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Planning Commission Motion No. 19072

HEARING DATE: FEBRUARY 6, 2014

Date: January 30, 2014
Case No.: **2013.1515 C**
Project Address: **2283 PALOU AVENUE**
Zoning: PDR-2 (Core Production, Distribution, and Repair)
 65-J Height and Bulk District
Block/Lot: 5585/001
Project Sponsor: Tyler Morris
 2283 Palou Avenue
 San Francisco, CA 94124
Staff Contact: Jeffrey Speirs – (415) 575-9106
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ADOPTING FINDINGS RELATING TO THE APPROVAL OF CONDITIONAL USE AUTHORIZATION PURSUANT TO SECTIONS 303 AND 226(w) OF THE PLANNING CODE TO ALLOW A NON-AUTOMATED DISTILLERY AND WHOLESALE USE (D.B.A. TOP HAT DISTILLERY) WITHIN THE PDR-2 (CORE PRODUCTION, DISTRIBUTION, AND REPAIR) DISTRICT AND A 65-J HEIGHT AND BULK DISTRICT.

PREAMBLE

On October 17, 2013 Tyler Morris (hereinafter “Project Sponsor”) filed an application with the Planning Department (hereinafter “Department”) for Conditional Use Authorization under Planning Code Section(s) 226(w) to allow a non-automated distillery and wholesale use (d.b.a. Top Hat Distillery) within the PDR-2 (Core Production, Distribution, and Repair) District and a 65-J Height and Bulk District.

On February 6, 2014, the San Francisco Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting on Conditional Use Application No. 2013.1515C.

The project is exempt from the California Environmental Quality Act (“CEQA”) as a Class 1 Categorical Exemption. The Commission has reviewed and concurs with said determination. The categorical

exemption and all pertinent documents may be found in the files of the Planning Department (hereinafter "Department"), as the custodian of records, at 1650 Mission Street, San Francisco.

The Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of the applicant, Department staff, and other interested parties.

MOVED, that the Commission hereby authorizes the Conditional Use requested in Application No. 2013.1515C, subject to the conditions contained in "EXHIBIT A" of this motion, based on the following findings:

FINDINGS

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

1. The above recitals are accurate and constitute findings of this Commission.
2. **Site Description and Present Use.** The property is located on the southern side of Palou Avenue, on the southeast corner of the intersection with Barneveld Avenue, Block 5585, Lot 001. The property is located within the PDR-2 (Core Production, Distribution, and Repair) District with 65-J height and bulk district. The property is developed with other industrial, wholesale, and office uses within a predominantly one-story building. The ground floor includes Camp Edmo, Light Soda On Tap, Elsie Smith Inc., Cayson Designs, GMG Janitorial Inc., RLH Fire Protection, Express Media, and the subject space (vacant) which is currently leased by Top Hat Distillery LLC. The subject property is a corner lot, with approximately 420 feet of frontage on Palou Avenue, 112 feet of frontage on Barneveld Avenue, and 413 feet of frontage on Apparel Way. The lot is 47,184 square-feet, and approximately 92% covered by the 43,500 square-foot subject building, with the rear of the building abutting Apparel Way. One on-street parking space is currently allocated to the subject space, and no additional parking spaces are required. The entrance is located on Palou Avenue, with commercial loading at the rear via Apparel Way.
3. **Surrounding Properties and Neighborhood.** The project site is located at the southeast corner of the intersection of Palou Avenue and Barneveld Avenue. To the north are Abco Mechanical Contractors and Fine Wines International; to the south are Indian Bento Food Services, and A Bright Printing Company; to the west, opposite of Barneveld Avenue, is United Rentals and Professional Contractor Supplies; and to the east are Southern Wine & Spirits and Heritage House Tableware. Built in 1947, the project site is located in a PDR-2 District with a variety of industrial, manufacturing and office uses. The surrounding properties are primarily industrial in character, and located within the same PDR-2 Zoning District.
4. **Project Description.** The applicant proposes to change the use from a wholesale merchandise use to a non-automated distillery and wholesale use, with tasting room. The distillery and wholesaler require Type 4, 6 and 13 licenses from the California Department of Alcoholic Beverage Control (ABC). The proposal includes minor tenant improvements to the interior, and

the existing industrial space would not be enlarged. The existing space is 2,620 square feet in size. The proposed interior changes include the addition of two interior walls to form a boiler room, and the installation of an interior drainage system. A proposed multi-purpose office, located at the front of the space, will also serve as a tasting room for up to 10 people. The distillery, with tasting room, will not be open to the public.

The proposed use is an independent use and locally owned, which has been encouraged throughout San Francisco. The proposed operation consists of 2 employees. Initial production equipment will include one 150 gallon pot still, one 400 gallon mash tun, four 300 gallon fermenting vessels, a 4-bottle filler and bottle labeler, one forklift, and a noiseless pump. Volume of initial production is estimated to be 2,000 proof gallons per year, or 50 to 60 cases a month. Hours of production will be during regular weekday hours, with reduced hours on the weekend. One on-street parking space is currently allocated to the subject space, and no additional parking spaces are required. The entrance is located on Palou Avenue, with commercial loading at the rear via Apparel Way. Supplies will be delivered once a month to the rear entrance. Distribution will occur once a month.

5. **Public Comment.** The Department has received no comments, phone calls, or emails in response to the proposal.
6. **Planning Code Compliance:** The Commission finds that the Project is consistent with the relevant provisions of the Planning Code in the following manner:

- A. **Conditional Use.** Section 226 of the Planning Code requires a Conditional Use Authorization for the manufacturing and distillation of alcohol, when conducted not less than 500 feet from any R or NC District.

The Subject Property is not within 500 feet from any R or NC District, as shown in Attachment "500' Radius Map."

- B. **Parking.** Section 151 of the Planning Code permits up to one off-street parking space for each 1,500 square feet of occupied floor area, where the occupied floor area exceeds 7,500 square feet.

The Subject Property contains approximately 2,620 square-feet of occupied floor area and thus does not require any off-street parking. Furthermore, the project is not a change of use that would trigger additional parking under the Planning Code.

- C. **Accessory Use.** Planning Code Section 204.3 allows accessory uses up to 1/3 of the total floor area.

The Project will include a room used as an office and tasting room as an accessory use. This room is 442 square-feet of occupied floor area, and is less than 1/3 of total floor area.

7. **Planning Code Section 303** establishes criteria for the Planning Commission to consider when reviewing applications for Conditional Use approval. On balance, the project does comply with said criteria in that:

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

The size of the proposed use will not impact the exterior or the front façade of the building. The proposed use will not impact traffic or parking in the District because deliveries will be once per month, and it will not be open to the public. This use will complement the mix of uses currently available in the district and will contribute to the economic vitality of the neighborhood by providing new economic opportunities for local businesses such as retail, restaurants and distributors.

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

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

The height and bulk of the existing building will remain the same. The Project will not alter the existing appearance or character of the project vicinity. The proposed work will not affect the building envelope or the front facade.

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

The existing building's front entry and rear loading will be preserved. The proposed use intends for once a month deliveries, will not be open to the public, and should not generate significant amounts of vehicular trips from the immediate neighborhood or citywide.

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

The proposed project will comply with the City's requirements to minimize noise, glare, odors, or other harmful emissions. The proposed use will have a boiler room, which will contain the majority of the project's noise. No other significant noise should result from the proposed use. Operations are considered normal and compatible with the surrounding uses. No grain milling is proposed on-site to reduce dust and noise. The nature of alcohol stills is that they condense all fumes and collect them as liquids which are transferred to storage containers. Interior drains are proposed to maintain a clean and odor free environment. Production waste is compostable and commonly used for feed for cattle.

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

The proposed use requires no new landscaping or parking. No new signage or lighting is proposed.

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

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

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

COMMERCE AND INDUSTRY ELEMENT

Objectives and Policies

OBJECTIVE 1:

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

Policy 1.1:

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

Policy 1.2:

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

Policy 1.3:

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

The Project would provide desirable goods and services to the businesses and distributors. The Project is consistent with uses outlined within the Planning Code and General Plan.

OBJECTIVE 2:

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

Policy 2.1:

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

The Project establishes a new distillery and wholesale use, which will enhance the diverse economic base of the City. The Project will retain an existing light industrial activity that is compatible with surrounding uses.

OBJECTIVE 4:

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

Policy 4.10:

Enhance the working environment within industrial areas.

The Project would continue to maintain the surrounding industrial area. A property management company maintains landscaping and parking. The Project creates a new industrial use in the district and expands a unique type of use in the City of San Francisco. The Project intends to serve local businesses and distributors in the area.

BAYVIEW HUNTERS POINT AREA PLAN

Objectives and Policies

OBJECTIVE 1:

STIMULATE BUSINESS, EMPLOYMENT, AND HOUSING GROWTH WITHIN THE EXISTING GENERAL LAND USE PATTERN BY RESOLVING CONFLICTS BETWEEN ADJACENT INDUSTRIAL AND RESIDENTIAL AREAS.

Policy 1.1:

Improve the relationship between housing and industry throughout Bayview Hunters Point, particularly in the Northern Gateway and South Basin areas, where light industry transitions to residential.

The Project would fill a vacancy in an existing light industrial building, and would compliment the surrounding industrial area. The Project is not located within 500 feet of an R District, nor will the project compete with residential land uses.

Policy 1.2:

Restrict toxic chemical industries and other industrial activities with significant environmental hazards from locating adjacent to or nearby existing residential areas.

The Project is not located within 500 feet of an R District, and will comply with the City's fire and safety standards.

Policy 1.3:

Maintain buffer zones where housing and industry occur in close proximity to each other to better define the configuration of residential neighborhoods and areas reserved for industrial activity.

The Project is not located within 500 feet of an R District, and is located in the middle of an existing industrial area.

Policy 1.5:

Encourage a wider variety of light industrial uses throughout the Bayview by maintaining the newly established Production, Distribution and Repair zoning, by more efficient use of industrial space, and by more attractive building design.

The Project will produce a unique product for the City, and is located in a Production, Distribution and Repair Zoning District. The current building has existing landscaping and street trees. The Project will not alter the exterior of the building.

OBJECTIVE 9:

IMPROVE LINKAGES BETWEEN GROWTH IN BAYVIEW'S INDUSTRIAL AREAS AND THE EMPLOYMENT AND BUSINESS NEEDS OF THE BAYVIEW HUNTERS POINT COMMUNITY.

Policy 9.1:

Increase employment in local industries.

The Project will provide employment in a unique industry for the City, and may employ more workers as the business grows.

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

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

The Project would enhance the district by manufacturing a unique product in the area. The business would be locally owned and may create employment opportunities for the community as production evolves. The proposed alterations are within the existing building footprint.

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

No change is proposed to the exterior of the building; the surrounding properties are within the PDR-2 District; and the Project will provide a unique product and will add to the variety of nearby businesses.

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

The Project would not impact the City's supply of affordable housing.

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

The Project will not attract significant volumes of car traffic, and deliveries are intended to be once a month. The subject space is allocated one parking space by the property management service for the building.

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

The Project will assist in maintaining a diverse economic base by establishing a distillery and wholesale use. The Project does not include office development as a primary use.

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

The Project is designed and will be constructed to conform to the structural and seismic safety requirements of the City Building Code. This proposal will not impact the property's ability to withstand an earthquake.

- G. That landmarks and historic buildings be preserved.

A landmark or historic building does not occupy the Project site. No change to the exterior is proposed.

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

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

10. The Project is consistent with and would promote the general and specific purposes of the Code provided under Section 101.1(b) in that, as designed, the Project would contribute to the character and stability of the neighborhood and would constitute a beneficial development.

11. The Commission hereby finds that approval of the Conditional Use authorization would promote the health, safety and welfare of the City.

DECISION

That based upon the Record, the submissions by the Applicant, the staff of the Department and other interested parties, the oral testimony presented to this Commission at the public hearings, and all other written materials submitted by all parties, the Commission hereby **APPROVES Conditional Use Application No. 2013.1515C** subject to the following conditions attached hereto as "EXHIBIT A" in general conformance with plans on file, dated August 8, 2013, and stamped "EXHIBIT B", which is incorporated herein by reference as though fully set forth.

APPEAL AND EFFECTIVE DATE OF MOTION: Any aggrieved person may appeal this Conditional Use Authorization to the Board of Supervisors within thirty (30) days after the date of this Motion No. 19072. The effective date of this Motion shall be the date of this Motion if not appealed (After the 30-day period has expired) OR the date of the decision of the Board of Supervisors if appealed to the Board of Supervisors. For further information, please contact the Board of Supervisors at (415) 554-5184, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

I hereby certify that the Planning Commission ADOPTED the foregoing Motion on February 06, 2014.

Jonas P. Ionin
Acting Commission Secretary

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

NAYES: None

ABSENT: Commissioners Antonini, Hillis

ADOPTED: February 6, 2014

EXHIBIT A

AUTHORIZATION

This authorization is for a conditional use to allow a non-automated distillery and wholesale use (d.b.a. Top Hat Distillery) located at 2283 Palou Avenue, Block 5585, and Lot 001 pursuant to Planning Code Section(s) 226(w) within the PDR-2 District and a 65-J Height and Bulk District; in general conformance with plans, dated **October 11, 2013**, and stamped "EXHIBIT B" included in the docket for Case No. 2013.1515C and subject to conditions of approval reviewed and approved by the Commission on February 6, 2014 under Motion No. **19072**. This authorization and the conditions contained herein run with the property and not with a particular Project Sponsor, business, or operator.

RECORDATION OF CONDITIONS OF APPROVAL

Prior to the issuance of the building permit or commencement of use for the Project the Zoning Administrator shall approve and order the recordation of a Notice in the Official Records of the Recorder of the City and County of San Francisco for the subject property. This Notice shall state that the project is subject to the conditions of approval contained herein and reviewed and approved by the Planning Commission on February 6, 2014 under Motion No 2013.1515C.

PRINTING OF CONDITIONS OF APPROVAL ON PLANS

The conditions of approval under the 'Exhibit A' of this Planning Commission Motion No. **2013.1515C** shall be reproduced on the Index Sheet of construction plans submitted with the Site or Building permit application for the Project. The Index Sheet of the construction plans shall reference to the Conditional Use authorization and any subsequent amendments or modifications.

SEVERABILITY

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

CHANGES AND MODIFICATIONS

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

Conditions of Approval, Compliance, Monitoring, and Reporting

PERFORMANCE

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

MONITORING

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

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

OPERATION

7. **Garbage, Recycling, and Composting Receptacles.** Garbage, recycling, and compost containers shall be kept within the premises and hidden from public view, and placed outside only when being serviced by the disposal company. Trash shall be contained and disposed of pursuant to garbage and recycling receptacles guidelines set forth by the Department of Public Works. *For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works at 415-554-.5810, <http://sfdpw.org>*
8. **Sidewalk Maintenance.** The Project Sponsor shall maintain the main entrance to the building and all sidewalks abutting the subject property in a clean and sanitary condition in compliance with the Department of Public Works Streets and Sidewalk Maintenance Standards. *For information about compliance, contact Bureau of Street Use and Mapping, Department of Public Works, 415-695-2017, <http://sfdpw.org/>*
9. **Odor Control.** While it is inevitable that some low level of odor may be detectable to nearby residents and passersby, appropriate odor control equipment shall be installed in conformance with the approved plans and maintained to prevent any significant noxious or offensive odors from escaping the premises. *For information about compliance with odor or other chemical air pollutants standards, contact the Bay Area Air Quality Management District, (BAAQMD), 1-800-334-ODOR (6367), www.baaqmd.gov and Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org*
10. **Community Liaison.** Prior to issuance of a building permit to construct the project and implement the approved use, the Project Sponsor shall appoint a community liaison officer to deal with the issues of concern to owners and occupants of nearby properties. The Project Sponsor shall provide the Zoning Administrator with written notice of the name, business address, and telephone number of the community liaison. Should the contact information change, the Zoning Administrator shall be made aware of such change. The community liaison shall report to the Zoning Administrator what issues, if any, are of concern to the community and what issues have not been resolved by the Project Sponsor. *For information about compliance, contact Code Enforcement, Planning Department at 415-575-6863, www.sf-planning.org*