# **Letter of Determination**

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

Reception:

415.558.6378

Fax:

415.558.6409

Planning Information: 415.558.6377

November 15, 2017

Alexis Pelosi Pelosi Law Group 560 Mission Street, Suite 2800 San Francisco, CA 94105

Site Address:

180 Montgomery Street

Assessor's Block/Lot:

0289/009

**Zoning District:** 

C-3-O (Downtown – Office)

**Staff Contact:** 

Claudine Asbagh, (415) 575-6914 or claudine.asbagh@sfgov.org

Record No.: 2017-008528ZAD

Dear Ms. Pelosi:

This letter is in response to your request for a Letter of Determination (LOD) regarding the property at 180 Montgomery Street. This parcel is located in the C-3-O (Downtown - Office) Zoning District and in both the 300-S and 350-S Height and Bulk Districts. Your request seeks a determination as to whether an existing use on the property (dba Workshop Café) is a Restaurant Use under the Planning Code.

The Planning Code defines Restaurant Use as "A Retail Sales and Service use that serves prepared, ready-to-eat cooked foods to customers for consumption on the premises and which has seating. As a minor and incidental use, it may serve such foods to customers for off-site consumption. It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59, or 75); however, if it does so, it shall be required to operate as a Bona Fide Eating Place."

As described in your request, Workshop Café offers food and beverage, free Wi-Fi, and different configurations of seating areas (including private rooms) that patrons can reserve for blocks of time as works-spaces (reserved seating areas). Workshop Café also offers various services (including print services, whiteboards and video monitors) that facilitate use of the reserved seating areas as office space by customers. The floor plans provided show that 3,007 sf of the 4,669 sf use is devoted to reserved seating areas.

In order for the Workshop Café to be consistent with the Planning Code definition of Restaurant Use, more than half of overall gross receipts must be from food and drink sales (including alcohol). If the Workshop Café does not meet this requirement, it will be considered to be an Office Use. Separately, more than half of food/drink receipts would need to be from non-alcohol food/drink sales to be a Bona Fide Eating Place. If the Workshop Café does not meet this requirement, it will be considered to be a Bar Use.

Alexis Pelosi Pelosi Law Group 560 Mission Street, Suite 2800 San Francisco, CA 94105 November 15, 2017 Letter of Determination 180 Montgomery

In addition, the reserved seating areas must be limited to 1/3 of the total occupied floor area in order to be considered subordinate to the Restaurant Use. If the Workshop Café does not meet this requirement, it will be considered to be an Office Use. Please note that the current plans show that more than 1/3 of the total occupied floor area is dedicated to reserved seating areas. Workshop Café may either reduce the area in question to less than 1/3 of the total occupied floor area or apply for a Conditional Use Authorization to allow an Office Use on the ground floor of the subject property.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

**APPEAL**: If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,

Scott F. Sanchez

Zoning Administrator

cc:

Claudine Asbagh, Planner

Property Owner

Neighborhood Groups



June 19, 2017

Scott Sanchez Zoning Administrator San Francisco Planning Department 1650 Mission Street, Suite 400 San Francisco, CA 94103 R#2017-008528 ZAD CK# 1005 \$ 664. -M. LUELLEN (NE)

Re: 180 Montgomery Street – Request for Letter of Determination

Dear Mr. Sanchez:

We represent the Workshop Café, a business operating at the ground floor of the property located at 180 Montgomery Street ("Property"). We are writing to request a Letter of Determination ("LOD") to confirm that the Workshop Café is a Restaurant use under the Planning Code.

The Workshop Café is a cutting-edge restaurant in downtown San Francisco that is meeting market demand and, for all the reasons set forth below, squarely falls within the definition of a Restaurant use.

#### 1. Background

The Workshop Café is located on the ground floor of 180 Montgomery Street. It is a restaurant providing food and beverage service in a unique space where customers may sit and enjoy a cup of coffee, a sandwich or snack, or a full meal while also staying connected and engaged in this busy digital age.

The Workshop Café, like most cafés and restaurants, offers free Wi-Fi to all customers, and even those persons that happen to sit nearby. In addition, it offers the ability for customers to stay for longer periods of time without feeling guilty about the amount of food or beverages that they are buying (or not). Different customers have different needs and the Workshop Café caters to them by providing different types of seating area.

Like many restaurants, the Workshop Café has an outdoor patio and an indoor bar-type seating area. It also includes an area that is by reservation only. Reservations to sit in this area, like reservations at any other restaurant in San Francisco, can be made over the phone, in person or via an application, which here is the Workshop Café application ("app"). All reservations on a first-come, first-serve basis and there are <u>no</u> standing or long-term reservations for seats or tables in the reserved seating area. All seats/tables at the Workshop Café are 100% available to the public at all times. The Workshop Café also has some private rooms that can also be reserved on a first-come, first-serve basis, either in person, through the app, or over the phone. All these rooms are open to the public. Images of the various seating areas in the Workshop Café are included in <u>Attachment A</u>.

The reserved seating area and private rooms have a few added services that the Workshop Café has determined are important to customers that want to sit in these areas. They include print services,



whiteboards and video monitors (but no computers). Use of these additional services are available to the public and are provided by the Workshop Café as a service for its customers. These services are not supplied by the customer and are 100% available to the public.

More than 66% of the gross receipts from the Workshop Café are from food and beverage sales sold to customers on the premises. Food and beverage is served throughout the space and can be ordered at the counter, at the table or via the app. The Workshop Cafe employs a full-time culinary manager<sup>1</sup> and a full-time kitchen staff to create and prepare food, including full meals, from fresh raw materials on-site. A copy of the Workshop Café's menu is included as Attachment B.

The Workshop Café also generates sales from reservations in the reserved seating areas, but these sales make up less than 33% of the Workshop Café's gross receipts. While these sales are small, allowing customers to make reservations is an important part of the Workshop Café. This service addresses the concern of many customers that they may not find a seat or table at a Starbucks, Illy's or Peet's, may be "forced" to share their space at a table with others (i.e., put away papers, devices, etc. to make room for others) or simply feel guilty for sitting in a café for three hours and only ordering one coffee. The ability to pay and reserve a seat addresses these concerns and meets market demand.

The Workshop Café also is meeting retail demand in the area by opening early (6AM Monday to Friday) and staying open late (10PM Monday to Friday) and on weekends (10AM to 10PM Saturday and Sunday). It is the **only** restaurant open along Montgomery Street in the evenings and on weekends. A video of how "dead" it is in this part of the City on the weekends has been prepared and can be seen at <a href="http://www.workshopcafe.com/fidisunday">http://www.workshopcafe.com/fidisunday</a>. By staying open in evening and on weekends, the Workshop Café is providing a much-needed service **to the public** who may want to stop in, grab a coffee and a bite to eat, have a place to sit without the concerns noted above and, if needed, have access to services such as printing. The Workshop Café's restaurant and services are not only cutting edge, but enliven the financial district during non-business hours, providing much needed services to the public.

#### 2. Planning Code Analysis

#### A. The Workshop Café is a Restaurant Use

The Workshop Café is a "Restaurant" use. A "Restaurant" use is a permitted "Retail Sales and Service" use in the C-3-O (Downtown Office) zoning district where the Workshop Café currently operates.

Planning Code Section 102 defines "Retail Sales and Service" as a "Commercial Use 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 ... Restaurant ...." "Restaurant" is defined as a "Retail Sales and Service use that serves prepared, ready-to-eat cooked foods to customers for consumption on or off the premises and which has seating. It may have a Take-Out Food use as a minor and incidental use. It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59, or 75); however, if it does so, it shall be required to operate as a Bona Fide Eating Place."

<sup>&</sup>lt;sup>1</sup> The current culinary manager previously was the Bay Area Culinary Manager for Sushirrito.



The Workshop Café has a Type 41 ABC license.<sup>2</sup> It therefore is required to comply with the requirements of a "Bona Fide Eating Place." The following is the definition of a "Bona Fide Eating Place" under Planning Code Section 102:

- (a) A place that is regularly and in a bona fide manner used and kept open for the service of meals to guests for compensation and that has suitable kitchen facilities connected therewith, containing conveniences for cooking of an assortment of foods that may be required for ordinary meals. "Meals" shall mean an assortment of foods commonly ordered at various hours of the day for breakfast, lunch, or dinner. Incidental food service, comprised only of appetizers to accompany drinks, is not considered a meal. Incidental, sporadic, or infrequent sales of meals or a mere offering of meals without actual sales is not compliance.
- (b) "Guests" shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.
- (c) Actual and substantial sales of meals are required, during the normal days and meal hours that a bona fide public eating place is open, provided that "normal days of operation" shall mean a minimum of five days a week and "normal hours" of operation for meal service shall mean approximately 7:00 a.m. to 11:00 a.m. if open for breakfast; 11:00 a.m. to 2:00 p.m. if open for lunch; or 5:00 p.m. to 10:00 p.m. if open for dinner.
- (d) The premises must be equipped and maintained in good faith. This means the premises must possess working refrigeration and cooking devices, pots, pans, utensils, table service, condiment dispensers, menus, signs, and enough goods to make substantial meals. The premises must comply with all regulations of the Department of Public Health.
- (e) A minimum of 51 percent of the restaurant's gross receipts shall be from food sales prepared and sold to guests on the premises. Records of the restaurant's gross receipts shall be provided to the Department upon request.
- (f) A "bona fide eating place" does not include an Adult Business as defined in this Section of the Code.

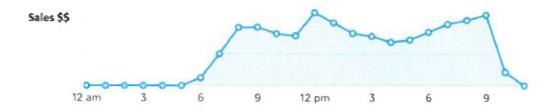
(Emphasis added.)

<sup>&</sup>lt;sup>2</sup> The Workshop Café is not a "Limited Restaurant" as it includes beer and wine for on-site consumption. Under Planning Code Section 102, a Limited Restaurant "shall not provide on-site beer and/or wine sales for consumption on the premises, but may provide off-site beer and/or wine sales for consumption off the premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) within the accessory use limits as set forth in Section 703.2(b)(1)(C)(vi)." (Planning Code Section 102. Emphasis added.)



The Workshop Café serves prepared, ready-to-eat cooked foods to customers (i.e., the public) for consumption on and off the premises. The menu includes jars, hot cereal, bagels, sweets, bowls, sandwiches and toasts, wraps, salads, soups and snacks, among other food offerings. Beverages are also available. Food and beverage orders are brought to the customer by Workshop Café employees via service at the counter or table service **throughout the entire restaurant** and throughout the day. A graph of food and beverage sales by hour is provided below and clearly shows that food and beverage sales occurs throughout the day in compliance with the requirements of the Workshop Café's Type 41 license from the ABC.<sup>3</sup>

#### TIME OF DAY



The Workshop Café falls clearly within the definition of a Restaurant and, more specifically, a Bona Fide Eating Place. Evidence in support of this includes (1) a copy the Workshop Café menu, which is included as <a href="Attachment B">Attachment B</a>; (2) a copy of the hours of operation of the Workshop Café, which is included as <a href="Attachment C">Attachment C</a>; and, (3) images of food service provided in different areas of the Workshop Café and of food and beverage offerings, which are included as <a href="Attachment D">Attachment D</a>. The fact that some of the seats and tables in the Workshop Café can be reserved by the public in advance does not mean the Workshop Café is not a restaurant. Most restaurants in San Francisco take table reservations. The fact that there are private rooms that can be reserved by the public does not mean the Workshop Café is not a restaurant. Many restaurants in San Francisco include private rooms that can be reserved. Finally, the fact that the Workshop Café includes features such as whiteboards, USB ports, monitors and computers does not mean the Workshop Café not a restaurant. Many restaurants in San Francisco include unique services to attract customers, but the inclusion of those services does not mean they are not restaurants.

In fact, many other cafés and restaurants include charging stations for their customers' phones and power outlets for computers. Including these services certainly attracts a customer that works on their laptop, but it does not make those cafés or restaurants a non-retail or office use just as the inclusion of a piano or dance floor attracts customers that like music or like to dance, but it does not make the restaurant a night club. Similarly, the showing a movie on a wall of a restaurant attracts customers that like movies, but it does not make the restaurant a movie theater and having an area where cats can hang out attracts customers that like cats, but it does not make a restaurant an animal shelter. For this same reason, the Workshop Café is a restaurant.

<sup>&</sup>lt;sup>3</sup> Alcohol is not served on the patio, as per the ABC license.



### B. The Workshop Café is not "General Office"

Planning Code Section 102 defines General Office as a "Non-Retail Sales and Service" use. A "Non-Retail Sales and Service" use is defined as a "Commercial Use that involves the sale of goods or services to other businesses rather than the end user, or that does not provide for direct sales to the general public on site." (Planning Code Section 102. Emphasis added.)

As discussed in detail above, the Workshop Café sells goods and services directly to the end user and, more importantly, provides for direct sales to the public on site. The goods that the Workshop Café sells are food and beverages. As noted above, more than 66% of the Workshop Café's sales are from the sales of these goods. The services that the Workshop Café sells are reservations for a seat, an ability to use a whiteboard, an ability to access a larger screen, an ability to print, an ability to reserve a private room, and other similar type services. These services are provided directly to the end user or customer, not to a business, and that customer, who is a member of the public, pays for these services directly either via cash, credit or through the app.

The Workshop Café is 100% open to the public and the services offered are available to anyone off the street. Even though the services are "office like," that does not mean they are not retail services, similar to the printing, copying, internet and computer services provided by a FedEx Kinkos, UPS Store or other similar business service retail use. Like those retail service providers, the Workshop Café, provides services to the end user - the customer, who is a member of the public - not to a business.<sup>4</sup>

### C. The Workshop Café is NOT Co-Working Space

Co-working Space is a type of "General Office" use. Like General Office, it is provided to businesses and is not open to the public. Some co-working spaces do provide daily access to the public (for example, Sphere Pad, Shared), but in all co-working spaces, a certain percentage of the space is reserved through contracts or licenses to dedicated users (i.e., members). Members have reserved desks and, typically, 24-hour access to the space. Co-working spaces also may include a kitchen with snacks or drinks, but do not include full-service kitchens or provide food and beverage service throughout the space or to desks. They are not Bona Fide Eating Places under an ABC Type 41 license and are not a restaurant.

As outlined in the chart below, co-working spaces there are big differences between co-working spaces and the Workshop Café.

	COWORKING is	WORKSHOP CAFE is
Membership	YES monthly commitment through contract/memberships	* NO Memberships
		* Pay as you go

<sup>&</sup>lt;sup>4</sup> Customers may be employed by other businesses or themselves providing services to other businesses, but that does not make their use of the services provided by the Workshop Café an office use. The customer, not the business, is eating and drinking the goods offered and sitting in the chairs provided and it is paid for by the customer not the business.



	COWORKING is	WORKSHOP CAFE is
Customer	BUSINESS with a contract to use the co-working space	INDIVIDUAL off the street - NO prior relationship, NO contract
Payment	BUSINESS (start-up, corporation, legal entity) pays 99% of the time	INDIVIDUAL (customer) pays 90% of the time (10% of customers expense use of space through business entity)
Access	PRIVATE (typically) with no (rare) street level access  * Key card access typical	PUBLIC (always) from street level
Room Rentals	PRIVATE only for businesses or members with access to co-working space (contracts)	PUBLIC available to anyone on a first-come basis (5 rooms available)
Turnover/Client Diversity	LIMITED because of contract/memberships	UNLIMITED based on who is "in the neighborhood"
	<ul> <li>Defined companies</li> <li>Committed contracts</li> <li>Same workers daily</li> </ul>	<ul> <li>Over 3,000 <u>unique customers</u> monthly (on average)</li> <li>Over 200 <u>unique</u> visitors per day (on average)</li> <li>Over <sup>2</sup>/<sub>3</sub> of customers visit <u>less than once per month</u> (on average)</li> </ul>
Usage Time	ALL DAY at desks identified and reserved through contract/memberships	~2 HOURS on average at any table that is open and not occupied
Percentage of Business Sales	RENTING DESKS 95% - 100% of sales from selling desk space with 5% or less coming from food and beverage (if offered)	FOOD AND BEVERAGE >66% of sales from café (coffee, drinks, snacks, food) and <33% from access to tables and meeting rooms
Exclusive Desk Rental	YES companies rent desks or workspaces exclusively for their use	NO every table is available to the public and no table may be reserved on a long-term exclusive basis
Reservations	EXCLUSIVE only those with a contract/membership can reserve a desk or meeting room	<b>OPEN TO PUBLIC</b> any member of the public can "reserve" a table and no repeat or permanent reservation allowed (like a restaurant reservation)
Active Street Frontage	NO members sitting at desks and only private access	YES vibrant street front with hundreds of customers visiting per day entering and exiting the café



Comparing the Workshop Café to co-working spaces, it is very clear that the Workshop Café is **not** co-working space. Co-working space is an office use. The Workshop Café is a restaurant use and cannot be considered co-working space because it does operate or have the same characteristics as co-working space. It is a restaurant use with services for customers, not an office with tenants.

In reviewing the Workshop Café and the Planning Code, the Workshop Café is clearly a restaurant use. The fact that it includes reserved seating and some "office like" features, does not change the fact that it is a restaurant use. It is a restaurant because

1. Over 66% of all sales at the Workshop Café are from food and beverage;

2. Food is prepared on-site from fresh, raw materials;

- 3. Customers can purchase and consume food and beverages from any seat in the Workshop Café;
- 4. Workshop Café employees provide service to every table, and serve customers at the counter; and,
- 5. All the space in the Workshop Café may be used by any member of the public.

Any "office like" services are just that, services – they do not make the Workshop Café an office or co-working space.

The Planning Code definition of office is clear. It focuses on the end user and whether the end user is private or public. Where the end user is public, the use is retail sales and service, even if the service being provided is "office like." Under any other interpretation, every restaurant and café downtown with extra seating, WiFi, power outlets, etc., would be an office. The Planning Code definition makes clear that it is not the act of providing a chair or table, or even a printer, power outlet, USB port, etc. that makes a use an office, but whether anyone walking off the street can sit at that chair or table and use those services. If they cannot, then the chair or table is private and it is not a retail use, but where they can then the chair or table is public and the use is a retail use. At the Workshop Café 100% of the services are open to the public making it a retail use

In sum, the Workshop Café is a cutting-edge restaurant in downtown San Francisco that is meeting market demands and offering services wanted by the public in an inviting setting with hours of operation that bring activity to an area that was previously "dead" on evenings and weekends. It is no more an office than an office that sells foods to employees is a restaurant or a restaurant that offers private rooms for rent and projection equipment, printers, computers and chargers is an office. It is a restaurant.

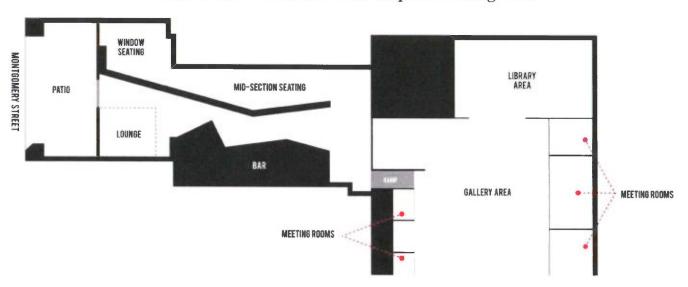
Enclosed is a check in the amount of \$664.00. We look forward to your response. If you have any questions or need any additional information please feel free to contact me at 415-273-9670.

Very truly yours,

Alexis Pelosi

Attachments

# Attachment A - Pictures of Workshop Cafe Seating Areas





Workshop's street LEVEL RETAIL presence from Montgomery St



Window seating



Lounge



Outside Patio



Mid Section



Mid Section



Mid Section Seating



Library Area



# **OUR MENU**

#### COFFEE

Drip 2.5 Pourover 4 Espresso 2.5

Macchieto 3 Cappuccino 3.5 Latte 4

Mocha 4.5 Chai Latte 4 mencano 3 Hot Chocolate 3.5 Kyoto Cold Brew 4

#### SPECIALTY DRINKS

ked Honey Amond Latte 5 Seasonal Lemonade 3.5
Fresh-squeezed OJ 3.5

Lev's Probiotics Kombucha 5 Red Blossom Tea 4 Red Blossom Herbal Tea 4

Peppernun Rose

## HOT CEREAL

Banana Almond Oatmeal 6

avert cut outs, skeed bananas, almond but trasted almonds, bee pollen. Served will be date with

Blueberry Muffin Oatmeal 5.5

Cinnamon Sugar Oatmeal 5

### **JARS**

Banana Date Shake 5.5

Coconut Colada

House-made coconut chia pudding, pineoppie honey, toosted coconut chips, super seed crurci

Fruit & Yogurt Parfait 5 Greek yagun, fresh bei ancient grain granola

Seasonal Fruit Jar 4.5

## **SWEETS**

Tiramisu Jar 5

Key Lime & Coconut Jar 5

# SOUP

Faux Pho 8

Workshop Cale broth, namen noodles, raasted chicken, camats, fresh herbs

## SALADS

Hapa Chicken Salad 12.5

**Green Goddess** Cobb Salad 12.5

Superfood Salad 10

revies, arange segments, chickpeas, choope nds, chia & hemp seeds, white truffe-honey

Prosciutto Salad 11.5

# **SANDWICHES** 8 TOASTS

Chipotle Citrus Chicken Sandwich 12.5

B.E.C. Breakfast Sandwich 8 Scrambied eggs, appiewood smoked bacan cheddar, anigula, aioli, Firebrand chailah ioli Served with a side of fruit

#### Avocado Toast 7

ribbans super seed cruch, fried cupers. Fretrand sesame bread (Add soft baked egg \$2)

Ham & Cheese Toast 8

Prosiciulta, gruyere, dyannaise, arugula, pecorino picided mustard seeds, Firebrand sesame bread (Add soft baked egg \$2)

Super BLT Sandwich 10

mphemodo, cheddar green goddess aioli, Filebiand challati iali. Served with a side of chips

#### SNACKS

Cheesy Popcorn 4

Healthy Popcorn 3

Miso Roasted Sweet Potatoes 4.5

Roasted invest polajaes, pickled a nori trunch, white miso & ginger d

Cauliflower, Wheatberry & Date Salad **4.5** 

Vegetables Crudité & Herbed Hummus 6

# WRAPS

Curry Quinoa Wrap 8

, quirto, Toasted sweet potatoes, cu kpeas, spinach, carrots, whate prain ew curry squice. Served cold with a side of 7 source.

**Asian Roasted** Chicken Wrap 10

Breakfast Burrito 8

# BAGELS

"The Works" Bagel 8.5

Flower Child Bagel 7

DIY Bagel 4

Choice of Baron Baking Bagel; plain, wheat, everything, sesome Choice of Schmear; changing green onion, green gaddess, herbed hummin, plain below chages.

#### BOWLS

Avo Egg Scramble 5.5

Workshop Classic Breakfast Bowl 10

DIY Soft Baked Egg Bowl 12

Southwest Bowl 12

Roasted Vegetable, Hummus & Grain Bowl 12

Gochujang Noodle Bowl 12

**ADD ONS** 

Roasted Chicken 4 Smoked Salmon 4 Toast 1.5

Soft Baked Egg 2 Avocado 1.5

# DRINK MENU

# BEERS \$6

North Coast Pranaster

North Coast Old Rasputin Victory Prima

Eel River Amber Ale Racer 5 IPA

HAPPY HOUR

COFFEE

STUMPTOWN

POASTERS

5P-7P

\$1 OFF BEER

S2 OFF WINE

# WINE

**SPARKLING** 

Prosecco 9

Mimosa 11

WHITE

Sauvignon Blanc 9 VIIIa Mario "Private Bin." NZ

Chardonnay 12 Flor de Campo, Sonia Borbara, CA

RED

Maibec 8

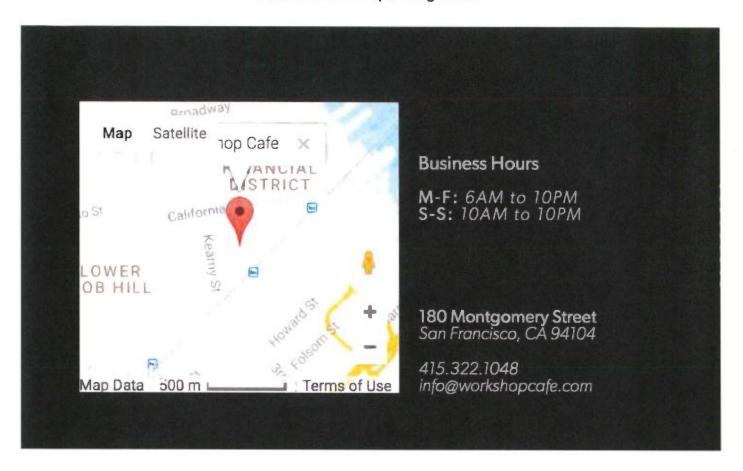
Cabernet Sauvignon 11 Josh Cellars North Coast CA







### Attachment C - Operating Hours



"Taken from www.WorkshopCafe.com website footer"

Attachment D - Images of food service and offerings















Summer Yogurt Parfait



Super BLT Sandwich



Happa Chicken Salad



Flower Child Bagel





