



SAN FRANCISCO PLANNING DEPARTMENT

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Planning Commission Motion No. 18921

HEARING DATE: JULY 11, 2013

Date: July 3, 2013
Case No.: **2013.0477 C**
Project Address: **435-437 Potrero Avenue**
Zoning: UMU (Urban Mixed Use) District
58-X Height and Bulk District
Block/Lot: 3974/022
Project Sponsor: Industry Capital Internet Infrastructure, LLC
1 Sansome Street, 15th Floor
San Francisco, CA 94104
Staff Contact: Corey Teague – (415) 575-9081
corey.teague@sfgov.org

ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO PLANNING CODE SECTIONS 179.1, 227(R), 303, AND 303(H), TO ALLOW APPROXIMATELY 10,000 GROSS SQUARE FEET OF INTERNET SERVICES EXCHANGE ON THE ENTIRETY OF BOTH FLOORS OF THE EXISTING TWO-STORY BUILDING WITHIN A UMU (URBAN MIXED USE) ZONING DISTRICT AND 58-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On April 18, 2013, David Silverman, on behalf of Industry Capital Internet Infrastructure, LLC (hereinafter "Project Sponsor"), filed an application with the Planning Department (hereinafter "Department") for Conditional Use Authorization under Planning Code Sections 179.1, 227(r), 303, and 303(h), to allow approximately 10,000 gross square feet of Internet Services Exchange on the entirety of both floors of the existing two-story building within a UMU (Urban Mixed Use) Zoning District and 58-X Height and Bulk District.

On July 11, 2013, the San Francisco Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2013.0477C.

The Project is exempt from the California Environmental Quality Act ("CEQA") as a Class 1 categorical exemption.

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 requested in Application No. 2013.0477C, 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 is located on the east side of Potrero Avenue between 17th and Mariposa Streets. The property is located within the UMU (Urban Mixed Use) District with a 58-X height and bulk district. The irregularly shaped parcel is nearly 5,000 square feet and contains an approximately 10,000 square foot, two-story building that was built in 1950 and the building was occupied as an Internet Services Exchange from 2000 to 2010 (most recently d.b.a. Astound Networks).
3. **Surrounding Properties and Neighborhood.** The project site is located in an area where the commercial nature of Showplace Square and lower Potrero begins to transition towards a mix of uses, including residential. As such, it is surrounded by a mix of building types and sizes, and a mix of land uses. The subject property is located in a cluster of UMU zoning that also borders RH-2 (along Utah Street) and PDR-1-G. Land uses on the subject block include a gas station, art studio, auto repair shop, residential buildings, and a vacant lot proposed for residential development (480 Potrero Avenue). Other nearby landmarks include Franklin Square, the Potrero Shopping Center, and the Soka Gakkai International of America Buddhist Center.
4. **Project Description.** The applicant proposes to establish an Internet Services Exchange (ISE) to occupy the entire building of approximately 10,000 square feet through the Eastern Neighborhoods Legitimization program. No changes to the exterior of the building are proposed except for some additional screening for the existing rooftop mechanical equipment. In contrast to larger ISEs, this project's small scale, local ownership, and central location will allow it to provide services to smaller users and businesses within the City.
5. **Public Comment.** When the case report was issued on June 3, 2013, the Department had not received any comments from the public explicitly supporting or opposing the project. However, several neighbors did express concerns about specific aspects of the project that were generally related to the operation of the backup generator. These concerns were based on their experiences

from previous operators of the building. Additionally, one neighbor on the subject block clarified that they are in fact opposed to the project. In response to these concerns, the current Project Sponsor held a meeting at the project site with a group of concerned neighbors on July 1st.

On July 10th and 11th, the Department received new emails of opposition from two neighbors on the subject block, one email of opposition from a resident living approximately 4 blocks away, and one email of opposition from a resident who didn't identify their address. The primary concerns in those emails stem from the potential noise, vibrations, and discharge from the backup generator in the building.

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. **Legitimization.** Planning Code Section 179.1 established a time-limited program wherein existing uses in the Eastern Neighborhoods plan area that have operated without the benefit of required permits may seek those permits. Uses that could be "legitimized" under this Section are those uses which, under the current provisions of this Code and without this Section, could not otherwise seek the required permits.

The proposed Internet Services Exchange (ISE) originally occupied the subject building in 2000. The subject property was zoned M-1 at that time, which permitted ISEs with a Conditional Use Authorization. The Zoning Administrator issued a Letter of Legitimization on June 4, 2013 for this project stating that the approximately 10,000 gross square feet of Internet Services Exchange occupying the entire existing building is eligible to be approved as a legal nonconforming use pursuant to Planning Code section 179.1. As such, the project is now seeking a Conditional Use Authorization under the provisions of the properties former M-1 zoning.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply 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 proposed Internet Services Exchange has already existed at the site for more than ten years without any reported complaints from surrounding businesses or residents. The low-intensity nature of the use, along with its relatively small size and scale, make it compatible with the existing mixed use surroundings. Additionally, the use provides a locally-owned, small-scale option for small businesses within the City for data and information storage.

- 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 existing building is two stories and approximately 30 feet high. It was originally built in 1950 and is representative of the size and scale of buildings in the area. The project would not enlarge or reduce the size of the building.

- 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 nature of the project is such that very little traffic will be generated because it is not a typical commercial use where customers come to the place of business to receive a service or purchase a good. Additionally, only two to four workers will be present at a time. Therefore, the project will not create issues for traffic or parking.

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

The existing HVAC equipment consists of seven fan units that will comply with the San Francisco Noise Ordinance the equipment and does not emit any dust or odors. The backup generator will only be used for testing and in emergencies like power outages.

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

The existing building covers the entire site and includes no open space or landscaped areas. All lighting and signing will meet Planning Code requirements.

- 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.

- D. That the use as proposed would provide development that is in conformity with the purpose of the applicable Neighborhood Commercial District.

The project is not located within a Neighborhood Commercial District.

8. Planning Code Section 303(h) establishes additional criteria for the Planning Commission to consider when reviewing applications for Conditional Use Approval of Internet Services Exchanges. On balance, the project does comply with said criteria in that:

- a. The intensity of the use at this location and in the surrounding neighborhood is not such that allowing the use will likely foreclose the location of other needed neighborhood-serving uses in the area;

The use has a low intensity and has existed in the building for more than ten years with no known negative impacts. Additionally, the existing building is not currently designed to easily accommodate a more active commercial use, and therefore is suitable for an Internet Services Exchange.

- b. The building in which the use is located is designed in discrete elements, which respect the scale of development in adjacent blocks, particularly any existing residential uses;

The existing building is two stories and approximately 30 feet high. It was originally built in 1950 and is representative of the size and scale of buildings in the area. The project would not enlarge or reduce the size of the building.

- c. Rooftop equipment on the building in which the use is located is screened appropriately;

The project is required to provide adequate screening of rooftop equipment pursuant to Planning Code Section 141 and Condition of Approval No. 6 in this motion.

- d. The back-up power system for the proposed use will comply with all applicable federal state, regional and local air pollution controls;

The existing backup generator complies with all relevant controls and is permitted by the Bay Area Air Quality Management District (Permit No. 21731).

- e. Fixed-source equipment noise does not exceed the decibel levels specified in the San Francisco Noise Control Ordinance;

A consultant is currently conducting a noise analysis for this building. The building's rooftop mechanical equipment will be altered and/or replaced to ensure compliance with maximum noise levels permitted for commercial and industrial buildings (no more than eight dBA above the local ambient at any point outside of the property plane) in the San Francisco Noise Ordinance (Section 2909 of the San Francisco Police Code). This requirement is also listed as Condition of Approval No. 11 of this motion.

- f. The building is designed to minimize energy consumption, such as through the use of energy-efficient technology, including without limitation, heating, ventilating and air conditioning systems, lighting controls, natural ventilation and recapturing waste heat, and as such commercially available technology evolves;

The existing equipment at the site is fully operable. However, the project will also use the following energy saving techniques to reduce the total power consumption of the building:

- 1) *Energy efficient Toshiba G90000 UPS systems to increase the efficiency of the current uninterruptible power system from 80 percent efficiency to 96.5 percent efficiency.*
- 2) *Cold isle containment, which can reduce the power associated with mechanical cooling by 25 to 30 percent.*
- 3) *Air-side economization, which can reduce the cooling power consumption by an estimated 50 to 60 percent.*

- g. The project sponsor has examined the feasibility of supplying and, to the extent feasible, will supply all or a portion of the building's power needs through on-site power generation, such as through the use of fuel cells or co-generation;

The project sponsor studied the feasibility of using on-site Co-generation and fuel cells. However, due to the limited lot size, such power generation is not possible.

- h. The project sponsor shall have submitted design capacity and projected power use of the building as part of the conditional use application;

The building is served by PG&E with a 1.0 mega volt ampere ("MVA") dedicated underground feed transformer that is located inside the building. This translates into a serviced capacity of approximately 800kW of power per hour. Using a vacancy factor estimate of 7.5 percent, the projected maximum annual energy use is 6,500,000 KWh per year, or 540,000kWh per month.

The following table provides projected monthly energy use per year as the building is leased up over time:

<i>Power Use per Month</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>
<i>Total Capacity (KWh)</i>	<i>36,000</i>	<i>216,000</i>	<i>360,000</i>	<i>540,000</i>

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

COMMERCE AND INDUSTRY

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.

The project will provided a much needed support service for other businesses within the City without producing undesirable consequences.

OBJECTIVE 3:

PROVIDE EXPANDED EMPLOYMENT OPPORTUNITIES FOR CITY RESIDENTS, PARTICULARLY THE UNEMPLOYED AND ECONOMICALLY DISADVANTAGED.

Policy 3.4:

Assist newly emerging economic activities.

OBJECTIVE 4:

IMPROVE THE VIABILITY OF EXISTING INDUSTRY IN THE CITY AND THE ATTRACTIVENESS OF THE CITY AS A LOCATION FOR NEW INDUSTRY.

Policy 4.1:

Maintain and enhance a favorable business climate in the city.

Policy 4.2:

Promote and attract those economic activities with potential benefit to the City.

The project will provided a much needed support service for other businesses to locate and grow within the City, especially businesses with technological support needs.

10. **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 does comply 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 proposal will not remove or otherwise impact any existing neighborhood-serving retail uses in the area.

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

The proposed use has existed within the subject building since 2000 (including periods of vacancy). Continuing the use at this location will not impact existing housing or neighborhood character.

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

No housing is created or removed as part of this project.

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

The nature of the project is such that very little traffic will be generated because it is not a typical commercial use where customers come to the place of business to receive a service or purchase a good. Additionally, only two to four workers will be present at a time. Therefore, the project will not create issues for traffic, parking, or MUNI.

- 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.

The Project will not displace any service or industry establishment, but will instead preserve and industrial service that has existed at this site since 2000.

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

The project includes no significant changes to the existing building.

- G. That landmarks and historic buildings be preserved.

The subject building was determined to not be a historic resource by the Showplace Square/Northeast Mission Historic Survey.

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

The project will have no impact on existing parks and open spaces.

11. 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.

12. 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. 2013.0477C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated May 30, 2013, 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. 18921. 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 July 11, 2013.

Jonas P. Ionin
Acting Commission Secretary

AYES: Commissioners Antonini, Borden, Fong, Moore, and Wu

NAYS: Commissioner Sugaya

ABSENT: Commissioner Hillis

ADOPTED: July 11, 2013

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow approximately 10,000 gross square feet of Internet Services Exchange on the entirety of both floors of the existing two-story building located at 435-437 Potrero Avenue, Block 3972, and Lot 22, pursuant to Planning Code Section(s) **179.1, 227(r), 303, and 303(h)** within the **UMU** District and a **58-X** Height and Bulk District; in general conformance with plans, dated **May 30, 2013**, and stamped "EXHIBIT B" included in the docket for Case No. **2013.0477C** and subject to conditions of approval reviewed and approved by the Commission on **July 11, 2013** under Motion No. **18921**. 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 **July 11, 2013** under Motion No. **18921**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **18921** 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.** The authorization and right vested by virtue of this action is valid for three (3) years from the effective date of the Motion. The Department of Building Inspection shall have issued a Building Permit or Site Permit to construct the project and/or commence the approved use within this three-year period.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
2. **Expiration and Renewal.** Should a Building or Site Permit be sought after the three (3) year period has lapsed, the project sponsor must seek a renewal of this Authorization by filing an application for an amendment to the original Authorization or a new application for Authorization. Should the project sponsor decline to so file, and decline to withdraw the permit application, the Commission shall conduct a public hearing in order to consider the revocation of the Authorization. Should the Commission not revoke the Authorization following the closure of the public hearing, the Commission shall determine the extension of time for the continued validity of the Authorization.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
3. **Diligent pursuit.** 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. Failure to do so shall be grounds for the Commission to consider revoking the approval if more than three (3) years have passed since this Authorization was approved.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
4. **Extension.** All time limits in the preceding three paragraphs may be extended at the discretion of the Zoning Administrator where implementation of the project is delayed by a public agency, an appeal or a legal challenge and only by the length of time for which such public agency, appeal or challenge has caused delay.
For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.
5. **Conformity with Current Law.** No application for Building Permit, Site Permit, or other entitlement shall be approved unless it complies with all applicable provisions of City Codes in effect at the time of such approval. *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org.*

DESIGN – COMPLIANCE AT PLAN STAGE

6. **Roof Mechanical Equipment.** Pursuant to Planning Code 141, the Project Sponsor shall submit a roof plan to the Planning Department prior to Planning approval of the building permit application. Rooftop mechanical equipment, if any is proposed as part of

the Project, is required to be screened so as not to be visible from any point at or below the roof level of the subject building.

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

PROVISIONS

- 7. Transit Impact Development Fee.** Pursuant to Planning Code Section 411 (formerly Chapter 38 of the Administrative Code), the Project Sponsor shall pay the Transit Impact Development Fee (TIDF) as required by and based on drawings submitted with the Building Permit Application. Prior to the issuance of a temporary certificate of occupancy, the Project Sponsor shall provide the Planning Director with certification that the fee has been paid.

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

MONITORING

- 8. Reporting.** As long as the use remains an Internet Services Exchange, the project sponsor shall submit to the Planning Department on an annual basis power use statements for the previous twelve-month period as provided by all suppliers of utilities and shall submit a written annual report to the Department of Environment and the Planning Department which shall state: (a) the annual energy consumption and fuel consumption of all tenants and occupants of the Internet Services Exchange; (b) the number of all diesel generators located at the site and the hours of usage, including usage for testing purposes; (c) evidence that diesel generators at the site are in compliance with all applicable local, regional, state and federal permits, regulations and laws; and (d) such other information as the Planning Commission may require.

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

- 9. 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.*

- 10. 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

11. **Noise Control.** The premises shall be adequately soundproofed or insulated for noise and operated so that 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.

12. **Vibration.** The Project Sponsor shall attempt to reduce vibration from equipment within the building and on the roof through repair, retrofit, or replacement of the equipment.

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

13. **Backup Generator Operation.** The Project Sponsor shall attempt to reduce the emissions of the backup generator, such as use of biofuels instead of diesel fuel to operate the backup generator.

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

14. **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.

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

15. **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.

16. **Six-Month Report.** The Project Sponsor shall report back to the Planning Commission approximately six months after occupancy of the building. The report shall focus on the operation of the building during that time, especially regarding the generation of noise and emissions from the backup generator and other equipment.

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