



CITY AND COUNTY OF SAN FRANCISCO
LONDON BREED, MAYOR

OFFICE OF SMALL BUSINESS
REGINA DICK-ENDRIZZI, DIRECTOR

June 14, 2019

Ms. Angela Calvillo, Clerk of the Board
City Hall Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

RE: BOS File No. 190165 – Legitimization Program for Non-residential Uses at 3150 18th Street

Small Business Commission Recommendations to the Board of Supervisors (BOS): **Approval**

Dear Ms. Calvillo,

On June 10, 2019 the Small Business Commission (SBC or the Commission) heard BOS File No. 190165 – Planning Code – Legitimization Program for Non-residential Uses at 3150 18th Street. Carolina Morales, aide to Supervisor Ronen provided the SBC with an overview of the legislation. Aaron Starr, Legislative Director with the Planning Department also made himself available for questions. The Commission voted unanimously (5-0, with 2 absent) to recommend that the Board of Supervisors approve the legislation. The Commission also made several comments and recommendations.

The SBC is supportive of the intent of this legislation which would undoubtedly prevent the displacement or closure of approximately 200 small, independently owned and operated enterprises. Many of the businesses are community serving and include: child and adult mental healthcare, speech pathology, educational services, chiropractic services, acupuncture therapy, massage therapy, hair stylists, tattoo artists, aesthetic services, and nonprofits with varied missions. Importantly, many if not most of these businesses are women, LGBTQ+, and minority owned. Many business owners have also identified themselves to be disabled and noted that the accessibility of the building and proximity to public transportation has made it possible to successfully operate their businesses. The majority of business owners have also indicated that the affordability of their commercial rentals has made it possible to provide inexpensive services to their clientele. This is particularly true for mental health providers who collectively see at least 1,200 clients a week.

Responsive to their review of the legislation and June 10th discussion, the Commission respectfully requests that the Board consider the following recommendations:

1. The current zoning restrictions of 3150 18th Street have likely outlived their usefulness. And, in light of commercial vacancies continuing to exist at the property, it does not appear as if exclusively allowing light manufacturing and arts activities is practical for the building. Recognizing that spot zoning is burdensome and administratively challenging, the Commission thusly recommends that the appropriateness of the zoning restrictions for the building, and for the surrounding area be reevaluated.
2. The businesses with non-conforming land uses currently renting at the property will be held to account for operating without proper permits through the legitimization program and associated fees. The landlord should also be held accountable for their role in violating the special zoning restrictions. If possible, fees attributed to business owners through the legitimization program should be minimized.

3. The “Office Use” definition is particularly broad. It may include nonprofits, grant writers, and independent web/graphic designers. Businesses operating at ActivSpace and who are determined to be an “Office Use” by the Planning Department should not be subject to a Mandatory Discretionary Review and should be able to participate in the legitimization program as the other businesses will be able to participate.
4. The definition of “Office Use” is too general and operationally challenging to pragmatically administer when making a land use determination. The definition currently includes: general office uses, retail professional services, and non-retail professional services. And, where it includes nonprofits, grant writers, and independent web/graphic designers notably, it would also include many of the City’s biggest tech firms and start-ups. The definition deserves to be reevaluated and modernized.

Thank you for considering the Commission’s comments and recommendations. Please feel free to contact me should you have any questions.

Sincerely,



Regina Dick-Endrizzi
Director, Office of Small Business

cc: Hillary Ronen, Member, Board of Supervisors,
Vallie Brown, Member, Board of Supervisors,
Sophia Kittler, Mayor’s Liaison to the Board of Supervisors
Lisa Pagan, Office of Economic and Workforce Development
Erica Major, Clerk, Land Use and Transportation Committee



Legislative Background

BOS File No. 190165

<u>Name:</u>	Planning Code - Legitimization Program for Non-Residential Uses at 3150-18th Street
<u>Sponsor(s):</u>	Supervisors Ronen and Brown
<u>Date Introduced:</u>	February 12, 2019
<u>Date Referred:</u>	May 20, 2019
<u>Date Substituted:</u>	May 7, 2019
<u>Scheduled for BOS Committee:</u>	Land Use and Transportation Committee

Legislation Overview:

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

Existing Laws

3150 18th Street is zoned for Production, Distribution, and Repair General (PDR-1-G) uses. This District prohibits Residential and Office Uses, and limits Retails and Institutional Uses. A list of relevant definitions is included in Appendix A.

Amendments to Current Law

The ordinance would establish a legitimization program which would allow existing businesses operating at ActivSpace without required permits, to seek those permits. The legitimization program would apply to non-residential uses that meet the following requirements:

- 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.

Businesses that qualify under the legitimization program would be allowed to continue operating at ActivSpace for a period of 10 years beginning upon the ordinance's effective date. As such, after 10 years, eligible businesses would need to relocate. Businesses that qualify under the legitimization program can also anticipate incurring standard fees associated with obtaining required permits:

- All ActivSpace tenants will have to establish their use with the Planning Department. Estimated base fee: **\$395**
- All ActivSpace tenants will be subject to a Building Inspection Review. Estimated base fee: **\$300-400**;
- Additional costs may be incurred depending on what Architectural Plans will be required for permit issuance;
- Additional costs may be incurred if businesses have conducted tenant improvements without the proper City permitting;

- Businesses considered to be “Office Uses” under the Planning Code and engage in the Mandatory Discretionary Review process can expect to pay a minimum base fee of **\$4,246**
- In order to reduce costs and time, some businesses may jointly submit permit applications and as such share costs. For example- all massage therapists, all artists, or all psychotherapists. It is unclear as to whether or not “Office Uses” would also be able to do this.

Background:

The ActivSpace property was constructed in 2004 and contains approximately 287 commercial units. These units range in size from ~100 square feet to ~400 square feet. On October 1 2004, the Assessor Recorder administered a Notice of Special Restriction under the San Francisco Planning Code for the ActivSpace property¹. The Notice was administered responsive to a Discretionary Review conducted by the Planning Commission. Ultimately, the Planning Commission determined that in order to protect industrial spaces in the City from being replaced with tech start-ups, the ActivSpace project would be approved so long as the commercial units would be utilized for arts and light industrial uses.

Per the Notice, the property owner agreed that the commercial units would be designated as rental workshops for arts activities, light manufacturing, and home and business services. The Notice also allows for ~700 square feet of the property to be used for retail sales or restaurant space. And, the Notice allows for one caretaker’s unit. The Notice specified that Office and residential/dwelling uses would be prohibited.

In January 2019 a complaint regarding unauthorized uses operating at ActivSpace was made to the Planning Department. Upon inspection, the Planning Department determined that the majority of business establishments operating at ActivSpace were not arts and light industrial uses. And, that those business establishments were operating without appropriate permits. In order to avert the possible displacement of close to 200 businesses, Supervisor Ronen introduced this legislation.

Existing Businesses

As of March 2019, 274 out of 289 ActivSpace commercial units were occupied. The Planning Department estimates that the following land uses currently operate out of ActivSpace²:

<u>Land Use</u>	<u>Number of Units</u>
Health Services (Acupuncture, Chiropractor, Psychotherapy)	53
Personal Services (Hair Salon, Aestheticians)	61
Massage	27
Arts Activity	66
PDR	15
Office	48
Residential	1
Retail	1
Vacant	15
Property Administrative	2

¹ See Appendix B for a copy of the Notice of Special Restriction.

² San Francisco Planning Department Executive Summary, Case Number: 2019-002217PCA

Many of these businesses have been operating out of ActivSpace since the property's inception, including those considered to be "Office Uses". Current tenants have reported to the Office of Small Business that they specifically sought to rent space at ActivSpace because of its affordability, proximity to multiple transit options, building security, and the community setting. And, where many of the tenants may be considered to be low-middle income earners³, the affordability of the space has allowed them to engage in work that they are not only passionate about but that is serving a demand in the community that hosts their operations and at a reasonable cost.

While the legislative sponsor has expressed her intent to include as many businesses in the legitimization program as possible, the Notice of Special Restriction administered to the property in 2004 precludes "Office Uses" from participating as Health Service or Personal Service businesses may be able to. As such, per the legislation, businesses deemed to be "Office Uses" by the Planning Department may only establish their use at the property through first participating in a Mandatory Discretionary Review.

Office Uses

The Planning Department estimates that there may be 35-50 businesses considered to be "Office Uses". Per a Planning Department Inspection conducted on March 8, 2019, it was estimated that 48 businesses may be considered to be "Office Uses", or 17% of ActivSpace units. Generally, if an entity provides business to business services, they are considered to be an "Office Use".

Many ActivSpace businesses have indicated to the Office of Small Business that they are registered as sole proprietors and engage in grant writing, independent consulting, design, and web design among other types of work and thusly may be considered to be "Office Uses". Non-profit Administrative Services may also be considered to be an "Office Use" and also occupy ActivSpace units. These entities are presumably *not* tech start-ups. Many businesses and non-profits who may possibly be considered to be "Office Uses" have expressed extraordinary difficulty in finding alternative and affordable office space in the City of San Francisco, particularly where they are seeking to rent less than 200 square feet of space.

Such businesses and non-profits that may be considered to be "Office Uses" have also expressed that alternative work environments, such as co-working spaces or home offices, are not practical for the type of work that they conduct. This is especially true where many business owners occupy small studio units or live among roommates. They also expressed that paying the minimum \$4,246 base fee for the Mandatory Discretionary Review would have severely detrimental economic consequences.

Enforcement

Although the Notice of Special Restriction was administered to the ActivSpace property in 2004, little to no active enforcement took place until January 2019, 15 years later. A reasonable concern exists that, the property owner may

³ According to the U.S. Department of Housing and Urban Development, in San Francisco if a family of four earns \$117,400 a year, they are considered to be "low income". According to U.S. Department of Labor data, the median yearly wage in San Francisco for: psychotherapists is \$103,500; for massage therapists is \$41,210; for graphic designers is \$68,380.

continue to rent to businesses who do not qualify under arts and light manufacturing uses. And, that prospective renters may continue to rent whose use would not be considered to be an arts or light manufacturing use.

Suggested Questions for Presenters:

Office Uses:

1. Does the Planning Department have an idea of what the availability of micro-office space looks like in San Francisco?
2. Planning Code Section 311(e) indicates that a discretionary review hearing would be scheduled within a “reasonable period of time”. How does the Planning Department define/administer this?
3. How would the administration of a Mandatory Discretionary Review differ from a typically administered Discretionary Review?
4. How long, on average can a Mandatory Discretionary Review take from beginning to end?
5. The base fee for a Mandatory Discretionary Review is \$4,265. How was this calculated? What is the legal basis for administering this fee?
6. Can the base fee of \$4,246 be waived, under any circumstances?
7. Planning Department Staff estimated that there are 48 businesses that may be considered to be “Office Uses”. Will the 48 businesses be able to submit one Mandatory Discretionary Review application or, will the Planning Commission require that they submit 48 individual applications?
8. Does the Planning Department anticipate administering charges in addition to the base fee for the Mandatory Discretionary Review? How much can applicants anticipate those to be?
9. While the Mandatory Discretionary Review process is under way, may the business continue operating?
10. If the Mandatory Discretionary Review has an unfavorable result, can the business submit to the Board of Appeals?

Enforcement:

1. How does the Planning Department intend to enforce this legislation?
2. According to the legislation, the businesses would be able to continue operating for 10 years at ActivSpace if they successfully participate through the legitimization program. **When would that 10 years start and end?**

Staff Recommendations:

- Fees associated with the Mandatory Discretionary Review “Office Uses” should be waived through follow-up legislation.
- Should an “Office Use” Mandatory Discretionary Review result in a determination that does not allow the business to participate in the legitimization program that business should be afforded a reasonable amount of time to relocate. Not less than six months.
- The definition of “Office Use” is too broad and deserves to be formally evaluated and modernized through follow-up legislation.

Appendix 1: Relevant Definitions

Production, Distribution, and Repair General Use: A grouping of uses that includes, but is not limited, to all Industrial and Agricultural Uses, Ambulance Services, Animal Hospital, Automotive Service Station, Automotive Repair, Automotive Wash, Arts Activities, Business Services, Cat Boarding, Catering, Commercial Storage, Kennel, Motor Vehicle Tow Service, Livery Stable, Parcel Delivery Service, Public Utilities Yard, Storage Yard, Trade Office, Trade Shop, Wholesale Sales, and Wholesale Storage

Arts Activities: A retail Entertainment, Arts and Recreation Use that includes performance, exhibition (except exhibition of films), rehearsal, production, post-production and some schools of any of the following: dance; music; dramatic art; film; video; graphic art; painting; drawing; sculpture; small-scale glassworks; ceramics; textiles; woodworking; photography; custom-made jewelry or apparel; and other visual, performance, and sound arts and craft. It shall exclude accredited Schools and Post-Secondary Educational Institutions. It shall include commercial arts and art-related business service uses including, but not limited to: recording and editing services; small-scale film and video developing and printing; titling; video and film libraries; special effects production; fashion and photo stylists; production, sale, and rental of theatrical wardrobes; and studio property production and rental companies. Arts spaces shall include studios, workshops, archives, and theaters, and other similar spaces customarily used principally for arts activities, exclusive of a Movie Theater, General Entertainment, Amusement Game Arcade, Adult Business, and any other establishment where liquor is customarily served during performances

Light Manufacturing: An Industrial Use that provides for the fabrication or production of goods, by hand or machinery, for distribution to retailers or wholesalers for resale off the premises, primarily involving the assembly, packaging, repairing, or processing of previously prepared materials. Light manufacturing uses include production and custom activities usually involving individual or special design, or handiwork, such as the following fabrication or production activities, as may be defined by the Standard Industrial Classification Code Manual as light manufacturing uses: Food processing; Apparel and other garment products; Furniture and fixtures; Printing and publishing of books or newspapers; Leather products; Pottery; Glass-blowing; Commercial laundry, rug cleaning, and dry cleaning facility; Measuring, analyzing, and controlling instruments; photographic, medical, and optical goods; watches and clocks; or Manufacture of cannabis products or cannabis extracts that are derived without the use of volatile organic compounds (any use requiring License Type 6—Manufacturer 1, as defined in California Business and Professions Code, Division 10). It shall not include Trade Shop, Agricultural and Beverage Processing 1 or 2, or Heavy Manufacturing 1, 2, or 3. This use is subject to the location and operation controls in Section [202.2\(d\)](#).

Office Use: A grouping of uses that includes General Office, Retail Professional Services, and Non-Retail Professional Services. This use shall exclude: retail uses other than Retail Professional Services; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods

Sales and Service Retail Use: A Commercial Use category that includes Uses that involve the sale of goods, typically in small quantities, or services directly to the ultimate consumer or end user with some space for retail service on site, excluding Retail Entertainment Arts and Recreation, and Retail Automobile Uses and including, but not limited to: Adult Business, Animal Hospital, Bar, Cannabis Retail, Cat Boarding, Chair and Foot Massage,

Tourist Oriented Gift Store, General Grocery, Specialty Grocery, Gym, Hotel, Jewelry Store, Kennel, Liquor Store, Massage Establishment, Mortuary (Columbarium), Motel, Non-Auto Sales, Pharmacy, Restaurant, Limited Restaurant, General Retail Sales and Service, Financial Service, Fringe Financial Service, Limited Financial Service, Health Service, Instructional Service, Personal Service, Retail Professional Service, Self-Storage, Tobacco Paraphernalia Establishment, and Trade Shop

Personal Services: A Retail Sales and Services Use that provides grooming services to the individual, including salons, cosmetic services, tattoo parlors, and health spas, bathhouses, and steam rooms. Personal Service does not include Massage Establishments or Gym, which are defined separately.

Health Services: A Retail Sales and Service Use that provides medical and allied health services to the individual by physicians, surgeons, dentists, podiatrists, psychologists, psychiatrists, acupuncturists, chiropractors, or any other health-care professionals when licensed by a State-sanctioned Board overseeing the provision of medically oriented services. It includes a clinic, primarily providing outpatient care in medical, psychiatric, or other health services, and not part of a Hospital or medical center, as defined by this Section of the Code.

Recording Requested by and
When Recorded Return to:

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Gary Romain
Activspace LLC
819 North 49th Street, #400
Seattle, WA 98103-6517

10/01/2004, 2004H825717
This document has not been recorded in the original
SAN FRANCISCO ASSESSOR RECORDER

Block 3573, Lots 2 and 12

**NOTICE OF SPECIAL RESTRICTIONS
UNDER THE SAN FRANCISCO PLANNING CODE**

18TH AND TREAT SAN FRANCISCO VENTURE, LLC, A WASHINGTON LIMITED LIABILITY COMPANY ("Owner"), the owner of that certain real property situated in the City and County of San Francisco, State of California, more particularly described on the attached Exhibit A, hereby gives notice that there are special restrictions on the use of said property under Part II, Chapter II of the San Francisco Municipal Code (Planning Code).

Said restrictions consist of conditions attached to the approval of Building Permit Application No. 2004/05/21/4487 for the construction of a workshops project by the Planning Department and are conditions that had to be so attached in order that said application could be approved under the Planning Code and under Discretionary Review Case No. 2004.0635D, which was required by Planning Commission Resolution 16727.

The restrictions and conditions of which notice is hereby given are as follows:

1. The project approved contains approximately 275 units of rental workshops for arts activities, light manufacturing, and home and business services uses, as defined by Sections 102.2, 226, and 222 of the Planning Code, respectively; approximately 700 square feet of retail sales or restaurant space, as defined by Section 218 of the Planning Code; and may contain one caretaker's unit, as defined by Section 204.4 of the Planning Code.

2. No workshop unit shall be occupied for office uses, as defined by Sections 219, 320(f), 790.106, 790.108, 890.106, 890.108 and 890.114 of the Planning Code, except for the property's on-site manager's office.

3. No workshop shall be used as a dwelling unit or for any other residential use, as defined by Sections 215-216 of the Planning Code, except for a single caretaker's unit.

4. Not less than 50 off-street parking spaces and one off-street loading space.

shall be maintained for use by occupants of the building.

5. Violations of the provisions noted above or any other provisions of the Planning Code may be subject to abatement procedures and fines up to \$500 a day in accordance with Planning Code Section 176.

The use of said property contrary to these special restrictions shall constitute a violation of the City Planning Code, and no release, modification or elimination of these restrictions shall be valid unless notice thereof is recorded on the Land Records by the Zoning Administrator of the City and County of San Francisco.

Dated: 9/30/04 at Seattle, WA
~~San Francisco, California~~

18th and Treat San Francisco Venture,
LLC, a Washington limited liability
company

By 

Its Manager



PLANNING DEPARTMENT

City and County of San Francisco • 1660 Mission Street, Suite 500 • San Francisco, California • 94103-2414

MAIN NUMBER
(415) 558-6378

DIRECTOR'S OFFICE
PHONE: 558-6411

4TH FLOOR
FAX: 558-6426

ZONING ADMINISTRATOR
PHONE: 558-6350

5TH FLOOR
FAX: 558-6409

PLANNING INFORMATION
PHONE: 558-6377

MAJOR ENVIRONMENTAL
FAX: 558-5991

COMMISSION CALENDAR
INFO: 558-6422

INTERNET WEB SITE
SFGOV.ORG/PLANNING

DATE: October 5, 2004
TO: Interested Parties
FROM: Linda Avery, Commission Secretary
RE: Planning Commission Action

Property Address: 3150 18th Street
Building Permit Application Nos.: 2004.05.21.4485 (demo); 2004.05.21.4484 (demo)
and 2004.05.21.4487 (new construction)
Discretionary Review Case No.: 2004.0635D

On **September 23, 2004**, the Planning Commission reviewed the above-referenced building permit application with the following results:

1. ACTION

- The Commission moved to take Discretionary Review and approve the project with the design changes for the Treat Avenue façade introduced at the hearing, and with the requirement that a Notice of Special Restriction be recorded against the property indicating that office and residential uses (except for a care taker's unit) not be permitted as part of the project.

2. FINDINGS

The reasons the commission took the action described above include:

- The project will provide more square footage of PDR use than is being taken away with the proposed demolition. Therefore, it meets the general intent of the Eastern Neighborhood policies and the "Core PDR" Designation.
- The proposed building at its scale and configuration is appropriate for industrial zoned parcels.
- The project meets the requirements and intent of the Planning Code, the Industrial Design Guidelines and the General Plan.

October 5, 2004
3150 18th Street
DR Case No. 2004.0635D
Page 2

3. . Speakers at the hearing included:

In support of the project

Steve Vettel
Kathleen Diop
Johnathan Beery
Lisa Roberson
Oskar Grande
Richard Stacy
Gary Romain

Opposed to the Project

Jillen Doroan
Kellie Seringer
Heidi Sokolowsky
Ian Green
Ron Slayen
Mike Sagalowitz

Jeremy Nelson (no position)

Planning Commissioners: Bradford Bell, Antonini, Hughes, W. Lee, S. Lee Olague

Case planner: Mat Snyder

cc: Linda Avery

MMS: G:\CASES2004\18TH3150 - DRMemo.doc