



SAN FRANCISCO PLANNING DEPARTMENT

Subject to: (Select only if applicable)

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- Jobs Housing Linkage Program (Sec. 413)
- Downtown Park Fee (Sec. 412)
- First Source Hiring (Admin. Code)
- Child Care Requirement (Sec. 414)
- Other

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Planning Commission Motion No. 18949 HEARING DATE: AUGUST 15, 2013

Date: August 8, 2013
Case No.: **2012.1528C**
Project Address: **1097 HOWARD STREET UNIT, #101**
Zoning: MUG (Mixed Use, General)
 65-X Height and Bulk District
SUD: SOMA Youth and Family
Block/Lot: 3731/128
Project Sponsor: William Marci
 1097 Howard Street #101
 San Francisco, CA 94103
Staff Contact: Diego R Sánchez – (415) 575-9082
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ADOPTING FINDINGS RELATING TO CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303, 249.40A AND 840.47 OF THE PLANNING CODE TO ALLOW A BAR (DBA THE SAN FRANCISCO CHAMPAGNE SOCIETY) WITHIN THE MUG (MIXED USE, GENERAL) DISTRICT, THE SOMA YOUTH AND FAMILY SPECIAL USE DISTRICT AND A 65-X HEIGHT AND BULK DISTRICT.

PREAMBLE

On December 20, 2012 William Marci (Project Sponsor) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Section 249.40A and 840.47.24 of the Planning Code to allow a bar (dba The San Francisco Champagne Society) within the MUG (Mixed Use, General) District, the SOMA Youth and Family Special Use District and a 65-X Height and Bulk District.

On August 15, 2013, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2012.1528C.

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. 2012.1528C, 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 first floor of a three story live/work building at the southeast corner of 7th and Howard Streets. The project site is currently used by the Project Sponsor for commercial and residential purposes. The building permit application for the conversion of this building from industrial and office uses to live/work units was submitted in 1995 and received approval for occupancy from the Department of Building Inspection in 1999. The Department of Building Inspection granted the Certification of Final Completion for the unit in which the project is proposed, unit #101, in 2002.
3. **Surrounding Properties and Neighborhood.** The proposal is located at the intersection of 7th and Howard Streets within the South of Market Area neighborhood and the Mixed Use, General, Zoning District and the SOMA Youth and Family Special Use District. The area is characterized by mixed used developments, with retail/commercial uses on the ground floor and residential uses above. There are also many single and two story buildings whose main use is for commercial or light industrial purposes. To the south of the project, along Moss Alley, there are numerous multi-storied buildings wholly residential in nature. Properties in the immediate vicinity of the proposal are zoned WMUG (WSOMA Mixed Use, General), MUG (Mixed Use, General) and RED (Residential Enclave District).
4. **Project Description.** The project proposes to establish a wine and champagne tasting room with minor retail sales, dba The San Francisco Champagne Society, within a Live/Work unit that is currently used for commercial and residential purposes. The project sponsor intends to hold wine tasting events and education/appreciation classes of wines and champagne on a scheduled basis and will also sell minor amounts of wine and champagne in a retail capacity. The unit is approximately 1,140 square feet. 410 square feet will be dedicated to the tasting and retail use of the proposal. The project sponsor also intends to continue using the balance of the space, 730 square feet, as a commercial and residential area. The project is considered a bar under Planning

Code Section 790.22 because the wine tasting aspect of the proposal requires an ABC license type 42, authorizing the sale of wine for consumption on or off the premises

5. **Public Comment.** The Department has received nine letters from the public in support of the proposed 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. **Useable Open Space.** Planning Code Section 135.3 states that, for uses other than dwelling units within the Eastern Neighborhoods Mixed Use Districts, all newly constructed structures, all structures to which gross floor area equal to 20 percent or more of existing gross floor area is added and all structures for which floor area is converted to office use, other than office use accessory to a non-office, shall provide and maintain useable open space for that part of the new, additional or converted square footage.

While the project is converting gross square footage to a new use, it is not subject to this provision as there is no new office space proposed as a principal use and there is no new construction or addition to the existing structure.

- B. **Off-Street Parking.** Planning Section 151.1 of the Planning Code establishes maximum amounts for off-street parking within the Mixed Use, General (MUG) Zoning District at no more than one space for each 1,500 square feet of gross floor area for retail uses.

The proposal does not provide off-street parking and therefore complies with the off-street parking requirements under Section 151.1.

- C. **SOMA Youth and Family Special Use District.** Section 249.4A of the Planning Code establishes the SOMA Youth and Family Special Use District. Within this Special Use District the establishment of a bar use, as defined in Planning Code Section 790.22, requires Conditional Use authorization.

The proposal is seeking Conditional Use authorization to establish a bar, as required by Planning Code Section 249.40A.

- D. **Neighborhood Notification.** Planning Code 312 requires neighborhood notification in the Eastern Neighborhoods Mixed Use Districts for a change in use from any one land use category to another land use category.

The proposal seeks to change the use of space from the Residential Uses land use category to the Retail Sales and Services land use category. Neighborhood notification was done in conjunction with the notification for the request for Conditional Use authorization.

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.

Because the proposal is within an existing Live/Work unit, there will be no enlargement of building envelope or any expansion visible from the public right of way. The proposal seeks to convert a portion of an existing Live/Work unit into a bar (for wine/champagne tastings) and a retail wine/champagne shop that will also hold small wine/champagne appreciation courses. This use, and its proposed size and intensity, are found to be necessary and desirable for the neighborhood and will be compatible with the mixed use character of the South of Market Area neighborhood.

- 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 proposal will be within an existing Live/Work unit and will not expand the building envelope or the unit size. Within the context of the greater neighborhood, the proposal should not create any new detrimental effects as the context is of a mix of residential uses coexisting with commercial and light industrial uses.

- 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 Planning Code does not require parking or loading for this proposal. Given the intensity of the use and the proximity to major public transit, it is not anticipated that the use will exacerbate problems with the traffic patterns in the area.

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

Owing to the nature of the proposed use, it is not anticipated that there will arise noxious or offensive emissions.

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

Because the proposal is within an existing building there are no opportunities to provide additional landscaping or screening of the use and there are no off-street parking or loading spaces to screen as well.

- 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

Objectives and Policies

OBJECTIVE 3:

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

Policy 1.1:

Assist newly emerging economic activities.

The proposal is an emerging activity that blends of wine education and tastings with an associated retail wine shop that focuses on the limited production wines. It is an economic activity that is new and that can provide employment opportunities for city residents.

EAST SOMA AREA PLAN

Objectives and Policies

OBJECTIVE 1.1:

ENCOURAGE PRODUCTION OF HOUSING AND OTHER MIXED-USE DEVELOPMENT IN EAST SOMA WHILE MAINTAINING ITS EXISTING SPECIAL MIXED-USE CHARACTER.

Policy 1.1.8:

Permit small and moderate size retail establishments in mixed use areas of East SoMa, but permit larger retail only as part of a mixed-use development.

The proposed development is a retail establishment of small size, approximately 410 square feet, within the Mixed Use General (MUG) Zoning District, a mixed use district.

OBJECTIVE 1.3:

INSTITUTE FLEXIBLE “LEGAL NONCONFORMING USE” PROVISIONS TO ENSURE A CONTINUED MIX OF USES IN EAST SOMA.

Policy 1.3.1:

Continue existing legal nonconforming rules, which permit pre-existing establishments to remain legally even if they no longer conform to new zoning provisions, as long as the use was legally established in the first place.

The proposal will continue its non-conforming Live/Work status as only a fraction of existing space will be used as a retail establishment. Live/Work uses in the SOMA neighborhood had historically allowed work activities that were principally or conditionally permitted in the district.

OBJECTIVE 4.2:

ESTABLISH PARKING POLICIES THAT IMPROVE THE QUALITY OF NEIGHBORHOODS AND REDUCE CONGESTION AND PRIVATE VEHICLE TRIPS BY ENCOURAGING TRAVEL BY NON-AUTO MODES.

Policy 4.3.2:

For new non-residential development, provide flexibility by eliminating minimum off-street parking requirements and establishing caps generally equal to the previous minimum requirements. For office uses in East SoMa, parking requirements should be commensurate with general downtown parking standards.

The project does not propose any new off-street parking, as parking is not required in this zoning district. The use is implicitly encouraging patrons to utilize non-private automobile means of transport, in line with the Transportation Objectives of the East SOMA plan.

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 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 enhance the neighborhood serving retail base by providing a retail wine shop with wine tasting that would complement the existing retail uses in the area. The business would be locally owned.

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

The existing units in the building and other units within the surrounding neighborhood will not be adversely affected given the Conditions of Approval regulating the operation of the proposal. The proposal will blend well into the existing mixed use character of the area. The addition of a retail wine

shop that focuses on the provision of locally made wine will preserve and enhance the cultural and economic diversity of the City.

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

No housing is removed for this Project.

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

Given the site's proximity to Market Street, the multiple public transit lines that run along Market Street and the intended number of patrons to be served by the use at any one time, it is not anticipated that the private automobile use by patrons will impede MUNI transit or overburden off-street parking.

- 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. The project will not affect industrial or service sector uses or related employment opportunities. Ownership of industrial or service sector businesses will not be affected by this project.

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

All alterations as a part of this proposal will meet the seismic code to insure, to the greatest extent possible, that any injury or loss of life in an earthquake is minimized.

- G. That landmarks and historic buildings be preserved.

The project does not include alterations to the exterior.

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

The project will have no negative impact on existing parks and open spaces. The Project does not have an impact on open spaces.

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. 2012.1528C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated December 12, 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. 18949. 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 August 15, 2013.

Jonas P. Ionin
Acting Commission Secretary

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

NAYES:

ABSENT: Commissioners Hillis, Borden

ADOPTED: August 15, 2013

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a bar (d.b.a. The San Francisco Champagne Society) located at 1097 Howard Street #101, Lot 128 in Assessor's Block 3731 pursuant to Planning Code Section(s) 303, 240.49A and 840.47 within the MUG District and a 65-X Height and Bulk District; in general conformance with plans, dated December 12, 2012, and stamped "EXHIBIT B" included in the docket for Case No. 2012.1528C and subject to conditions of approval reviewed and approved by the Commission on August 15, 2013 under Motion No. **18949**. 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 August 15, 2013 under Motion No. **18949**.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **18949** 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

6. **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

PROVISIONS

7. **Eastern Neighborhoods Infrastructure Impact Fee.** Pursuant to Planning Code Section 423 (formerly 327), the Project Sponsor shall comply with the Eastern Neighborhoods Public Benefit Fund provisions through payment of an Impact Fee pursuant to Article 4.

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

MONITORING - AFTER ENTITLEMENT

8. **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

9. **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

10. **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>

11. **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>

12. **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