



# SAN FRANCISCO PLANNING DEPARTMENT

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## Letter of Determination

May 27, 2016

Ilene Dick  
Farella Braun and Martel LLP  
235 Montgomery Street  
San Francisco CA 94104

<b>Site Address:</b>	<b>425 Brannan Street</b>
<b>Assessor's Block/Lot:</b>	<b>3787/033</b>
<b>Zoning District:</b>	<b>SLI (Service/Light Industrial)</b>
<b>Staff Contact:</b>	<b>Laura Lynch, (415) 575-9045 or <a href="mailto:laura.lynch@sfgov.org">laura.lynch@sfgov.org</a></b>
<b>Record No.:</b>	<b>2016-004496ZAD</b>

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Dear Ms. Dick:

This letter is in response to your request for a Letter of Determination regarding the property at 425 Brannan Street. The property is located within the SLI (Service/Light Industrial) Zoning District and 65-X Height and Bulk District. The property is also located in an area subject to Interim Moratorium prohibiting the conversion of industrial uses to non-industrial uses. The request is to determine whether the second floor was legally converted to office space prior to the property being subject to the current SLI Zoning District controls which prohibit general office use. It should be noted that the first floor of the property was recently converted to retail sales per Building Permit Application No. 201508285513 (which was reviewed and approved by the Planning Department).

### BACKGROUND

The subject building is approximately 19,500 square feet and was constructed in 1924 for light manufacturing/warehouse uses. The Office of the Assessor and Recorder lists the property as an industrial building and building permit records indicate the historic use as warehouse. At the time of construction, the property was located in the Heavy Industrial Zoning District. On May 2, 1960, the subject property was rezoned from Heavy Industrial to M-2 (Heavy Industrial).

In the mid-1980's, the property was rezoned from M-2 to SSO (Service/Secondary Office) under interim zoning controls during the development of the South of Market (SOMA) Area Plan. On April 6, 1990, the subject property was rezoned from M-1/SSO to SLI (Service – Light Industrial) as part of the SOMA Area Plan. Under the SLI Zoning District, Office Uses<sup>1</sup> as defined in Planning Code Section 890.70 are

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<sup>1</sup> Planning Code Section 890.70(a): "Office use" shall mean space within a structure or portion thereof intended or primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or provide to others at that location services including, but not limited to, the following: Professional; banking; insurance; management; consulting; technical; sales; and design; and the non-accessory office functions of manufacturing and warehousing businesses; all uses encompassed within the definition of "office" in Section 219 of this Code; multimedia, software development, web design, electronic commerce, and information technology; all uses encompassed within the definition of "administrative services" in Section 890.106 of this Code; and all "professional services" as proscribed in Section 890.108 of this Code excepting only those uses which are limited to the Chinatown Mixed Use District.

generally prohibited with the exception of office uses in Landmark Buildings or contributory buildings in historic districts (per Planning Code Section 803.9(a)) and work space of design professionals (per Planning Code Section 803.9(g)).

On September 30, 2014, the Board of Supervisors adopted interim zoning moratorium to prohibit the conversion or replacement of Production, Distribution, and Repair uses in the proposed Central South of Market (SOMA) Plan Area. On December 19, 2014, the Board of Supervisors extended the interim zoning moratorium, which will now expire on October 9, 2016.

In your request, it is argued that there was legal office use on the second floor prior to the 1990 adoption of the SLI Zoning District and that office use has been maintained on the property since that time as a non-conforming use. Your request included the building permit history for the property and information from reverse directories regarding previous tenants to support your argument, including the following:

The submittal included a 1983 building permit (8312507) where the existing use is listed as "Printing Plant" and the proposed use is listed as "Printing Plant and Publishing Business." The scope of work stated the following: "New partitioning and electrical for office and warehouse space on second floor." Based upon a review of the plans, the office portion of the second floor appears to be accessory to the warehouse space. Based upon your submittal and the permit, the tenant was E.R. Reports (a publishing company) and they occupied the second floor from 1983-1987 with various other publishing companies. It should also be noted that while this permit was not reviewed by the Planning Department, the proposed "Printing Plant and Publishing Business" use would have been considered to be a Home and Business Service and/or Manufacturing and Processing use under the M-2 zoning in effect at that time.

The submittal included a 1987 building permit (8718113) where both the existing and proposed uses were listed as "office space." The scope of work stated the following: "Interior partition wall (non-bearing); relocate electrical outlets and switches (all construction one hour rated) carpeting." Based upon a review of the plans, proposed interior tenant improvements are limited to a portion of the second floor (not the entire floor). Based upon your submittal and the permit, the tenant was Quinby's Inc. (a children's toy and game company) and they occupied the second floor from 1987-1990. This permit does not state a change of use and was not routed to the Planning Department for review.

The submittal also references a 1987 letter from the Public Utilities Commission noting that the Transportation Impact Development Fee (TIDF) was not required for the 1987 building permit. TIDF was not assessed for this permit because the permit application was not represented as a change of use to office.

The submittal included a 1995 building permit (9502803) where both the existing and proposed uses were listed as "office." The scope of work stated the following: "Demolish old walls & construct new walls at reception area & classified area. Modify reception door & street entrance door to comply with CAC T-24 accessibility." Based upon a review of the plans, the scope of the permit included the entire second story. Based upon your submittal and the permit, the tenant was SF Weekly (a newspaper) and they occupied the entire second floor from 1990-1997. While this permit does not state a change of use and was not routed to the Planning Department for review, occupancy by SF Weekly would have been considered to

be a Business Service<sup>2</sup> use per Planning Code Section 890.111 (which is principally permitted under the SLI Zoning District). It should also be noted that a Business Service use is considered to be a Production, Distribution and Repair use per Planning Code Section 102<sup>3</sup>.

The submittal included a 1999 building permit (9926836) and a 2000 building permit (20000104165) which, together, authorized conversion of the ground floor from warehouse to telecommunication facility. Given that these permits were limited to the ground floor, they do not (nor could they have) authorized either a new or continuing general office use on the second floor.

All other permits approved at the property were related to upgrades to the front façade or change of use at the first floor. The permit history does not include any permits which authorize conversion of the second story to general office use.

#### **DETERMINATION**

Based upon available records, including Assessor's records and building permit history, the last authorized use of the second floor is warehouse. While the Planning Department does not find that the 1983 or 1987 building permits authorized either a new or continuing general office use on the second floor of the property, any such general office use would have been considered to be a non-conforming use with the 1990 adoption of the SLI Zoning District (which prohibits general office use). Non-conforming uses are subject to the requirements of Planning Code Sections 180-183. Per Section 183 (Non-conforming Uses: Discontinuance and Abandonment), wherever a non-conforming use has been changed to conforming use, such use shall not after being so changed be re-established and the use of the property thereafter shall be in conformity with the use limitation of the Planning Code. Given that the second floor was occupied from 1990-1997 by a principally permitted Business Service use (SF Weekly), any prior non-conforming general office use would have been abandoned and could not thereafter be re-established.

In light of these facts, it is my determination that the second floor of the subject property was not legally converted to office space prior to the property being subject to the current SLI Zoning District controls which prohibit general office use. Further, had general office use been legally established prior to the current SLI Zoning District controls, any such non-conforming use would have been abandoned through the conversion of the second story to a conforming Business Service use (SF Weekly).

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<sup>2</sup> Planning Code Section 890.111: A use which provides the following kinds of services to businesses and/or to the general public and does not fall under the definition of "office" pursuant to Section 890.70: radio and television stations; newspaper bureaus; magazine and trade publication publishing; microfilm recording; slide duplicating; bulk mail services; parcel shipping services; parcel labeling and packaging services; messenger delivery/courier services; sign painting and lettering services; building maintenance services.


<sup>3</sup> Planning Code Section 102: *Production, Distribution, and Repair (PDR) 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 Service, 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.

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**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: Laura Lynch, Planner  
Property Owner  
Neighborhood Groups