



SAN FRANCISCO PLANNING DEPARTMENT

RE-NOTICE OF VIOLATION AND PENALTY and DENIAL OF REFERRAL TO DIRECTOR Planning Code Section 176

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April 24, 2009

Murkelley, LLC
2516 Mission Street
San Francisco, CA 94110

Violation of Planning Code Section: 736.41: Bar - *Mission St N C T District*
Complaint Identification Numbers: 10113
Site Address: 2516-2524 Mission Street, a.k.a. "Medjool"
Assessor's Block/Lot: 3616/061
Zoning District: Mission Street Neighborhood Commercial Transit District
Staff Contact: Sonja Kos, (415) 575-6811 or sonja.kos@sfgov.org
Subject: Section 176.1 Determination of Referral to Director'

Dear Sir and/or Madam:

On February 20, 2009, the Planning Department sent you notice that one or more violations of the Planning Code exist on the site with respect to the Planning Code Section(s) referenced above. In subsequent days and weeks the Department received through your legal counsel several questions regarding the accuracy of certain statements in the Notice of Planning Violation (NOPV), as well as a request pursuant to Section 176.1 that I, as Acting Zoning Administrator, refer the violation to the Planning Director for enforcement.

This letter responds to both of those matters.

RESPONSE TO QUERIES

1. *Attorney Gladstone questioned whether the February 20th NOPV correctly described the three appeal processes.*

I have determined that the letter accurately describes the appeals processes available pursuant to Planning Code Section 176.

2. *Attorney Vignoles questioned whether the citation of Code Section 736.1 et seq. is accurate because that Section does not exist.*

Planning Code Section 736.1 was added to the Code as part of the Eastern Neighborhoods rezoning, and describes provisions for the Mission Street Neighborhood Commercial Transit District, which is the new designation for the district where Medjool is located. A text copy of that Code Section was attached to the

hard copy of the NOPV mailed to you, the property owner. Another copy is attached herewith and will be scanned into all electronic copies of this letter.

3. *Attorney Vignoles submitted a request for referral of enforcement to the Planning Director, received electronically on a form approved by the Department, in accord with provisions in Sections 176 and 176.1.*

I have determined that referral to the Director is not the appropriate means to remedy this violation. The alternative methods of administrative enforcement established by Section 176.1 do not replace but rather are intended to supplement the enforcement remedies established in Section 176 and other penalties or methods of enforcement, and they are reserved for administrative correction of minor violations of a technical nature, not for appeal of more egregious violations such as illegally establishing a use that is not permitted.

HOW TO CORRECT THE VIOLATION

Operation of the rooftop restaurant and bar at 2516 Mission Street must cease.. The roof must be returned to its permitted use, as a roof deck providing open space for residents and guests of the hotel uses on-site, that is consistent with the **Mission Street Neighborhood Commercial Transit District and the building permits establishing a legal use of the rooftop deck.**

To verify correction of the violation and avoid accrual of penalties, please contact the staff planner shown at the top of this notice immediately. The responsible party will need to provide sufficient evidence to demonstrate that the violation has been abated. Evidence may include the following: issuance of a building permit to correct the violation, site visit by staff contact or photographs demonstrating abatement.

Please contact the Department of Building Inspection (DBI), 1660 Mission Street, San Francisco, CA 94103, telephone: (415) 558-6088, website: www.sfgov.org/dbi, regarding any building permits that may be required to perform the subject work.

TIMELINE TO RESPOND

The responsible party (property owner and current leaseholder) has **fifteen (15) days from the date of this notice** to either 1) correct the violation as outlined above or 2) appeal this notice and assessment of penalties to the board of Appeals as outlined below.

PENALTIES

Because there was confusion and a lack of clarity about certain aspects of the original NOPV, I am resetting the response timeline and the assessment of penalties to the date of issuance of this letter. The Code directs the clock to stop while decisions are in the hands of the Zoning Administrator or the Board of Appeals.

Therefore, beginning on **April 24, 2009**, administrative penalties of **\$250 per day** are being 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

Because you have requested a referral to the Director and that request has been denied, if you or any interested party believe that this order to remove a violation of the Planning Code is an abuse of discretion by the Zoning Administrator, you may file an appeal with the Board of Appeals, 1650 Mission Street, Room 304, San Francisco, CA 94103, telephone: (415) 575-6880, website: www.sfgov.org/bdappeal **within fifteen (15) days from the date of this notice..**

Denial of the referral to the Director is not separately appealable.

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 that do not have as their scope of work the removal of the illegal restaurant-bar will be placed on hold until further notice.

Sincerely,



Craig Nikitas
Acting Zoning Administrator

Attachment:

cc: Sonja Kos, Planning Department
Brett Gladstone, Esq.

ATTACHMENT

SEC. 736.1 MISSION STREET NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT.

The Mission Street Commercial Transit District is located near the center of San Francisco in the Mission District. It lies along Mission Street between 15th and Cesar Chavez (Army) Street, and includes adjacent portions of 17th Street, 21st Street, 22nd Street, and Cesar Chavez Street.

The commercial area of this District provides a selection of goods serving the day-to-day needs of the residents of the Mission District. Additionally, this District serves a wider trade area with its specialized retail outlets. Eating and drinking establishments contribute to the street's mixed-use character and activity in the evening hours.

The District is extremely well-served by transit, including regional-serving BART stations at 16th Street and 24th Street, major buses running along Mission Street, and both cross-town and local-serving buses intersecting Mission along the length of this district. Given the area's central location and accessibility to the City's transit network, accessory parking for residential uses is not required. Any new parking is required to be set back or be below ground.

This District has a mixed pattern of larger and smaller lots and businesses, as well as a sizable number of upper-story residential units. Controls are designed to permit moderate-scale buildings and uses, protecting rear yards above the ground story and at residential levels. New neighborhood-serving commercial development is encouraged mainly at the ground story. While offices and general retail sales uses may locate at the second story of new buildings under certain circumstances, most commercial uses are prohibited above the second story. Continuous retail frontage is promoted by requiring ground floor commercial uses in new developments and prohibiting curb cuts.

Housing development in new buildings is encouraged above the ground story. Housing density is not controlled by the size of the lot but by requirements to supply a high percentage of larger

units and by physical envelope controls. Existing residential units are protected by prohibitions on upper-story conversions and limitations on demolitions, mergers, and subdivisions.

SEC. 736 MISSION NEIGHBORHOOD COMMERCIAL TRANSIT DISTRICT ZONING CONTROL TABLE

| | | | |
|---------------------------|--|---|---|
| | | | <u>Mission Street</u> |
| <u>No.</u> | <u>Zoning Category</u> | <u>§ References</u> | <u>Controls</u> |
| <u>BUILDING STANDARDS</u> | | | |
| <u>736.10</u> - | <u>Height and Bulk Limit</u> | <u>§§ 102.12, 105, 106, 250-252, 260, 261.1, 263.18, 270, 271</u> | <u>Varies</u> <u>See Zoning Map</u> <u>Height Sculpting on Alleys; § 261.1</u> <u>Additional 5' Height Allowed for Ground Floor Active Uses in 40-X and 50-X; § 263.18</u> |
| <u>736.11</u> - | <u>Lot Size [Per Development]</u> - | <u>§§790.56, 121.1</u> | <u>P up to 9,999 sq. ft.;</u> <u>C 10,000 sq. ft. & above</u> <u>§121.1</u> |
| <u>736.12</u> - | <u>Rear Yard</u> | <u>§§130, 134, 136</u> | <u>Required at residential levels only</u> <u>§134(a)(e)</u> |
| <u>736.13</u> - | <u>Street Frontage</u> | - | <u>Required</u> <u>§ 145.1</u> |
| <u>736.13a</u> | <u>Street Frontage, Above-Grade Parking Setback and Active</u> | | <u>Minimum 25 feet on ground floor, 15 feet on</u> |

| | | | |
|--|---|--|--|
| | <u>Uses</u> | | <u>floors above</u> <u>§ 145.1(c), (e)</u> |
| <u>736.13b</u> | <u>Street Frontage, Required</u> <u>Ground Floor Commercial</u> | | <u>Required along Mission</u> <u>St. § 145.1(d)</u> |
| <u>736.13c</u> | <u>Street Frontage, Parking and</u> <u>Loading access restrictions</u> | | <u>NP along Mission St.</u> <u>§ 155(r)</u> |
| <u>736.14</u> - | <u>Awning</u> | <u>§ 790.20</u> | <u>P</u> <u>§ 136.1(a)</u> |
| <u>736.15</u> - | <u>Canopy</u> | <u>§ 790.26</u> | <u>P</u> <u>§ 136.1(b)</u> |
| <u>736.16</u> - | <u>Marquee</u> | <u>§ 790.58</u> | <u>P</u> <u>§ 136.1(c)</u> |
| <u>736.17</u> - | <u>Street Trees</u> | - | <u>Required</u> <u>§ 143</u> |
| <u>COMMERCIAL AND INSTITUTIONAL STANDARDS AND USES</u> | | | |
| <u>736.20</u> - | <u>Floor Area Ratio</u> | <u>§§ 102.9, 102.11,</u> <u>123</u> | <u>3.6 to 1</u> <u>§ 124(a) (b)</u> |
| <u>736.21</u> - | <u>Use Size [Non-Residential]</u> | <u>§ 790.130</u> | <u>P up to 5,999 sq. ft.;</u> <u>C 6,000 sq. ft. & above</u> <u>§ 121.2</u> |
| <u>736.22</u> - | <u>Off-Street Parking,</u> <u>Commercial/Institutional</u> | <u>§§ 150, 151.1, 153-</u> <u>157, 159-160, 204.5</u> | <u>None required. Limits set</u> <u>forth in Section 151.1</u> <u>§§ 151.1, 166, 145.1</u> |
| <u>736.23</u> - | <u>Off-Street Freight Loading</u> | <u>§§ 150, 153-155,</u> <u>204.5</u> | <u>Generally, none required</u> <u>if gross floor area is less</u> |

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| | | | <i>than 10,000 sq. ft.</i> <i>§§ 152, 161(b)</i> |
| <u>736.24</u> - | <u>Outdoor Activity Area</u> | <u>§ 790.70</u> | <i>P if located in front;</i> <i>C if located elsewhere</i> <i>§ 145.2(a)</i> |
| <u>736.25</u> - | <u>Drive-Up Facility</u> | <u>§ 790.30</u> | <i>NP</i> |
| <u>736.26</u> - | <u>Walk-Up Facility</u> | <u>§ 790.140</u> | <i>P if recessed 3 ft.;</i> <i>C if not recessed</i> <i>§ 145.2(b)</i> |
| <u>736.27</u> - | <u>Hours of Operation</u> | <u>§ 790.48</u> | <i>No Limit</i> |
| <u>736.30</u> - | <u>General Advertising Sign</u> | <u>§§ 262, 602-604,</u> <u>608, 609</u> | <i>P</i> <i>§ 607.1(e)2</i> |
| <u>736.31</u> - | <u>Business Sign</u> | <u>§§ 262, 602-604,</u> <u>608, 609</u> | <i>P</i> <i>§ 607.1(f)3</i> |
| <u>736.32</u> - | <u>Other Signs</u> | <u>§§ 262, 602-604,</u> <u>608, 609</u> | <i>P</i> <i>§ 607.1(c),(d),(g)</i> |

| <u>No.</u> | <u>Zoning Category</u> | <u>§ References</u> | <u>Mission Street</u> | | |
|---------------|---|-----------------------------------|--------------------------|------------|-------------|
| | | | <u>Controls by Story</u> | | |
| | | <u>§ 790.118</u> | <u>1st</u> | <u>2nd</u> | <u>3rd+</u> |
| <u>736.37</u> | <u>Residential</u> <u>Conversion</u> | <u>§§ 790.84,</u> <u>207.7</u> | <u>C</u> | <u>C</u> | <u>C</u> |
| <u>736.38</u> | <u>Residential</u> <u>Demolition</u> | <u>§§ 790.86,</u> <u>207.7</u> | <u>C</u> | <u>C</u> | <u>C</u> |
| <u>731.39</u> | <u>Residential</u> | <u>§ 207.8</u> | <u>P</u> | <u>P</u> | <u>P</u> |

| | <u>Division</u> | | | | |
|----------------------------------|---|------------------|----------|----------|----------|
| <u>Retail Sales and Services</u> | | | | | |
| <u>736.40</u> | <u>Other Retail Sales and Services [Not Listed Below]</u> | <u>§ 790.102</u> | <u>P</u> | <u>P</u> | <u>P</u> |
| <u>736.41</u> | <u>Bar</u> | <u>§ 790.22</u> | <u>P</u> | <u>P</u> | - |
| <u>736.42</u> | <u>Full-Service Restaurant</u> | <u>§ 790.92</u> | <u>P</u> | <u>P</u> | - |
| <u>736.43</u> | <u>Large Fast Food Restaurant</u> | <u>§ 790.90</u> | - | - | - |
| <u>736.44</u> | <u>Small Self-Service Restaurant</u> | <u>§ 790.91</u> | <u>C</u> | - | - |
| <u>736.45</u> | <u>Liquor Store</u> | <u>§ 790.55</u> | - | - | - |
| <u>736.46</u> | <u>Movie Theater</u> | <u>§ 790.64</u> | <u>P</u> | <u>P</u> | - |
| <u>736.47</u> | <u>Adult Entertainment</u> | <u>§ 790.36</u> | <u>C</u> | <u>C</u> | - |
| <u>736.48</u> | <u>Other Entertainment</u> | <u>§ 790.38</u> | <u>P</u> | <u>P</u> | - |
| <u>736.49</u> | <u>Financial Service</u> | <u>§ 790.110</u> | <u>P</u> | <u>P</u> | - |
| <u>736.50</u> | <u>Limited Financial Service</u> | <u>§ 790.112</u> | <u>P</u> | <u>P</u> | - |
| <u>736.51</u> | <u>Medical Service</u> | <u>§ 790.114</u> | <u>P</u> | <u>P</u> | <u>P</u> |
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|---------------|---|---|-----------|-----------|-----------|
| <u>736.52</u> | <u>Personal Service</u> - | <u>§ 790.116</u> | <u>P</u> | <u>P</u> | <u>P</u> |
| <u>736.53</u> | <u>Business or Professional Service</u> | <u>§ 790.108</u> | <u>P</u> | <u>P</u> | <u>P</u> |
| <u>736.54</u> | <u>Massage Establishment</u> | <u>§ 790.60,</u> <u>§ 2700</u> <u>Police Code</u> | <u>C</u> | <u>C</u> | - |
| <u>736.55</u> | <u>Tourist Hotel</u> | <u>§ 790.46</u> | <u>C</u> | <u>C</u> | <u>C</u> |
| <u>736.56</u> | <u>Automobile Parking</u> | <u>§§ 790.8,</u> <u>156, 158.1,</u> <u>160</u> | <u>NP</u> | <u>NP</u> | <u>NP</u> |
| <u>736.57</u> | <u>Automotive Gas Station</u> | <u>§ 790.14</u> | <u>C</u> | - | - |
| <u>736.58</u> | <u>Automotive Service Station</u> | <u>§ 790.17</u> | <u>C</u> | - | - |
| <u>736.59</u> | <u>Automotive Repair</u> | <u>§ 790.15</u> | <u>C</u> | <u>C</u> | - |
| <u>736.60</u> | <u>Automotive Wash</u> | <u>§ 790.18</u> | <u>C</u> | - | - |
| <u>736.61</u> | <u>Automobile Sale or Rental</u> | <u>§ 790.12</u> | <u>C</u> | - | - |
| <u>736.62</u> | <u>Animal Hospital</u> - | <u>§ 790.6</u> | <u>C</u> | <u>C</u> | - |
| <u>736.63</u> | <u>Ambulance Service</u> | <u>§ 790.2</u> | <u>C</u> | - | - |
| <u>736.64</u> | <u>Mortuary</u> | <u>§ 790.62</u> | <u>C</u> | <u>C</u> | <u>C</u> |

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|---|---|-----------------------|--|-----------|-----------|
| <u>736.65</u> | <u>Trade Shop</u> | <u>§ 790.124</u> | <u>P</u> | <u>C</u> | <u>C</u> |
| <u>736.66</u> | <u>Storage</u> | <u>§ 790.117</u> | <u>NP</u> | <u>NP</u> | <u>NP</u> |
| <u>736.67</u> | <u>Video Store</u> | <u>§ 790.135</u> | <u>C</u> | <u>C</u> | <u>C</u> |
| 736.68 | <u>Fringe Financial</u> | <u>§ 790.111</u> | <u>#</u> | <u>#</u> | <u>#</u> |
| <u>Institutions and Non-Retail Sales and Services</u> | | | | | |
| <u>736.70</u> | <u>Administrative Service</u> | <u>§ 790.106</u> | <u>C</u> | <u>C</u> | <u>C</u> |
| <u>736.80</u> | <u>Hospital or Medical Center</u> | <u>§ 790.44</u> | <u>C</u> | <u>C</u> | <u>C</u> |
| <u>736.81</u> | <u>Other Institutions, Large</u> | <u>§ 790.50</u> | <u>P</u> | <u>P</u> | <u>P</u> |
| <u>736.82</u> | <u>Other Institutions, Small</u> | <u>§ 790.51</u> | <u>P</u> | <u>P</u> | <u>P</u> |
| <u>736.83</u> | <u>Public Use</u> | <u>§ 790.80</u> | <u>C</u> | <u>C</u> | <u>C</u> |
| <u>736.84</u> | <u>Medical Cannabis Dispensary</u> | <u>§ 790.141</u> | <u>P #</u> | - | - |
| <u>RESIDENTIAL STANDARDS AND USES</u> | | | | | |
| <u>736.90</u> | <u>Residential Use</u> | <u>§ 790.88</u> | <u>P, except C for frontages listed in 145.4</u> | <u>P</u> | <u>P</u> |
| <u>736.90A</u> | <u>Single-Room Occupancy (SRO) Unit</u> | § 890.88 | <u>P</u> | <u>P</u> | <u>P</u> |
| <u>736.91</u> | <u>Residential Density</u> | <u>§§ 207, 207.1,</u> | <u>No residential density limit by lot area. Density restricted by physical envelope</u> | | |

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|---------------|---|---|--|----------|----------|
| | <u>Dwelling Units</u> | <u>790.88(a)</u> | <u>controls of height, bulk, setbacks, open space, exposure and other applicable controls of this and other Codes, as well as by applicable design guidelines, applicable elements and area plans of the General Plan, and design review by the Planning Department.</u> <u>§ 207.4, 207.6</u> | | |
| <u>736.92</u> | <u>Residential Density, Group Housing</u> | <u>§§ 207.1, 790.88(b)</u> | <u>No group housing density limit by lot area. Density restricted by physical envelope controls of height, bulk, setbacks, open space, exposure and other applicable controls of this and other Codes, as well as by applicable design guidelines, applicable elements and area plans of the General Plan, and design review by the Planning Department.</u> <u>§ 208</u> | | |
| <u>736.93</u> | <u>Usable Open Space [Per Residential Unit]</u> | <u>§§ 135, 136</u> | <u>Generally, either 80 sq. ft. if private, or 100 sq. ft. if common</u> <u>§ 135(d)</u> | | |
| <u>736.94</u> | <u>Off-Street Parking, Residential</u> | <u>§§ 150, 151.1, 153-157, 159-160, 204.5</u> | <u>None required. P up to 0.5 parking spaces per unit; C up to 0.75 parking spaces per unit.</u> <u>§§ 151.1, 166, 167, 145.1</u> | | |
| <u>736.95</u> | <u>Community Residential</u> | <u>§ 790.10, 145.1, 166</u> | <u>C</u> | <u>C</u> | <u>C</u> |

| | | | | | |
|--|----------------|--|--|--|--|
| | <u>Parking</u> | | | | |
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SPECIFIC PROVISIONS FOR THE MISSION NCT DISTRICT

| <u>Article 7 Code Section</u> | <u>Other Code Section</u> | <u>Zoning Controls</u> |
|-------------------------------------|---------------------------|---|
| <u>§ 726.68</u> | <u>§ 249.35</u> | <u>FRINGE FINANCIAL SERVICE RESTRICTED USE DISTRICT (FFSRUD) Boundaries: The FFSRUD and its 1/4 mile buffer includes, but is not limited to, the Mission Street Neighborhood Commercial Transit District. Controls: Within the FFSRUD and its 1/4 mile buffer, fringe financial services are NP pursuant to Section 249.35. Outside the FFSRUD and its 1/4 mile buffer, fringe financial services are P subject to the restrictions set forth in Subsection 249.35(c)(3).</u> |
| <u>§ 736.84</u> <u>§ 790.141</u> | <u>Health Code § 3308</u> | <u>Medical cannabis dispensaries in the Mission NCT District may only operate between the hours of 8 am and 10 pm.</u> |