would codify a new Section 192, establishing a legitimization program to allow existing uses operating at 3150 18th Street without the benefit of all required permits to seek those permits. The legitimization program applies to non-residential uses that meet the following conditions:

- (1) if the use is for office, any building permit will be subject to mandatory discretionary review by the Planning Commission;
- (2) as of January 15, 2019, it was already operating at 3150 18th Street;
- (3) as of January 15, 2019, it had a lease with the owner of 3150 18th Street, or a written agreement with an entity that has such a lease with the owner; and
- (4) applications for all appropriate permits from any City or State agency to legalize the use are filed within 90 days of the effective date of this ordinance, and the applicant diligently pursues the permit(s) until they are issued.

Non-Residential or Production, Distribution, and Repair (PDR) Uses that qualify under this legitimization program would be considered Legal Non-Conforming Uses.

This legitimization program will sunset in 10 years, and any legal non-conforming uses would lose such status on that date.

This legislation would have no retroactive effect, and would not forgive or waive enforcement of any violations that occurred prior to the ordinance's effective date.

n:\legana\as2019\1900414\01356493.docx



SAN FRANCISCO PLANNING DEPARTMENT

June 3, 2019

Ms. Angela Calvillo, Clerk
Honorable Supervisor Ronen
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Re: Transmittal of Planning Department Case Number 2019-002217PCA:
Legitimization program for certain Non-Residential Uses at 3150-18th Street
Board File No. 190165
Planning Commission Recommendation: Approval with Modification

Dear Ms. Calvillo and Supervisor Ronen,

On May 23, 2019 the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Ronen that amend the Planning Code to establish a legitimization program for certain Non-Residential Uses at 3150 18th Street, also known as ActivSpace. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. Decrease the program's time period from 10 years to 3 years for Office Uses.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Aaron D. Starr".

Aaron D. Starr
Manager of Legislative Affairs

Transmittal Materials

**CASE NO. 2019-002217PCA
Legitimization program for 3150-18th Street**

cc:

Andrew Shen, Deputy City Attorney
Carolina Morales, Aide to Supervisor Ronen
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Resolution No. 20453

HEARING DATE: MAY 23, 2019

Project Name: Legitimization program for certain Non-Residential Uses at 3150-18th Street
Case Number: 2019-002217PCA [Board File No. 190165]
Staff Contact: Audrey Butkus, Legislative Affairs
Audrey.Butkus@sfgov.org, 415-575-9129
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

RESOLUTION APPROVING WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE TO ESTABLISH A LEGITIMIZATION PROGRAM FOR CERTAIN NON-RESIDENTIAL USES AT 3150-18TH STREET (ASSESSOR'S PARCEL BLOCK NO. 3573, LOT NO. 106); ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.

WHEREAS, on May 7, 2019 Supervisor Ronen re-introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 190165, which would amend the Planning Code to establish a legitimization program for certain non-residential uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106);

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on May 23, 2019; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Sections 15378 and 15060(c)(2); and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance.

The Commission's proposed modification is as follows:

1. Decrease the program's time period from 10 years to 3 years for Office Uses.

FINDINGS

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

1. The proposed Ordinance with all recommended modifications, is on balance with the General Plan. The Ordinance with all recommended modifications prevents the eviction of small, commercial tenants whose land uses do not conform to the PDR zoning, while also ensuring that these affordable spaces are eventually returned to their intended PDR uses. The Ordinance with all recommended modifications, ensures that the building is returned to its intended purpose to serve artists and makers as soon as a reasonable amount of time has passed to ensure current non-complying tenants may find new business locations.
2. **General Plan Compliance.** The proposed Ordinance with the Commission's recommended modifications are is consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 4

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 4.3

Carefully consider public actions that displace existing viable industrial firms.

Policy 4.11

Maintain an adequate supply of space appropriate to the needs of incubator industries.

The proposed Ordinance with the recommended modification will ensure that the building at 3150 18th Street returns to its authorized land uses, which cater to Light Industrial and Arts Activities Uses, while giving current non-conforming tenants enough time to find a new place of business.

MISSION AREA PLAN

OBJECTIVE 1.1

STRENGTHEN THE MISSION'S EXISTING MIXED-USE CHARACTER, WHILE MAINTAINING THE NEIGHBORHOOD AS A PLACE TO LIVE AND WORK.

The Ordinance with the recommended modification succeeds in preventing the eviction of commercial tenants whose land uses do not conform to the PDR zoning, while also ensuring that these affordable spaces are eventually returned to their intended PDR uses.

OBJECTIVE 6.1

SUPPORT THE ECONOMIC WELLBEING OF A VARIETY OF BUSINESSES IN THE EASTERN NEIGHBORHOODS.

The Ordinance with the recommended modification ensures that the building is returned to its intended purpose to serve artists and makers as soon as a reasonable amount of time has passed to ensure current non-complying tenants may find new business locations.

3. **Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance with the recommended modification would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance with the recommended modification would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

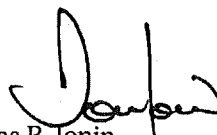
8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

4. **Planning Code Section 302 Findings.** The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on May 23, 2019.


Jonas P. Ionin
Commission Secretary

AYES: Fung, Hillis, Johnson, Koppel, Melgar, Moore, Richards

NOES: None

ABSENT: None

ADOPTED: May 23, 2019



SAN FRANCISCO PLANNING DEPARTMENT

Executive Summary Planning Code Text Amendment HEARING DATE: MAY 9, 2019

90-DAY DEADLINE: AUGUST 5, 2019

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Project Name: Legitimization program for certain Non-Residential Uses at 3150-18th Street
Case Number: 2019-002217PCA [Board File No. 190165]
Initiated by: Supervisor Ronen / Re-Introduced May 7, 2019
Staff Contact: Audrey Butkus, Legislative Affairs
Audrey.Butkus@sfgov.org, 415-575-9129
Reviewed by: Aaron Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, 415-558-6362
Recommendation: Approval with Modifications

PLANNING CODE AMENDMENT

The Ordinance would amend the Planning Code to establish a legitimization program for certain Non-Residential Uses at 3150 18th Street, also known as ActivSpace.

The Way It Is Now:

1. 3150 18th Street is zoned Production, Distribution, and Repair General (PDR-1-G). The intention of this District is to retain and encourage existing production, distribution, and repair activities and promote new business formation. This District prohibits Residential and Office uses, and limits Retail and Institutional uses.

The Way It Would Be:

1. The legislation would codify a new Section 192, establishing a legitimization program to allow existing uses operating at 3150 18th Street without the benefit of all required permits to seek those permits. The legitimization program applies to non-residential uses that meet the following conditions:
 - a. If the use is for office, any building permit will be subject to mandatory discretionary review by the Planning Commission;
 - b. As of January 15, 2019, it was already operating at 3150 18th Street;
 - c. As of January 15, 2019, it had a lease with the owner of 3150 18th Street, or a written agreement with an entity that has such a lease with the owner; and
 - d. Applications for all appropriate permits from any City or State agency to legalize the use are filed within 90 days of the effective date of this ordinance, and the applicant diligently pursues the permit(s) until they are issued.

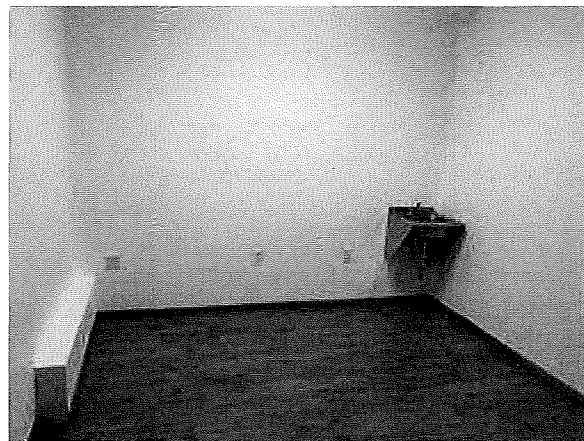
2. Non-Residential Uses that qualify under this legitimization program would be considered Legal Non-Conforming Uses, to sunset 10 years after the Ordinance becomes active. Any legal non-conforming uses under the legitimization program would then lose their nonconforming status.
3. The Ordinance would have no retroactive effect, and would not forgive or waive enforcement of any violations that occurred prior to the Ordinance's effective date.

BACKGROUND

This Ordinance is the result of ongoing enforcement with the Planning Department, Health Department and the Department of Building Inspection regarding illegal businesses operating at 3150 18th Street.



ActivSpace exterior (activspace.com)



Typical upper story unit in ActivSpace (yelp.com)

On September 23, 2004, the Planning Commission moved to take Discretionary Review and approve a project at 3150 18th Street. The project proposed to demolish two, two-story light industrial office and warehouse buildings and in their place construction of a five-story building with approximately 260 commercial units (287 *were actually built*) and a single caretaker's unit. The commercial units were designated exclusively as rental workshops for arts activities, light manufacturing, repair and small business services uses. As part of the approval action, the Commission prohibited office and residential uses on the site, save for an administrative office for the building, and one caretaker's unit. This was memorialized by a Notice of Special Restrictions being places on the property's Assessor's Record. The units range in size from ~100 square feet to ~400 square feet (*see Exhibit B*).

As part of the approval action, the Commission prohibited office and residential uses on the site . .

On January 22, 2019 the Planning Department received an anonymous complaint alleging the illegal operation of tattoo and massage establishments at the site. On February 27, 2019, the Planning Department issued a Notice of Enforcement for the subject property for violating its Notice of Special

Restrictions¹ and for the presence of illegal Massage and Personal Service uses. This Notice of Enforcement is attached as Exhibit C. This enforcement case is the result of a complaint filed on January 22, 2019 alleging the illegal operation of tattoo and massage establishments at the site. During the Code Enforcement investigation, Planning Staff discovered that many other uses had been established at the site without the benefit of permit. Many businesses were also operating without Business Licenses. This enforcement is ongoing, with some further enforcement action dependent on the result of this proposed Ordinance. As of February 22, 2019, only 6 businesses held the necessary permits to operate from the Department of Public Health, and only 2 businesses had filed a permit to establish their use with the Planning and Building Departments.



Map displaying location of Code Enforcement complaints for illegal conversion from PDR filed through 2017.

ISSUES AND CONSIDERATIONS

Office Uses at 3150 18th Street

The exact number of Office Uses currently in operation at 3150 18th Street is unknown; however, the Department's estimation is that there are currently between 35-50 tenants whose operations classify as an Office Use. The proposed Ordinance would require any current tenant operating as an Office Use to seek Discretionary Review approval from the Planning Commission to be able to participate in the program.

¹ See Exhibit B

Some tenants have asked that the ordinance include language that would overturn the Commission's Discretionary Review action altogether; however, that is not possible. The Board is the body that approves ordinances, and the Board cannot overturn a Planning Commission's Discretionary Review action. Only the Planning Commission or the Board of Appeals can do that, and the window to appeal this decision to the Board of Appeals has long passed. Therefore, the only way this restriction can be removed is through another Discretionary Review action by the Planning Commission, which would require a change of use permit from the property owner or tenant.

The Board cannot overturn a Planning Commission's Discretionary Review action. Only the Planning Commission or the Board of Appeals can do that...

Though the Department understands the desire of the sponsor to ensure all current tenants have an ability to remain at 3150 18th Street, the Department would caution any applicant against pursuing this avenue. Seeking to overturn the Commission decision in this manner does not guarantee that these current office businesses will be able to be approved. Further, the Department is unlikely to recommend approval of such an application because of the City's long-standing policy to protect PDR spaces from office or residential development. These small business may end up spending a significant amount of time and money seeking approval, only to be either disapproved, or approved but only for the remaining length of the legitimization program. It should also be acknowledged that approval of the office businesses may inadvertently raise rents beyond the current levels, placing the small-scale PDR and Arts Activities Uses at risk of displacement. While a home office, which is permitted in the Planning Code, may not be ideal for some of these businesses in the long term, it is an option for them in the short-term while they look for new office space in the City.

Length of Amnesty Program

The Ordinance proposes allowing all uses approved through the Legitimization Program to operate for a period of no more than 10 years. After 10 years all uses not allowed in PDR-1-G would need to vacate the building. This legitimization program is tied to the land use and not the occupant; therefore, if an existing tenant vacates the building before the 10 years expire, a new tenant of that same use may occupy the unit until the expiration of program. The 10-year period would begin starting the day the legislation becomes effective.

Staff finds that the 10-year time-period defeats the purpose of the program being temporary. The purpose of the legitimization program is to provide current tenants whose land use is not currently permitted time to find a new business location. The program is not intended to permanently permit these non-conforming uses. Permanently permitting these land uses would only serve to: 1. Reward a property owner who has knowingly violated their zoning controls, possibly setting a precedent for other developers in PDR Districts to do the same; 2. Permanently remove greatly needed affordable Arts Activity and Light Industrial rental spaces; and 3. Increase rents even higher than what today's office tenants can afford, furthering the displacement of small businesses. Under this reasoning, allowing these uses to stay for 10 years is an excessive amount of time to accomplish the stated purpose of the program.

The Department is also concerned about the length of the program because of owner's record of failing to inform tenants of the property's restrictions. Although the legislation requires the property owner to inform new tenants of the legitimization program, the Department is skeptical that property owner will properly inform each new non-conforming tenant of the temporary nature of their tenancy. As a result, the City may find itself back in the same position in 10 years: trying to protect small business tenants from being evicted on short notice due to not being properly informed of the temporary nature of their land use authorization.

Production Distribution and Repair Districts

PDR Districts provide space for a wide variety of PDR (production, distribution and repair) and other non-residential activities in districts where these uses are free from inherent economic and operational competition and conflicts with housing, large office developments, and large-scale retail, which are not permitted in these Districts. Other uses that share operational characteristics with PDR uses are permitted in these Districts, as they require large flexible spaces and prefer separation from intensive housing districts. PDR-zoned land is also an important reservoir of space in San Francisco for new and evolving industry and activity types that cannot be foreseen today and cannot practically function or compete for space in a typical downtown office or neighborhood commercial environment. Businesses and activities allowed in PDR Districts generally share a need for flexible operating spaces that feature large open interiors, high ceilings, freight loading docks and elevators, floors capable of bearing heavy loads, and large (often uncovered exterior) storage areas. These uses are often not ideally compatible with housing for operational reasons, including the need for significant trucking and delivery activities, 24-hour operation, and emission of noise, odors and vibrations. Importantly, PDR uses are limited in the amount of rent they can afford relative to office, retail, and residential uses, yet are important sectors of the City's economy.

Protecting PDR Spaces

The City set out to protect its industrial lands in the late 1990s because of the rise of the tech industry in San Francisco. Looking for cheap new office space, new tech start-ups started to rent industrial space in the eastern part of the city. This in-turn either displaced existing industrial uses or removed scarce industrial space from the real-estate market. As a result, the City engaged in a several attempts to stop the loss of industrial space, first with an Industrial Protection Zone, and finally by rezoning industrial parcels to a new zoning district designation, PDR (Production, Distribution, and Repair). Unlike the existing industrial zoning (M-1 and M-2), these new PDR zoning districts prohibited office and residential uses and significantly restricted the amount of retail and non-PDR uses.

The building at 3150 18th Street was approved while the city was looking for ways to protect its industrial lands, and prior to the adoption of PDR Zoning. The building was specifically designed to provide small, affordable workspaces for Arts and Light Industrial uses, and the Commission's support of the project was based on this fact. ActivSpace describes itself as a company "*designed and built specifically with the needs of creative individuals in mind*". The 289 units at 3150 18th Street are mostly small and include only a basic sink. Many of the units do not have windows. They are ideal for artist studios and maker spaces and their size makes them affordable to these types of uses. The longer the prohibited uses can remain at ActivSpace, the longer these units will remain inaccessible to the vulnerable artist and maker uses the City aims to protect.

General Plan Compliance

The proposed Ordinance, with all recommended modifications complies with Objective 1.1 of the Mission Area Plan to “strengthen the Mission’s existing mixed-use character, while maintaining the neighborhood as a place to live and work.” It does this by preventing the eviction of commercial tenants whose land uses do not conform to the PDR zoning, while also ensuring that these affordable spaces are eventually returned to their intended PDR uses. The proposed Ordinance, *with* the proposed modifications to limit the legitimization program’s length to 3 years and to prevent Office Uses from remaining at the site, also complies with Objective 6.1 support the continued development and preservation of artists’ and arts organizations’ spaces. The Ordinance, with the recommended modifications, ensures that the building is returned to its intended purpose to serve artists and makers as soon as a reasonable amount of time has passed to ensure current non-complying tenants may find new business locations.

Implementation

The Department has determined that this ordinance will impact our current implementation procedures in the following ways:

- There are many unknowns and factors that are beyond the Department’s or City’s control that can affect the success or failure of this program, including:
 - The property owner is under no obligation to assist tenants in legalizing their use, or in stabilizing their rent to make it worth the time and expense for them to go through the time and expense of legalizing their use. Most leases in this building are month-to-month.
 - As it is currently unknown how many units have been physically altered without permits, the Department of Building Inspection has expressed that they may require new architectural plans to be submitted for some or all units when they come in to establish their use. Though the project architect and property owner have verbally committed to sharing the approved architectural plans, DBI seems unable to verify the current accuracy of the various plan versions, and the tenants claim the property owner/architect have yet to share plans with them.
 - This program’s success will largely rely on the tenants and property owner coming together and coordinating amongst themselves to legalize their uses with the various city agencies.
 - The program may have the inadvertent effect of raising the rents beyond affordability for current tenants, while enabling future office uses to enter the neighborhood and occupy space designed for artists and producers (for the period of the legitimization program).
- Some of the current tenants are fall into uses that are allowed in PDR-1-G, but only up to certain amounts. Taken in aggregate, these uses may already be over the allowable square footage limits in the Planning Code. The Department believes the following uses may already be operating in excess of their allowable size limitations:
 - Social Service or Philanthropic Facility: C if over 5,000sqft
 - Health Services: C if over 5,000sqft
 - Other Retail Sales and Service Uses: Bar, Cannabis Retail, Tourist Oriented Gift Store, Specialty Grocery, Jewelry Store, Liquor Store, Non-Auto Sales, Pharmacy, Restaurant, Limited Restaurant, General Retail Sales and Service, Financial Service, Fringe Financial Service, Limited Financial Service, Instructional Service, Personal Service, Retail Professional Service, and Tobacco Paraphernalia Establishment: NP once combined uses are over 2,500sqft.

There will be consternation and confusion from tenants who try to legalize these uses permanently if the property owner does not devise a system to designate which units will be permanent, and which will be temporary under the program. The property owner must do this prior to the effective date of this ordinance to avoid any confusion. The City cannot compel the property owner to make these determinations.

RECOMMENDATION

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. Decrease the program's time period from 10 years to 3 years.
2. Do not permit Office Uses to participate in the legitimization program.

BASIS FOR RECOMMENDATION

The Department supports the Ordinance with all proposed modifications because it will ensure that small business tenants of 3150 18th Street are given time to legitimize their uses if they are allowed under PDR-1-G zoning, or time to find a new business location if they are not allowed to operate under PDR-1-G zoning. Although the Department supports the overall intentions and goals of this Ordinance, it also cautions that even with the adoptions of all proposed modifications, the success of this program contains additional variables (described in the Implementation section above) that are not within the City's control.

1. **Decrease the program's time period from 10 years to 3 years.** Most if not all leases at 3150 18th Street are month-to-month. They are not standard 5-year commercial leases. This program is designed to give non-complying tenants time to find a new business location. Department staff find that 10 years is too long. Many tenants may move out during that time, and under this program new tenants of the same use may move into the space. The City cannot be held responsible for notifying every new tenant of the impending expiration date on their use. Further, based on past behavior, the Department is skeptical that the property owner will properly notify new tenants. If the program is too long, the City may find itself back in the same position in 10 years: with tenants not knowing that their uses were not permanently allowed and then seeking an exception from the Planning Code. Lastly, these uses are not allowed in the PDR-1-G zoning district for good reason: most if not all of them can pay higher rents than PDR uses. Every month these uses can stay results in rewarding the property owner for knowingly breaking the Conditions of Approval placed on the property and the underlying zoning controls. The Department does not want to set a precedent for other developers to do the same in the future.
2. **Do not permit Office Uses to participate in the legitimization program.** PDR-1-G Districts are specifically designed to prevent the proliferation of Office Uses which can often pay more than double the amount of rent as traditional PDR uses. Office Uses in this district go against the intent of the District and the General Plan. Additionally, the original Conditions of Approval for the ActivSpace project specifically stated that Office Uses are not be allowed. Lastly, if the program is only 3 years (as staff recommends), by the time an Office use seeks to temporarily legalize through a Mandatory Discretionary Review, they will likely only have 1.5-2 years left to operate at the space. The Department should not be offering permit avenues that are of little or no benefit to the applicant.

REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

ENVIRONMENTAL REVIEW

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

PUBLIC COMMENT

As of the date of this report, the Planning Department has received three emails attached as Exhibit E regarding the proposed Ordinance. One email is from a client of a tenant at 3150 18th Street requesting the allowance for massage uses and two emails are from current office tenants at the subject site, requesting Office Uses be permitted at the property.

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Notice of Special Restriction
- Exhibit C: Notice of Enforcement
- Exhibit D: Estimation of Use Types Occurring in 3150 18th Street
- Exhibit E: Letters of Support/Opposition
- Exhibit F: Board of Supervisors File No. 190165

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

February 20, 2019

File No. 190165

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On February 12, 2019, Supervisor Ronen introduced the following proposed legislation:

File No. 190165

Ordinance amending the Planning Code to establish a legitimization program for certain Non-Residential Uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

Not defined as a project under CEQA Guidelines Sections 15378 and 15060(c)(2) because it would not result in direct or indirect physical change in the environment. It is establishing a program. Any physical activity will need environmental review.

Joy
Navarrete

Digitally signed by Joy Navarrete
DN: cn=Joy Navarrete, o=Planning,
ou=Environmental Planning,
email=joy.navarrete@sfgov.org,
c=US
Date: 2019.03.07 16:23:41 -08'00'

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: Regina Dick-Endrizzi, Director
Small Business Commission, City Hall, Room 448

FROM: Erica Major, Assistant Clerk
Land Use and Transportation Committee

DATE: May 20, 2019

SUBJECT: REFERRAL FROM BOARD OF SUPERVISORS
Land Use and Transportation Committee

The Board of Supervisors' Land Use and Transportation Committee has received the following proposed legislation, which is being referred to the Small Business Commission for comment and recommendation.

File No. 190165

Ordinance amending the Planning Code to establish a legitimization program for certain non-residential uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Please return this cover sheet with the Commission's response to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

RESPONSE FROM SMALL BUSINESS COMMISSION - Date: _____

____ **No Comment**

____ **Recommendation Attached**

Chairperson, Small Business Commission

cc: Dominica Donovan

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 15, 2019

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On May 7, 2019, Supervisor Ronen introduced the following proposed legislation:

File No. 190165-2

Ordinance amending the Planning Code to establish a legitimization program for certain non-residential uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

- c: John Rahaim, Director
Scott Sanchez, Acting Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 15, 2019

File No. 190165-2

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On May 7, 2019, Supervisor Ronen introduced the following proposed substitute legislation:

File No. 190165-2

Ordinance amending the Planning Code to establish a legitimization program for certain non-residential uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

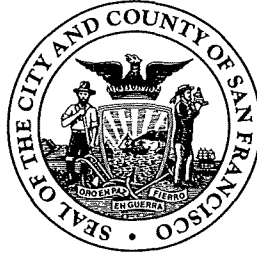
A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

February 20, 2019

File No. 190165

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On February 12, 2019, Supervisor Ronen introduced the following proposed legislation:

File No. 190165

Ordinance amending the Planning Code to establish a legitimization program for certain Non-Residential Uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

February 20, 2019

Planning Commission
Attn: Jonas Ionin
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Commissioners:

On February 12, 2019, Supervisor Ronen introduced the following legislation:

File No. 190165

Ordinance amending the Planning Code to establish a legitimization program for certain Non-Residential Uses at 3150-18th Street (Assessor's Parcel Block No. 3573, Lot No. 106); affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1, and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

The proposed ordinance is being transmitted pursuant to Planning Code, Section 302(b), for public hearing and recommendation. The ordinance is pending before the Land Use and Transportation Committee and will be scheduled for hearing upon receipt of your response.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

c: John Rahaim, Director
Scott Sanchez, Acting Deputy Zoning Administrator
Corey Teague, Zoning Administrator
Lisa Gibson, Environmental Review Officer
Devyani Jain, Deputy Environmental Review Officer
AnMarie Rodgers, Director of Citywide Planning
Dan Sider, Director of Executive Programs
Aaron Starr, Manager of Legislative Affairs
Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2019 APR 30 PM 1:03

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- ☐ 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- ☐ 2. Request for next printed agenda Without Reference to Committee.
- ☐ 3. Request for hearing on a subject matter at Committee.
- ☐ 4. Request for letter beginning "Supervisor inquires"
- ☐ 5. City Attorney request.
- ☐ 6. Call File No. from Committee.
- ☐ 7. Budget Analyst request (attach written motion).
- ☒ 8. Substitute Legislation File No.
- ☐ 9. Reactivate File No.
- ☐ 10. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☒ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Subject:

The text is listed below or attached:

Signature of Sponsoring Supervisor: 

For Clerk's Use Only:

Introduction Form

By a Member of the Board of Supervisors or Mayor

2019 FEB 12 PM 4:30

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- ☒ 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- ☐ 2. Request for next printed agenda Without Reference to Committee.
- ☐ 3. Request for hearing on a subject matter at Committee.
- ☐ 4. Request for letter beginning : "Supervisor [] inquiries"
- ☐ 5. City Attorney Request.
- ☐ 6. Call File No. [] from Committee.
- ☐ 7. Budget Analyst request (attached written motion).
- ☐ 8. Substitute Legislation File No. []
- ☐ 9. Reactivate File No. []
- ☐ 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- ☐ Small Business Commission ☐ Youth Commission ☐ Ethics Commission
- ☐ Planning Commission ☐ Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Supervisor Hillary Ronen, Brown

Subject:

Planning Code - Legitimization Program for Non-Residential Uses at 3150 18th St

The text is listed:

Ordinance amending the Planning Code to establish a legitimization program for certain Non-Residential Uses at 3150 18th Street (Assessor's Block No. 3573, Lot No. 106)

Signature of Sponsoring Supervisor:



For Clerk's Use Only