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Planning Commission Motion No. 18839

HEARING DATE: APRIL 04, 2013

Date: March 28, 2013
Case No.: **2012.1413C**
Project Address: **1096 Union Street**
Zoning: RM-2 (Residential, Mixed: Moderate-Density)
40-X Height and Bulk District
Block/Lot: 0098/009
Project Sponsor: Joseph Omran
1263 Leavenworth Street
San Francisco, CA 94109
Staff Contact: Elizabeth Watty – (415) 558-6620
Elizabeth.Watty@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF A CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 182, 303, AND 722.43, TO ALLOW A CHANGE OF USE FROM A RETAIL GROCERY STORE (D.B.A TOP O’ THE HILL MARKET) TO A LIMITED-RESTAURANT (D.B.A LA PALOMA CAFÉ) WITHIN THE RM-2 (RESIDENTIAL, MIXED: MODERATE-DENSITY) ZONING DISTRICT, AND THE 40-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On November 14, 2013, Joseph Omran (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Sections 182, 303, and 722.43, to allow a change of use from a Retail Grocery Store to a Limited-Restaurant within the RM-2 Zoning District and a 40-X Height and Bulk District.

On April 4, 2013, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.1413C.

On February 13, 2013, the Project was determined to be exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 Categorical Exemption under CEQA as described in the determination contained in the Planning Department files for this Project.

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 on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use Authorization requested in Application No. 2012.1413C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

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

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The Project Site is located at the northeast corner of Union and Leavenworth Streets, Assessor's Block 0098, Lot 009. It is located within the RM-2 (Residential, Mixed: Moderate-Density) Zoning District and the 40-X Height and Bulk District.

The Project Site is occupied by a mixed-use building that is two stories along the Union Street frontage, increasing to three-stories along Leavenworth Street. The building includes the subject ground floor commercial space with access off of Union Street, and two dwelling-units. The existing business – Top O' The Hill Market – is currently approved as a "Retail Grocery Store".

3. **Surrounding Properties and Neighborhood.** The surrounding neighborhood consists of a variety of three-to-five-story, high-density residential apartment buildings, with several 10+-story apartment buildings. Polk Street Neighborhood Commercial District is three blocks west of the Project Site and the Hyde Street commercial corridor is one block to the west. The North Beach Neighborhood Commercial District is four blocks the east. The Property is located within a quarter mile of both the Polk Street and North Beach NCDs.

The RM-2 districts are generally similar to RM-1 Districts, but the overall density of dwelling units is greater and the mixture of building types and unit sizes is more pronounced. Building widths and scales remain moderate, and considerable outdoor space is still available. The unit density permitted requires careful design of new structures in order to provide adequate amenities for the residents. Where nonresidential uses are present, they tend to offer services for wider areas than in RM-1 Districts.

4. **Project Description.** The Project Sponsor proposes to convert an existing 1,150 gsf Retail Grocery Store (d.b.a Top O' The Hill Market) into a Limited-Restaurant (d.b.a La Paloma Café). The Limited-Restaurant will not allow on-site beer, wine, and/or liquor sales for drinking on the premises. The Project Sponsor has previously been approved for interior alterations, so the subject request does not include any additional interior or exterior alterations, other than adding seating. The business is independently-owned and not considered a Formula Retail Restaurant.

5. **Public Comment.** The Department has not received any opposition to, or support for, the Project.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Use.** Planning Code Sections 182 states that any existing nonconforming use that is located within $\frac{1}{4}$ mile from any Individual Area Neighborhood Commercial District or Restricted Use Subdistrict may change to another use which is permitted as a conditional use at the first story and below in an NC-1 District and in the Individual Area Neighborhood Commercial District or Districts within $\frac{1}{4}$ mile of the use upon approval of a conditional use application.

The Subject Property is located one quarter mile from the Polk Street and the North Beach NCDs. Limited-Restaurants are principally permitted in the Polk Street NCD (Section 723.43) and conditionally permitted in the North Beach NCD (Section 722.43). The Project Sponsor is requesting Conditional Use Authorization in order to allow a Limited-Restaurant on the ground floor of the existing tenant space.

- B. **Floor Area Ratio.** Planning Code Section 124 establishes basic floor area ratios (FAR) for all zoning districts. FAR is the ratio of the gross floor area of all the buildings on a lot to the total area of the lot. Under Section 124(a), the FAR for the RM-2 Zoning District is 1.8-to-1. Under Section 124(b), in R Districts, the floor area ratio limits listed in Subsection (a) do not apply to dwellings or other residential units.

With a lot area of 2,587 square feet, 4,657 nonresidential gsf can be developed on the Project Site. Since the Project will not include the physical expansion of the 1,150 gsf commercial space, the Project complies with the FAR controls for the Site.

- C. **Loading.** Section 152 requires off-street freight loading for uses above a certain size. Retail establishments and uses primarily engaged in the handling of goods (such as the proposed Limited-Restaurant) are not required to provide off-street freight loading if they measure less than 10,000 square feet in gross floor area.

With a gross floor area of under 10,000 square feet, the Project is not required to provide any off-street loading. All loading for this business is required to be conducted in such a way as to avoid undue interference with sidewalks, crosswalks, bus stops, hydrants and other public features.

- D. **Parking.** For Restaurant uses, Planning Code Section 151 requires one off-street parking for every 200 square-feet of occupied floor area, where the occupied floor area exceeds 5,000 square-feet.

The floor area of the subject tenant space measures 1,150 gsf, which is under the 5,000 osf parking threshold, and thus does not require – and is not providing – any off-street parking.

E. **Signage.** Any proposed signage on the property shall comply with the requirements of Section 606 of the Planning Code, and will be subject to the review and approval of the Planning Department.

7. **Planning Code Section 303(c)** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use authorization. On balance, the Project complies with said criteria in that:

A. The proposed new uses and building, at the size and intensity contemplated and at the proposed location, will provide a development that is necessary or desirable, and compatible with, the neighborhood or the community.

The Project has been found to be desirable as it would promote the continued operation of a locally-owned business. Operation of the Limited-Restaurant will not be dramatically different than Retail Grocery Store that has operated at this location for decades. The Project will complement the mix of goods and services currently available in the immediate vicinity by offering neighborhood residents additional food/beverage options.

Furthermore, corner stores enhance and support the character and traditional pattern of RM-Districts. Small neighborhood-oriented establishments such as the proposed business provide convenience goods and services to meet the frequent and recurring needs of neighborhood residents within a short walking distance of their homes.

B. The proposed Project will not be detrimental to the health, safety, convenience or general welfare of persons residing or working in the vicinity. There are no features of the Project that could be detrimental to the health, safety or convenience of those residing or working the area, in that:

i. Nature of proposed site, including its size and shape, and the proposed size, shape and arrangement of structures;

The size and shape of the site and the size, shape, and arrangement of the building on the site are adequate for the Project. The Project would not physically expand the existing building or tenant space, and therefore would not alter the existing appearance or character of the Project vicinity.

ii. The accessibility and traffic patterns for persons and vehicles, the type and volume of such traffic, and the adequacy of proposed off-street parking and loading;

The Project will not adversely impact public transit or overburden the existing supply of parking in the neighborhood. The use is relatively small and intended for walk-in service by local residents, although the area is well-served by ample public transportation. Off-street parking and loading are not required for the Project. The proposed use is designed to meet the needs of the immediate

neighborhood and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.

- iii. The safeguards afforded to prevent noxious or offensive emissions such as noise, glare, dust and odor;

The business is not expected to generate excessive noise or odors; however, the proposed use is subject to the standard Conditions of Approval for restaurants as outlined in Exhibit A. Condition No.'s 8 and 9 specifically obligate the Project Sponsor to address any odor or noise generated by the Limited-Restaurant use.

- iv. Treatment given, as appropriate, to such aspects as landscaping, screening, open spaces, parking and loading areas, service areas, lighting and signs;

The Project Site is completely built-out at the ground-floor level to all street-facing property lines, thus no landscaping will need to be provided. Any future changes in signage would be reviewed under a separate permit by the Planning Department, in accordance with Conditions of Approval contained in Exhibit A.

- C. That the use as proposed will comply with the applicable provisions of the Planning Code and will not adversely affect the General Plan.

The Project complies with all relevant requirements and standards of the Planning Code and is consistent with objectives and policies of the General Plan as detailed below.

- 8. **General Plan Compliance.** The Project is, on balance, consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 1:

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1:

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development that has substantial undesirable consequences that cannot be mitigated.

Policy 1.2:

Assure that all commercial and industrial uses meet minimum, reasonable performance standards.

Policy 1.3:

Locate commercial and industrial activities according to a generalized commercial and industrial land use plan.

The Project will provide desirable goods and services, as well as employment opportunities to those in the community. Further, the Project Site is a corner lot in an RM-2 District. Since it is located within a quarter mile of the North Beach NCD (which is the more restricted of the two NCDs located within a quarter mile of the Site), the use is permitted with a Conditional Use Authorization. As such, the change of use to a Limited-Restaurant is consistent with the uses permitted for this property.

OBJECTIVE 2:

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1:

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

The Project will enable the retention of an existing independent, locally-owned business.

9. **Planning Code Section 101.1(b)** establishes eight priority-planning policies and requires review of permits for consistency with said policies. On balance, the Project complies with said policies in that:

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

The Project will enable the retention of an existing neighborhood-serving and locally-owned business, which creates employment opportunities for the community.

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

The business will occupy an existing ground-floor tenant space that was previously used as a Retail Grocery Store. The Project will not adversely affect the character of the building, while it will strengthen the neighborhood character by enabling the retention of a neighborhood-serving corner business.

- C. That the City's supply of affordable housing be preserved and enhanced.

The Project will not affect the City's supply of affordable housing.

- D. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking.

The Project will not adversely affect public transit or place a burden on the existing supply of parking in the neighborhood. The area is well-served by public transportation and many of the business' customers walk to the café from their homes.

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

There is no commercial office development associated with the Project. No industrial or service sector uses will be displaced; rather, the Project enables the continued and expanded operation of a small service-sector business.

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

The Project does not involve any construction activities that will compromise the structural integrity of the existing building. Any future tenant improvements will conform to the structural and seismic safety requirements of the City's Building Code.

- G. That landmarks and historic buildings be preserved.

No exterior changes are proposed for the Project. Any future storefront alterations and signage will be required to comply with applicable historic preservation standards.

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

The Project, which does not include any physical expansion of the building envelope, will not affect any parks or open spaces, or their access to sunlight.

- 10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.
- 11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2012.1413C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with floor plans on file, dated **October 26, 2012**, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 18839. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on April 4, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Commissioners Antonini, Borden, Fong, Hillis, Moore, Sugaya, Wu

NAYS:

ABSENT:

ADOPTED: April 4, 2013

EXHIBIT A

AUTHORIZATION

This authorization is for a Conditional Use Authorization to allow a Restaurant (d.b.a **La Paloma Café**) to occupy the 1,150 gsf corner tenant space for the property located at 1096 Union Street, Lot 009 in Assessor's Block 0098, pursuant to Planning Code Sections **182, 303, and 722.43** within the RM-2 (Residential, Mixed: Moderate-Density) Zoning District and a 40-X Height and Bulk District; in general conformance with plans, dated **October 26, 2012**, and stamped "EXHIBIT B" included in the docket for Case No. **2012.1413C** and subject to conditions of approval reviewed and approved by the Commission on **April 4, 2013** under Motion No. 18839. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the Project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on **April 4, 2013** under Motion No. 18839.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. 18839 shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use Authorization and any subsequent amendments or modifications.

SEVERABILITY

The Project shall comply with all applicable City codes and requirements. If any clause, sentence, section or any part of these conditions of approval is for any reason held to be invalid, such invalidity shall not affect or impair other remaining clauses, sentences, or sections of these conditions. This decision conveys no right to construct, or to receive a building permit. "Project Sponsor" shall include any subsequent responsible party.

CHANGES AND MODIFICATIONS

Changes to the approved plans may be approved administratively by the Zoning Administrator. Significant changes and modifications of conditions shall require Planning Commission approval of a new Conditional Use Authorization.

Conditions of approval, Compliance, Monitoring, and Reporting PERFORMANCE

1. **Validity and Expiration.** The authorization and right vested by virtue of this action is valid for three years from the effective date of the Motion. A building permit from the Department of Building Inspection to construct the Project and/or commence the approved use must be issued as this Conditional Use Authorization is only an approval of the proposed Project and conveys no independent right to construct the Project or to commence the approved use. The Planning Commission may, in a public hearing, consider the revocation of the approvals granted if a site or building permit has not been obtained within three years of the date of the Motion approving the Project. Once a site or building permit has been issued, construction must commence within the timeframe required by the Department of Building Inspection and be continued diligently to completion. The Commission may also consider revoking the approvals if a permit for the Project has been issued but is allowed to expire and more than three years have passed since the Motion was approved.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

2. **Extension.** This authorization may be extended at the discretion of the Zoning Administrator only where failure to issue a permit by the Department of Building Inspection to perform said tenant improvements is caused by a delay by a local, State or Federal agency or by any appeal of the issuance of such permit(s).

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

DESIGN – COMPLIANCE AT PLAN STAGE

3. **Garbage, composting and recycling storage.** Space for the collection and storage of garbage, composting, and recycling shall be provided within enclosed areas on the property and clearly labeled and illustrated on the building permit plans. Space for the collection and storage of recyclable and compostable materials that meets the size, location, accessibility and other standards specified by the San Francisco Recycling Program shall be provided at the ground level of the buildings.

For information about compliance, contact the Case Planner, Planning Department at 415-558-6378, www.sf-planning.org

MONITORING - AFTER ENTITLEMENT

4. **Enforcement.** Violation of any of the Planning Department conditions of approval contained in this Motion or of any other provisions of Planning Code applicable to this Project shall be subject to the enforcement procedures and administrative penalties set forth under Planning Code Section 176 or Section 176.1. The Planning Department may also refer the violation complaints to other city departments and agencies for appropriate enforcement action under their jurisdiction.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

5. **Revocation due to Violation of Conditions.** Should implementation of this Project result in complaints from interested property owners, residents, or commercial lessees which are not resolved by the Project Sponsor and found to be in violation of the Planning Code and/or the specific conditions of approval for the Project as set forth in Exhibit A of this Motion, the Zoning Administrator shall refer such complaints to the Commission, after which it may hold a public hearing on the matter to consider revocation of this authorization.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

OPERATION

6. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-5810, <http://sfdpw.org>

7. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards. In addition, the operator shall be responsible for daily monitoring of the sidewalk within a one-block radius of the subject business to maintain the sidewalk free of paper or other litter associated with the business during business hours, in accordance with Article 1, Section 34 of the San Francisco Police Code.

For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org>

8. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that incidental noise shall not be audible beyond the premises or in other sections of the building and fixed-source equipment noise shall not exceed the decibel levels specified in the San Francisco Noise Control Ordinance.

For information about compliance with the fixed mechanical objects such as rooftop air conditioning, restaurant ventilation systems, and motors and compressors with acceptable noise levels, contact the Environmental Health Section, Department of Public Health at (415) 252-3800, www.sfdph.org

For information about compliance with the construction noise, contact the Department of Building Inspection, 415-558-6570, www.sfdbi.org

For information about compliance with the amplified sound including music and television contact the Police Department at 415-553-0123, www.sf-police.org

9. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed and maintained if necessary, in order to prevent any significant noxious or offensive odors from escaping the premises.

For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org

10. **Community Liaison.** Prior to issuance of a building permit to construct the Project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor.

For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org