



SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

September 10, 2009

Steven Vettel
Farella Braun + Martel LLP
235 Montgomery Street
San Francisco CA 94104

**RE: 1111 California Street
Block: 0253 Lot: 020**

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Dear Mr. Vettel:

This letter is in response to your request (dated July 8, 2009) for a determination regarding the present legal status of the Nob Hill Masonic Center ("Center"). I have also considered a letter dated August 26, 2009 from Alice Barkley, Esq. of Luce Forward regarding this issue. The Center was completed in 1958 and includes a 3,200-seat auditorium, an exhibition hall and several exhibition rooms, the Henry Wilson Coil Library & Museum of Freemasonry, offices, and a 565-space parking garage. It is located at 1111 California Street, within the RM-4 (Residential, Mixed, High-Density) Zoning District, the 65-A Height and Bulk District, and the Nob Hill Special Use District (SUD). You specifically request a determination on three topics, as quoted below:

- "...that the Center as currently operated is a legal nonconforming use fully in compliance with the Planning Code and with the Center's 1956 building permit, and that a pending change in management of the Auditorium, Exhibition Hall, and California Rooms pursuant to a lease to Live Nation has no bearing on that status;"
- "...that the Center is currently in compliance with all requirements regarding parking and loading facilities;"
- "...that there are no other conditions of approval that apply to the Center's assembly and entertainment uses."

Each of these topics is addressed individually below.

1) Legal Nonconforming Use: As discussed in the "Background" portion of your letter, the construction of the Center was enabled by a rezoning of the property from "Second Residential District" to "Commercial District" (Planning Commission Resolution No. 4171, dated July 9, 1953), and by the issuance of a building permit (No. 165699, issued on May 10, 1956). The building permit was approved subject to the conditions contained in the resolution associated with the 1953 rezoning. The Center operated as a permitted use until 1978, when the subject property was rezoned to the RM-4 District that

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currently applies to the property. The RM-4 District does not permit assembly and entertainment uses, therefore, the functions within the Center became a non-conforming use as a result of the 1978 rezoning.

The Planning Code identifies two procedures that may be followed to seek continued operation of the Center. Pursuant to Planning Code Section ("Section") 185(e), the Planning Commission may grant Conditional Use authorization for the Center to continue operation in its current form, but "...no enlargement, intensification, or extension of the nonconforming use shall be permitted by the Commission." Pursuant to Section 182(b)(1), if a non-conforming use is located within 1/4 mile of any Individual Area Neighborhood Commercial District ("NCD"), the Planning Commission may grant Conditional Use authorization to change to another use within is permitted as a conditional use at the first story in an NC-1 District, and in the Individual Area NCD. The Center is located within 1/4 mile of the Polk Street NCD. Both the Polk Street NCD and the NC-1 District allow "Other Entertainment" uses with Conditional Use authorization. The types of activities conducted within the Center would be categorized as "Other Entertainment". Therefore, if the Center desires to enlarge or intensify the nature of the existing operations in a manner that would preclude Conditional Use authorization under Section 185(e), it may be appropriate to seek Conditional Use authorization through the process described in Section 182(b)(1). You have not requested, nor are we opining on any specific changes in operation to the Center that may constitute intensification, and therefore jeopardize the existing non-conforming status.

Your letter asks whether the leasing of portions of the Center to the concert promoter "Live Nation" would alter the non-conforming status of the Center. Section 180 explicitly states that, "A mere change of title or possession or right of possession of property, without any other change that is relevant to the restrictions of the Code, shall not terminate the status of a nonconforming use..." Therefore, the leasing of all or a portion of the facility to Live Nation, in and of itself, would not affect the non-conforming status of the Center.

2) Parking and Loading.

2.1) Off-Street Parking: The conditions of approval for the 1953 rezoning (which also apply to the 1956 building permit for the Center) require that off-street parking be provided at a ratio of one space for each eight seats up to the first 1,000 seats, and one space for each ten seats after the first 1,000 seats. The parking ratios cited in the conditions correspond with the current parking requirements of Section 151 for a "theater or auditorium). Based on the current 3,200-seat configuration, the auditorium of the Center requires 345 parking spaces. According to your letter, 206 of the 565 spaces in the garage for the Center are reserved for monthly parking. Therefore, 359 spaces are available for short-term parking. It appears that the auditorium, as currently configured, complies with the parking requirements imposed by the cited conditions of approval. It should be noted that these conditions do not specify parking requirements for the other uses within the Center, such as the Exhibition Hall and California Rooms, the library and museum, or the office uses

2.2) Off-Street Loading: It appears that the Planning Code did not require off-street loading spaces in 1956, when the building permit for the Center was issued. In addition, the conditions of approval do not

specify requirements for off-street loading spaces. The Center fails to conform to the following aspects of the current Planning Code requirements for off-street loading, including the following:

- Number of Spaces: The number of off-street loading spaces required by the Planning Code is calculated based on the gross square footage of the structure served by the spaces. According to your letter, the existing Center measures between 100,000 and 200,000 gross square feet. However, our Assessor's records indicate that the Center measures approximately 347,000 square feet. The actual gross square footage applicable to the loading requirements may be less than 347,000 square feet, because the definition of gross floor area in Section 102.9 excludes certain areas of the building (such as some spaces dedicated to mechanical equipment). Without a precise calculation of gross floor area based on the current floor plans for the Center, it is difficult to determine the applicable off-street loading requirements. However, if the gross square footage of the Center exceeds 200,000 square feet, two off-street loading spaces would be required. Therefore, the Center may not meet current Planning Code requirements for the number of off-street loading spaces.
- Dual-Use of Existing Space: Your letter indicates that the existing loading space sometimes serves a "dual use" as secondary ingress/egress for the parking garage from Pine Street. When being used in this configuration, this area is classified as a driveway and no longer qualifies as an off-street loading space.
- Enclosure of Existing Space: Section 155(p) requires that any off-street loading area within 50 feet of an R District be completely enclosed within a building if the loading area is used in regular night operation. The Center is located within an R District, and by the very nature of the Center, operates primarily for night time events. The existing off-street loading space is unenclosed, and therefore does not meet this requirement.

Because the Center fails to conform to the current Planning Code requirements for off-street loading, it is considered to be a non-complying structure under Section 180(a)(2). Therefore, the Center is subject to the regulations governing non-conforming uses and non-complying structures.

2.3: On-Street Loading: Your letter indicates that large trucks carrying stage equipment sometimes utilize on-street parking spaces on California Street for loading and unloading, and that the Center obtains temporary curbside loading permits from the Department of Public Works. Parking within the public right-of-way is controlled by other regulations such as the City's Police Code and Public Works Code, and the State Streets and Highways Code. There are no regulations within the Planning Code which address the type of temporary loading operations described in your letter.

2.4: On-Street Performer Bus Parking: Your letter indicates that performer buses sometimes utilize on-street parking spaces on California Street. As with the on-street loading discussed in item 2.3 above, this type of parking within the public right-of-way is controlled by other regulations such as the City's Police Code and Public Works Code, and the State Streets and Highways Code. There are no regulations within the Planning Code which address the type of temporary parking operations described in your letter.

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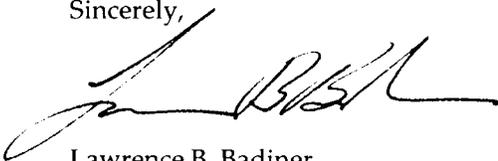
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3) Other Conditions: Your letter requests a determination "that there are no other permit or Code conditions that apply to the current assembly and entertainment uses of the Center." This is a very broad statement and there are a number of Planning Code provisions applying to the site. As described in this letter, the Center is subject to the Conditions of Approval from the 1953 rezoning (enumerated in Planning Commission Resolution No. 4171), and must substantially conform to the 1956 building permit approval (No. 165699, issued on May 10, 1956). It appears that there are no other Planning conditions of approval that apply to the operation of the Center.

However, there are a multitude of local, State, and Federal regulations which may apply to various aspects of the operation of the Center and the maintenance of the structure on the property. This includes, but it is not limited to the regulations in Sections 180-189 of the Planning Code, addressing non-conforming uses and non-complying structures. It is beyond the scope of this letter and the authority of the Zoning Administrator to exhaustively list every regulation which may apply to the operation of the Center and the uses and performances which may occur within.

If you believe this extension 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,



Lawrence B. Badiner
Zoning Administrator

cc: Kevin Guy, Planning Department
Brett Bollinger, Planning Department
Alice Barkley, Luce Forward

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