



SAN FRANCISCO PLANNING DEPARTMENT

Planning Commission Memorandum

HEARING DATE: FEBRUARY 12, 2015

Date: February 5, 2015
To: Members, Planning Commission
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Scott Sanchez, Zoning Administrator
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Re: Informational Update and Progress Report on the Academy of Art University (AAU) Enforcement Program

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BACKGROUND

On January 8, 2015, the Planning Commission requested that the Planning Department provide a status update on the progress of the AAU Enforcement Program. The following is a summary of developments since the last update hearing on May 8, 2014:

EIR STATUS UPDATE

The Academy of Art University (AAU) EIR has progressed substantially since the Withdrawal Notice of Stay on April 25, 2014 and publication of the Draft EIR is scheduled for February 25, 2015. A public hearing on the Draft EIR is scheduled to be held at the Planning Commission meeting on April 16th, 2015 and the public comment period would extend until April 27th. Following the close of the public review period for the Draft EIR, the Department will prepare a Response to Comments (RTC) document, which will respond to all verbal and written comments received and make revisions to the Draft EIR, as appropriate. Following publication of the RTC document, Planning Department staff will return to the Commission to request certification of the EIR. If the EIR is certified, the Planning Commission may consider approvals of the required AAU entitlements.

The AAU EIR is analyzing four general components of AAU's continued growth within the City. These four components include: 1) analysis of AAU's anticipated future growth at a programmatic level of residential uses to house approximately 400 students and approximately 670,000 square feet of additional institutional space, located within 12 specific geographic areas (known as study areas) to accommodate long-term needs of up to an additional 6,100 on-site students and 1,200 faculty and staff; 2) analysis of six specific buildings at a project level because these sites were either acquired and occupied, identified, or were otherwise changed by AAU after publication of the September 2010 Notice of Preparation (NOP) for this EIR; 3) legalization of prior unauthorized changes of use at 34 locations that were occupied prior to publication of the AAU NOP (Legalization Approvals); and 4) shuttle service expansion to the six project sites and every study area where AAU would potentially occupy new buildings.

Due to the fact that projects are evaluated under CEQA from the existing conditions at the time of publication of an NOP to the future conditions, past actions, even if they occurred without the benefit of a permit, are considered existing conditions. Therefore, the Legalization Approvals of the 34 locations occupied prior to AAU NOP publication are part of the baseline conditions for the AAU EIR. Because AAU had already changed uses at these sites prior to the NOP, for CEQA purposes there is little or no physical change to analyze. Therefore, the primary analysis of the prior unauthorized changes of use for purposes of the EIR will be of the actions to legalize these uses through the permitting process. The City will rely on the EIR when considering AAU Legalization Approvals. Due to the need to analyze the impacts, cumulative and otherwise, of the entire AAU Project, the City has not acted on any parts of the Project pending the completion of this EIR.

To provide information to the Commission about the environmental effects from the previous physical changes from AAU's unpermitted changes of use and AAU's ongoing operations at these 34 locations, Planning is preparing a separate informational document, called the Existing Sites Technical Memorandum (ESTM). This memo will evaluate the environmental effects from the time of occupation of the building by AAU in order to provide the Commission and the public with additional information to consider when deciding whether to authorize these uses after-the-fact. After the close of the Draft EIR public review period, the Planning Department will be distributing the ESTM to the Planning Commission and all interested parties. The results of the ESTM will be presented at an information hearing at the Planning Commission.

Together, the Existing Sites Memo and the DEIR will analyze the environmental effects of AAU's ongoing operations of its existing 40 properties, as well as potential environmental effects of AAU's potential future growth.

ENFORCEMENT STATUS UPDATE

On May 9, 2014, AAU filed requests for Zoning Administrator hearings on 20 properties that were issued NOVPs. On June 18, 2014, the Zoning Administrator held a consolidated hearing on the 20 NOVPs. At this hearing, AAU stated it "does not contest the issuance of the NOVPs" and summarized their efforts towards complying with the NOVPs. The Zoning Administrator closed the public hearing and determined that the properties were in violation of the Planning Code to be documented through final NOV Decision.

On May 12, 2014, AAU filed appeals with the Board of Appeals on the issuance of the Withdrawal Notice of Stay, Letter of Determination for 150 Hayes Street, and NOV Decision for 2295 Taylor Street and 930-950 Van Ness Avenue.

On September 25, 2014, AAU withdrew their appeal of the Letter of Determination for 150 Hayes Street and filed a brief for the remaining appeals stating that they "do not contest the merits" of the decisions and ask "only that the Board of Appeals retain the opportunity to hear equitable arguments against the imposition of penalties under the NOV if any when such penalties are imposed."

On October 15, 2014, AAU withdrew their appeal of the NOVP Decision for 2295 Taylor Street with the understanding that penalties would accrue until they vacated portions of the building that could not be occupied under the Planning Code.

On October 29, 2014, the Planning Department confirmed that AAU had vacated portions of the building that could not be occupied and is now occupying portions of the building that can be legalized under the Planning Code.

The appeal of the Withdrawal Notice of Stay and NOVP Decision for 930-950 Van Ness Avenue are pending at the Board of Appeals and the Department is preparing final NOVP Decisions for the 20 properties that were previously subject to the Stay. It is anticipated that the final NOVP Decisions will be issued upon completion of the Draft EIR with new penalty accrual terms based on an updated EIR timeline.

TIMELINE FOR FUTURE ENTITLEMENTS

In the coming months, the Planning Department will work with the Planning Commission to develop a proposal for processing the various entitlements necessary to legalize AAU facilities upon completion of the EIR.

REQUIRED COMMISSION ACTION

This is an informational item. No Commission action is required at this time.