File No. 111337

Committee Item No. 2
Board Item No. 13

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Land Use and Economic Development **Date** March 26, 2012

Board of Supervisors Meeting **Date** April 3, 2012

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Completed by: Alisa Miller **Date** March 23, 2012
Completed by: Alisa Miller **Date** March 29, 2012

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document can be found in the file.

[Planning Code - Extension of Time for Legitimization of Existing Eastern Neighborhoods Uses]

Ordinance amending the San Francisco Code Section 179.1(b) to: 1) extend ~~by 90 days~~ through November 12, 2012, the period of time in which existing uses in the Eastern Neighborhoods area that have operated without permits may file an application for determination of eligibility for legitimization; 2) establish a deadline within which the applicant must proceed with the legitimization process; and 3) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

NOTE: Additions are *single-underline italics Times New Roman*; deletions are ~~*strike-through italics Times New Roman*~~. Board amendment additions are double-underlined; Board amendment deletions are ~~strikethrough normal~~.

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 are in compliance with the California Environmental Quality Act (California Public Resources Code section 21000 et seq.). Said determination is on file with the Clerk of the Board of Supervisors in File No. 111337 and is incorporated herein by reference as though fully set forth.

(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. 18549, which resolution is incorporated herein by reference as though fully set forth. A copy of Resolution No. 18549 is on file with the Clerk of the Board of Supervisors in File No. 111337.

(c) The Board of Supervisors finds that this Ordinance is consistent with the City's General Plan and the Priority Policies of Planning Code Section 101.1(b) for the reasons set forth in Planning Commission Resolution No. 18549.

Section 2. The San Francisco Code is hereby amended by amending Section 179.1(b), to read as follows:

(b) **Applicability.**

(1) **Geography.** This Section shall apply only to property located in the Eastern Neighborhoods Mixed Use Districts, the SLI District, or any PDR District which is located within the boundaries of the Eastern Neighborhoods Project Area pursuant to Section 327.2(j). This Section shall not apply to any Live/Work use as set forth in Section 233.

(2) **Eligibility.** Any use that is the subject of an application under this Section shall be one that is determined by the Zoning Administrator as one which:

(A) exists as of the date of the application;

(B) would have been principally permitted or permitted with conditional use authorization under provisions of the Planning Code that were effective on April 17, 2008;

(C) would not be permitted under current provisions of this Code;

(D) is a land use that either:

(1) has been regularly operating or functioning on a continuous basis for no less than 2 years prior to the effective date of this Section; or

(2) has been 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 this Section;

(E) is not accessory to any other use; and

(F) is not discontinued and abandoned pursuant to the provisions of Section 183 that would otherwise apply to nonconforming uses.

(3) **Sunset.** All applications for a determination of eligibility under Subsection (d) must be received by the Zoning Administrator <u>on or before November 12, 2012</u> ~~within three years of the effective date of this Section~~. If the Planning Department fails to timely issue notice pursuant to Subsection (c), the Zoning Administrator may extend this termination date for an additional period of time not to exceed the number of days that the Department delayed in issuing the notice. <u>An applicant who has received a determination of eligibility must submit to the Department all required application materials for legitimization within 90 days of the date of issuance of the determination of eligibility and diligently pursue the legitimization process until completion. For purposes of this section, "diligently pursue" shall mean timely responding to all requests for additional information from the Department or other City agency reviewing the matter and timely applying for and pursuing all permits and other approvals required to legitimize the use. Failure to do so may result in the Zoning Administrator's revocation of the legitimization letter.</u>

Section 3. Effective Date. This ordinance shall become effective 30 days from the date of passage.

Section 4. This section is uncodified. In enacting this Ordinance, the Board intends to amend only those words, phrases, paragraphs, subsections, sections, articles, numbers, punctuation, charts, diagrams, or any other constituent part of the Planning Code that are explicitly shown in this legislation as additions, deletions, Board amendment additions, and

Board amendment deletions in accordance with the "Note" that appears under the official title of the legislation.

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

By: Judith A. Boyajian
JUDITH A. BOYAJIAN
Deputy City Attorney

FILE NO. 111337

REVISED LEGISLATIVE DIGEST

(3/12/2012, Amended in Committee)

[Planning Code - Extension of Time for Legitimization of Existing Eastern Neighborhoods Uses]

Ordinance amending the San Francisco Planning Code Section 179.1(b) to: 1) extend through November 12, 2012, the period of time in which existing uses in the Eastern Neighborhoods area that have operated without permits may file an application for determination of eligibility for legitimization; 2) establish a deadline within which the applicant must proceed with the legitimization process; and 3) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

Existing Law

Planning Code Section 179.1 provides a process for the legitimization of certain existing land uses in the Eastern Neighborhoods area, office and housing uses in particular, that are no longer permitted as a result of the recent adoption of Eastern Neighborhoods Zoning Controls. These uses were permitted under the prior controls but were operating without the required permits. Section 179.1(b) requires all applications for a determination of eligibility for legitimization to be received by the Zoning Administrator by January 12, 2012.

Amendments to Current Law

This legislation amends Section 179.1(b) to extend for through October 31, 2012 the time within which the Zoning Administrator must receive a request for a determination of eligibility for legitimization.

Background Information

Although the Section 179.1 legitimization program has been in effect for almost three years, to date only three entities have taken advantage of the program. Members of the Eastern Neighborhoods Citizens Advisory Committee (CAC) have expressed concern that the program was not being utilized and have advocated for additional time to explore the reasons for the lack of participation and to propose any appropriate remedies. At its November 21, 2011 meeting, the CAC unanimously adopted a motion to request the Board of Supervisors to extend the legitimization program to enable further study of the program. The CAC further requested that the Board hold an informational hearing to hear from the Mayor's Office of Economic and Workforce Development, the Planning Department, and other interested parties and to consider further extending the program.

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

December 21, 2011

File No. 111337

Bill Wycko
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Mr. Wycko:

On December 13, 2011, Supervisor Cohen introduced the following proposed legislation:

> **File No. 111337**
>
> Ordinance amending the San Francisco Planning Code Section 179.1(b) to: 1) extend by 90 days the period of time in which existing uses in the Eastern Neighborhoods area that have operated without permits may file an application for determination of eligibility for legitimization; and 2) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1.

This legislation is being transmitted to you for environmental review, pursuant to Planning Code Section 306.7(c).

Angela Calvillo, Clerk of the Board

Alisa Miller

By: Alisa Miller, Committee Clerk
Land Use & Economic Development Committee

Attachment

c: Nannie Turrell, Major Environmental Analysis
Brett Bollinger, Major Environmental Analysis

Exempt from CEQA per Section 15060(c)(2) and 15378. Non-physical exemption.
Nannie R Turrell
January 5, 2011

SAN FRANCISCO
PLANNING DEPARTMENT

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

March 1, 2012

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

Re: Transmittal of Board File No. 11-1337; Planning Case No. 2012.0016T
Extension of time to seek amnesty and apply for legitimization of uses in the Eastern Neighborhoods

Planning Commission Recommendation: ***Approval with Modifications***

Dear Honorable Clerk Calvillo and Supervisor Cohen,

On February 23, 2012, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Cohen.

The proposed Ordinance would 1) amend Planning Code Section 179.1 (B) to extend by 90 days the period of time in which existing uses in the Easter Neighborhoods Area that have operated without permits may file an application for determination of eligibility for legitimization; and 2) make environmental findings, Planning Code Section 302 findings, and findings of consistency with General Plan and the Priority Policies of Planning Code Section 101.1.

The proposal has been found exempt from the California Environmental Quality Act per section 15060 (c) (2) under non-physical exemption on January 5, 2012.

At the February 23, 2012 hearing, the Commission adopted Resolution Number 18550 with ***a recommendation of approval to the Board of Supervisors for the proposed ordinance.***

The Department recommends that the legislative sponsors advise the City Attorney at your earliest convenience if you wish to incorporate any changes recommended by the Commission. One hard-copy is being delivered to the Clerk of the Board for the official record. This electronic copy is our transmittal. Per Ordinance Number 316-10, the Planning Department provides only one hard-copy of this report and provides e-copies to other parties. Additional hardcopies may be provided upon request.

Attached are documents relating to the Commission's action. If you have any questions or require further information please do not hesitate to contact me.

Sincerely,

AM-R

AnMarie Rodgers
Manager of Legislative Affairs

cc: Supervisor Cohen

<u>Attachments [one copy of each of the following]</u>
Planning Commission Resolution Number 18549
Planning Commission Executive Summary

SAN FRANCISCO
PLANNING DEPARTMENT

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

Planning Commission Resolution No. 18549

HEARING DATE: FEBRUARY 23RD, 2012

Project Name:	**Extension of time to seek amnesty and apply for legitimization of uses in the Eastern Neighborhoods**
Case Number:	2012.0016T [Board File No. 11-1337]
Initiated by:	Supervisor Cohen / Introduced December 13, 2011
Staff Contact:	Kimia Haddadan, 415.575.9068 kimia.haddadan@sfgov.org
Reviewed by:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415.558.6395
90-Day Deadline:	*March 21, 2012*
Recommendation:	**Recommend Approval with Modifications**

RECOMMENDING THAT THE BOARD OF SUPERVISORS PASS AN ORDINANCE WITH MODIFICATIONS THAT WOULD INITIATE AMENDMENTS TO THE SAN FRANCISCO PLANNING CODE BY AMENDING SECTION 179.1 (B) TO: 1) EXTEND BY SIX MONTHS THE PERIOD OF TIME IN WHICH EXISTING USES IN THE EASTERN NEIGHBORHOODS AREA THAT HAVE OPERATED WITHOUT PERMITS MAY FILE AN APPLICATION FOR DETERMINATION OF ELIGIBILITY FOR LEGITIMIZATION; AND 2) ESTABLISH A 90-DAY TIMELINE BETWEEN WHEN THE LETTER OF LEGITIMIZATION IS ISSUED AND WHEN ALL REQUIRED APPLICATIONS FOR LEGITIMIZATION NEED TO BE SUBMITTED. FAILURE TO MEET THIS DEADLINE WOULD DEEM THE LETTER OF LEGITIMIZATION NULL AND VOID.

PREAMBLE

Whereas, the timeline to seek amnesty and apply for legitimization of uses in the Eastern Neighborhoods has expired on January 19, 2012 and currently the Department cannot legally process any application received after that date; and

Whereas, on December 13, 2011 Supervisor Cohen introduced a proposed Ordinance under Board File Number 11-1337 that would amend Planning Code Section 179.1 (B) to extend by 90 days the period of time in which existing uses in the Easter Neighborhoods Area that have operated without permits may file an application for determination of eligibility for legitimization; and

Whereas, since the introduction of the proposed Ordinance, the Planning Department recommended extending this period even further to six months; and also recommended to articulate that the legitimization process should proceed with deliberation after a determination of eligibility; and

Whereas, on February 23, 2012 the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance and the proposed modification; and

Whereas, the proposed Ordinance have been found exempt from the California Environmental Quality Act per section 15060 (c) (2) under non-physical exemption on January 5, 2012; and

Whereas, the Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented by Department staff, and other interested parties; and

Whereas, the 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 Commission has reviewed the proposed Ordinance; and

MOVED, that the Commission hereby recommends that the Board of Supervisors recommend *approval with modification* of the proposed Ordinance and adopts the attached Draft Resolution to that effect.

The recommended modifications include modifying the Supervisor's proposed Ordinance to extend the timeline to seek amnesty and apply for legitimization of uses in the Eastern Neighborhoods for six months. The modifications also establish a 90-day timeline between when the letter of legitimization is issued and when all required applications for legitimization need to be submitted. Failure to meet this deadline would deem the letter of legitimization null and void.

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. This Ordinance would respond to concerns raised by EN CAC, SFMADE, and the Small Business Commission that the amnesty program was not being fully utilized. Extending this timeline would provide one last opportunity for these small businesses to inquire information in order to find out whether or not they need to apply for the program. Currently, the Department cannot legally process any application to this program. Any small business without proper permits is subject to code enforcement and termination of use.

2. The Department has received 26 applications that are determined eligible under the amnesty program. These applications would amount to about 850,000 square feet of legitimized office space. During the first two and half years of this period the Department only received six applications. The rest of applications were all submitted within the last six months of this period. It is unclear if the applications received have captured all the eligible uses in the Easter Neighborhoods Area. Staff's general analysis suggests that the increase in late participation in program may not represent a lack of public awareness of the program. Staff recognizes that no matter when the deadline may be, there will always be an incentive for property owners to submit applications late in the process and thereby avoid paying fees until required. In addition, some property owners may have been confused about eligibility criteria or ramifications if uses were found ineligible.

3. Currently, once the letter of legitimization is issued, property owners have no legislated limits on the amount of time in which they may submit the necessary applications to the Department to secure this legalization. Therefore, while it is important to extend the deadline, it is also necessary to conclude this process in a reasonable time by clearly articulating the City's expectations on concluding the legitimization process. For this reason, the Department also proposes a 90-day timeline between when the legitimization letter is issued until all required application materials for legitimization need to be submitted and diligently pursued until completion. Failure to do so will deem the legitimization letter null and void.

4. Additionally, in order to ensure the most comprehensive outreach, the Department would like to utilize new mechanisms of informing small businesses about this program. These new mechanisms include the following:
   - Publish press releases and seek additional media coverage (see attached example in Exhibit C: Business Times interview with the Planning Department Director).
   - Collaborate with brokers, property owners, local organizations such as SFMADE, and Mayor's Office of Economic and Workforce Development, to help businesses that will need to apply for legitimization and have not yet done so due to lack of awareness or confusions about the application process.

1. **General Plan Compliance.** The proposed Ordinance is, on balance, consistent with the following Objectives and Policies of the General Plan:

<u>EASTERN NEIGHBORHOODS AREA PLANS</u>

One of the key policies in the Eastern Neighborhoods Area Plans is that they attempt to ensure a stable future for Production, Distribution and Repair (PDR) businesses in the city, mainly by reserving a certain amount of land for this purpose. The Plans also establish that existing legal nonconforming use rules already provide substantial protections to certain types of establishments that pre-date the proposed rezoning. For example, in areas where limitations will be imposed under new zoning on retail and office uses, existing office and retail uses that do not comply with this limitation would be able to remain, provided they were legally established in the first place.

OBJECTIVE 1- INSTITUTE FLEXIBLE "LEGAL NONCONFORMING USE" PROVISIONS TO ENSURE A CONTINUED MIX OF USES IN THE MISSION.

POLICY 1.3.1 Continue existing, legal nonconforming rules, which permit pre-existing establishments to remain legally even if they no longer conform to new zoning provisions, as long as the use was legally established in the first place.

POLICY 1.3.3 *Recognize desirable existing uses in the former industrial areas which would no longer be permitted by the new zoning, and afford them appropriate opportunities to establish a continuing legal presence.*

The proposed Ordinance would extend the three year timeline for the amnesty program that was created to implement these policies. This Ordinance would provide a one last opportunity for legal noncomforming uses to seek amnesty and legitimize their use.

2. The proposed replacement project is generally consistent with the eight General Plan priority policies set forth in Section 101.1 in that:

A) The existing neighborhood-serving retail uses will be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses will be enhanced:

The proposed Ordinance will have no adverse impact on the neighborhood-serving retail uses.

B) The existing housing and neighborhood character will be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods:

The proposed Ordinance will help protect office uses in the neighborhood that have been in operation before the Eastern Neighborhood policies were adopted. At the same time, this Ordinance is aligned with the Eastern Neighborhood Area Plan policies to protect production, distribution and repair uses in this area.

C) The City's supply of affordable housing will be preserved and enhanced:

The proposed Ordinance will have no adverse effects on the City's supply of affordable housing.

D). The commuter traffic will not impede MUNI transit service or overburden our streets or neighborhood parking:

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

E) A diverse economic base will be maintained by protecting our industrial and service sectors from displacement due to commercial office development. And future opportunities for resident employment and ownership in these sectors will be enhanced:

The proposed Ordinance would help protect manufacturing and industrial uses in the Eastern Neighborhoods Area by providing one last opportunity to office uses that have been operating prior to the zoning changes as a result of the Eastern Neighborhoods Area. Upon arrival of the new sunset for the amnesty program, office uses will not be allowed in most areas of the Eastern Neighborhoods in order to ensure protection of manufacturing and industrial uses from displacement.

F) The City will achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake.

The proposed Ordinance would not affect the preparedness against injury and loss of life in an earthquake is unaffected.

G) That landmark and historic buildings will be preserved:

The proposed Ordinance would not adversely affect landmark and historic buildings.

H) Parks and open space and their access to sunlight and vistas will be protected from development:

The proposed Ordinance would not adversely affect parks and open spaces in terms their access to sunlight and vistas.

I hereby certify that the Planning Commission ADOPTED the foregoing Resolution on February 23, 2012.

Linda Avery
Commission Secretary

AYES: Miguel, Antonini, Borden, Fong, Moore, Sugaya, and Wu

NAYS: none

ABSENT: none

ADOPTED: 2/23/12

SAN FRANCISCO
PLANNING DEPARTMENT

Executive Summary
Planning Code Text Change
HEARING DATE: FEBRUARY 23RD, 2012

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:	**Extension of time to seek amnesty and apply for legitimization of uses in the Eastern Neighborhoods**
Case Number:	2012.0016T [Board File No. 111337]
Initiated by:	Supervisor Cohen / Introduced December 13, 2011
Staff Contact:	Kimia Haddadan, 415.575.9068 kimia.haddadan@sfgov.org
Reviewed by:	AnMarie Rodgers, Manager Legislative Affairs anmarie.rodgers@sfgov.org, 415.558.6395
90-Day Deadline:	*March 21, 2012*
Recommendation:	**Recommend Approval with Modifications**

PLANNING CODE AMENDMENTS

The proposed Ordinance would initiate amendments to the San Francisco Planning Code Section 179.1 (b) to: 1) extend by 90 days the period of time in which existing uses in the Eastern Neighborhoods area that have operated without permits may file an application for determination of eligibility for legitimization; and 2) making environmental findings, Planning Code Section 302 findings, and findings of consistency with the General Plan and the Priority Policies of Planning Code Section 101.1

The Way It Is Now:

At the time of the Eastern Neighborhoods (EN) Plan adoption[1], the Commission and the Board of Supervisors sought to find the proper balance between land uses such as housing, industry, office and technology-related uses. As part of the EN Plan, the City created an amnesty program (also referred to as a legitimization program) to provide a limited-time opportunity whereby existing uses that have operated without the benefit of required permits may seek those permits. Planning Code Section 179.1 "Legitimization of Uses Located in the Eastern Neighborhoods" established this amnesty program. This section establishes two major criteria in order to seek amnesty and pursue legitimization: first that uses should be located within the Eastern Neighborhoods; and second uses could have been legally permitted before the EN. This program was available for three years after plan adoption and expired on January 19,

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[1] In December 2008, the Eastern Neighborhoods Plan was adopted by the following Ordinance 0297-08 General Plan Amendments Related to the Eastern Neighborhoods Area Plans - the Mission, East SoMa, Showplace Square/Potrero Hill and Central Waterfront Area Plans; 0298-08 Amendment to Planning Code - For the Eastern Neighborhoods Area Plans; 0299-08 Zoning Map Amendments in connection with the Eastern Neighborhoods Area Plans; and 0300-08 Amendment to Administrative Code - Chapter 10E, Establishing the Eastern Neighborhoods Area monitoring program.

2012. Within these three years, the Department received thirty applications, twenty of which were submitted during the last ten days of the program. To pursue legitimization a project sponsor would request a letter of determination for eligibility from the Zoning Administrator. If determined eligible for the legitimization program, the Department would provide a 30 day neighborhood notice prior to determining eligibility and issuing the final letter of eligibility.

Currently, the Department legally cannot process any applications submitted after January 19, 2012.

The Way It Would Be:

The Ordinance proposes to extend the three year time-period for another ninety days. This extension aims to provide a final opportunity for legitimization to businesses that are operating without proper permits under the existing zoning designations of the Eastern Neighborhood Plan.

Issues and Considerations:

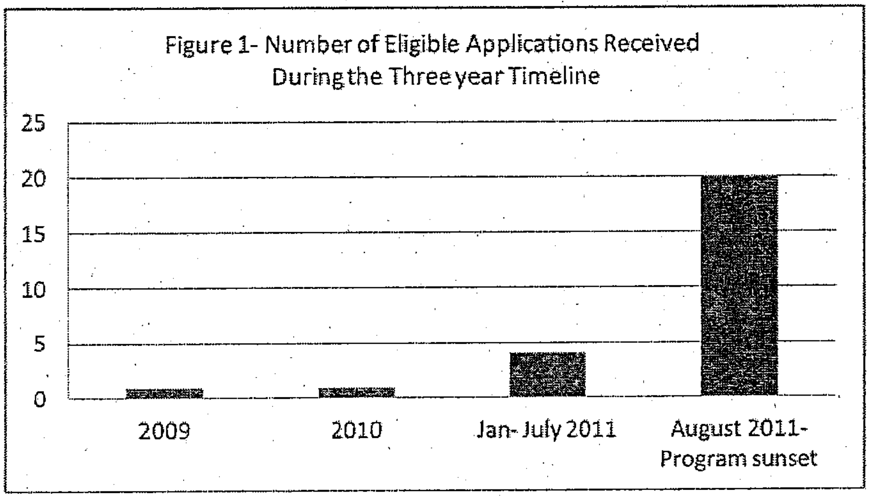
Community Concerns- On November 21, 2011, the Eastern Neighborhoods Community Advisory Committee (EN CAC) passed a motion requesting a 90-day time extension to the Eastern Neighborhood legitimization program. EN CAC Members expressed concerns that the legitimization program was not being fully utilized. The committee's resolution asked that the Board of Supervisors extend the amnesty program for 90-days and to hold a hearing to consider a further extension of the program. The Small Business Commission also voted 5-0, on December 12, 2011 to recommend that the Board of Supervisors extend the period of time that potential eligible uses can seek amnesty and apply for legitimization (See Exhibit D) In response, Supervisor Malia Cohen introduced this Ordinance to extend the Amnesty Program.

Public Outreach- The amnesty program provided an opportunity for some uses in the Eastern Neighborhood Area that were no longer permitted under the current zoning designations to receive proper permits and legitimize their uses. To increase awareness of this program, the Department sent two ~~notifications to 2,500 property owners in the Eastern Neighborhood Area. The first notice was mailed~~ three years ago when the program was established and a second notice was mailed in May 2011. These letters were mailed to all property owners within the MUG, MUO, MUR, UMU, South Park, SLI, PDR-1-G, and PDR-1-D Zoning Districts, regardless of the uses or conditions on the property. The letter was specific to each zoning district, so as to be able to specifically state which uses were eligible to apply for amnesty. The Department's webpage explains all of the information relevant to the amnesty program, including the eligibility criteria, application process and materials, and frequently asked questions[2].

Application volume- The Department has received 26 applications that are determined eligible under the program. These applications would amount to about 850,000 square feet of legitimized office space. During the first two and half years of this period the Department only received six applications. The rest of applications were all submitted within the last six months of this period. Figure 1 shows the number of

[2] http:// amnestyprogram.sfplanning.org

applications received throughout the course of three years (See Exhibit E for a full list of eligible applications submitted).



It is unclear if the applications received have captured all the eligible uses in the Eastern Neighborhoods Area. Staff's analysis suggests that the increase in late participation in program may not represent a lack of public awareness of the program. No matter when the deadline may be, there will always be an incentive for property owners to submit applications late in the process and thereby avoid paying fees until required. Some property owners may have been confused about eligibility criteria or ramifications if uses were found ineligible.

Application Process- Under the existing amnesty program, once the Zoning Administrator has determined eligibility for the program, there is no required timeline for submitting all required applications to legitimize. This has resulted in many pending cases where the letter has been issued and yet little progress has been made to finalize the legitimization of the use. In order to address this issue, the Department would recommends adding a 90-day timeline between when the letter of legitimization is issued and when all the application materials need to be submitted.

REQUIRED COMMISSION ACTION

The proposed Resolution is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

RECOMMENDATIONS

The Department recommends that the Commission recommend approval with modifications of the proposed Ordinance and adopt the attached Draft Resolution to that effect. The recommended modifications would increase opportunities to enter the program by lengthening the window for initial requests as well as increase structure for pursuing legitimization by adding a timeline for submittal of applications. Specifically, the recommended modifications include:

1. **Extend the deadline for submitting requests for amnesty by six months, instead of 90 days.**
2. **Articulate that the legitimization process that should proceed with deliberation after a determination of eligibility.**

Basis for Recommendation of Support and Modifications

Basis for Modification 1: Extend the program by six months. The original legalization program expired on January 19, 2012. If this proposed Ordinance to extend the amnesty program by 90-days moves expeditiously through the approval process, the Department would anticipate that the earliest this Ordinance could become effective would be April 23rd, 2012, four days *after* the extended deadline expires on April 19th. Therefore, the Department likely could not still accept new amnesty requests under the Ordinance as proposed. However, extending the program by six months would likely enable the Department to accept applications in late April/early May (again depending on the effective date of this proposed Ordinance) through June 19th when the program would finally expire. The Department believes that this six month extension would allow enough time for potential eligible property owners to inquire more about the amnesty program and submit necessary request letters.

Basis for Modification 2: Articulate that the legitimization process should proceed with deliberation after a determination of eligibility. Currently, once a letter of legitimization is issued and determined to be valid, property owners have no legislated limits on the amount of time in which they may submit the necessary applications to the Department to secure this legalization. While it is important to extend the deadline, it is also necessary to conclude this process in a reasonable time by clearly articulating the City's expectations on finalizing the process. For this reason, the Department also proposes a 90-day timeline between when the legitimization letter is issued until all required application materials for legitimization need to be submitted and diligently pursued until completion. Failure to do so will deem the legitimization letter null and void.

Basis for Recommendation of Support: This Ordinance would support the original goals of the Eastern Neighborhoods Plan. It would both support existing businesses in the Eastern Neighborhoods area by extending the opportunity to receive the proper permits for operation and by continuing the City's commitment to properly place and balance land uses in the Eastern Neighborhoods. Extending this timeline would provide one last opportunity for eligible, existing nonconforming businesses to pursue amnesty.

Additionally, in order to ensure the most comprehensive outreach, the Department would like to utilize new mechanisms of informing small businesses about this program. These mechanisms include the following:

- Publish press releases and seek additional media coverage (see attached example in Exhibit C: Business Times interview with the Planning Department Director on February 10-16, 2012 issue).
- Collaborate with brokers, property owners, local organizations such as SFMADE, and Mayor's Office of Economic and Workforce Development, to help businesses that will need to apply for legitimization and have not yet done so due to lack of awareness or confusions about the application process.

ENVIRONMENTAL REVIEW

The proposed amendments to the Planning Code has been reviewed and found exempt from CEQA per Section 1506- (c) (2) and 15378 under non-physical exemption.

PUBLIC COMMENT

No public comment was received in response to this proposed Ordinance. Staff has attached the resolutions from the ENCAC and the Small Business Commissions which are addressed to the Board of Supervisors.

RECOMMENDATION:	**Recommendation of Approval with Modifications**

Attachments:

Exhibit A:	Draft Planning Commission Resolution
Exhibit B:	Draft Board of Supervisors Ordinance [Board File No. 11-1337]
Exhibit C:	February 10-16, 2012 SF Business Times Interview with Director Rahaim
Exhibit D:	Resolutions from the ENCAC and Small Business Commissions
Exhibit E:	List of eligible applications received for legitimization of uses in the Eastern Neighborhoods

Exhibit C- Interview with Director Rahaim in SF Business Times

Deal sites deal with dust of derelict retailers

'Out of business' is sign of times

BY SARAH DUXBURY
San Francisco Business Times

On Dec. 30, daily deal site Plum District offered discounted Starbucks/Fandango and Target/Restaurant.com gift cards. Thousands of customers nationally snapped them up, and a few, no doubt, thought the deal was too good to be true.

It turns out they were correct.

Almost immediately, San Francisco-based Plum District started fielding customer complaints that the merchant on the deal, Digital Doorstep, was not fulfilling orders. Two weeks later, Digital Doorstep filed for Chapter 7 bankruptcy. Plum District immediately issued a press release announcing it had refunded all customer orders.

Nor is Plum District alone.

Last year, San Francisco-based Bloomspot offered $50 of food for $25 at Elizabeth Falkner's Orson restaurant. When she closed that restaurant in October, customers could get a refund or they could apply the deal to Falkner's other restaurant, Citizen Cake. Many customers hadn't yet used their vouchers when Citizen Cake also went out of business in December.

The fast-growing daily deal space has entered its adolescence.

While there may still be a Wild West element to the space — newcomers pop up seemingly daily while companies go bust just as fast, and there's a fierce battle among providers to offer the greatest deals — some of the more established sites recognize that they must turn inevitable business bumps into brand-building opportunities. The age of best practices has arrived.

SPENCER BROWN

"I didn't think over-communicating would be harmful," says Megan Gardner.

The most critical thing is protecting that subscriber base, since customers are expensive to win.

"There's a lifetime value to the subscriber, and they spent a lot of money acquiring that subscriber, so it's not in their best interest to lose them in any way," said Boyan Josic, founder of Daily Deals Media, which tracks the industry.

It now costs up to $20 to get one customer to sign up for your daily deal offerings, Josic said, compared with just $2 to acquire a new customer 18 months ago.

"We wanted to get out there in front of anyone with any questions, to let them know what was going on and that we were deeply disturbed and making it right quickly," said Megan Gardner, CEO of Plum District. "I didn't think over-communicating would be harmful to the company."

Quite the opposite.

"When someone has a customer-service concern, there's an opportunity to make it right," Gardner said. "You can take people from being screaming angry to being huge brand advocates."

The company went on high alert to protect that customer base. Gardner herself spent 15 hours a day on the customer loyalty desk, she said. Some customers were pleased Plum District was making it right; others were frustrated by the experience.

Gardner won't share details on how many refunds Plum District made, other than to say it was substantial. This was a major, and popular, national deal.

"This is not something that would ordinarily have made it through our processes, and we've since tightened up," Gardner said.

Bloomspot also used the failure of Citizen Cake and Orson as an opportunity to secure customer loyalty. While customers were offered a $25 refund, they also could be reimbursed with $30 in Bloom Rewards — essentially a $30 credit on a future Bloomspot purchase.

Gardner said that in Plum District's two years, only one other national offer has been a failure, and only a handful of local merchants have gone out of business.

Bloomspot declined to participate in this story.

One reason such failures are treated so seriously is that the industry shakeout has begun.

Over the last six months of 2011, 798 daily deal sites out of 10,000 went out of business globally, Josic said.

"It was a chain reaction. Subscriber rates went up; small companies lost funding; investors got wary and took a step back; companies sold out cheap and went out of business," Josic said. "For an industry where we still have startups, that's a pretty dramatic loss."

Kleiner Perkins-backed Plum District, which in December raised a $20 million series C funding round led by General Catalyst Partners, has 300 sales people in 27 cities, 100 employees and two offices. It expects to grow 50 percent in 2012 and can't let one bad deal slow it down.

Thus, of the 50-odd jobs it will add in 2012, at the top of the list is its first director of customer loyalty.

"We were originally looking for a manager level, but now we think it's important to hire the person we will need in nine to 12 months so we're not hiring after the fact," Gardner said.

sduxbury@bizjournals.com / (415) 288-4963

Eastern S.F. properties likely to get new shot at amnesty

BY J.K. DINEEN
San Francisco Business Times

An amnesty program designed to allow property owners to comply with new zoning in San Francisco's Eastern Neighborhoods will likely be extended after only about 30 landlords applied to legalize uses.

Under the 2009 Eastern Neighborhoods rezoning, about 1,000 parcels in the Mission district, Potrero Hill and Central Waterfront were switched to a strict industrial zoning classification from one that allowed a wide assortment of residential, office and retail uses.

The rezoning was meant to protect manufacturing jobs in those mixed-use areas and prevent space from being completely consumed by upscale housing and office developers.

San Francisco has the lowest percentage of land zoned for industrial uses of any major city in the United States, just 6.8 percent, according to the city planning department.

To give property owners a chance to retain the now-illegal uses, the city offered a three-year amnesty program under which owners could apply to pay $10 to $12 a square foot to grandfather uses that were in place before the Eastern Neighborhoods rezoning passed.

The city sent out 2,500 notices to property owners and building tenants potentially in violation. Planning Director John Rahaim said they received a small flurry of applications in the days up to the Jan. 19 deadline. The 30 applications the city received cover about 600,000 square feet; if all are accepted, which is unlikely, it would pump $6.5 million into city coffers.

Rahaim said he will recommend a six-month extension. He also said he is open to revisiting aspects of the Eastern Neighborhoods plan that do not seem to be working.

"I think there are tweaks to the Eastern Neighborhoods rezoning that we should consider," said Rahaim. "How flexible we can be is something we should sit down and talk about."

PAOLO VESCIA / SFBT FILE 2011

"There are tweaks to ... rezoning that we should consider," says John Rahaim.

Landlord Fred Snyder of the David Allen Trust applied to legitimize one of the properties he owns, 660-680 Alabama St., a 50,000-square-foot former factory. The building was recently 100 percent leased to Meraki, a networking systems company backed by Google and Sequoia Capital. Snyder said he is taking advantage of a provision that allows paying the fee over four years. "We filed and we have made a couple of payments already," said Synder.

At another property he owns, at 18th and Florida streets, Synder opted for the new zoning. And the decision has paid off: Last fall, the dinnerware and tile maker Heath Ceramics signed a long-term lease there and has started building out a 4,000-square-foot retail store and a 16,000-square-foot manufacturing and warehouse space. The new facility will house 34 employees in its first year. The company will occupy 60,000 square feet over the next three years.

Land use attorney Brett Gladstone, who represents a number of property owners affected by the change, said some are not coming forward because they can't afford the fee. Others are confused by the process or fear that the city will reject their efforts to come into compliance.

Gladstone said the department should extend the deadline a full year. "I feel it's important that a study be done on the fees. Those fees were created through studies undertaken in 2005 and 2006. The economy was different then, and the ability of property owners to pay those fees is much different than it is today."

Kate Solis, executive director of SFMade, a manufacturing advocacy group, said she would support a three- to six-month extension.

She said about 300 manufacturing companies operate in San Francisco, a majority of which are in the rezoned area in the Eastern Neighborhoods. Low rents brought on by the recession have helped boutique manufacturers — companies that make food, clothing, furniture, bicycles and other products — set up shop in the Eastern Neighborhoods, she said. Tech companies and manufacturers can benefit from sharing buildings and neighborhoods, "but the devil is in the details.

"Either you end up with a great mashup, or the office completely dominates and the manufacturers end up on the street again," she said.

Philip Lesser, a Mission district property owner, said he has clients getting calls from tech companies and brokers looking to get into a brick-and-timber building on Florida Street partially occupied by a printing company. Even though the building is half empty, the companies were told they can't legally move in.

"Knowing what we know now, it would be a shame not to go back and revisit the Eastern Neighborhoods rezoning," said Lesser.

jkdineen@bizjournals.com / (415) 288-4971

SMALL BUSINESS COMMISSION
OFFICE OF SMALL BUSINESS

CITY AND COUNTY OF SAN FRANCISCO
EDWIN M. LEE, MAYOR

December 28, 2011

Ms. Angela Calvillo, Clerk of the Board
Board of Supervisors
City Hall room 244
1 Carlton B. Goodlett Place
San Francisco, CA 94102-4694

Re: File No. 111337 [Planning Code - Extension of Time for Legitimization of Existing Eastern Neighborhoods Uses]

Small Business Commission Recommendation: **Approval with Modification**

Dear Ms. Calvillo:

On December 12, 2011, the Small Business Commission (SBC) voted 5-0 to recommend that the Board of Supervisors extend the period of time in which existing uses in the Easter Neighborhoods area that have operated without permits may file an application for determination of eligibility for legitimization. The Commission recommended a twelve month extension.

Since this motion was passed, Supervisor Cohen introduced BOS File No. 111337, which will provide for a three month extension. The Small Business Commission supports this ordinance but recommends that it be amended to provide a twelve month extension.

During the time that this legitimization program is extended, the Commission recommends that the Planning Department undertake an analysis on the program if it has not been done so already. The Commission is interested in the reasons for the lack of utilization of the program and whether it may be a response to the recession, permit discrepancies, lack of knowledge, and/or high impact fees. In addition, the Commission is interested in the department evaluating the number of small business office tenants (under 100 employees) that will be required to relocate if their spaces are found to not be compliant.

Sincerely,

Regina Dick-Endrizzi

Regina Dick-Endrizzi
Director, Office of Small Business

cc. Jason Elliott, Mayors Office
John Rahaim, Planning Department
Supervisor Malia Cohen

SAN FRANCISCO
PLANNING DEPARTMENT

MEMO

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

DATE:	November 22, 2011
TO:	Supervisor Cohen
	Supervisor Wiener
	Supervisor Campos
	Supervisor Kim
FROM:	Mat Snyder
	Eastern Neighborhood Community Advisory Committee
	(EN CAC) Staff Planner
RE:	EN Legitimization Program

At their November 21, 2011 meeting, the EN CAC passed a motion requesting a 90-day time extension to the EN Legitimization Program.

As you know, as a result of the Eastern Neighborhoods Plan, certain land uses that were previously permitted are no longer permitted. The Planning Code's legitimization provisions (Sec. 179.1) are designed to allow a time-limited opportunity whereby existing uses that have operated without the benefit of required permits could seek those permits.

To date, only three entities have taken advantage of this provision. The deadline to participate in this program is January 12, 2012.

EN CAC Members expressed concern that program was not fully being utilized and advocated for additional time to explore reasons for the lack of participation and propose any remedies, if appropriate.

As such, the EN CAC made the following motion at the November 21, 2011 Meeting:

Motion:	Request that the Board of Supervisors extend the Eastern Neighborhoods Legitimacy provisions of the Planning Code for 90 days under the existing policy to enable further study of the program; and to request the BOS to hold an informational hearing to hear from Office of Economic and Workforce Development, Planning, and other interested parties; to enable the consideration of extending the program further.		
1st:	Sofis	2nd:	Huie
Ayes:	Block, Boss, Doumani, Goldstein, Gillett, Huie, Lopez, Ongoco, Scully, Shen, Sofis		
Nos:	[none]		

Please let me know if I can be of any assistance regarding this request for legislation.

cc: Mattias Mormino, Aid to Supervisor Kim, via e-mail
Sheila Chung Hagan, Aid to Supervisor Campos, via e-mail
Andrea Bruss, Aid to Supervisor Cohen, via e-mail
Chris Block, EN CAC Chair, via e-mail
Kate Sofis, EN CAC Vice-Chair, via e-mail
AnMarie Rodgers, Manager of Legislative Affairs, via e-mail

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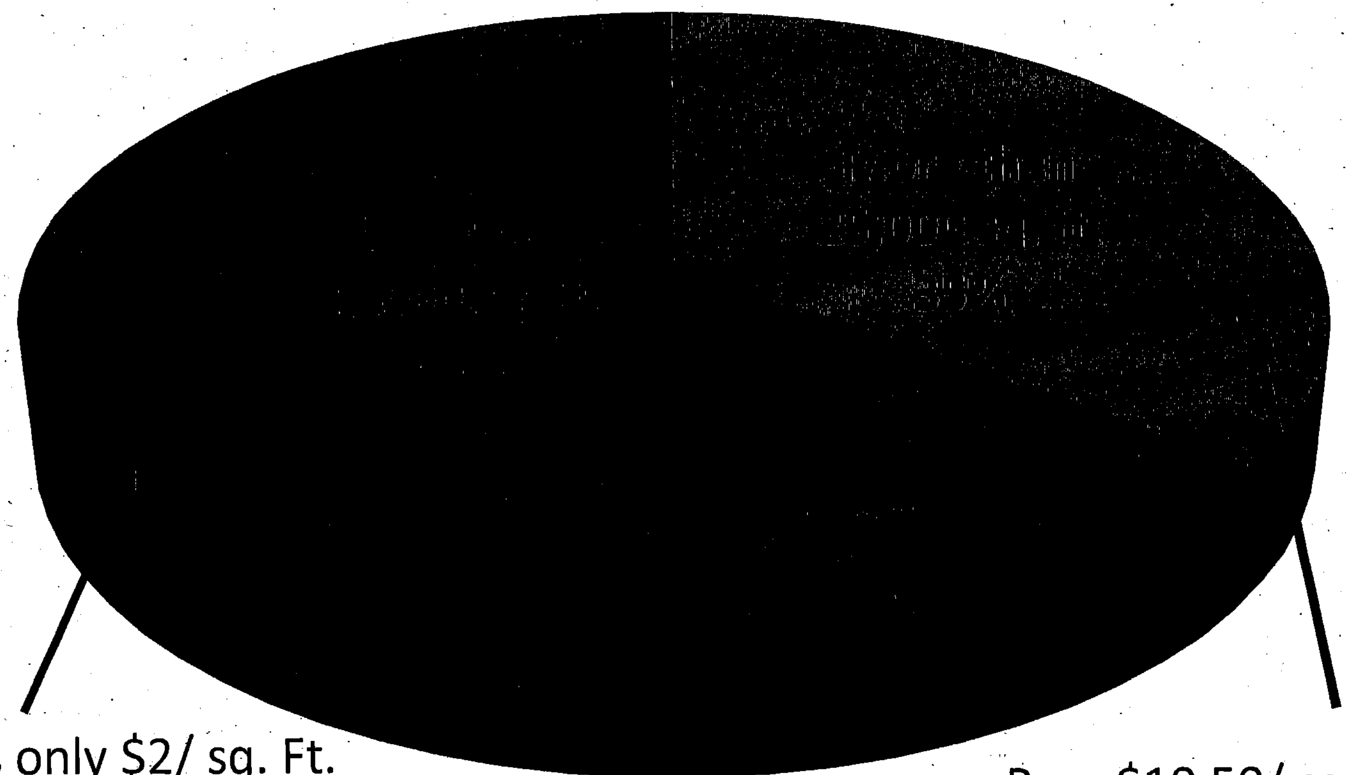
Exhibit E- List of eligible applications received for legitimization of uses in the Eastern Neighborhoods Area (Updated 2/9/12)

Addresses	GSF	Planner	Zoning	Submit Date
660-680 Alabama St	39,691	Teague	UMU	4/29/2009
255-269 Potrero Ave	24,928	Teague	PDR-1-G	3/15/2010
1098 Harrison St (aka 385 7th St)	42,039	Sanchez	MUG	1/13/2011
208 Utah St (aka 201 Potrero Ave)	48,731	Durandet	PDR-1-G	1/28/2011
2300 Harrison St (aka 3101 19th St)	22,847	Durandet	UMU	2/15/2011
555 De Haro St	14,800	Sanchez	PDR-1-G	3/3/2011
375 Alabama St	48,189	Teague	PDR-1-G	8/25/2011
999 Brannan St	143,292	Sanchez	PDR-1-G	10/18/2011
100 Potrero Ave	70,070	Sanchez	PDR-1-G	10/18/2011
808 Brannan St	22,837	Teague	UMU	12/9/2011
1040 Mariposa St	7,000	Sanchez	UMU	12/9/2011
580-590 York St (aka 2700 18th St)	15,270		PDR-1-G	1/3/2012
10 Arkansas St (aka 117 Wis. St)	13,887	Sanchez	UMU	1/9/2012
1 Arkansas St	12,495	Sanchez	UMU	1/9/2012
414 Brannan St	7,248	Teague	SLI	1/13/2012
1 Enterprise St (Dwelling Unit)	N/A		PDR-1-G	1/13/2012
3130 20th St	32,081	Teague	UMU	1/13/2012
360 Kansas St	5,000	Teague	PDR-1-D	1/13/2012
375 Rhode Island St	?	Teague	UMU	1/17/2012
970 Tennessee St (aka 901 Minn. St)	5,975	Sanchez	UMU	1/17/2012
290 Division St	20,981		PDR-1-G	1/19/2012
121 Wisconsin St (Parking Lot)	N/A		UMU	1/19/2012
1550 Bryant St	92,753	Teague	PDR-1-G	1/19/2012
2700 19th St	7,500	Bendix	UMU	1/19/2012
1400 Tennessee St (Retail)	N/A		PDR-1-G	1/19/2012
2545 16th St	60,980		PDR-1-G	1/19/2012
TOTAL	**758,594**			

File No. 111337 3/12/12 - Presented in Committee

Legitimization applications received based on property size



File No. 111337 4/12/12 - Presented in Committee

Figure 1- Number of Eligible Applications Received During the Three year Timeline