



# SAN FRANCISCO PLANNING DEPARTMENT

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## Memo to the Planning Commission INFORMATIONAL ITEM

HEARING DATE: MAY 8, 2014

*Date:* May 1, 2014  
*To:* Members, Planning Commission  
*From:* John Rahaim, Director  
Scott Sanchez, Zoning Administrator  
*Staff Contact:* Christine Haw (415) 558- 6618  
[christine.haw@sfgov.org](mailto:christine.haw@sfgov.org)  
*Re:* Progress Report on the Academy of Art University (AAU)  
Enforcement Program  
*Recommendation:* **No action required**

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

### BACKGROUND

On January 17, 2013, the Zoning Administrator issued Notices of Violation and Penalty (NOVPs) for 22 properties operated by the Academy of Art University (AAU). As part of the enforcement process, the Zoning Administrator also issued a written determination to voluntarily stay enforcement of the NOVPs and toll the applicable compliance and appeal periods so long as AAU adhered to specific terms outlined in the determination ("Stay"). On April 25, 2014, the Zoning Administrator issued a Withdrawal Notice of Stay which terminated the voluntary stay related to appeal periods and modified the penalty accrual terms to assess penalties if the Draft Environmental Impact Report (DEIR) is not published by November 1, 2014. Please see attached materials for an update on the status of recent enforcement actions, status of environmental review and status of the Stay.

### REQUIRED COMMISSION ACTION

No action is required at this time.

<b>RECOMMENDATION:</b> <b>Informational only; no action required.</b>
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### Attachments:

Stay (January 17, 2013)  
Letter from Planning Director to AAU (April 11, 2014)  
Withdrawal Notice of Stay (April 25, 2014)



# SAN FRANCISCO PLANNING DEPARTMENT

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*Via Certified and U.S. Mail*

January 17, 2013

Dr. Elisa Stephens, President  
Academy of Art University  
79 New Montgomery Street  
San Francisco, CA 94108

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

Reception:  
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Dear Dr. Stephens:

The City and County of San Francisco (the "City") and the Academy of Art University ("AAU") have engaged in lengthy discussions regarding AAU's ongoing violations of the San Francisco Planning Code (the "Planning Code"). These violations include those documented in Enforcement Notifications that the Planning Department (the "Department") sent to AAU in November 2011.

The Department has been preparing an Environmental Impact Report ("EIR") under the California Environmental Quality Act for the Academy of Art University Project. The EIR process has been ongoing since 2008 and has continued beyond a reasonable period. A purpose of many of the conditions below is to enable the Department to conclude this EIR process at an accelerated pace to allow AAU to come into full compliance with all applicable Planning Code provisions. The EIR process must be completed before the City can consider approving required permits and applicable conditional use authorizations to correct outstanding violations. Any actions that AAU take or fail to take that delay the EIR process also delay the City's ability to act on approvals that would bring AAU into full compliance with all applicable Planning Code provisions.

Accordingly, as a result of AAU's continuing noncompliance with the November 2011 Enforcement Notification(s), the Department is issuing Notices of Violation and Penalties ("NOVPs") against the following properties that continue to violate the Planning Code:

1. 601 Brannan Street,
2. 1080 Bush Street ,
3. 1153 Bush Street,
4. 58-60 Federal Street,
5. 631 Howard Street,
6. 2225 Jerrold Avenue,
7. 2801 Leavenworth Street,
8. 1727 Lombard Street,
9. 1916 Octavia Street,
10. 1055 Pine Street,
11. 1069-1077 Pine Street,
12. 491 Post Street,
13. 2340 Stockton Street,
14. 620 Sutter Street,
15. 817 Sutter Street,
16. 860 Sutter Street,
17. 740 Taylor Street,
18. 466 Townsend Street,
19. 1849 Van Ness Avenue,

20. 2151 Van Ness Avenue,
21. 2209 Van Ness Avenue, and
22. 2211 Van Ness Avenue.

Exercising his enforcement discretion, the Zoning Administrator voluntarily agrees to stay enforcement of the above-referenced NOVPs and toll the NOVPs applicable compliance and appeal periods so long as AAU adheres to all of the terms enumerated below as the Zoning Administrator determines in his sole discretion. The purpose of these terms is to help ensure that AAU adheres to the Department's EIR schedule to complete the EIR in a timely manner and takes steps to timely address the long outstanding Planning Code violations.

1. By January 31, 2013, AAU must approve the required scopes of work for the EIR cultural resources work and for the expanded technical memorandum covering the remaining properties that need discretionary permits from the City as described in the Planning Department's letter of November 20, 2012.
2. By January 31, 2013, AAU must in a written notice to the Department designate a representative to act on its behalf for purposes of preparing the EIR. That representative must have decision-making authority to act on AAU's behalf to move the EIR forward in a timely manner, attend regular meetings with the Planning Department, and generally function as the liaison between the Planning Department and AAU.
3. AAU must meet its contractual obligations with Atkins Global to produce the EIR and adhere to the Department's "Academy of Art EIR Schedule" (last updated January 2013) to ensure prompt delivery of work product and forward progress on the EIR. The Department's Environmental Review Officer must approve any changes to the EIR schedule in advance and in writing.
4. AAU must work diligently and in good faith with the Department to timely complete the EIR and must take no actions that would require a change in the EIR scope of work or baseline including, but not limited to, acquiring and occupying or using any Additional Properties. For purposes of this document, "Additional Properties" mean any and all buildings or other real property not used or occupied by or on the behalf of AAU (including any of its affiliates) as of July 5, 2012.
5. Once the EIR is certified, the AAU must work diligently and in good faith with the Department to timely apply for and obtain all necessary permits including conditional use authorizations, where appropriate.
6. Maintain an Institutional Master Plan ("IMP") in compliance with Planning Code Section 304.5.
7. By January 31, 2013, AAU must in a written notice to the Department designate a representative to act on its behalf for purposes of compliance with provisions of the San Francisco Planning Code and enforcement of outstanding violations. That representative must have decision-making authority to act on AAU's behalf and will function as the liaison between the Planning Department and AAU for Planning Code compliance and enforcement issues.
8. AAU must not occupy or use any Additional Properties where the Department determines that any lawful use or occupancy would require a permit from the City, a conditional use authorization as required by the Planning Code, or additional environmental review.

January 17, 2013

9. AAU must not convert any existing housing to student housing in violation of the San Francisco Planning Code.
10. Within 7 calendar days from the date of this document, AAU must apply for permits to remove all unpermitted signs that do not and cannot comply with Article 6 of Planning Code. AAU must remove all unpermitted signs that do not and cannot comply with Article 6 of Planning Code within 30 days from the date of the permit approval.
11. Within 7 calendar days from the date of this document, AAU must submit permits for 1069 Pine Street and 1727 Lombard Street (to document change of use under Planning Code Section 182(c)).
12. Within 7 calendar days from the date of this document, AAU must submit permit applications for 620 Sutter Street for change of use.
13. AAU must respond to any and all Planning Department correspondence, electronic mail, or phone calls within 7 calendar days from the date of this document or such other longer period as the Department may in its sole discretion provide.
14. AAU must attend meetings at the Planning Department's reasonable request.

If at any time the Zoning Administrator determines that AAU has failed to comply with any of the above conditions, then the Zoning Administrator may give AAU a written notice describing the non-compliance ("Withdrawal Notice"). That Withdrawal Notice will operate automatically to lift the Zoning Administrator's voluntary stay on enforcing the NOVPs and tolling compliance and appeal deadlines. AAU will then have fifteen (15) days from the date of the Withdrawal Notice to either correct the violations as provided in the NOVPs or appeal the NOVPs. Inaction by the Zoning Administrator regarding AAU's performance, or manner or time of performance, of any of the above conditions will not be considered a waiver by the Zoning Administrator or the City regarding AAU's performance of the particular condition or any other condition.

Notwithstanding anything to the contrary above, the Zoning Administrator may at any time and at his sole discretion withdraw his voluntary election to stay enforcement of the NOVPs and toll enforcement and appeal deadlines, upon providing a Withdrawal Notice to AAU.

The Zoning Administrator's voluntary stay of enforcement of the NOVPs under this document shall in no way affect the ability of the City or any other governmental authority to enforce any other applicable local, state or federal laws against AAU properties.

**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

Dr. Elisa Stephens, President  
Academy of Art University

January 17, 2013

cc: Rodney Fong, President, Planning Commission  
Cindy Wu, Vice President, Planning Commission  
John Rahaim, Director of Planning  
Yvonne Mere, Deputy City Attorney, Office of the City Attorney  
Susan Cleveland-Knowles, Deputy City Attorney, Office of the City Attorney  
Tom Hui, Acting Director, Department of Building Inspection  
Dan Lowrey, Acting Deputy Director, Department of Building Inspection  
Enrique Pearce, Pearce Law Offices

中文詢問請電: **558.6378**

Para información en Español llamar al: **558.6378**



# SAN FRANCISCO PLANNING DEPARTMENT

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April 11, 2014

Dr. Elisa Stephens, President  
Academy of Art University  
79 New Montgomery Street, 4th Floor  
San Francisco, CA 94105-3410

Dear Dr. Stephens:

Since we have been unable to meet in person, I wanted to inform you of our current concerns and upcoming actions regarding the Environmental Impact Report (EIR) and related activities regarding the Academy of Art University properties.

As you know, on January 17, 2013, the Zoning Administrator (ZA) issued 22 Notices of Violation (NOVs) due to the lack of compliance of several of your properties with respect to the Planning Code and the lack of progress in correcting these violations, in particular the lack of progress on the EIR. With those notices, however, the ZA issued a stay of the NOVs as long as certain deadlines were met related to the completion of the EIR, and with the clear understanding that the EIR moved forward in a timely manner.

It has now been four months since the consultant has made any progress on the Draft EIR (DEIR), and six months since the Planning Department transmitted comments to the AAU and consultant on the transportation impact study (TIS). The Department received its last communication related to the DEIR from your attorney on January 28, 2014. The EIR is more than 1 year behind the schedule attached to the ZA's stay of the NOVs, which established a DEIR publication date of October 28, 2013. In addition, it is our understanding that the consultants have stopped work due to AAU's failure to pay them.

The Department insists that the DEIR be completed in a timely way so that AAU can correct long standing NOV on multiple properties. This means that the DEIR be completed and released for public review by November 1, 2014. The consultant's current stoppage of work on the DEIR constitutes a direct violation of the stay issued by the ZA. Therefore, the ZA will soon issue a letter to the Academy stating that the stay on the NOVs will be released immediately and that penalties will begin to accrue if the DEIR is not completed by November 1, of 2014. In addition, I would like to emphasize that completing the DEIR in a timely manner will require active participation and cooperation by AAU in its role as project sponsor. I hope and trust that we can count on timely participation by your representatives in this effort.

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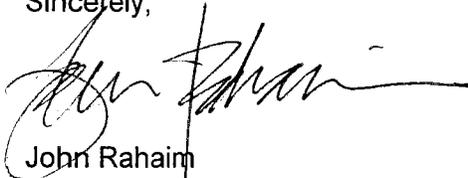
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It is also our understanding that you have serious concerns about the ability of the current consultants to complete the work and would like to change consultants at this time. Based on our previous experience in similar matters, my staff and I generally believe that such a change would further delay completion of the DEIR and that waiting until the DEIR is completed to make a change would be a more efficient approach. I am available to discuss this issue in more detail if that would be helpful. An intermediate approach would be for AAU to retain an additional consultant to act as a peer reviewer on topics such as the transportation impact study and cultural resources section, and other potential topics that are of particular complexity for the Academy of Art project.

It is critical that these long delays in compliance by the Academy of Art come to an end. We will do what is necessary to complete the EIR by the date noted above, but this will only occur if the Academy does its part to make that happen. We look forward to your cooperation in this matter.

Sincerely,



John Rahaim  
Director of Planning

cc: Scott Sanchez, Zoning Administrator  
Susan Cleveland Knowles, Deputy City Attorney  
Yvonne Mere, Deputy City Attorney  
Chris Haw, Planning Department  
Rick Cooper, Planning Department  
Chelsea Fordham, Planning Department



# SAN FRANCISCO PLANNING DEPARTMENT

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## Withdrawal Notice of Stay

*Via Certified and U.S. Mail*

April 25, 2014

Dr. Elisa Stephens, President  
Academy of Art University  
79 New Montgomery Street  
San Francisco, CA 94108

Dear Dr. Stephens,

On January 17, 2013, I issued Notices of Violation and Penalties ("NOVPs") against 22 Academy of Art University ("AAU") properties for continued violations of the Planning Code. Exercising my enforcement discretion, I also issued a written determination to voluntarily stay enforcement of these 22 NOVPs and toll the NOVPs applicable compliance and appeal periods so long as AAU adhered to terms enumerated in the written determination ("Stay" – see attached). The following is an update on recent enforcement actions, status of environmental review and status of the Stay.

### RECENT ENFORCEMENT ACTIONS

Since the issuance of the Stay, the Planning Department has taken enforcement actions on the following properties:

930-950 Van Ness Avenue/963 O'Farrell Street – The Planning Department conducted a Zoning Administrator Hearing related to this property (which was not included in the Stay) and is issuing a NOVP Decision confirming violations of the Planning Code (see attached). On May 29, 2012, AAU submitted a Conditional Use Authorization to legalize the use of the property at 930 Van Ness Avenue/963 O'Farrell Street; however, this application is on hold pending completion of the required Environmental Impact Report ("EIR"). Given that AAU has made efforts to legalize the use of the property, enforcement and accrual of penalties will be consistent with other properties currently subject to the Stay (as discussed in the section "Status of Stay" below).

2295 Taylor Street - The Planning Department conducted a Zoning Administrator Hearing related to this property (which was not included in the Stay) and is issuing an NOVP Decision confirming violations of the Planning Code (see attached). As noted in the NOVP, this property cannot be legalized under the Planning Code and penalties will begin accruing on this property as noted in the NOVP Decision.

2225 Jerrold Street - The Planning Department is issuing an updated Enforcement Notification for this property (which was included in the Stay) based upon new information about violations at this property (see attached). Failure to respond to the Enforcement Notification may be grounds for issuance of a new NOVP for this property.

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Dr. Elisa Stephens  
Release of Stay Decision  
Academy of Art University  
April 25, 2014

150 Hayes Street – The Planning Department is issuing a Letter of Determination for this property (which was not included in the Stay) finding that the property is a post-secondary educational institution under the Planning Code (see attached). Based upon this determination, the property is in violation of the Planning Code and the Planning Department is also issuing an Enforcement Notification (see attached). Failure to respond to the Enforcement Notification may be grounds for issuance of an NOVP for this property.

740 Taylor Street – The Planning Department is issuing a Letter of Determination for this property (which was included in the Stay) finding that the property is legally a post-secondary educational institution based upon the permit history for this property (see attached). As such, the use-related enforcement case for this property will be abated once the Letter of Determination is final.

631 Howard Street – The Planning Department confirmed that AAU has vacated this property and abated the use-related enforcement case for this property on October 23, 2013.

Signs – AAU has been responsive in abating signage complaints. Since January 17, 2013, 20 signs have been removed from 13 properties, 17 signs have been legalized and 22 signs are under review by the Planning Department (20 for 79 New Montgomery Street, one for 180 New Montgomery Street and one for 540 Powell Street). An additional 6 signs are under review; however, they cannot be legalized at this time because of underlying use violations (Conditional Use Authorizations are required to legalize the use of these properties).

#### **STATUS OF ENVIRONMENTAL REVIEW**

At the time the Stay was issued, the Planning Department's Academy of Art EIR schedule estimated publication of the Draft EIR by September 18, 2013; however, publication did not occur as scheduled. It has now been more than 4 months since the consultant (Atkins Global) has made any progress on the Draft EIR and 6 months since the Planning Department transmitted comments to AAU and the consultant on the Transportation Impact Study (TIS). Furthermore, the entire EIR is now more than one year behind the schedule in effect at the time the Stay was issued. It is our understanding that consultants have stopped work due to AAU's failure to pay them. While Environmental Planning Staff has indicated that the Draft EIR may be published by November 1, 2014, this would only be possible if AAU meets its contractual obligations, promptly responds to Planning Department comments, and works diligently and in good faith to complete the Draft EIR.

I am aware of your letter (dated April 21, 2014 and e-mailed April 22, 2014) to Director Rahaim, and view AAU's stated commitment to re-start the EIR process as a positive step; however, as discussed below, AAU's past actions (or inaction) related to progress on the EIR directly violated the terms of the Stay. I believe that the record reflects that work on the EIR stopped, that the stoppage was directly attributable to the AAU, and that the stoppage lead to a material delay in progress on the EIR. I decline to determine that there was no stoppage as requested by AAU. In separate correspondence, Planning Department staff has reached out to re-start work on the EIR as soon as possible to achieve the goal of publishing the Draft EIR by November 1, 2014.

## STATUS OF STAY

As noted in the Stay, the Stay is a voluntary agreement to stay enforcement and toll the applicable compliance and appeal periods so long as AAU adhered to all terms outlined in the Stay. If at any time, the Zoning Administrator determines that AAU has failed to comply with the terms of the Stay, then the Zoning Administrator may give AAU a written notice describing the non-compliance ("Withdrawal Notice"). The Withdrawal Notice will operate automatically to lift the Zoning Administrator's voluntary stay on enforcing the NOVPs and tolling compliance and appeal deadlines. AAU will then have fifteen (15) days from the date of the Withdrawal Notice to either correct the violations as provided in the NOVPs or appeal the NOVPs.

The Stay outlined 14 terms "to help ensure that AAU adheres to the Department's EIR schedule to complete the EIR in a timely manner and take steps to timely address the long outstanding Planning Code violations." These terms included the following:

Term No. 3: AAU must meet its contractual obligations with Atkins Global to produce the EIR and adhere to the Department's 'Academy of Art EIR Schedule' (last updated January 2013) to ensure prompt delivery of work product and forward progress on the EIR. The Department's Environmental Review Officer must approve any changes to the EIR schedule in advance and in writing.

Term No. 4: AAU must work diligently and in good faith with the Department to timely complete the EIR and must take no actions that would require a change in the EIR scope of work or baseline including, but not limited to, acquiring and occupying or using any Additional Properties. For purposes of this document, "Additional Properties" mean any and all buildings or other real property not used or occupied by or on the behalf of AAU (including any of its affiliates) as of July 5, 2012.

Term No. 13: AAU must respond to any and all Planning Department correspondence, electronic mail, or phone calls within 7 calendar days from the date of this document or such other longer period as the Department may in its sole discretion provide.

As noted previously, the Planning Department's Academy of Art EIR schedule estimated issuance of a Draft EIR by September 18, 2013 at the time the Stay was issued. It is our understanding that progress on the EIR ceased completely because AAU has failed to meet its contractual obligations with Atkins Global and ensure prompt responses to Planning Department comments. While AAU has recently indicated that work on the EIR will reconvene, past inactions represent a violation of the terms of the Stay. **This letter serves as the Withdrawal Notice of Stay and modification of penalty accrual terms for the NOVPs.** Appeal periods for the NOVPs are no longer tolled and penalties for the NOVPs will begin accruing on November 2, 2014 if the Draft EIR is not published by November 1, 2014. If the Draft EIR is published by November 1, 2014, I may issue a subsequent determination that further modifies the penalty accrual terms for the NOVPs to ensure timely completion of the EIR. In addition, if prior to November 1, 2014, it is determined that AAU has

Dr. Elisa Stephens  
Release of Stay Decision  
Academy of Art University  
April 25, 2014

violated any of the terms of the stay not related to the EIR, I reserve discretion to reconsider whether penalties will begin accruing at an earlier date.

**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

Attachments: 930 Van Ness Avenue/963 O'Farrell Street NOVP Decision  
2295 Taylor Street NOVP Decision  
2225 Jerrold Street Enforcement Notification  
150 Hayes Street Letter of Determination  
150 Hayes Street Enforcement Notification  
740 Taylor Street Letter of Determination

cc: Planning Commission  
John Rahaim, Director of Planning – Planning Department  
Christine Haw, Code Enforcement Manager - Planning Department  
Yvonne Mere, Deputy City Attorney, Office of the City Attorney  
Susan Cleveland-Knowles, Deputy City Attorney, Office of the City Attorney  
Tom Hui, Director, Department of Building Inspection  
Dan Lowrey, Deputy Director, Department of Building Inspection  
Ronald Van Buskirk, Pillsbury Winthrop Shaw Pittman LLP



# SAN FRANCISCO PLANNING DEPARTMENT

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## Notice of Violation and Penalty Decision

Date: April 25, 2014

Property Owner: 950 Van Ness Avenue LLC  
c/o Academy of Art University  
79 New Montgomery Street, 6<sup>th</sup> Floor  
San Francisco, CA 94105

Site Address: 930-950 Van Ness Avenue and 963 O'Farrell Street  
Block/Lot: 0718/021 and 0718/ 017  
Zoning District: RC-4 (Residential-Commercial Combined High Density District);  
Van Ness Special Use District; Van Ness Automotive Special Use District

Complaint Number: 10508 and 10643  
Code Violations: 209.3(i), A Post-Secondary Educational Institution Use requires Conditional Use Authorization to establish; 237 & 223(p), Parking Garage Use (Not Open to the Public) requires a Conditional Use Authorization to establish.

Administrative Penalty: \$250 Each Day of Violation  
Appeal Date: Within 15 days from the Date of this Letter  
Staff Contact: Dario Jones, (415) 558-6477 or [dario.jones@sfgov.org](mailto:dario.jones@sfgov.org)  
DECISION: NOTICE OF VIOLATION AND PENALTY UPHELD

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### DESCRIPTION OF VIOLATION

The Zoning Administrator has determined that the above referenced property is in violation of the Planning Code Sections listed below:

- 1. Violation of Planning Code Section 209.3(i):** The subject property is in violation for the establishment of an unauthorized Post-Secondary Educational Institutional use. A Post-Secondary Educational Institutional use requires a Conditional Use ("CU") authorization prior to establishing per Planning Code Section 209.3(i) within an RC-4 district.
- 2. Violation of Planning Code Sections 237 and 223(p):** A CU Authorization and building permit are required to authorize the establishment of a Parking Garage Use not open to the public, or an automobile storage facility.

### TIMELINE OF INVESTIGATION

In 2007, the Department provided AAU notice that most of its properties feature violations of the Planning Code, typically for changes of use and signage without benefit of permit. Since 2007, AAU's enforcement issues have been subject to more than 20 public hearings before the Planning Commission and Board of Supervisors.

In 2008, the Department informed AAU that an Environmental Impact Report ("EIR") and Transportation Study would be required to process any permits to legalize unauthorized changes of use.

On May 19, 2008, AAU submitted an EIR application, and on August 13, 2008, AAU submitted a Transportation Study Application (Case No. 2008.0586E!). The Department allowed existing violations to be placed "on hold" pending completion of the EIR and Transportation Study. The Department informed the AAU that it could not acquire and convert or otherwise use any new properties in San Francisco until after the Department completed the EIR, including the Transportation Study, the Commission approved AAU's IMP and the City processed necessary entitlements based on the final certified EIR.

On November 3, 2009, it came to the attention of Department staff that AAU had acquired the subject property (former Mercedes-Benz auto showroom) to store AAU's classic car collection.

On April 9, 2010, the Department issued an Enforcement Notice detailing the violations listed above, including the direction to demonstrate the legality of the uses or to cease and desist the unauthorized uses.

On June 22, 2010, the Planning Department issued a Notice of Violation and Penalty against 930 Van Ness Avenue and 963 O'Farrell Street.

On July 8, 2010, the Planning Department in conjunction with other City agencies performed a site visit to the property located at 930 Van Ness Avenue and the property located at 963 O'Farrell Street. The site visit found that although both properties are distinct and separate buildings located on separate parcels, the properties are internally connected at the basement and street level.

The three-story over basement 930 Van Ness Avenue property was found to be in operation as an auto storage use for AAU's antique car collection along with marketing offices that serve AAU. The one-story over basement property located at 963 O'Farrell Street was found to be operating as an auto repair use at street level specifically to maintain and service AAU's antique car collection stored in 930 Van Ness Avenue. The basement area of 963 O'Farrell Street (which can only be accessed via 930 Van Ness Avenue) was found to be operating as storage for AAU's antique car collection. The last known legal use for both properties is noted as automobile sales with accessory auto repair. In addition, no building permits were located to demonstrate the authorization to internally connect the properties.

On July 9, 2010, David, P, Cincotta, Attorney for AAU, responded to the Notice of Violation and Penalty. The response noted that "it is true that students and members of the Industrial Design Department have visited the site to observe the classic automobiles that are located there, and that there are some offices within the location that serve functions of the AAU." The response also stated that 1) all AAU offices would be removed from the property by July 30, 2010; 2) AAU will continue its practice of not holding any classes of the Industrial Design Department or any other department of AAU at this location; 3) AAU will immediately file a CU Authorization application to authorize the facility to be used as a social service or philanthropic facility under Planning Code Section 209.3(d)<sup>1</sup>; and, 4) AAU requests an interpretation of

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<sup>1</sup> Planning Code Section 209.3(d) – "Social service or philanthropic facility providing assistance of a charitable or public service nature and not of a profitmaking or commercial nature." This use requires a Conditional Use Authorization at the subject properties.

Planning Code Sections 209.3(d), 237 (Van Ness Automotive SUD) and 223(p)<sup>2</sup> to determine the most appropriate use of the facility. The response also included a Request for Zoning Administrator Hearing to refer the item to the Director for enforcement under Planning Code Section 176.1.

On September 17, 2011, it came to the attention of the Planning Department that AAU had again acquired additional properties. This action further delayed the processing of the AAU's EIR.

On November 4, 2011, the Department notified AAU in writing that the Department could no longer keep other existing violations "on hold" because "[e]very subsequent purchase of property necessitates analysis and possible revision of the EIR project description which necessarily delays the completion of that document. Without an EIR, neither the AAU nor the City can move forward with the appropriate permits to bring the pre-EIR properties into compliance with City codes, not to mention the post-EIR properties." On the same date, the Department initiated enforcement proceedings against the AAU for other properties that were in violation of the Planning Code. As part of this process, the Department inadvertently issued a duplicate Enforcement Notice (EN) for the subject property.

On November 21, 2011, David, P, Cincotta, Attorney for AAU, responded to the Department's enforcement case for this property. The response argued that "930 Van Ness Avenue is a car museum, open to the general public. This use is not specifically related to the educational purposes or function of the University." The response stated that "an appropriate use category for it might be 209.4(a) other community facility not publicly owned but open for public use."<sup>3</sup>

On May 29, 2012, AAU submitted an application for Conditional Use Authorization (Case No. 2012.0686C) for the subject properties to authorize a private parking garage/auto storage use (not open to the public) under Planning Code Sections 237 and 223(p). Additionally, the application stated that the auto museum would seek authorization under Planning Code Section 209.6(a)<sup>4</sup> as a Public Use, which is a principally permitted use in the subject zoning district.

On January 29, 2013, a Zoning Administrator's hearing was held at the Planning Department to hear evidence regarding the legal use of the properties (see below).

On February 13, 2013, The Planning Department conducted an additional site inspection to both properties. Although it appeared that AAU's office uses had vacated the property, there was no change to the previous observed operation of a Post-Secondary Educational Institution and the parking

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<sup>2</sup> Planning Code Section 223(p) – "Major (nonaccessory) parking garage not open to the public." This use requires a Conditional Use Authorization at the subject properties.

<sup>3</sup> Planning Code Section 209.4(a) - "Community clubhouse, neighborhood center, community cultural center or other community facility not publicly owned but open for public use, in which the chief activity is not carried on as a gainful business and whose chief function is the gathering of persons from the immediate neighborhood in a structure for the purposes of recreation, culture, social interaction or education..." This use requires a Conditional Use Authorization at the subject properties.

<sup>4</sup> Planning Code Section 209.6(a) - "Public structure or use of a nonindustrial character, when in conformity with the Master Plan. Such structure or use shall not include a storage yard, incinerator, machine shop, garage or similar use." This use is principally permitted at the subject properties.

April 25, 2014

garage/auto storage use (not open to the public). During the site visit, it was noted that AAU students frequent the property to study the vehicles. Additionally, the Department observed a sign indicating that the tours of the auto collection were available to the public. The Department requested additional information regarding AAU's claim that the building was used as a museum, including the frequency of tours and number of people accommodated for on the tours.

On July 2, 2013, AAU provided information that in 2012 approximately thirty tours were conducted, each with an average size of 40-50 people.

### **EVIDENCE PRESENTED AT THE ZONING ADMINISTRATOR'S HEARING**

A public hearing for the matter was held on January 22, 2013. At this hearing, AAU was represented by Robert Passmore, Patrice Fambrini, and Marne Sussman, and interested members of the public included Greg Scott, Patricia Vaughey and Sue Hestor.

At this hearing, AAU argued that 963 O'Farrell Street has historically operated as an auto repair use and continues to do so, in compliance with the Planning Code. AAU also argued that 930 Van Ness Street operates as a private antique car museum visited by art students and the public via appointment and does not operate as an institutional use.

### **DECISION**

**NOTICE OF VIOLATION AND PENALTY UPHeld.** Pursuant to Planning Code Section 176 the Zoning Administrator upholds the Notice of Violation and Penalty issued on June 22, 2010, for the following reasons:

1. The Planning Department maintains that the current operations (auto storage and auto repair) of both buildings are part of AAU's overall Post-Secondary Educational Institution use. This is evidenced by the fact that the current operations are no longer primarily open to the general public and primarily serve AAU's antique car collection. Additionally, during the second site visit, it was disclosed that AAU students frequent the property to study the vehicles. This association further demonstrates that the use of the properties is a significant component of AAU's Post-Secondary Educational Institution use. As such, a Conditional Use Authorization for Post-Secondary Educational Institution is required.
2. On May 29, 2012, AAU submitted an application for Conditional Use Authorization (Case No. 2012.0686C) for the subject properties to authorize a private parking garage/auto storage use (not open to the public) under Planning Code Sections 237 and 223(p); however, the application cannot be processed until the completion of the EIR. As such, the property remains in violation of the Planning Code.
3. AAU has stated that 930 Van Ness Avenue operates as a private antique car museum and seeks authorization under Planning Code Section 209.6(a) as a Public Use, which is a principally permitted use in the subject zoning district. While AAU has provided evidence that the property is open to the public on a limited basis as a museum, they have not provided sufficient evidence

April 25, 2014

to demonstrate that the use qualifies as a Public Use under the Planning Code. Based on the evidence provided, it appears that the private antique car museum is accessory to the primary institutional/auto storage uses of the property.

4. During the hearing the issue regarding the properties building permit history related to the internal connection was discussed. It remains unclear to the Planning Department if the internal connection was authorized by both the Planning Department and the Department of Building Inspection. Therefore, a building permit to authorize the construction of the internal connection is required.
5. The enforcement matter has been properly considered under Planning Code Section 176 and should not be processed under the enforcement mechanisms of Section 176.1 because this is a complex enforcement matter which requires interpretations of the Planning Code.

## TIMELINE TO RESPOND

As noted in the Withdrawal Notice of Stay, the Department will modify the penalty accrual terms for the NOVPs previously subject to the Stay. While appeal periods for the NOVPs are no longer tolled, penalties for the NOVPs will begin accruing on November 2, 2014 if the Draft EIR is not published by November 1, 2014. If the Draft EIR is published by November 1, 2014, the Department may issue a subsequent determination that further modifies the penalty accrual terms for the NOVPs to ensure timely completion of the EIR.

## APPEALS

This decision letter and any assessed penalties may be appealed to the Board of Appeals **within fifteen (15) days from the date of this letter**. Time and materials fees are not appealable. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day that the violation exists, excluding the period of time that the matter has been pending either before the Zoning Administrator or before the Board of Appeals. **For further information, please contact the Board of Appeals in person at 1650 Mission Street, (Room 304) or call (415) 575-6880.**

## ADMINISTRATIVE PENALTIES

If the responsible party does not request any appeal process and does not take corrective action to abate the violation **within the 15 days of the date of this letter**, this Notice of Violation and Penalty will become final. As noted in the **Withdrawal Notice of Stay**, beginning on November 2, 2014 administrative penalties of **\$250 per day** will start to accrue for each day the violation continues unabated if the Draft EIR is not published by November 1, 2014. If the Draft EIR is published by November 1, 2014, the Department may issue a subsequent determination that further modifies the penalty accrual terms for the NOVPs to ensure timely completion of the EIR.

If the Department does not receive payment of any outstanding penalty amount, the Department may forward the matter to the Bureau of Delinquent Revenue for collection as authorized by Article V, Section 10.39 of the San Francisco Administrative Code. Please be advised that payment of the penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will

continue to accrue until the responsible party takes corrective action to abate the violation consistent with this Notice of Violation of Penalty.

**ENFORCEMENT TIME AND MATERIALS FEE**

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations. Additional fees will continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

Sincerely,



Scott F. Sanchez  
Zoning Administrator

Attachment:  
Notice of Violation and Penalty, dated June 22, 2010

Cc:  
Planning Commission  
John Rahaim, Director of Planning  
Christine Haw, Code Enforcement Manager  
Yvonne R. Meré, Deputy City Attorney, City Attorney's Office  
Susan Cleveland-Knowles, Deputy City Attorney, Office of the City Attorney  
Tom Hui, Director, Department of Building Inspection  
Dan Lowrey, Deputy Director, Department of Building Inspection  
Ronald E. Van Buskirk, Attorney, Pillsbury Winthrop Shaw Pittman LLP, Four Embarcadero Center, 22<sup>nd</sup> Floor, San Francisco, CA 94111 (P.O. Box 2824, San Francisco, CA 94126)  
Ralph Marchese, 1388 Sutter Street, Suite 805, San Francisco, CA 94109  
Patrice Fambrini, (via email)  
Sue Hestor, Interested Party, 870 Market Street #1128, San Francisco 94102  
Brad Paul, Interested Party (via email)

中文詢問請電: 558.6378  
Para información en Español llamar al: 558.6378



# SAN FRANCISCO PLANNING DEPARTMENT

## NOTICE OF VIOLATION AND PENALTY Planning Code Section 176

June 22, 2010

Dr. Elisa Stephens, President  
Academy of Art University  
79 New Montgomery Street  
San Francisco, CA 94105

**Complaint ID Nos.:** 10508/10643  
**Site Address:** 930 Van Ness Avenue and 963 O'Farrell Street  
**Assessor's Block/Lot:** 0718/021 and 017  
**Zoning:** RC-4 (Residential-Commercial Combined High Density District)  
Van Ness Special Use District  
Automotive Special Use District  
Illumination Special Sign District  
**Staff Contact:** Dario Jones, (415) 558-6477 or [dario.jones@sfgov.org](mailto:dario.jones@sfgov.org)

**RE:** Violation of Planning Code Section 209.3(i): A Conditional use authorization is required in order to establish a post-secondary educational institution within the RC-4 Zoning District; and,

Violation of Planning Code Sections 237 and 223(p): A Conditional Use Authorization and building permit are required to authorize the establishment of an automobile storage facility; and,

Violation of Planning Code Section 304.5: The Academy of Art University (AAU) is subject to the Institutional Master Plan requirements (IMP) of the Planning Code. AAU does not have a complete IMP on file with the Department and AAU's most recent IMP submittal does not list the subject property.

Dear Dr. Stephens,

You are receiving this notice in order to inform you that beginning on July 8, 2010, the Planning Department will assess a penalty of up to \$250.00 per day (Planning Code Section 176) against the subject property for the following reasons:

1. An Enforcement Notice was issued on April 9, 2010 (via certified mail) with the purpose of informing you that the unauthorized change of use of the subject property (930 Van Ness Avenue/963 O'Farrell Street) from an automobile dealer to that of a post-secondary educational institution and automobile storage facility is in violation of the Planning Code because a Conditional Use Authorization and complete Institutional Master Plan are required.

1650 Mission  
Suite 400  
San Francisco  
CA 94103-2

Reception:  
415.558.6

Fax:  
415.558.6

Planning  
Information:  
415.558.6

2. The Enforcement Notice advised you on the necessary steps to correct the violation; however, those steps have not been taken.
3. The Enforcement Notice informed you that all operations within 930 Van Ness Avenue/963 O'Farrell Street are to cease and desist immediately within 15 days from receipt of the Enforcement Notice.
4. To date the Planning Department has not received a direct response to the Enforcement Notice and the violation continues unabated; therefore, beginning on July 8, 2010, an administrative penalty of \$250 per day will be assessed against the property located at 930 Van Ness Avenue/963 O'Farrell Street as long as the use continues to operate in violation of the Planning Code.

## BACKGROUND

In 2006, the Planning Department's Code Enforcement Division ("Department") issued a Notice of Violation to the Academy of Art University ("AAU") for failure to submit an Institutional Master Plan ("IMP") per Planning Code Section 304.5. AAU responded by submitting a draft IMP (Case No. 2006.0737I). In 2007, the Department presented AAU's IMP to the Planning Commission ("Commission"); however, the Commission deemed it to be incomplete because 1) AAU had not addressed outstanding enforcement issues (see below), and 2) the Commission requested additional information, including a transportation study. In 2008, the Department presented a revised and updated version of AAU's IMP to the Commission; however, the Commission still found it to be incomplete because AAU had not addressed outstanding enforcement issues or provided the requested transportation study. To date, AAU has yet to submit a complete IMP that satisfies the requirements of Section 304.5.

In 2007, the Department provided AAU notice that most of its properties feature violations of the Planning Code, typically for changes of use and signage without benefit of permit. Since 2007, AAU's enforcement issues have been subject to more than 20 public hearings before the Planning Commission and Board of Supervisors.

In 2008, the Department informed AAU that an Environmental Impact Report ("EIR") and Transportation Study would be required to process any permits to legalize unauthorized changes of use. On May 19, 2008, AAU submitted an EIR application, and on August 13, 2008, AAU submitted a Transportation Study Application (Case No. 2008.0586E!). Based on the apparent good faith efforts then made by AAU, the Department allowed existing violations to be placed "on hold" pending completion of the EIR and Transportation Study. AAU was informed that it could not acquire, convert or otherwise utilize any new properties until completion of the EIR, Transportation Study, IMP and processing of necessary entitlements.

On November 3, 2009, an article in the San Francisco Business Times stated that the Academy of Art University had acquired the subject properties. On November 12, 2009, an AAU representative confirmed at a public hearing before the Commission that they had acquired the subject properties. Between November 2009 and February 2010, AAU occupied the subject buildings.

Notice of Violation and Penalty  
930 Van Ness Avenue and 963 O'Farrell Street  
Academy of Art University

June 22, 2010  
Complaint ID Nos.: 10508/10643

On February 18, 2010, the Department performed a site visit to the subject properties and found that the approximately 42,040 and 3,500 sq. ft. buildings were fully occupied and in operation as a post-secondary educational institution and automobile storage facility operated by AAU. The last known legal use for the subject buildings was that of retail automobile showroom (formerly Mercedes-Benz of San Francisco). No permits or authorizations are on file with the Department to change the use to a post-secondary educational institution or automobile storage facility.

Immediate action is required on your part in order to correct this violation and bring both 950 Van Ness Avenue and 963 O'Farrell Street into compliance with the requirements of the Planning Code. Until action has been taken to legalize all uses of the Academy of Art buildings as previously identified in the EIR and IMP all operations within both 950 Van Ness Avenue and 963 O'Farrell Street are required to cease and desist immediately.

### DESCRIPTION OF VIOLATION

The subject property is currently in violation of the following Planning Code sections:

- 1) Per Planning Code Section 209.3(i), a Conditional Use Authorization and building permit are required to authorize the establishment of a post-secondary educational institution within the RC-4 Zoning district. The ground and second level of the subject building are being used by the marketing and outreach departments of AAU. The subject use was established without the required Conditional Use Authorization and building permit. Furthermore, processing of entitlements to legalize the subject property cannot occur until completion of the required EIR, Transportation Study and IMP; and
- 2) Per Planning Code Sections 237 and 223(p): A Conditional Use Authorization and building permit are required to authorize the establishment of an automobile storage facility, which is distinct from the previous use as a retail automobile showroom. Approximately 30 to 40 vehicles are stored on site and are in use as part of AAU's Industrial Design Department. The subject use was established without the required Conditional Use Authorization and building permit. Furthermore, processing of entitlements to legalize the subject property cannot occur until completion of the required EIR, Transportation Study and IMP; and
- 3) Per Planning Code Section 304.5, AAU is subject to the IMP requirements of the Planning Code and the occupancy or use of any portion of a property by AAU use requires an update to the IMP prior to occupancy. AAU does not have a complete IMP on file with the Department and the most recent IMP submittal to the Department does not list the subject building.

### HOW TO CORRECT THE VIOLATION

Listed below are the relevant Planning Code sections that are in violation and what action is immediately required in order to correct the violation:

- 1) PLANNING CODE SECTION 209.3(i) - OPERATION OF A POST-SECONDARY EDUCATIONAL INSTITUTION WITHOUT THE REQUIRED CONDITIONAL USE AUTHORIZATION AND BUILDING PERMIT.

AAU must either:

- A) Demonstrate that it is legally occupying the subject property; OR,
  - B) Immediately cease and desist all operations of a post-secondary educational institution at the subject properties.
- 2) PLANNING CODE SECTIONS 237 AND 223(P) – OPERATION OF AN AUTOMOBILE STORAGE FACILITY WITHOUT REQUIRED CONDITIONAL USE AUTHORIZATION AND BUILDING PERMIT.

AAU must either:

- A) Demonstrate that it is legally occupying the subject property; OR,
  - B) Cease and desist all operations of an automobile storage facility at the subject properties.
- 3) PLANNING CODE SECTION 304.5 – OPERATION OF AN INSTITUTIONAL USE WITHOUT A COMPLETE IMP.

AAU must submit a complete IMP (with transportation study) that includes the subject properties. Please note that the IMP cannot be deemed complete by the Planning Commission until such time that any and all outstanding enforcement issues relating to AAU properties have been resolved.

## PENALTIES

Beginning on July 8, 2010, administrative penalties of up to \$250 per day will begin to be assessed to the responsible party for each day the violation continues unabated, excluding the period of time that the matter has been pending either before the Zoning Administrator or before the Board of Appeals. This notice and any assessed penalties may be appealed to the Board of Appeals. The Board of Appeals may not reduce the amount of the penalty below \$100 per day for each day that the violation exists, excluding the period of time that the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

In addition, please note that per Planning Code Section 350(c) (1), the Planning Department is authorized to charge for time and materials to recover the cost of correcting code violations and violations of Planning Commission and Department conditions of approval of use if such costs are not covered by any permit or application fees collected as part of the legalization of such violations.

## APPEAL PROCESSES

If the responsible party believes that this order to remove a violation of the Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available within fifteen (15) days from the date of this notice:

- 1) The responsible party may request a Zoning Administrator's hearing to show cause why this notice and assessment of penalties are in error and should be rescinded by filing a written

request with the Department (on a form supplied by the Planning Department). The Zoning Administrator shall render a decision within 30 days of such hearing and the responsible party may appeal the Zoning Administrator's decision to the Board of Appeals within 15 days from the date of the decision.

- 2) The responsible party may request that the Zoning Administrator refer the matter to the Director for enforcement action under the process set forth in Planning Code Section 176.1 by filing a written request with the Department (on a form supplied by the Planning Department). The Zoning Administrator shall render a decision within 30 days of such request and the responsible party may appeal the Zoning Administrator's decision to the Board of Appeals within 15 days from the date of this notice. If the Zoning Administrator determines that the enforcement case will proceed under Planning Code Section 176 that determination shall be made as part of a final decision and is not appealable separately from the decision on the merits.
- 3) The responsible party may waive the right to a Zoning Administrator's hearing and proceed directly to an appeal to the Board of Appeals, 1650 Mission Street, Room 304, San Francisco, CA 94103, telephone: (415) 575-6880, website: [www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal).

#### **OTHER APPLICATIONS UNDER PLANNING DEPARTMENT CONSIDERATION**

We want to assist you in ensuring the subject property is in full compliance with Planning Code and that no violations are pending. The Planning Department requires that pending violations be resolved prior to the processing and approving of any new building permits or other applications. Therefore, any applications under consideration by the Planning Department for the subject site will be placed on hold until further notice.

If any interested party believes that this order to remove a violation of the Planning Code is an abuse of discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals, 1660 Mission Street, Room 3036, San Francisco, CA 94103, telephone: (415) 575-6880, website: [www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal) within fifteen (15) days from the date of this notice.

Sincerely,



Scott F. Sanchez  
Acting Zoning Administrator

**Cc:**

John Rahaim, Director of Planning  
Christine Haw, Code Enforcement Manager  
Bill Wycko, Environmental Review Officer  
Nannie Turrell, Planning Department MEA  
Alex Tse, Deputy City Attorney, San Francisco City Attorney's Office  
David Cincotta, JMBM LLP, 2 Embarcadero Center, 5th Floor, San Francisco, CA 94111

Notice of Violation and Penalty  
930 Van Ness Avenue and 963 O'Farrell Street  
Academy of Art University

June 22, 2010  
Complaint ID Nos.: 10508/10643

Paul Correa, Office of the President, Academy of Art University, 79 New Montgomery Street, San Francisco, CA  
94105  
EUROMOTORS INC, c/o EUROPEAN MOTORS LTD, 500 8TH ST, SAN FRANCISCO, CA 94103  
BARSOTTI FAMILY LVG TR, JULES & GERALDINE BARSOTTI, 500 8TH ST, SAN FRANCISCO,  
CA94103



# SAN FRANCISCO PLANNING DEPARTMENT

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## Notice of Violation and Penalty Decision

Date: April 25, 2014

Property Owner: 701 Chestnut Street LLC  
Academy of Art University  
79 New Montgomery Street  
San Francisco, CA 94105

Site Address: 2295 Taylor Street (A.K.A. 701 Chestnut Street)  
Block/Lot: 0066/001  
Zoning District: North Beach Neighborhood Commercial District (NCD)  
Complaint Number: 8610  
Code Violations: 121.2; Exceeding Use Size Limits in the North Beach NCD; 178(e)(5),  
Unauthorized Change of Use without a Conditional Use Authorization in  
North Beach NCD; 722.22, Off-Street Parking; 722.81, Establishing a Large  
Institutional/Educational Service Use on the Second Story.

Administrative Penalty: \$250 Each Day of Violation  
Appeal Date: Within 15 days from the Date of this Letter  
Staff Contact: Dario Jones, (415) 558-6477 or [dario.jones@sfgov.org](mailto:dario.jones@sfgov.org)  
DECISION: NOTICE OF VIOLATION AND PENALTY UPHELD

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

### DESCRIPTION OF VIOLATION

The Zoning Administrator has determined that the above referenced property is in violation of the Planning Code Sections listed below:

- 1. Violation of Planning Code Sections 722.21 and 121.2:** The Planning Code prohibits non-residential uses greater than 4,000 sq. ft. in the North Beach Neighborhood Commercial District ("NCD"). The Academy of Art University ("AAU") is in violation for exceeding the 4,000 sq. ft. non-residential use size limit of the North Beach NCD by establishing a 20,880 sq. ft. Large Institutional Educational Service<sup>1</sup> use. AAU expanded the last known legal use of the building (a retail use on the ground floor and parking garage on the second story) beyond the 4,000 sq. ft. use size limit by converting both floors to a Large Institutional/Educational Service use without obtaining the appropriate permits. The proposed use size cannot be legalized under the current zoning and would require a legislative amendment to allow legalization.

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<sup>1</sup> Per Planning Code Section 790.50(c), a Large Institutional Use is defined as "a public or private, nonprofit or profit-making use, excluding hospitals and medical centers, which provides services to the community and meets the applicable provisions of Section 304.5 of this Code concerning institutional master plans, including but not limited to the following: **Educational Service**. A use certified by the Western Association of Schools and Colleges which provides educational services, such as a school, college or university. It may include, on the same premises, employee or student dormitories and other housing operated by and affiliated with the institution".

April 25, 2014

2. **Violation of Planning Code Section 178(e)(5):** AAU is in violation for changing a use that already exceeds the 4,000 sq. ft. use size provisions of Section 121.2 without a required Conditional Use Authorization ("CU") as required per the Planning Code.
3. **Violation of Planning Code Section 722.22:** The Academy of Art University is in violation for not providing off-street parking spaces. In this case, a post-secondary educational institution use requires one off-street parking space for every two classrooms per Planning Code Section 151.
4. **Violation of Planning Code Section 722.81:** AAU is in violation for the establishment of a Large Institutional Educational Service use on the second story of the subject property without receiving CU authorization as required per Planning Code Section 722.81 for the North Beach NCD.

### TIMELINE OF INVESTIGATION

In 2007, the Department provided AAU notice that most of its properties feature violations of the Planning Code, typically for changes of use and signage without benefit of permit including for the property located at 2295 Taylor Street (AKA 701 Chestnut Street). Although a CU application was submitted for the subject property in 2007 (Case No. 2007.1079C), the Planning Department informed AAU that an Environmental Impact Report ("EIR") and Transportation Study would be required to process any permits to legalize unauthorized changes of use.

On May 19, 2008, AAU submitted an EIR application, and on August 13, 2008, AAU submitted a Transportation Study Application (Case No. 2008.0586E!). The Department allowed existing violations to be placed "on hold" pending completion of the EIR and Transportation Study. The Department informed the AAU that it could not acquire and convert or otherwise use any new properties in San Francisco until after the Department completed the EIR, including the Transportation Study, the Commission approved AAU's IMP and the City processed necessary entitlements based on the final certified EIR.

In April 2010, as part of a Joint Task Force inspection for AAU properties, the Department performed a site visit to the subject property and found that AAU had illegally established a 20,880 sq. ft. Large Institutional/Educational Service use on both floors of the two-story building.

Further review of permit history for the property found that in 1992, Large Institutional/Educational Service use, The San Francisco Art Institute ("SFAI"), was granted a Conditional Use (Case No. 92.400C - Motion No. 13457) by the Planning Commission for the conversion and expansion within the subject property. Further it was found that although the SFAI did occupy the property, SFAI failed to submit a building permit application to authorize the change of use and as a result the previous Conditional Use Authorization had expired. Therefore, the last known legal use of the building was a retail use (dba "The GAP").

On December 3, 2010, prior to a scheduled CU hearing, to modify the previous CU for the property to remove the off-street parking requirement, before the Planning Commission, AAU withdrew its CU application.

On June 6, 2011, an Enforcement Notice was issued with the information regarding the Planning Code requirements pertaining to the unauthorized Large Institutional/Educational Service use and requested that AAU either demonstrate that AAU was legally authorized to occupy and operate a Large Institutional Educational Service at the subject property or to cease all operations within the subject property.

On June 21, 2011, AAU responded to the June 6, 2011 Enforcement Notice and submitted arguments regarding the legality of the subject building. In this letter, AAU requested that this matter "be first heard by the Zoning Administrator." The Enforcement Notice included a description of the appeals processes for enforcement cases, including the requirement for filing a Request for Zoning Administrator Hearing or appeal to the Board of Appeals within 15 days of the issuance of the Notice of Violation and Penalty.

On September 17, 2011, the Department learned that, despite the admonition not to acquire, convert or otherwise use new properties, AAU had acquired additional properties. This action further delayed the processing of the EIR.

On October 28, 2011, the Zoning Administrator determined that AAU had not demonstrated that it had occupied the subject property legally and issued a Notice of Violation and Penalties (NOVP).

On November 4, 2011, the Department notified AAU in writing that the Department could no longer keep other existing violations "on hold" because "[e]very subsequent purchase of property necessitates analysis and possible revision of the EIR project description which necessarily delays the completion of that document. Without an EIR, neither the AAU nor the City can move forward with the appropriate permits to bring the pre-EIR properties into compliance with City codes, not to mention the post-EIR properties." On the same date, the Department initiated enforcement proceedings against the AAU for other properties that were in violation of the Planning Code.

On January 22, 2013, a Zoning Administrator's hearing was held at the Planning Department to hear evidence regarding the legal use of the property (see below). This hearing was continued to February 12, 2013, to allow additional time for Mr. Bob Passmore, Project Sponsor for AAU, to demonstrate additional evidence that AAU had legally occupied both floors of the subject property.

### **EVIDENCE PRESENTED AT THE ZONING ADMINISTRATOR'S HEARING**

Public hearings for the matter were held on January 22, 2013 and February 12, 2013. At the January 22, 2013 hearing, AAU was represented by Robert Passmore, Patrice Fambrini, and Marne Sussman, and interested members of the public included Greg Scott, Patricia Vaughey and Sue Hestor. At the February 12, 2013 hearing, AAU was represented by Robert Passmore and Patrice Fambrini, and interested members of the public included Sue Hestor and John Sanger.

At these hearings, AAU argued that a 1993 CU Authorization (Case No. 92.400IECV) to allow conversion and expansion of the building by the San Francisco Art Institute (SFAI) authorized conversion of the building for use by AAU.

At the February 12, 2013 hearing, John Sanger, Attorney, submitted an affidavit (executed January 31, 2013) and testimony regarding the prior permitting and use of the subject property. Mr. Sanger testified that he provided pro bono legal assistance to SFAI at the time it sought the 1993 CU Authorization and served on SFAI's Board of Trustees. Mr. Sanger stated that while SFAI obtained the CU Authorization in 1993, it did not pursue the project. He also testified that SFAI investigated conversion of the second floor parking garage into a Large Institutional/Educational Service use; but, determined that it was not feasible because "such occupancy would require substantial structural retrofitting to meet the demands for human occupancy" and subsequently sold the property.

## DECISION

**NOTICE OF VIOLATION AND PENALTY UPHeld.** Pursuant to Planning Code Section 176 the Zoning Administrator upholds the Notice of Violation and Penalty issued on October 28, 2011, for the following reasons:

- In 1993, the subject property received a CU Authorization for the establishment of a Large Institutional/Educational Service use (San Francisco Art Institute, or SFAI) to occupy the 2<sup>nd</sup> story, enlarge the building in excess of 5000 square feet in area with the addition of a third story, allow a single-use greater than 2500 square feet, and provide required off-site parking for the use at 800 Chestnut Street (SFAI Campus).

Although the subject property was authorized for the above entitlements, evidence presented during the February 12, 2013 hearing indicates that the authorizations were not pursued by SFAI. Below is the information presented during the hearing that supports this decision:

1. A building permit was required to establish the uses outlined in the CU Authorization; however research of Planning Department and Department of Building Inspection records could not locate any building permits to document a change of use from retail to a Large Institutional/Educational Service use, to increase the square footage of the subject property, or to relocate the required parking from the subject property to 800 Chestnut Street.
2. Although it appears that SFAI may have occupied the ground floor of the subject property, at no time was substantial evidence, including a building permit, provided by Mr. Passmore that would demonstrate that SFAI exercised the CU Authorization.
3. In addition, an affidavit provided by Mr. John M. Sanger, Attorney, indicates that the SFAI never exercised its entitlements and abandoned all proposed changes granted for the subject property after it was discovered that it was not feasible to develop the second floor for human occupancy due to building code requirements.

## PENALTIES

Pursuant to Planning Code Section 176, the administrative penalties of **\$250 per day** have been assessed to the responsible party for each day the violation continues unabated, excluding the period of time the

April 25, 2014

Notice of Violation and Penalty has been pending before the Zoning Administrator. The Notice of Violation and Penalty was issued on October 28, 2011 and Zoning Administrator Hearings were held on January 22, 2013 and February 12, 2013. No penalties are due at this time, however, failure to take the compliance actions as noted above or appeal to the Board of Appeals **within fifteen (15) days** will result in accrual of penalties thereafter.

### **ENFORCEMENT TIME AND MATERIALS FEE**

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations. Additional fees will continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

### **APPEALS**

This decision letter and any assessed penalties may be appealed to the Board of Appeals **within the 15-day time limit** from the date of this decision. Again, the time and materials fees are not appealable. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day that the violation exists, excluding the period of time that the matter has been pending either before the Zoning Administrator or before the Board of Appeals. **For further information, please contact the Board of Appeals in person at 1650 Mission Street, (Room 304) or call (415) 575-6880.**

Sincerely,



Scott F. Sanchez  
Zoning Administrator

Attachment:

Notice of Violation and Penalty, dated October 28, 2011  
Affidavit from John M. Sanger (executed January 31, 2013)

Cc:

Planning Commission

John Rahaim, Director of Planning

Christine Haw, Code Enforcement Manager

Yvonne R. Meré, Deputy City Attorney, City Attorney's Office

Susan Cleveland-Knowles, Deputy City Attorney, Office of the City Attorney

Tom Hui, Director, Department of Building Inspection

Dan Lowrey, Deputy Director, Department of Building Inspection

Ronald E. Van Buskirk, Attorney, Pillsbury Winthrop Shaw Pittman LLP, Four Embarcadero Center, 22<sup>nd</sup> Floor, San Francisco, CA 94111 (P.O. Box 2824, San Francisco, CA 94126)

Ralph Marchese, 1388 Sutter Street, Suite 805, San Francisco, CA 94109

Patrice Fambrini, (via email)

Sue Hestor, Interested Party, 870 Market Street #1128, San Francisco 94102  
Brad Paul, Interested Party (via email)  
John Sanger, Interested Party (via email)

中文詢問請電: 558.6378  
Para información en Español llamar al: 558.6378



# SAN FRANCISCO PLANNING DEPARTMENT

## NOTICE OF VIOLATION AND PENALTY

October 28, 2011

**Property Owner**

Dr. Elisa Stephens, President  
Academy of Art University  
79 New Montgomery Street  
San Francisco, CA 94105

**Site Address:** 2295 Taylor Street (A.K.A 701 Chestnut Street)  
**Assessor's Block/Lot:** 0066/001  
**Zoning District:** North Beach Neighborhood Commercial District  
**Complaint Number:** 8610  
**Code Violation:** Unauthorized Large Institutional Educational Service Use  
**Administrative Penalty:** Up to \$250.00 for each day of violation  
**Respond By:** Within 15 Days from the Date of this Letter  
**Staff Contact:** Dario Jones, (415) 558-6477 or [dario.jones@sfgov.org](mailto:dario.jones@sfgov.org)

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

Reception:  
415.558.6378

Fax:  
415.558.6409

Planning  
Information:  
415.558.6377

The Planning Department has determined that the above referenced property is in violation of Planning Code for not using the property in the manner it is authorized. As the owner or leaseholder of the subject property, you are a 'responsible' party to bring the above property in compliance with Planning Code. The details of the violation are discussed below:

### DESCRIPTION OF VIOLATION

The subject property is currently in violation of the following Planning Code sections:

1. **Violation of Planning Code Section 722.21 and 121.2:** The Planning Code prohibits non-residential uses greater than 4,000 sq. ft. in the North Beach Neighborhood Commercial District ("NCD"). The Academy of Art University ("AAU") is in violation for exceeding the 4,000 sq. ft. non-residential use size limit of the North Beach NCD by establishing a 20,880 sq. ft. Large Institutional Educational Service<sup>1</sup> use. AAU expanded the last known legal use of the building (a retail use on the ground floor and parking garage on the second story) beyond the 4,000 sq. ft. use size limit by converting both floors to a large Institutional Educational Service use.

<sup>1</sup> Per Planning Code Section 790.50 a Large Institutional Use is defined as "a public or private, nonprofit or profit-making use, excluding hospitals and medical centers, which provides services to the community and meets the applicable provisions of Section 304.5 of this Code concerning institutional master plans, including but not limited to the following: Educational Service. A use certified by the Western Association of Schools and Colleges which provides educational services, such as a school, college or university. It may include, on the same premises, employee or student dormitories and other housing operated by and affiliated with the institution".

2. **Violation of Planning Code Section 178(e)(5):** AAU is in violation for changing a use that already exceeds the 4,000 sq. ft. use size provisions of Section 121.2 without a required Conditional Use Authorization ("CU") as required per the Planning Code.
3. **Violation of Planning Code Section 722.22:** The Academy of Art University is in violation for not providing off-street parking spaces. In this case, a post-secondary educational institution use requires one off-street parking space for every two classrooms per Planning Code Section 151.
4. **Violation of Planning Code Section 722.81:** AAU is in violation for the establishment of a Large Institutional Educational Service use on the second story of the subject property without receiving CU authorization as required per Planning Code Section 722.81 for the North Beach NCD.
5. **Violation of Planning Code Section 304.5:** AAU is in violation for the establishment of a Large Institutional Educational Service Use prior to a required Institutional Master Plan ("IMP") hearing before the Planning Commission. Until an IMP has been heard and closed by the Planning Commission, the Large Institutional Educational Service use is not authorized to operate.

## BACKGROUND AND TIMELINE

In 2006, the Planning Department's Code Enforcement Division ("Department") issued a Notice of Violation to the AAU for failure to submit an IMP per Planning Code Section 304.5. AAU responded by submitting a draft IMP (Case No. 2006.0737I). In 2007, the Department presented AAU's IMP to the Planning Commission ("Commission"); however, the Commission deemed it to be incomplete because 1) AAU had not addressed outstanding enforcement issues (see below), and 2) the Commission requested additional information, including a transportation study. In 2008, the Department presented a revised and updated version of AAU's IMP to the Commission; however, the Commission still found it to be incomplete because AAU had not addressed outstanding enforcement issues or provided the requested transportation study.

In 2007, the Department provided AAU notice that most of its properties feature violations of the Planning Code, typically for changes of use and signage without benefit of permit including for the property located at 2295 Taylor Street.

Although a CU application was submitted for the subject property in 2007 (Case No. 2007.1079C), the Planning Department informed AAU that an Environmental Impact Report ("EIR") and Transportation Study would be required to process any permits to legalize unauthorized changes of use.

On May 19, 2008, AAU submitted an EIR application, and on August 13, 2008, AAU submitted a Transportation Study Application (Case No. 2008.0586E!). Based on the apparent good faith efforts then made by AAU, the Department allowed existing violations to be placed "on hold" pending completion of the EIR and Transportation Study. AAU was informed that it could not acquire, convert or otherwise utilize any new properties until completion of the EIR, Transportation Study, IMP and processing of necessary entitlements.

In April 2010, as part of a Joint Task Force inspection for AAU properties, the Department performed a site visit to the subject property and found that AAU had illegally established a 20,880 sq. ft. Large Institutional Educational Service Use.

Further review of permit history for the property found that in 1992, an educational service use, The San Francisco Art Institute ("SFAI"), was granted a Conditional Use (Case No. 92.400C – Motion No. 13457) by the Planning Commission for the conversion and expansion within the subject property. Further it was found that although the SFAI did occupy the property, SFAI failed to submit a building permit application to authorize the change of use and as a result the previous Conditional Use Authorization had expired. Therefore, the last known legal use of the building was a retail use (GAP).

On December 2, 2010, prior to a scheduled CU hearing before the Planning Commission, AAU withdrew its 2007 CU application.

On June 6, 2011, an Enforcement Notice was issued to you with the information regarding the Planning Code requirements pertaining to the unauthorized educational use along with steps describing how to bring the subject property into compliance. To date, AAU's large institutional educational use at 2295 Taylor Street continues to remain out of compliance with the Planning Code.

### HOW TO CORRECT THE VIOLATION

- 1) Demonstrate that AAU is legally authorized to occupy and operate a Large Institutional Educational Service on both the ground floor and second story of the subject property; or,
- 2) Cease all operations within the subject property.

To prevent further enforcement action and avoid accrual of penalties, the responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation(s) has been abated. Evidence may include the following: issuance of a building permit to correct the violation, site visit by planning staff or photographs demonstrating compliance or abatement. Please contact staff planner noted at the top of this notice to submit evidence.

### TIMELINE TO RESPOND

The responsible party has **fifteen (15) days from the date of this notice** to either;

- 1) Correct the violation as noted above; or
- 2) Appeal this Notice of Violation and Penalty as noted below.

### APPEAL PROCESSES

If the responsible party believes that this order to remove a violation of Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available **within fifteen (15) days from the date of this notice**:

- 1) The responsible party may request a Zoning Administrator Hearing under Planning Code Section 176 to show cause why this Notice of Violation and Penalty is issued in error and should be rescinded by filing the Request for Zoning Administrator Hearing Form and supporting evidence to the Planning Department. The Zoning Administrator shall render a decision within 30 days of such hearing and the responsible party may appeal the Zoning Administrator's decision to the Board of Appeals within 15 days from the date of the decision.
- 2) The responsible or any interested party may waive the right to a Zoning Administrator Hearing and proceed directly to appeal the Notice of Violation and Penalty to the Board of Appeals located at 1650

Notice of Violation and Penalty  
2295 Taylor Street  
Academy of Art University

October 28, 2011  
Complaint Identification Number: 8610

Mission Street, Room 304, San Francisco, CA 94103, telephone: (415) 575-6880, website: [www.sfgov.org/bdappeal](http://www.sfgov.org/bdappeal). The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

- 3) The responsible party may also file a written request to the Zoning Administrator to terminate abatement proceedings under Section 176 and refer the matter to the Planning Director for enforcement action under the process set forth in Code Section 176.1. If the Zoning Administrator determines that the enforcement case will continue under Code Section 176, this determination is not appealable separate from the merits of the case. The Zoning Administrator shall render a decision on the case within 30 days of the referral request and the responsible party may appeal the Zoning Administrator's decision to the Board of Appeals within 15 days of such decision.

### ADMINISTRATIVE PENALTIES

If any responsible party does not request any appeal process and does not take corrective action to abate the violation within the 15-day time limit as noted above, this Notice of Violation and Penalty will become final. Beginning on the following day, administrative penalties of up to **\$250 per day** to the each responsible party will start to accrue for each day the violation continues unabated. If the accruing penalty amount is not received within 30 days from the final date of the Notice of Violation and Penalty, the Planning Department will forward the matter to the Bureau of Delinquent Revenue for collection as authorized by Article V, Section 10.39 of the San Francisco Administrative Code. Please be advised that payment of the penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until a corrective action is taken to abate the violation.

### ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations. Accordingly, the responsible party is currently subject to a fee of \$1130 for 'Time and Materials' cost associated with the Code Enforcement investigation. Please submit a check payable to 'Planning Department Code Enforcement Fund' within 15 days from the date of this notice. Additional fees will continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

Notice of Violation and Penalty  
2295 Taylor Street  
Academy of Art University

October 28, 2011  
Complaint Identification Number: 8610

### OTHER APPLICATIONS UNDER PLANNING DEPARTMENT CONSIDERATION

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to the abatement of violation will be placed on hold until corrective actions are taken to abate the violation. We want to assist you in ensuring that the subject property is in full compliance with Planning Code. You may contact the enforcement planner as noted above with any questions.

Sincerely,



Scott F. Sanchez  
Zoning Administrator

cc: John Rahaim, Director of Planning  
Christine Haw, Code Enforcement Manager  
Alex Tse, Deputy City Attorney, San Francisco City Attorney's Office  
David Cincotta, JMBM LLP, 2 Embarcadero Center, 5th Floor, San Francisco, CA 94111  
Ralph Marchese-1388 Sutter Street, Suite 805-San Francisco, CA 94109

中文詢問請電: 558.6378  
Para información en Español llamar al: 558.6378

# SANGER & OLSON

576 SACRAMENTO STREET  
SEVENTH FLOOR  
SAN FRANCISCO, CALIFORNIA 94111-3023  
TEL 415.693.9300 + FAX 415.693.9322  
real.estate@sanger-olson.com

## Transmittal Memorandum

February 6, 2013, 2013

**To:** Mr. Scott Sanchez  
Zoning Administrator  
San Francisco Planning Department  
1650 Mission Street, 4<sup>th</sup> Floor  
San Francisco, CA 94013

**From:** John M. Sanger

**Re:** Hearing on 2295 Taylor Street (aka 701 Chestnut Street)

### Herewith the following:

- Executed Affidavit with Regard to Prior Permitting and Use of Referenced Property by the San Francisco Art Institute

Affidavit Given in Connection with Zoning Administrator's Hearing on Use and Occupancy of 2295 Taylor Street (aka 701 Chestnut Street), San Francisco, California

I, John M. Sanger, say:

1. I am a resident of San Francisco and work in the City, having my office at 576 Sacramento Street, 7<sup>th</sup> Floor. I am and have been for over 40 years a member of the California bar and my practice area is real estate, with a specialty in land use and zoning laws. I have represented clients in complying with the zoning and building and other laws of the City and County of San Francisco for many years.
2. In 1991 and 1992 I provided pro bono legal assistance to the San Francisco Art Institute (SFAI) with respect to negotiating and concluding the purchase of the property at 2295 Taylor Street (known to SFAI and me as 701 Chestnut Street) for purposes of serving as a potential site for the SFAI graduate school after substantial required redevelopment. At that time and thereafter, after becoming a member of the Board of Trustees, I continued to assist SFAI in complying with the Planning Code's requirement for an institutional master plan (IMP) and for a conditional use authorization and variance for use of the property for SFAI purposes and with regard to the use, occupancy and potential development of the same property..
3. In that role I was principally responsible for assuring compliance with City codes. Accordingly, after submission of the IMP and consultation with the Department of Planning and its Zoning Administrator, I caused to be submitted a conditional use application and variance application for use of

the property for SFAI purposes and ultimately for the planned graduate school, which was foreseen to require expansion to the maximum possible height allowed under the Planning Code by the addition of another story, conversion of the second floor from parking to studio use and replacement of the lost parking at 800 Chestnut. The conditional use application was submitted and approved by the Planning Commission subject to certain conditions, among which I believe the most significant was the replacement of parking which would be lost by conversion of the second story.

However, none of the conditions were ever triggered by reason of an ultimate determination that it was not feasible to redevelop the property as planned and, as discussed below, because it was not feasible to convert the second floor from parking to other purposes even for interim more limited uses. Consequently conditions involving the need to expand parking at 800 Chestnut Street were never triggered and no other work at 800 Chestnut was required in order to occupy 701 Chestnut as it was occupied by SFAI.

4. Potential redevelopment of the site as then planned for the graduate school would have required substantial expansion and involved an architectural competition and selection of an architect. Pending that possibility SFAI wished to make interim use of the property for studio and related purposes involving teaching and exhibition of work by students. Accordingly, I assisted SFAI in investigating the possibility of obtaining a building permit for a change of use and occupancy of the second story from parking to studio and related uses. The second story had been designed and was then in use only for parking, the use it served in connection with the GAP store which had been there for many years prior to its acquisition by SFAI. To SFAI's disappointment, we discovered that occupancy of the second floor for studio, teaching, office or other purposes involving human occupancy, rather than the parking of vehicles, was not going to be possible by reason

of the fact that such occupancy would require substantial structural retrofitting to meet the demands for human occupancy. Due to the expense involved, such work was determined to be prohibitive for interim use purposes and the use of the second floor was confined to parking thereafter while the first floor was used for studio and teaching and gallery space as required by the conditional use approval pursuant to appropriate permits. Some partitioning occurred and probably some electrical and plumbing work but nothing very substantial to the best of my memory since the long-term plan was for something quite different.

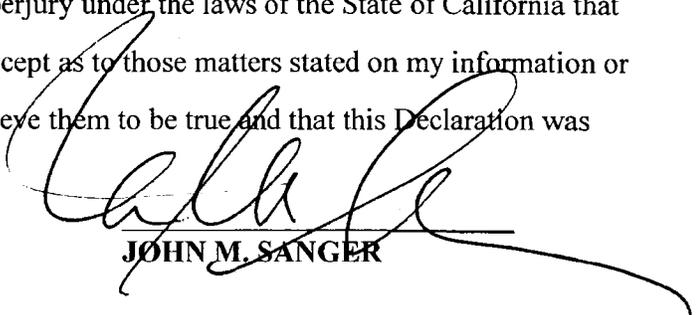
5. During the same period a master plan was developed for 800 Chestnut and some improvements were made to add a digital arts center, an elevator, accessible restrooms and some other small improvements primarily to enhance accessibility and accommodate some expansion of program. None of these changes had anything to do with 701 Chestnut and none of the requirements to be implemented at 800 Chestnut were ever triggered due to lack of proceeding with the work at 701 Chestnut.
6. To the best of my memory before I left the Board of Trustees in 2000 it had generally been determined that the site was not large enough to accommodate the needs of SFAI for its graduate school, especially given the limits on and expense of redevelopment for such purposes. The plan at that time was simply to retain the property for general purposes, including exhibition and gallery space as required by the conditional use authorization in order to maintain a transparent or retail-like frontage.
7. Thereafter I heard about the decision to sell the property and to locate the expanded graduate program elsewhere from the subsequent Chair of the Board of Trustees and interim President whom I knew quite well. He also informed me that the property had been acquired by a foreign corporation acting on behalf of the Academy of Art in order to disguise the fact that it

was acquiring the property, presumably in order to have a presence and signage just a block away from SFAI on the main access street to SFAI which, I was informed caused substantial confusion as to which school occupied what property.

8. I personally observed for many years thereafter, including the period after 2006 when I rejoined the SFAI Board of Trustees, the fact that the second floor had been converted to a different occupancy than parking. From what I did observe, the form of occupancy was that of offices or studios although I never entered to determine whether that was true or not. The entry to the second floor which in the past had generally been open to allow vehicle entry appeared always closed. I assumed that such occupancy was without permit since I never observed any substantial structural work being undertaken at the property and knew that significant structural changes would have been required to comply with the Building Code.

I have personal knowledge of the foregoing and could competently testify to the foregoing if called as a witness.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct except as to those matters stated on my information or belief and as to those matters I believe them to be true and that this Declaration was executed on January 31, 2013.



**JOHN M. SANGER**



# SAN FRANCISCO PLANNING DEPARTMENT

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## ENFORCEMENT NOTIFICATION

April 25, 2014

### Property Owner

2225 Jerrold Avenue LLC  
79 New Montgomery Street LLC  
San Francisco CA, 94105

### Business Operator

Dr. Elisa Stephens, President  
Academy of Art University  
79 New Montgomery Street  
San Francisco, CA 94105

**Site Address:** 2225 Jerrold Avenue  
**Assessor's Block/Lots:** 5286A/020  
**Zoning District:** PDR-2 District (Core Production, Distribution, and Repair)  
**Complaint Number:** 11699  
**Code Sections:** 217(h): Postsecondary Educational Institution  
**Administrative Penalty:** Up to \$250 Each Day of Violation  
**Respond By:** Within 15 days from the Date of this Letter  
**Staff Contact:** Dario Jones, (415) 558-6477 or [dario.jones@sfgov.org](mailto:dario.jones@sfgov.org)

The Planning Department has received complaints that Planning Code violations exist on your above referenced property that need to be resolved. As the owner and leaseholder of the subject property, you are a responsible party. The purpose of this notice to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property in compliance with Planning Code. The details of the violation are discussed below:

### DESCRIPTION OF VIOLATION

**Violation of Planning Code Section 217(h):** The subject property was found to be operating as a recreational facility as part of the Academy of Art University's Postsecondary Educational Institution<sup>1</sup> use. Any operation of a Postsecondary Educational Institution use is not permitted in the PDR-2 Zoning District per Planning Code Section 217(h).

On April 19, 2013, Planning Department Staff observed an AAU campus bus shuttle and approximately 10 to 12 students in athletic gear outside the subject property.

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<sup>1</sup> Per Planning Code Section 217(h): "Postsecondary educational institution for the purposes of academic, professional, business or fine-arts education, which is required to submit an institutional master plan pursuant to Section 304.5 of this Code. Such institution may include employee or student dormitories and other housing operated by and affiliated with the institution. Such institution shall not have industrial arts as its primary course of study."

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

On April 30, 2013, a site visit was conducted by Planning Department Staff, Christine Haw and Dario Jones, with AAU representatives, Patrice Fambrini, Gordon North, Bob Passmore, and others at the subject property. Planning Department staff found that two of the large warehouse rooms had been converted to a weight training room and a full-scale basketball court. Additionally, Planning Department staff has observed AAU students visiting the facility, which is served by the AAU campus shuttle.

## HOW TO CORRECT THE VIOLATION

1. You must demonstrate that the subject property is operating in compliance; or,
2. You must cease and desist all Postsecondary Educational Institution operations at the subject property and remove all of AAU's recreational facilities, including the full scale basketball court and weight lifting equipment from the subject property.

## TIMELINE TO RESPOND

The responsible party has **fifteen (15) days from the date of this notice** to submit adequate evidence to demonstrate that either no violation exists or that correction actions have been taken to abate the violation of the above property. Please contact the enforcement planner noted at the top of this notice to submit such evidence. The abatement actions shall be taken as early as possible. Any unreasonable delays in abatement of the violations may result in further enforcement action by the Planning Department.

## PENALTIES AND APPEAL RIGHTS

Failure to respond to this notice by correcting the violations or demonstrating compliance with the Planning Code **within fifteen (15) days from the date of this notice** will result in the issuance of a **Notice of Violation and Penalty** by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day the violations continue thereafter per violation. The Notice of Violation and Penalty provides appeals processes noted below.

- 1) Request for Zoning Administrator Hearing. The Zoning Administrator's decision is appealable to the Board of Appeals.
- 2) Appeal of the Notice of Violation and Penalty to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day a violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.
- 3) Request for alternative review by the Planning Director under the process set forth in Planning Code Section 176.1.

## ENFORCEMENT TIME AND MATERIALS FEE

Under Planning Code section 350(c)(1), the Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations. Accordingly, the responsible party is currently subject to a fee of \$1,209 for 'Time and Materials' cost associated with the Code Enforcement investigation. Please submit a check payable to 'Planning Department Code Enforcement Fund' within 15 days from the date

of this Notice of Violation and Penalty. The Department's stay on enforcement of the Notice of Violation and Penalty does not affect or eliminate the responsible party's obligation to pay 'Time and Materials' costs to date. Additional fees will continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

### **OTHER APPLICATIONS UNDER PLANNING DEPARTMENT CONSIDERATION**

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to the abatement of violation will be placed on hold until corrective actions are taken to abate the violation. We want to assist you in ensuring that the subject property is in full compliance with Planning Code. You may contact the enforcement planner as noted above with any questions.

cc: Planning Commission  
John Rahaim, Director of Planning  
Yvonne Mere, Deputy City Attorney, Office of the City Attorney  
Susan Cleveland-Knowles, Deputy City Attorney, Office of the City Attorney  
Tom Hui, Director, Department of Building Inspection  
Dan Lowrey, Deputy Director, Department of Building Inspection  
Ron Van Buskirk, Pillsbury Winthrop Shaw Pittman. LLP  
Ralph Marchese, Marchese Company



# SAN FRANCISCO PLANNING DEPARTMENT

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## ENFORCEMENT NOTIFICATION

April 25, 2014

### Property Owner

150 Hayes Street LLC  
3110 Edwards Mill Road, #100  
Raleigh NC, 27612

### Business Operator

Dr. Elisa Stephens, President  
Academy of Art University  
79 New Montgomery Street  
San Francisco, CA 94105

**Site Address:** 150 Hayes Street  
**Assessor's Block/Lots:** 0811/022  
**Zoning District:** C-3-G (Downtown General)  
**Complaint Number:** 11953  
**Code Section:** 217(h): Unauthorized Postsecondary Educational Institution  
**Administrative Penalty:** Up to \$250 Each Day of Violation  
**Respond By:** Within 15 days from the Date of this Letter  
**Staff Contact:** Dario Jones, (415) 558-6477 or [dario.jones@sfgov.com](mailto:dario.jones@sfgov.com)

The Planning Department has received a complaint that Planning Code violations exist on your above referenced property that need to be resolved. As the owner and leaseholder of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property in compliance with Planning Code. The details of the violations are discussed below:

### DESCRIPTION OF VIOLATION

The subject property is currently in violation of the following Planning Code sections:

1. **Violation of Planning Code Section 217(h):** A building permit to authorize a change of use to from an office use to a Post-Secondary Educational use is required. Currently, the Academy of Art University ("AAU") does not have a building permit on file to authorize the change of use.

### HOW TO CORRECT THE VIOLATION

1. You may demonstrate that the subject property is operating in compliance; or,
2. You must cease and desist all operations until you have obtained all required approvals for the subject property.

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

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Planning  
Information:  
**415.558.6377**

## **TIMELINE TO RESPOND**

The responsible party has **fifteen (15) days from the date of this notice** to submit adequate evidence to demonstrate that either no violation exists or that corrective actions have been taken to abate the violation at the above property. Please contact the enforcement planner noted at the top of this notice to submit such evidence. The abatement actions shall be taken as early as possible. Any unreasonable delays in abatement of the violations may result in further enforcement action by the Planning Department.

## **PENALTIES AND APPEAL RIGHTS**

Failure to respond to this notice by correcting the violations or demonstrating compliance with the Planning Code **within fifteen (15) days from the date of this notice** will result in the issuance of a **Notice of Violation and Penalty** by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day the violations continue thereafter. The Notice of Violation and Penalty provides appeals processes noted below.

- 1) Request for Zoning Administrator Hearing. The Zoning Administrator's decision is appealable to the Board of Appeals.
- 2) Appeal of the Notice of Violation and Penalty to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day a violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.
- 3) Request for alternative review by the Planning Director under the process set forth in Planning Code Section 176.1.

## **ENFORCEMENT TIME AND MATERIALS FEE**

Pursuant to Planning Code Section 350(c)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party will be subject to an amount of \$1209 plus any additional accrued time and materials cost for Code Enforcement investigation and abatement of the violations. This fee is separate from the administrative penalties as noted above and is not appealable.

## **OTHER APPLICATIONS UNDER CONSIDERATION**

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to the abatement of violations on the subject property will be placed on hold until further notice. We want to assist you in ensuring that the subject property is in full compliance with the Planning Code. You may contact the enforcement planner as noted above for any questions.

Enforcement Notification  
150 Hayes Street

April 25, 2014  
Complaint ID No. 11953

cc: Planning Commission  
John Rahaim, Director of Planning  
Yvonne Mere, Deputy City Attorney, Office of the City Attorney  
Susan Cleveland-Knowles, Deputy City Attorney, Office of the City Attorney  
Tom Hui, Director, Department of Building Inspection  
Dan Lowrey, Deputy Director, Department of Building Inspection  
Ron Van Buskirk, Pillsbury Winthrop Shaw Pittman. LLP  
Ralph Marchese, Marchese Company

**中文詢問請電: 558.6378**

**Para información en Español llamar al: 558.6378**



# SAN FRANCISCO PLANNING DEPARTMENT

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## Letter of Determination

April 25, 2014

Dr. Elisa Stephens  
Academy of Art University  
79 New Montgomery  
San Francisco, CA 94111

**Site Address:** 150 Hayes Street  
**Assessor's Block/Lot:** 0811/022  
**Zoning District:** C-3-G (Downtown General Commercial)  
**Staff Contact:** Christine Haw, (415) 558-6618 or [Christine.Haw@sfgov.org](mailto:Christine.Haw@sfgov.org)

Dear Dr. Stephens:

This letter is in response for a Letter of Determination regarding the property at 150 Hayes Street. This property is located within the C-3-G (Downtown General Commercial) Zoning District and 120-X Height and Bulk District. The request seeks a determination of the appropriate use category under the Planning Code for the subject property and presents three possible scenarios: 1) a use run by post-secondary educational institution that has no student use (no students visiting the building); 2) a use run by a post-secondary educational institution that is visited by students for administrative purposes (paying tuition, etc.) and 3) whether part of a single tenant building can be categorized as office while the remainder is categorized as post-secondary educational institution. In all three scenarios, your letter contends that the use at 150 Hayes Street may be considered to be an office use under the Planning Code.

In your May 21, 2012 correspondence to Deputy City Attorney Alex Tse, you provided detailed descriptions of Academy of Art (AAU) positions and functions proposed to be housed at 150 Hayes Street (Exhibit A). Those functions include Academic Administration, Payroll and Accounting, Student Account Services, Athletic Program Support, Campus Life Services, Undergraduate Admissions Programs, Graduate Admissions Programs, Customer Service Programs, International Admissions Programs, Career Services Outreach Programs, Video and Production Programs from the Online Program, Executive Management, Financial Aid Programs, Academic Advisory Programs, Student Services Programs, Marketing and others. Full-time faculty from the Fashion and Graphic Design Programs as well as equipment and lab techs with the Motion Picture and Television Programs were also listed in Exhibit A. A site visit on December 4, 2012 confirmed that many of the functions described and submitted in Exhibit A are indeed located at 150 Hayes Street. Additionally, Planning Department staff has observed AAU students visiting the facility, which is served by the AAU campus shuttle.

In reviewing the three scenarios presented in your Letter of Determination request, it is my determination that each would be considered to be post-secondary educational institutions under the Planning Code and none would be considered to be office uses under the Planning Code. Planning Code Section 217(h) includes: "Postsecondary educational institution for the purposes of academic, professional, business or fine-arts education, which is required to submit an institutional master plan

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pursuant to Section 304.5 of this Code. Such institution may include employee or student dormitories and other housing operated by and affiliated with the institution. Such institution shall not have industrial arts as its primary course of study." This determination is based upon the fact that the functions in Exhibit A are core functions of a post-secondary educational institution. All of these functions directly serve the ongoing demands of the institution and most of these functions involve direct and ongoing interaction with students, such as through the counseling and financial aid programs. These uses cannot be considered as office uses under the Planning Code if there is an affiliation with a post-secondary educational institution as these functions would not exist independent of the post-secondary educational institution.

Based on the detailed information submitted to our office in Exhibit A and confirmed by the site visit, it is my determination that the use of 150 Hayes Street is considered to be a post-secondary educational institution under the Planning Code.

**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: Property Owner  
Neighborhood Groups  
Planning Commission  
John Rahaim, Director of Planning – Planning Department  
Christine Haw, Code Enforcement Manager - Planning Department  
Yvonne Mere, Deputy City Attorney, Office of the City Attorney  
Susan Cleveland-Knowles, Deputy City Attorney, Office of the City Attorney  
Tom Hui, Director, Department of Building Inspection  
Dan Lowrey, Deputy Director, Department of Building Inspection  
Ronald Van Buskirk, Pillsbury Winthrop Shaw Pittman LLP



# SAN FRANCISCO PLANNING DEPARTMENT

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## Letter of Determination

April 25, 2014

Dr. Elisa Stephens  
Academy of Art University  
79 New Montgomery  
San Francisco, CA 94111

**Site Address:** 740 Taylor Street  
**Assessor's Block/Lot:** 0283/012  
**Zoning District:** RC-4 (Residential-Commercial Combined High Density)  
**Staff Contact:** Christine Haw, (415) 558-6618 or [Christine.Haw@sfgov.org](mailto:Christine.Haw@sfgov.org)

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Dear Dr. Stephens:

This letter is in response to your request for a Letter of Determination regarding the legal use of the property at 740 Taylor Street under the Planning Code. This property is located in the RC-4 (Residential-Commercial Combined High Density) Zoning District and 65-A Height and Bulk District.

Based upon our review of the building permit history for 740 Taylor Street, the Planning Department has determined that the subject property is a post-secondary educational institution per Planning Code Section 209.3(i). We are basing our determination on Building Permit Application No. 8304737 that changed the authorized use of the property from "Food/Beverage Handling" to "School" and subsequent permits which document the existing and proposed uses as "School."

During the course of our review, we found that the most extensive permit, Building Permit Application No. 200310036518 ("seismic upgrades under UMB ordinance and an accessible entry" which noted "no increase in office space") listed the present and proposed use as "Office." However, we found no corresponding building permit that legally established an office use at the subject property. Given that the seismic upgrade work under this permit was based upon the use of the building as an "Office" and not that of a "School", we are advising you to contact the Department of Building Inspection to confirm that the seismic upgrade is sufficient to fulfill the standards for post-secondary educational institutions.

**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,

A handwritten signature in black ink, appearing to read "Scott F. Sanchez".

Scott F. Sanchez  
Zoning Administrator

Dr. Elisa Stephens  
Academy of Art University

April 25, 2014  
740 Taylor Street

cc: Property Owner  
Neighborhood Groups  
Planning Commission  
John Rahaim, Director of Planning – Planning Department  
Christine Haw, Code Enforcement Manager - Planning Department  
Yvonne Mere, Deputy City Attorney, Office of the City Attorney  
Susan Cleveland-Knowles, Deputy City Attorney, Office of the City Attorney  
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