

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
RICH MENENDEZ,

Appeal No. 17-183

Appellant(s))

vs.

ZONING ADMINISTRATOR,

Respondent)

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on November 29, 2017, the above named appellant(s) filed an appeal with the Board of Appeals of the City and County of San Francisco from the decision or order of the above named department(s), commission, or officer.

The substance or effect of the decision or order appealed from is the ISSUANCE on November 15, 2017, of a Letter of Determination regarding whether an existing use on the subject property at 180 Montgomery Street (dba Workshop Café) is a Restaurant Use under the Planning Code.

RECORD NO. 2017-008528ZAD

FOR HEARING ON January 31, 2018

Address of Appellant(s):

Address of Other Parties:

Rich Menendez, Appellant c/o Peter Ziblatt, Attorney for Appellant Pelosi Law Group 12 Geary Street San Francisco, CA 94108	N/A
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BOARD OF APPEALS

Date Filed:

NOV 29 2017

APPEAL #17-183

CITY & COUNTY OF SAN FRANCISCO BOARD OF APPEALS

PRELIMINARY STATEMENT OF APPEAL

I / We, Rich Menendez, hereby appeal the following departmental action: **ISSUANCE of Letter of Determination, Record No. 2017-008528ZAD**, by the **Zoning Administrator** which was issued or became effective on: November 15, 2017, for the property located at: **180 Montgomery Street**.

BRIEFING SCHEDULE:

The Appellant may, but is not required to, submit a one page (double-spaced) supplementary statement with this Preliminary Statement of Appeal. No exhibits or other submissions are allowed at this time.

Appellant's Brief is due on or before: **January 11, 2018, (no later than three Thursdays prior to the hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible. PZ

Respondent's and Other Parties' Briefs are due on or before: **January 25, 2018, (no later than one Thursday prior to hearing date)**, up to 12 pages in length, doubled-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible.

Only photographs and drawings may be submitted by the parties at hearing.

Hearing Date: **Wednesday, January 31, 2018, 5:00 p.m., City Hall, Room 416, One Dr. Carlton B. Goodlett Place.**

All parties to this appeal must adhere to the briefing schedule above, however if the hearing date is changed, the briefing schedule **MAY** also be changed. Written notice will be provided of any change to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should submit eleven (11) copies of all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. Please note that names and contact information included in submittals from members of the public will become part of the public record. Submittals from members of the public may be made anonymously.

Please note that in addition to the parties' briefs, any materials that the Board receives relevant to this appeal, including letters of support/opposition from members of the public, are distributed to Board members prior to hearing. All such materials are available for inspection at the Board's office. You may also request a copy of the packet of materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

If you have any questions please call the Board of Appeals at 415-575-6880

The reasons for this appeal are as follows:

See attached statement.

Appellant or Agent (Circle One):

Signature: G. ZIBLATT

Print Name: PETER ZIBLATT

NOV 29 2017

APPEAL # 17-183**PRELIMINARY STATEMENT OF APPEAL**

Workshop Café is appealing the Letter of Determination issued by the Planning Department's Zoning Administrator, Scott Sanchez, dated November 15, 2017, which found that the reserved seating area of the restaurant is subordinate to the Restaurant Use and classified as an Office Use. The basis of the appeal is as follows:

1. The Workshop Café is a Retail Sales and Service, Restaurant Use. 100% of the Workshop Café, including the reserved seating area, is a "Retail Sales and Service" use or Restaurant Use that serves prepared, ready-to-eat cooked foods directly to the public or end user (i.e., customers) for consumption on- and off the premises. It is a Bona Fide Eating Place with approximately 66% of gross receipts coming from food and beverage sales.
2. The Workshop Café is not a Non-Retail Sales and Service, Office Use. General Office is a Non-Retail Sales and Service use that is a type of Commercial Use that sells goods or services to other businesses, not to end users or the general public. The Workshop Café, on the other hand, is 100% open to the public and all the goods and services offered are available to anyone off the street and any member of the public, meeting the definition of retail sales and service.
3. Office Amenities and Reserved Seating do not make the Workshop Café an Office Use. 100% of the Workshop Café is a Retail Sales and Service use or Restaurant Use because (1) over 66% of all sales at the Workshop Café are from food and beverage; (2) food is prepared on-site from fresh, raw materials; (3) customers can purchase and consume food and beverages from any seat in the Workshop Café; (4) Workshop Café employees provide service to every table, and at the counter; (5) 100% of the floor area may be used by any member of the public; and, (6) all goods and services are provided directly to the public as the end user.

NOV 29 2017

APPEAL # 17-183

SAN FRANCISCO PLANNING DEPARTMENT

Letter of Determination

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

November 15, 2017

Reception:
415.558.6378

Alexis Pelosi
Pelosi Law Group
560 Mission Street, Suite 2800
San Francisco, CA 94105

Fax:
415.558.6409

Planning
Information:
415.558.6377

Site Address:	180 Montgomery Street
Assessor's Block/Lot:	0289/009
Zoning District:	C-3-O (Downtown - Office)
Staff Contact:	Claudine Asbagh, (415) 575-6914 or claudine.asbagh@sfgov.org
Record No.:	2017-008528ZAD

Dear Ms. Pelosi:

This letter is in response to your request for a Letter of Determination (LOD) regarding the property at 180 Montgomery Street. This parcel is located in the C-3-O (Downtown - Office) Zoning District and in both the 300-S and 350-S Height and Bulk Districts. Your request seeks a determination as to whether an existing use on the property (dba Workshop Café) is a Restaurant Use under the Planning Code.

The Planning Code defines Restaurant Use as "A Retail Sales and Service use that serves prepared, ready-to-eat cooked foods to customers for consumption on the premises and which has seating. As a minor and incidental use, it may serve such foods to customers for off-site consumption. It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59, or 75); however, if it does so, it shall be required to operate as a Bona Fide Eating Place."

As described in your request, Workshop Café offers food and beverage, free Wi-Fi, and different configurations of seating areas (including private rooms) that patrons can reserve for blocks of time as works-spaces (reserved seating areas). Workshop Café also offers various services (including print services, whiteboards and video monitors) that facilitate use of the reserved seating areas as office space by customers. The floor plans provided show that 3,007 sf of the 4,669 sf use is devoted to reserved seating areas.

In order for the Workshop Café to be consistent with the Planning Code definition of Restaurant Use, more than half of overall gross receipts must be from food and drink sales (including alcohol). If the Workshop Café does not meet this requirement, it will be considered to be an Office Use. Separately, more than half of food/drink receipts would need to be from non-alcohol food/drink sales to be a Bona Fide Eating Place. If the Workshop Café does not meet this requirement, it will be considered to be a Bar Use.

Alexis Pelosi
Pelosi Law Group
560 Mission Street, Suite 2800
San Francisco, CA 94105

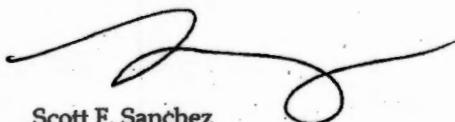
November 15, 2017
Letter of Determination
180 Montgomery

In addition, the reserved seating areas must be limited to 1/3 of the total occupied floor area in order to be considered subordinate to the Restaurant Use. If the Workshop Café does not meet this requirement, it will be considered to be an Office Use. Please note that the current plans show that more than 1/3 of the total occupied floor area is dedicated to reserved seating areas. Workshop Café may either reduce the area in question to less than 1/3 of the total occupied floor area or apply for a Conditional Use Authorization to allow an Office Use on the ground floor of the subject property.

Please note that a Letter of Determination is a determination regarding the classification of uses and interpretation and applicability of the provisions of the Planning Code. This Letter of Determination is not a permit to commence any work or change occupancy. Permits from appropriate Departments must be secured before work is started or occupancy is changed.

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: Claudine Asbagh, Planner
Property Owner
Neighborhood Groups



Alexis M. Pelosi
alexis@pelosilawgroup.com

January 10, 2018

Via Hand Delivery

President Daryl Honda and Commissioners
San Francisco Board of Appeals
San Francisco Planning Department
1650 Mission Street, Suite 304
San Francisco, CA 94103

Re: Appellant Brief in Support of Appeal No. 17-183
Menendez v. ZA
Letter of Determination
180 Montgomery Street, San Francisco

Dear President and Commissioners:

Our firm represents Mr. Rich Menendez and the Workshop Café, which is located at 180 Montgomery Street in San Francisco, California (“Property”). On behalf of our client, we are submitting this brief in support of its appeal of a Letter of Determination (“LOD”) issued by the Zoning Administrator (“ZA”) dated November 15, 2017, that appears to find that the services and amenities provided by the Workshop Café somehow transform a “Retail Sales and Services” or “Restaurant” use into an “Office” use.

Specifically, we request that the Board of Appeals reject the ZA’s conclusions in the LOD and find that under Planning Code definitions, the entirety of the Workshop Café is a “Retail Sales and Service” use, and more specifically a “Restaurant” use. Based on the clear definitions provided in the Planning Code, we believe that the ZA erred in finding that providing reserved seating and amenities make a business that is 100% open to the public an “Office” use. For this reason, we request the LOD be overturned.

I. INTRODUCTION

On June 19, 2017, the Pelosi Law Group, on behalf of the Workshop Café, requested a LOD from the ZA seeking confirmation that the Workshop Café is a “Retail Sales and Service” use and, more specifically a “Restaurant” use under the Planning Code. An LOD was requested to clarify that the offering of seat reservations and amenities to the public does not change the underlying Restaurant use of the Workshop Café.

On November 15, 2017, the ZA issued an LOD that simply stated the Workshop Café’s “...reserved seating must be limited to 1/3 of the total occupied floor area in order to be considered subordinate to the Restaurant Use. If the Workshop Café does not meet this requirement, it will be considered to be an Office Use. Please note that the current plans show that more than 1/3 of the total occupied floor is dedicated to reserved seating.” **No additional analysis, discussion or rationale was provided.** In addition, no response to the detailed and thorough Planning Code analysis provided in the LOD request, which is attached for your reference but without its exhibits, was provided, nor an explanation or rationale to support the ZA’s determination. The ZA appears to simply have found that where a customer sits and what amenities are offered to that customer somehow changes the underlying use when a fee is charged, even though the underlying use remains and is available throughout the space.¹

The Board of Appeals is required to defer to the ZA, **unless** the Board finds that the ZA erred or abused his discretion. Here, we believe that substantial evidence exists to support our claim that the ZA has erred in his interpretation of the Planning Code. First, as discussed in detail in the LOD request and below, the Workshop Café meets the definition of “Retail Sales and Services”

¹ A reasonable comparison would be a business class ticket on an airplane. Does the fact that someone pays for a wider seat and a meal change the underlying use? Does it somehow make a plane a restaurant? No. Similarly, someone paying to reserve seat and use amenities at the Workshop Café does not change the use from a restaurant, it just means they are in a different kind of seat.

under the Planning Code. Second, it does not meet the definition of “Office” under the Planning Code. The Workshop Café is 100% open to the public with all services provided directly to the end user, which is the public. All reservations at the Workshop Café are on a first-come, first-serve basis, and there is no membership or other ongoing contractual obligation – any person walking down the street can sit anywhere in the Workshop Café and use any of the amenities provided. Food and beverage service is provided throughout the space and comprises a majority of the gross receipts. The Workshop Café cannot be an “Office” under the Planning Code, because it provides *direct sales to the general public on-site*. For these reasons, as discussed in detail below, we believe that the ZA has erred in his interpretation of the Planning Code and the LOD issued should be overturned.

II. OVERVIEW OF THE WORKSHOP CAFÉ

The Workshop Café is located on the ground floor of 180 Montgomery Street. It first opened its doors on August 20, 2013, and since that time, it has operated in the same manner, providing food and beverage service in a unique space where customers can sit and enjoy a cup of coffee, a sandwich or snack, or a full meal while also staying connected and engaged. The Workshop Café opened as a restaurant and continues to operate as a restaurant. The Workshop Café offers unique amenities and seating opportunities and it appears that it is these amenities that are the “issue.” These amenities and seating options, however, are features of the restaurant – not the other way around (i.e., the restaurant is not an add on to amenities and seating options).²

The Workshop Café, like most cafés and restaurants, offers free Wi-Fi to all customers, and to those persons that happen to sit nearby. In addition, it offers a service that allows customers to guarantee a seat will be available for them and allows customers to stay for longer periods of time

² As discussed below, this statement is supported by the gross receipts and the fact that the Workshop Café employs a full-time culinary manager and service staff, not an office manager.

without feeling guilty about the amount of food or beverages that they are buying (or not). As different customers have different needs, the Workshop Café provides different types of seating areas and amenities to cater to customer (i.e., the public) demand.

The Workshop Café has an outdoor patio and an indoor bar-type seating area. It also includes reserved only seating and private meeting rooms. Reservations to sit in this area or reserve a private meeting room, like reservations at most other restaurants in San Francisco, can be made over the phone, in person or via an application. The Workshop Café charges a fee for these reserved seating areas. **All reservations are on a first-come, first-serve basis and there are no standing or long-term reservations for seats or tables in the reserved seating area with every seat or table 100% available to the public at all times.** Images of the various seating areas in the Workshop Café are included in **Attachment A**.

The reserved seating area and private rooms have a few added services that the Workshop Café has determined are important to customers (i.e., the public) that want to sit in these areas. They include print services, whiteboards and video monitors (but no computers). Use of these additional services are 100% available to the public and are provided for a fee by the Workshop Café (i.e., not the customer) as a service for its customers (i.e., the public).

The Workshop Café has a full-time culinary manager³ and full-time kitchen staff that creates and prepares food, including full meals from fresh raw materials on-site. A copy of the Workshop Café's menu is included as **Attachment B**. Food and beverages are served in all areas of the Workshop Café, including the reserved seating areas and meeting rooms and can be ordered at the counter, at the table or via the app. **Food and beverage sales are the primary source of revenue** for the Workshop Café comprising more than 66% of gross receipts.⁴

³ The current culinary manager previously was the Bay Area Culinary Manager for Sushirrito.

⁴ Because of concern regarding competition in the marketplace, and to preserve certain proprietary information from disclosure, a gross receipts figure is used that shows the Workshop Café meets its requirements of a Bona Fide

The Workshop Café also generates sales from reservations in the reserved seating areas. These sales are nominal, **but are an important part of the Workshop Café's business model.** While these sales are not the primary revenue generator, they are a key factor to the restaurant's success. Specifically, they bring customers in the door by addressing an anxiety felt by the public (i.e., the customers) that they may not find an open seat or table⁵ at their local café or alleviate a concern or guilty feeling that some in the public feel when they take up a seat for a few hours and only order one drink. By creating a reservation system within the Workshop Café where customers know they will have a seat and not be forced (through guilt) to purchase anything, their anxiety and concern is eliminated. Over 90% of these same customers, buy food or beverages (repeatedly) when sitting at the Workshop Café. For this reason, **the reserved seating area is an integral part of the Workshop Café and a critical component to its success.** It meets the demands of the market and public, but in meeting that demand it does not change the underlying use of the Workshop Café, which is a restaurant. This is evidenced by the fact that more than 90% of all customers, **regardless of where they sit** order food and beverages.⁶

III. ANALYSIS

A. The Workshop Café is a Restaurant and Bona Fide Eating Place

The Workshop Café is a restaurant that also provides a suite of amenities that allows its customers to support work related activities while enjoying their food and beverages. The business model falls squarely within the definition of a “Restaurant” under the Planning Code.⁷

Restaurant. The actual gross receipts from food and beverage sales, however, are much higher.

⁵ This is referencing the anxiety felt by folks who may need a place to sit for a few hours between meetings and may not find a seat or table at Starbucks, Peets, etc. or may be forced to move their papers, computer, etc. to make way for other folks also needing a place to sit.

⁶ Like all cafes and restaurants, there will always be some customers that do not order any food or beverages. There is no distinction, or significant difference, in the number of customers that purchase food and beverages based on where they are sitting (i.e., there are an equal number of customers that do not order food and beverages that sit in the non-reserved seating area as in the reserved seating area).

⁷ A copy of all of the Planning Code definitions cited in this brief are attached as **Attachment C.**

Planning Code Section 102 defines “Restaurant” as a “Retail Sales and Service use that serves prepared, ready-to-eat cooked foods to customers for consumption on or off the premises and which has seating. It may have a Take-Out Food use as a minor and incidental use. It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59, or 75); however, if it does so, it shall be required to operate as a Bona Fide Eating Place.”

The Workshop Café serves prepared, ready-to-eat cooked foods to customers (i.e., the public) for consumption on and off the premises. The menu includes jars, hot cereal, bagels, sweets, bowls, sandwiches and toasts, wraps, salads, soups and snacks, among other food offerings. Beverages are also available. Food and beverage orders are brought to the customer by Workshop Café employees via service at the counter or table service throughout the entire restaurant throughout the day. More than 66% of all gross receipts are from food and beverage sales and more than 90% of all customers order food and beverages with no distinction between whether these customers are in a reserved or non-reserved seating area. Evidence of these statements can be found in a graph of food and beverage sales by hour included in Attachment D, images of the food served included in Attachment E, a copy of the hours of operation is included as Attachment F.

In addition to being a “Restaurant,” the Workshop Café is also a “Bona Fide Eating Place” under Planning Code section 102 and has a Type 41 ABC license. A copy of the Workshop Café’s Type 41 ABC license that indicates that it is an Eating Place consistent with the requirements for a “Bona Fide Eating Place” is included as Attachment G. Planning Code section 102, defines a “Bona Fide Eating Place” as one that meets the following requirements:

- (a) A place that is regularly and in a bona fide manner used and kept open for the service of meals to guests for compensation and that has suitable kitchen facilities connected therewith, containing conveniences for cooking of an assortment of foods that may be required for ordinary meals. “Meals” shall mean an assortment of foods commonly ordered at various hours of the day for breakfast, lunch, or dinner. Incidental food service, comprised only of appetizers to accompany drinks, is not considered a meal. Incidental, sporadic, or infrequent sales of meals or a mere offering of meals without

actual sales is not compliance.

- (b) "Guests" shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.
- (c) Actual and substantial sales of meals are required, during the normal days and meal hours that a bona fide public eating place is open, provided that "normal days of operation" shall mean a minimum of five days a week and "normal hours" of operation for meal service shall mean approximately 7:00 a.m. to 11:00 a.m. if open for breakfast; 11:00 a.m. to 2:00 p.m. if open for lunch; or 5:00 p.m. to 10:00 p.m. if open for dinner.
- (d) The premises must be equipped and maintained in good faith. This means the premises must possess working refrigeration and cooking devices, pots, pans, utensils, table service, condiment dispensers, menus, signs, and enough goods to make substantial meals. The premises must comply with all regulations of the Department of Public Health.
- (e) **A minimum of 51 percent of the restaurant's gross receipts shall be from food sales prepared and sold to guests on the premises.** Records of the restaurant's gross receipts shall be provided to the Department upon request.
- (f) A "bona fide eating place" does not include an Adult Business as defined in this Section of the Code.

(emphasis added.)

The Workshop Café fits within the definition of "Restaurant" and, more specifically, a "Bona Fide Eating Place." The fact that the Workshop Café charges the public to reserve a seat or room and offers those customers amenities, such as charging stations, monitors, white boards, access to printers and WiFi, does not change the use of the space. The ZA through the LOD, however, appears to conclude that even though food and beverages are being offered and consumed throughout the space and even though food and beverage sales comprise over 66% of the gross receipts and even though the Workshop Café maintains a Type 41 ABC license, the charging of a fee for a service (i.e., a guaranteed seat and access to amenities) somehow makes that reserved seating area not a restaurant.

The reserved seating area and amenities are a critical part of the restaurant and **a marketing tool** to

drive customers into the restaurant. The finding that this **marketing tool** changes the use is not only inconsistent with the clear definition of Restaurant and Bona Fide Restaurant in the Planning Code, but erroneous.⁸

B. The Workshop Café is not “General Office”

The Workshop Café is not an “Office” use. Planning Code Section 102 defines General Office as a “Non-Retail Sales and Service” use. A “*Non-Retail Sales and Service*” use (*emphasis added*) is a “Commercial Use that involves **the sale of goods or services to other businesses rather than the end user, or that does not provide for direct sales to the general public on site.**” (Planning Code Section 102. **Emphasis added.**)

As discussed in detail above, the **Workshop Café sells goods and services directly to the end user and, more importantly, provides for direct sales to the public on site.** The goods that the Workshop Café sells are food and beverages and these sales comprise more than 66% of the Workshop Café’s gross receipts **with more than 90% of all customers purchasing food and beverages.** The other services that the Workshop Café sells are reservations for a seat, an ability to use a whiteboard, access a larger screen, print, use a private room, and other similar type services. These services are provided directly to the end user or customer and not to a business.⁹ The customer (i.e., the public), pays for these services directly to the Workshop Café either via cash, credit or through the app.

⁸ It also appears to find that customers cannot both reserve a seat and pay for food and beverage without somehow creating two separate types of uses. The reserved seating area and amenities are part of the Workshop Café’s business model and a marketing tool and not, contrary to what appears to be implied, a separate business or use.

⁹ They also are less than 33% of all gross receipts.

The Workshop Café is 100% open to the public and the goods and services offered are available to anyone off the street and provided directly to the end user –not to a business.¹⁰ While some of the services offered by the Workshop Café are “office like,” not only do they not change the underlying use, but they do not mean those services are not *retail* services. They are identical to the printing, copying, internet and computer services provided by a FedEx Kinkos, UPS Store or other similar store and the Planning Code does not designate those uses or businesses as office use, so similarly, the Workshop Café should not be considered an office use. Based on the information above, the ZA’s conclusion is simply not supported by the definition of Office under the Planning Code and is yet another reason why we believe the ZA’s interpretation is in error.

C. Reserved Seating Areas and “Office-Like” Features Do Not Convert a Restaurant to an Office Use

The Workshop Café, as noted above, is a restaurant. It meets the Planning Code definition of a “Restaurant” and the mere fact that it includes reserved seating areas and “office like” features does not somehow convert it to a non-restaurant or “Office” use. Without any citations to the Planning Code, or any analysis, a determination has been made that reserved seating and other amenities offered by the Workshop Café convert it from a restaurant into an office use.¹¹ This interpretation, and its application to the Workshop Café means that potentially any restaurant that has reserved seating and offers unique amenities could be subject to similar limitations. It is *the* logical consequence or potential effect of the LOD.

¹⁰ Customers may be employed by other businesses or may themselves providing services to other businesses, but that does not make their use of the services provided by the Workshop Café an office use. The customer (i.e., public) is eating and drinking, sitting in the chairs and at the tables and paying for the services – not the business.

¹¹ The LOD limits the amount of reserved seating area to 1/3 the total occupiable floor area. At 1/3 the total occupiable floor area it would be an accessory use.

Many restaurants require reservations and assess fees for those reservations, especially where meeting rooms or the entire restaurant is reserved. These same restaurants also provide “office like” amenities such as Wi-Fi, audio visual equipment, white boards, etc. as part of any reservation. Under the LOD issued, these restaurants would be limited to renting out only 1/3 of their occupied floor area or be determined to have been converted to office uses.

Many restaurants also offer other unique services to attract customers, but those services do not change the fundamental underlying use. For example, a restaurant may include a piano or dance floors to attract customers that like music or like to dance, but it does not make the restaurant a night club. A restaurant may also include video game tables or movies on walls to attract customers that like movies, but it does not make the restaurant a video arcade or a movie theater. A restaurant may even include areas where customers can hang out with cats to attract customers that like cats, but it does not make a restaurant an animal shelter. For these same reasons, the Workshop Café, which includes “office like” amenities to attract customers that want to use their computers, does not make it an office.

Any interpretation that a restaurant that offers “office like” amenities, in addition to food and beverages to the general public (i.e., its customers), somehow converts the underlying use into an office use is simply illogical. Under this interpretation every Starbucks, Peets or other café where customers sit for hours on their computers working should be considered an office use. Many of these cafes charge for WiFi and are adding other amenities and services to attract customers to their businesses. The Workshop Café has found a way to attract those customers and get them to stay, increasing more food and beverage sales and driving other customers into the restaurant *simply because* they can reserve a seat and not feel guilty or concerned about sitting for prolonged period of time. Paying for a seat does not change the underlying use and instead is a cutting-edge retail/restaurant concept and the LOD is unfairly penalizing the Workshop Café for finding a

creative way to survive and thrive in a competitive business environment through the implementation of a creative marketing tool – a tool that is critical and integral to the success of the restaurant. The Workshop Café is the same use as any other café in the City¹²; the marketing, however, is different and marketing cannot, and should not define, the use.

IV. CONCLUSION

While not stated in the LOD, in our opinion, we believe the LOD reflects a concern by the ZA regarding the conversion of ground floor retail space into co-working space. As shown in a table prepared and attached as Attachment H, the Workshop Café is not co-working space. Instead it is a vibrant and active retail use at the ground floor along a key stretch of Montgomery Street that was previously “dead.”^{13,14} It is a retail use offering a unique restaurant concept for the public, but instead of embracing the idea, the ZA appears to be trying to pigeonhole it into a use type that it clearly does not fit.

Legally, as discussed above and supported by the definitions in the Planning Code, the Workshop Café meets the definition of “Retail Sales and Service” and “Restaurant” use. The amenities offered do not change that, nor does the fact that customers (i.e., the public) pay to reserve a seat or table. The ZA’s interpretation of the Workshop Café, we believe, is skewed by other potentially “bad” actors. The argument presented appears to be that “if it looks like a duck (office), swims like a duck

¹² Today, most cafes throughout the City have customers sitting for prolonged periods of time, on their computers, tablets or phones working. Many of these cafes are trying to capture this customer on a regular basis by providing larger tables and workspaces, offering charging strips and other amenities to try to drive customers into their cafes.

¹³ Before the Workshop Café, the space at 180 Montgomery Street was vacant for over three (3) years and was almost reduced in size with a large portion of it planned for conversion to back of house uses for the office building. The Workshop Café was the only retail use able to use the large space and the activity in the space is considerable and consistent with customers entering and existing the restaurant throughout the day and evening.

¹⁴ The Workshop Café includes extended hours (i.e., 7AM Monday to Friday until 9PM Monday to Friday, and 10AM to 9PM Saturday and Sunday). It is the only restaurant open along Montgomery Street in the evenings and on weekends. A video of how “dead” this part of the City is on weekends can be seen at <http://www.workshopcafe.com/fidisunday>. By staying open in the evenings and on weekends, the Workshop Café is providing a much-needed service to the public who may want to stop in, grab a coffee and a bite to eat, have a place to sit and, if needed, have access to the amenities that the Workshop Café offers.

(office), and quacks like a duck (office), then it is probably a duck (office)," but here it cannot be a duck (office) because the Workshop Café simply cannot be defined as "Office." It is 100% open to the public, providing its goods and services directly to the end user. To be clear, the definition of "Office" under the Planning Code is not whether a use provides a chair or table, or even a printer, power outlet, USB port, etc., but whether anyone walking off the street can sit at that chair or table and use those services. Where they can, even if they have to pay for it, the use is Retail.

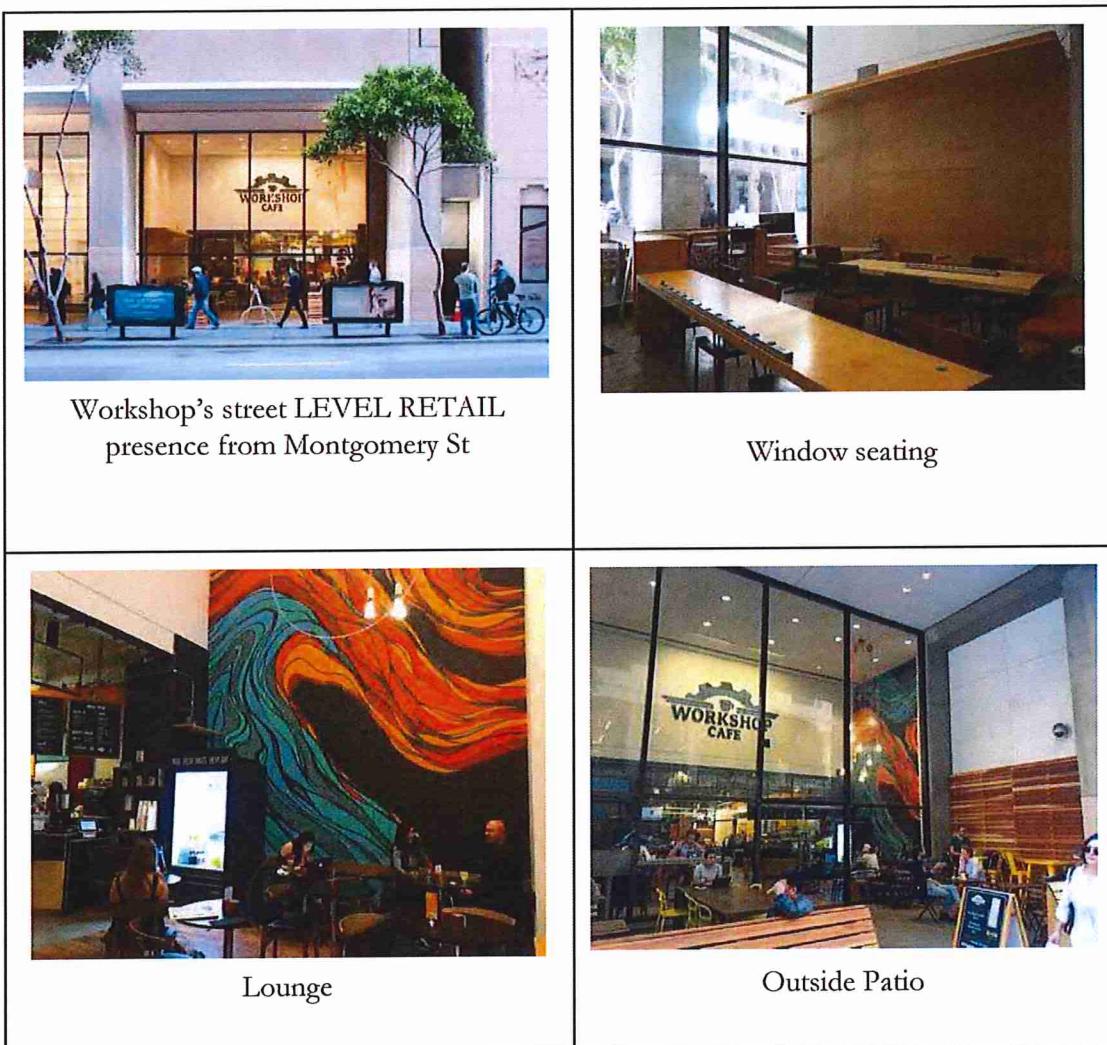
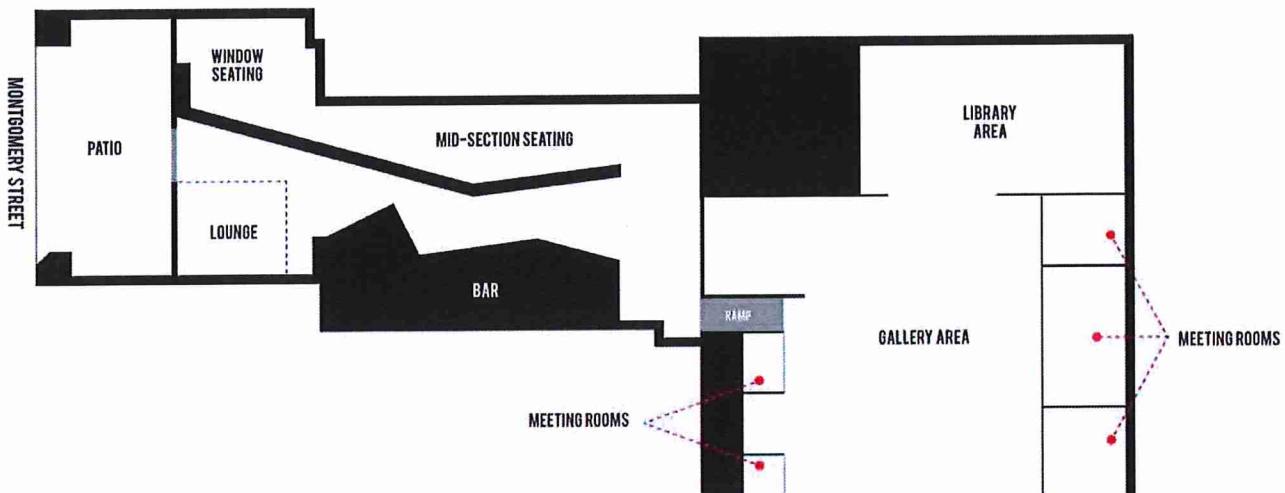
At a time when retailers are closing their doors and restaurants are failing across the City, the Workshop Café has developed a cutting-edge retail concept that not only meets the definition of "Retail Sales and Service," but also achieves the goal providing a vibrant and active ground floor use. As supported by the facts and evidence presented above (i.e., over 66% of all sales at the Workshop Café are from food and beverage sales; over 90% of all customers regardless of where they sit order food and beverages; food is prepared on-site from fresh, raw materials and customers can purchase and consume food and beverages from any seat or table with employees providing service to every table, as well as at the counter; and, all the space at the Workshop Café is accessible to any member of the public) the Workshop Café is a Restaurant. Thus, the ZA has erred, the **Workshop Café is Retail, and, specifically, a "Bona Fide Eating Place"** and the ZA's LOD should be overturned.

Very Truly Yours,



Alexis M. Pelosi
Pelosi Law Group

Attachment A - Pictures of Workshop Cafe Seating Areas





Mid Section



Mid Section



Lounge



Library Area



Gallery Area



Mid Section Seating

Attachment B - Workshop Café Menu



OUR MENU

Made fresh onsite every day.

COFFEE <small>(STUMPTOWN)</small> <ul style="list-style-type: none"> Drip 2.5 Pourover 4 Espresso 2.5 Maschiato 3 Cappuccino 3.5 Latte 4 Mocha 4.5 Chai Latte 4 Americano 3 Hot Chocolate 3.5 Kyoto Cold Brew 4 <p><small>(Soy/almond milk upgrade .5)</small></p>	SPECIALTY DRINKS <ul style="list-style-type: none"> Iced Honey Almond Latte 5 Horchata 5 Seasonal Lemonade 3.5 Fresh-squeezed OJ 3.5 Lev's Probiotics Kombucha 5 Red Blossom Tea 4 White, Black, Oolong Red Blossom Herbal Tea 4 Peppermint Rose Elderflower 	JARS <ul style="list-style-type: none"> Banana Date Shake 5.5 Banana, medjool dates, almond milk, cocoa nibs, cinnamon coconut sugar Coconut Colada Chia Parfait 5 House-made coconut chia pudding, pineapple, honey, toasted coconut chips, super seed crunch Fruit & Yogurt Parfait 5 Greek yogurt, fresh berries, stone fruit compote, ancient grain granola Seasonal Fruit Jar 4.5 Raspberries, blackberries, pineapple, honeydew, blueberries 	SALADS <ul style="list-style-type: none"> Hapa Chicken Salad 12.5 Roasted chicken, avocado, orange segments, carrot and cucumber ribbons, toasted almonds, sesame nori crunch, romaine and arugula, white miso & ginger dressing Green Goddess Cobb Salad 12.5 Bacon, roasted chicken, avocado, cherry tomatoes, watermelon radish, romaine and arugula, green goddess dressing Superfood Salad 10 Quinoa, kale, roasted red beets, carrots, blueberries, orange segments, chickpeas, chopped almonds, chia & hemp seeds, white truffle-honey vinaigrette Prosciutto Salad 11.5 Prosciutto, feta, medjool dates, pepitas, sunflower seeds, spinach and arugula, sumac vinaigrette 		
HOT CEREAL <ul style="list-style-type: none"> Banana Almond Oatmeal 6 Steel cut oats, sliced bananas, almond butter, toasted almonds, bee pollen. Served w/ house-made date milk Blueberry Muffin Oatmeal 5.5 Steel cut oats, fresh blueberries, pecan streusel. Served w/ house-made date milk Cinnamon Sugar Oatmeal 5 Steel cut oats, cinnamon coconut sugar. Served w/ house-made date milk 	SWEETS <ul style="list-style-type: none"> Tiramisu Jar 5 Stumptown coffee ladyfingers, whipped mascarpone, chocolate-covered espresso beans Key Lime & Coconut Jar 5 Key lime mousse, graham cracker crumbs, toasted coconut chips 	SOUP <ul style="list-style-type: none"> Faux Pho 8 Workshop Café broth, ramen noodles, roasted chicken, carrots, fresh herbs 	SANDWICHES & TOASTS <ul style="list-style-type: none"> Chipotle Citrus Chicken Sandwich 12.5 Chipotle chicken, spicy citrus slaw, cheddar, pickled onions, green goddess aioli, Firebrand challah roll. Served with a side of chips B.E.C. Breakfast Sandwich 8 Scrambled eggs, applewood smoked bacon, cheddar, arugula, aioli, Firebrand challah roll. Served with a side of fruit Cauliflower, Wheatberry & Date Salad 4.5 Roasted cauliflower, ancient grain blend, medjool dates, arugula, pickled onion, feta, sumac vinaigrette Vegetables Crudité & Herbed Hummus 6 Herbed hummus, feta, vegetable crudité, chips 		
WRAPS <ul style="list-style-type: none"> Curry Quinoa Wrap 8 Kale, quinoa, roasted sweet potatoes, cucumber, chickpeas, spinach, carrots, whole grain wrap, Thai yellow curry sauce. Served cold with a side of curly sauce Asian Roasted Chicken Wrap 10 Ancient grain blend, roasted chicken, carrot ribbons, citrus ginger slaw, charred green onions, pickled onions, gochujang aioli, whole grain tortilla. Served cold with a side of gochujang aioli Breakfast Burrito 8 Scrambled eggs, applewood smoked bacon, roasted sweet potatoes, cheddar, charred green onions, avocado-tomatillo salsa, whole grain tortilla. Served hot with a side of chipotle aioli 	BOWLS <ul style="list-style-type: none"> Avo Egg Scramble 5.5 Scrambled eggs, avocado, arugula, feta, extra virgin olive oil Workshop Classic Breakfast Bowl 10 Smoked salmon, scrambled eggs, avocado, arugula, feta, extra virgin olive oil DIY Soft Baked Egg Bowl 12 Soft baked eggs, roasted sweet potatoes, arugula, avocado, green goddess dressing, super seed crunch Choice of: Roasted Chicken or Smoked Salmon Southwest Bowl 12 Ancient grain blend, roasted chicken, roasted sweet potato and carrots, chipotle aioli, spicy citrus slaw, pickled onions, cherry tomatoes, charred green onions, feta, avocado-tomatillo salsa Roasted Vegetable, Hummus & Grain Bowl 12 Ancient grain blend, roasted sweet potatoes, cauliflower and carrots, herbed hummus, feta, pickled onions, lemon-tahini vinaigrette, pistachio dukkah Gochujang Noodle Bowl 12 Ramen noodles, roasted chicken, bulgogi sauce, carrot ribbons, arugula, pickled onions, serrano peppers, gochujang aioli, crispy shankots 	DRINK MENU <hr/> BEERS \$6 <ul style="list-style-type: none"> North Coast Prolongster North Coast Old Rasputin Victory Prima Eel River Amber Ale Racer 5 IPA <hr/> HAPPY HOUR <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;"> 5P-7P </td> <td style="width: 50%; text-align: center;"> \$1 OFF BEER \$2 OFF WINE </td> </tr> </table> <hr/> <div style="display: flex; justify-content: space-around; align-items: center;"> <div style="border: 1px solid black; padding: 5px; font-weight: bold;">ADD ONS</div> <div style="font-size: small; margin-right: 20px;"> Bacon 4 Soft Baked Egg 2 Avocado 1.5 Toast 1.5 </div> <div style="display: flex; gap: 20px;"> </div> </div>	5P-7P	\$1 OFF BEER \$2 OFF WINE	WINE <hr/> SPARKLING <ul style="list-style-type: none"> Prosecco 9 Italy Mimosas 11 Prosecco & fresh-squeezed OJ <hr/> WHITE <ul style="list-style-type: none"> Sauvignon Blanc 9 Villa Maria "Private Bin," NZ Chardonnay 12 Flor de Campo, Santa Barbara, CA <hr/> RED <ul style="list-style-type: none"> Malbec 8 Graffigna, Argentina Cabernet Sauvignon 11 Josh Cellars, North Coast, CA
5P-7P	\$1 OFF BEER \$2 OFF WINE				

[Print](#)

ATTACHMENT C- Planning Code Definitions

B

Bar. A Retail Sales and Service Use that provides on-site alcoholic beverage sales for drinking on the premises, including bars serving beer, wine and/or liquor to the customer where no person under 21 years of age is admitted (with Alcoholic Beverage Control [ABC] license types 23, 42, 48, or 61) and drinking establishments serving beer where minors are present (with ABC license types 40 or 60) in conjunction with other uses such as Movie Theaters and General Entertainment. Such businesses shall operate with the specified conditions in Section 202.2(a).

(Amended by Ord. [188-15](#); see Sec. 102 history note.)

Basement. See Story.

Bedroom. A room primarily used for sleeping that meets the minimum requirements as defined in the Building Code for sleeping rooms.

Board of Supervisors (Board). The Board of Supervisors of the City and County of San Francisco.

Bona Fide Eating Place. A place that is regularly and in a bona fide manner used and kept open for the service of meals to guests for compensation and that has suitable kitchen facilities connected therewith, containing conveniences for cooking of an assortment of foods that may be required for ordinary meals.

(a) "Meals" shall mean an assortment of foods commonly ordered at various hours of the day for breakfast, lunch, or dinner. Incidental food service, comprised only of appetizers to accompany drinks, is not considered a meal. Incidental, sporadic, or infrequent sales of meals or a mere offering of meals without actual sales is not compliance.

(b) "Guests" shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.

(c) Actual and substantial sales of meals are required, during the normal days and meal hours that a bona fide public eating place is open, provided that "normal days of operation" shall mean a minimum of five days a week and "normal hours" of operation for meal service shall mean approximately 7:00 a.m. to 11:00 a.m. if open for breakfast; 11:00 a.m. to 2:00 p.m. if open for lunch; or 5:00 p.m. to 10:00 p.m. if open for dinner.

(d) The premises must be equipped and maintained in good faith. This means the premises must possess working refrigeration and cooking devices, pots, pans, utensils, table service, condiment dispensers, menus, signs, and enough goods to make substantial meals. The premises must comply with all regulations of the Department of Public Health.

(e) A minimum of 51 percent of the restaurant's gross receipts shall be from food sales prepared and sold to guests on the premises. Records of the restaurant's gross receipts shall be provided to the Department upon request.

(f) A "bona fide eating place" does not include an Adult Business as defined in this Section of the

Code.

Building. Any structure having a roof supported by columns or walls.

N

Neighborhood Agriculture. See Agriculture, Neighborhood.

Neighborhood-Serving Business. A neighborhood-serving business cannot be defined by the type of use, but rather by the characteristics of its customers, types of merchandise or service, its size, trade area, and the number of similar establishments in other neighborhoods. The primary clientele of a "neighborhood-serving business," by definition, is comprised of customers who live and/or work nearby.

While a neighborhood-serving business may derive revenue from customers outside the immediately surrounding neighborhood, it is not dependent on out-of-neighborhood clientele.

A neighborhood-serving use provides goods and/or services which are needed by residents and workers in the immediate neighborhood to satisfy basic personal and household needs on a frequent and recurring basis, and which if not available require trips outside of the neighborhood.

A use may be more or less neighborhood-serving depending upon its trade area. Uses that, due to the nature of their products and service, tend to be more neighborhood-serving are those which sell convenience items such as groceries, personal toiletries, magazines, and personal services such as cleaners, laundromats, and film processing. Uses that tend to be less neighborhood-oriented are those which sell more specialized, more expensive, less frequently purchased comparison goods such as automobiles and furniture.

For many uses (such as stores selling apparel, household goods, and variety merchandise), whether a business is neighborhood-serving depends on the size of the establishment: the larger the use, the larger the trade area, hence the less neighborhood-oriented.

Whether a business is neighborhood-serving or not also depends in part on the number and availability of other similar establishments in other neighborhoods: the more widespread the use, the more likely that it is neighborhood-oriented.

Net Addition. The total amount of gross floor area defined in Planning Code Section 102 contained in a development project, less the gross floor area contained in any structure demolished or retained as part of the proposed development project.

Nighttime Entertainment. See Entertainment, Nighttime.

Non-Auto Vehicle Sales or Rental. A Retail Sales and Service Use offering new or used bicycles, scooters, motorcycles, boats, or other marine vehicles for sale, rent, or lease when conducted entirely within an enclosed building.

Non-Commercial Entertainment and Recreation. See Entertainment and Recreation, Non-Commercial.

Nonprofit Organization. An organization organized and operated for nonprofit purposes within the provisions of California Revenue and Taxation Code Sections 23701-23710, inclusive, as demonstrated by a written determination from the California Franchise Tax Board exempting the organization from taxes under Revenue and Taxation Code Section 23701.

Non-Residential Use. Space within any structure or portion thereof intended or primarily suitable for, or

accessory to, occupancy by retail, office, commercial, or uses other than a Residential Use as defined in this Section. For the purposes of Article 4, residential components of Institutional Uses other than Religious Institutions shall be defined as a "residential use," and non-residential use shall not include PDR and publicly owned and operated community facilities.

Non-Residential Use Size. The permitted gross floor area allowed each individual non-residential use. Gross Floor Area is defined in this Section of the Code.

Non-Retail Use. A type of Commercial Use that involves the sale of goods or services to other businesses rather than the end user, or that does not provide for direct sales to the general public on site. Uses in this category include, but are not limited to, Non-Retail Sales and Service Uses and Non-Retail Automotive Uses.

Notice of Special Restrictions. A document recorded with the San Francisco Recorder's Office for any unit subject to this Program detailing the sale and resale or rental restrictions and any restrictions on purchaser or tenant income levels included as a Condition of Approval of the principal project relating to the unit.

O

Occupied Floor Area. See Floor Area, Occupied.

Office, General. A Non-Retail Sales and Service Use that includes space within a structure or portion thereof intended or primarily suitable for occupancy by persons or entities which perform, provide for their own benefit, or provide to others at that location, services including, but not limited to, the following: professional, banking, insurance, management, consulting, technical, sales, and design; and the non-accessory office functions of manufacturing and warehousing businesses, multimedia, software development, web design, electronic commerce, and information technology. This use shall exclude Non-Retail Professional Services as well as Retail Uses; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods.

Office Use. A grouping of uses that includes General Office, Retail Professional Services, and Non-Retail Professional Services. This use shall exclude: retail uses other than Retail Professional Services; repair; any business characterized by the physical transfer of tangible goods to customers on the premises; wholesale shipping, receiving and storage; and design showrooms or any other space intended and primarily suitable for display of goods.

One Ownership. Ownership of a parcel or contiguous parcels of property or possession thereof under a contract to purchase by a person or persons, firm, corporation or partnership, individually, jointly, in common, or in any other manner whereby such property is under single or unified control. The term shall include condominium ownership. The term "owner" shall mean the person, firm, corporation or partnership exercising one ownership as herein defined.

Open Air Sales. A Commercial Use Characteristic generally categorized as a Retail Sales and Service Use that involves open air sale of new and/or used merchandise, except vehicles, but including agricultural products, crafts and/or art work.

Open Recreation Area. A Non-Commercial Entertainment, Arts and Recreation Use that is not publicly owned which is not screened from public view, has no structures other than those necessary and incidental to the open land use, is not operated as a gainful business, and is devoted to outdoor recreation

rather than visitors, including Dwelling Units, Group Housing, Residential Hotels, and Senior Housing, Homeless Shelters, and for the purposes of Article 4 only any residential components of Institutional Uses. Single Room Occupancy and Student Housing designations are consider characteristics of certain Residential Uses.

(Amended by Ord. 129-17; see Sec. 102 history note.)

Restaurant. A Retail Sales and Service use that serves prepared, ready-to-eat cooked foods to customers for consumption on the premises and which has seating. As a minor and incidental use, it may serve such foods to customers for off-site consumption. It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59, or 75); however, if it does so, it shall be required to operate as a Bona Fide Eating Place. It is distinct and separate from a Limited-Restaurant. Such businesses shall operate with the specified conditions in Section 202.2(a)(1).

It shall not be required to operate within an enclosed building so long as it is also a Mobile Food Facility. Any associated outdoor seating and/or dining area is subject to regulation as an Outdoor Activity Area as set forth elsewhere in this Code.

(Amended by Ord. [188-15](#); [129-17](#); see Sec. 102 history note.)

Restaurant, Limited. A Retail Sales and Service Use that serves ready-to-eat foods and/or drinks to customers for consumption on or off the premises, that may or may not have seating. It may include wholesaling, manufacturing, or processing of foods, goods, or commodities on the premises as an Accessory Use as set forth in Sections 204.3 or 703.2 depending on the zoning district in which it is located. It includes, but is not limited to, foods provided by sandwich shops, coffee houses, pizzerias, ice cream shops, bakeries, delicatessens, and confectioneries meeting the above characteristics, but is distinct from a Specialty Grocery, Restaurant, and Bar. Within the North Beach SUD, it is also distinct from Specialty Food Manufacturing, as defined in Section 780.3(b). It shall not provide on-site beer and/or wine sales for consumption on the premises, but may provide off-site beer and/or wine sales for consumption off the premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine), that occupy less than 15% of the Occupied Floor Area of the establishment (including all areas devoted to the display and sale of alcoholic beverages). Such businesses shall operate with the specified conditions in Section 202.2(a)(1).

(Amended by Ord. [129-17](#); see Sec. 102 history note.)

Retail Entertainment, Arts and Recreation. See Entertainment, Arts and Recreation, Retail.

Retail Sales and Service, General. A Retail Sales and Service Use that provides goods and/or services to the general public and that is not listed as a separate Retail Sales and Service Use in this Section of the Code. This use includes, but is not limited to the sale or provision of the following goods and services:

- (a) Personal items such as tobacco and magazines;
- (b) Self-service laundromats and dry cleaning, where no portion of a building occupied by such use shall have any opening other than fixed windows and exits required by law within 50 feet of any R District;
- (c) Household goods and service (including paint, fixtures and hardware, but excluding other building materials);
- (d) Variety merchandise, pet supply stores and pet grooming services;

- (e) Florists and plant stores;
- (f) Apparel and accessories;
- (g) Antiques, art galleries, art supplies and framing service;
- (h) Home furnishings, furniture and appliances¹
- (i) Books, stationery, greeting cards, office supplies, copying service, music and sporting goods; and
- (j) Toys, gifts, and photographic goods and services.

(Amended by Ord. [129-17](#); see Sec. 102 history note.)

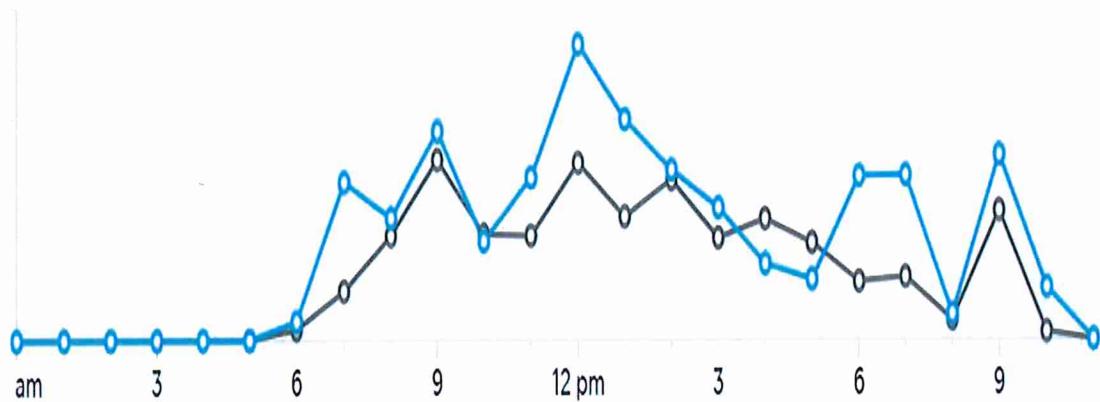
Retail Use. A Commercial Use that includes uses that involve the sale of goods, typically in small quantities, or services directly to the ultimate consumer or end user including, but not limited to, Retail Sales and Service Uses, some Entertainment, Arts and Recreation Uses, and Retail Automotive Uses.

(Amended by Ord. [129-17](#); see Sec. 102 history note.)

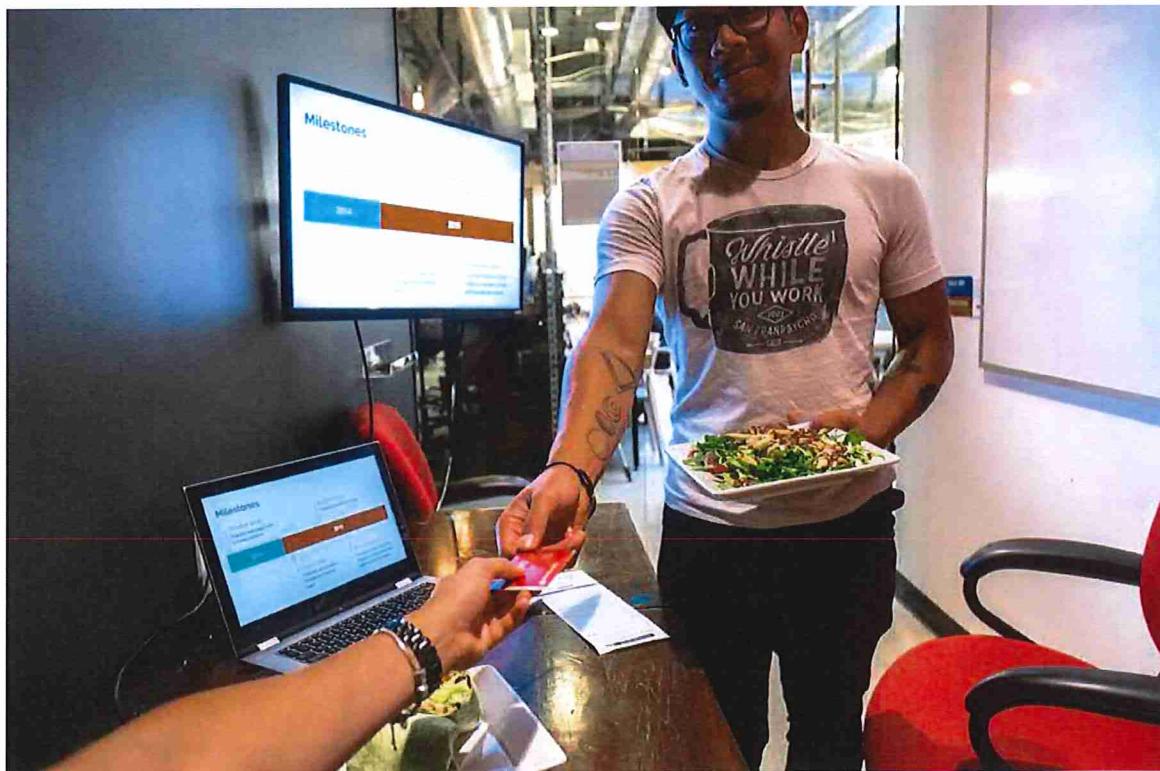
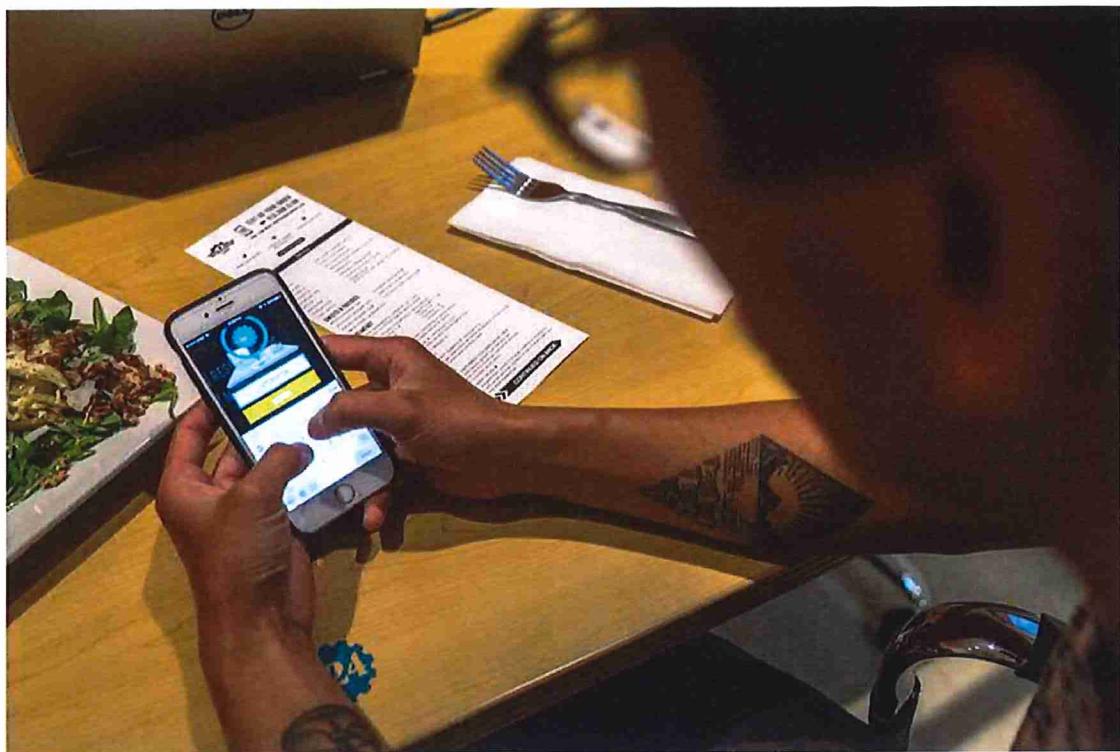
ATTACHMENT D-Sales by the Hour

FOOD & BEVERAGE SALES BY THE HOUR

TIME OF DAY



Attachment E - Images of food service and offerings





Summer Yogurt Parfait



Super BLT Sandwich

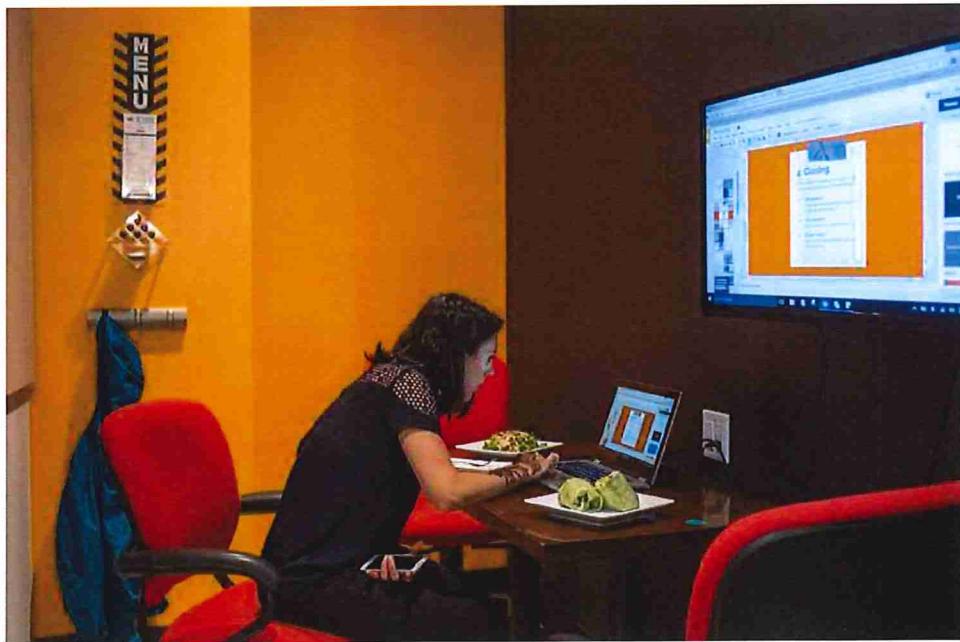
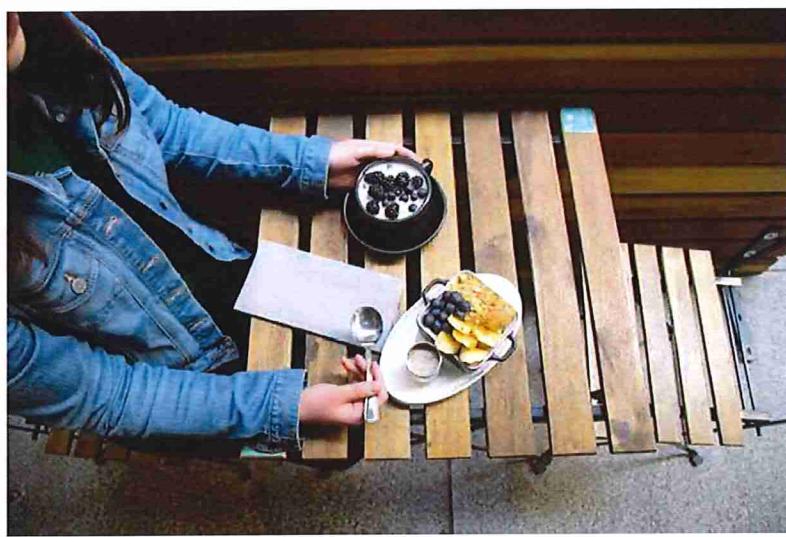


Happa Chicken Salad



Flower Child Bagel





ATTACHMENT F- Store Hours



WORKSHOP CAFE

**FiDi @
180 MONTGOMERY**

M-F: 7AM-9PM

S+S: 10AM-9PM

[EXPLORE](#)

[GET DIRECTIONS](#)

ATTACHMENT G - ABC License



**California Department of Alcoholic Beverage Control
License Query System Summary as of 01/08/2018**

License Information

License Number:	531012
Primary Owner:	WORKSHOP CAFE INC.
ABC Office of Application:	24 - SAN FRANCISCO

Business Name

WORKSHOP CAFE

Business Address

180 MONTGOMERY ST STE 100 SAN FRANCISCO, CA 94104	County: SAN FRANCISCO	Census Tract: 0117.00
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Licensee Information

Licensee: WORKSHOP CAFE INC.

Company Information

OFFICER: MENENDEZ, RICHARD ANTHONY (PRESIDENT/SECRETARY)
OFFICER: MENENDEZ, RICHARD ANTHONY (CHIEF EXECUTIVE OFFICER)
OFFICER: MENENDEZ, RICHARD ANTHONY (CHAIRMAN OF THE BOARD/SECRETARY)
OFFICER: MENENDEZ, RICHARD ANTHONY (DIRECTOR)
OFFICER: MENENDEZ, RICHARD ANTHONY (TREASURER)
STOCKHOLDER: MENENDEZ, RICHARD ANTHONY

License Types

1) License Type:	41 - ON-SALE BEER AND WINE - EATING PLACE		
License Type Status:	ACTIVE		
Status Date:	16-SEP-2013	Term:	12 Month(s)
Original Issue Date:	13-SEP-2013	Expiration Date:	31-AUG-2018
Master:	Y	Duplicate:	0
		Fee Code:	P40
		License Type was Transferred On:	From:
		License Type was Transferred On:	To:

Operating Restrictions

Restriction:	*Operating Restrictions exist. For more information, please see our Guidelines for Access to Records.
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ATTACHMENT H- Coworking Table

	COWORKING is....	WORKSHOP CAFE is....
Membership	YES monthly commitment through contract/memberships	* NO Memberships * <u>Pay as you go</u> , on the app
Customer	BUSINESS with a contract to use the co-working space	INDIVIDUAL off the street - <u>NO prior relationship, NO contract</u>
Payment	BUSINESS (<i>start-up, corporation, legal entity</i>) pays 99% of the time	INDIVIDUAL (<i>customer</i>) pays 90% of the time
Access	PRIVATE (<i>typically</i>) with <u>no</u> (<i>rare</i>) street level access * Key card access typical	PUBLIC (<i>always</i>) from street level
Meeting Rooms	PRIVATE only for businesses or members with access to co-working space (<i>contracts</i>)	PUBLIC available to <u>anyone</u> on a first- come basis (<i>5 meeting rooms</i>)
Turnover/Client Diversity	LIMITED because of contract/memberships <ul style="list-style-type: none"> ● Defined companies ● Committed contracts ● Same workers daily 	UNLIMITED based on who is “in the neighborhood” <ul style="list-style-type: none"> ● Over 3,000 <u>unique customers</u> monthly (<i>on average</i>) ● Over 200 <u>unique visitors</u> per day (<i>on average</i>) ● Over $\frac{2}{3}$ of customers visit <u>less than once per month</u> (<i>on average</i>)
Usage Time	ALL DAY at desks identified and reserved through contract/memberships	~2 HOURS on average at any table that is open and not occupied
Percentage of Business Sales	RENTING DESKS 95% - <u>100%</u> of sales from <u>selling desk space</u> with 5% or less coming from food and beverage (if offered)	FOOD AND BEVERAGE >66% of sales from cafe (coffee, drinks, snacks, food) and <33% from access to tables and meeting rooms
Exclusive Desk Rental	YES companies rent desks or workspaces exclusively for their use	NO every table is available to the public through the app and no one has an “assigned” table
Reservations	EXCLUSIVE only those with a contract/membership can reserve a desk or meeting room	OPEN TO PUBLIC anyone with the app can “reserve” a table and no repeat or permanent reservation allowed (<i>like a restaurant reservation</i>)

ATTACHMENT: LOD Request



June 19, 2017

Scott Sanchez
Zoning Administrator
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, CA 94103

Re: 180 Montgomery Street – Request for Letter of Determination

Dear Mr. Sanchez:

We represent the Workshop Café, a business operating at the ground floor of the property located at 180 Montgomery Street (“Property”). We are writing to request a Letter of Determination (“LOD”) to confirm that the Workshop Café is a Restaurant use under the Planning Code.

The Workshop Café is a cutting-edge restaurant in downtown San Francisco that is meeting market demand and, for all the reasons set forth below, squarely falls within the definition of a Restaurant use.

1. Background

The Workshop Café is located on the ground floor of 180 Montgomery Street. It is a restaurant providing food and beverage service in a unique space where customers may sit and enjoy a cup of coffee, a sandwich or snack, or a full meal while also staying connected and engaged in this busy digital age.

The Workshop Café, like most cafés and restaurants, offers free Wi-Fi to all customers, and even those persons that happen to sit nearby. In addition, it offers the ability for customers to stay for longer periods of time without feeling guilty about the amount of food or beverages that they are buying (or not). Different customers have different needs and the Workshop Café caters to them by providing different types of seating area.

Like many restaurants, the Workshop Café has an outdoor patio and an indoor bar-type seating area. It also includes an area that is by reservation only. Reservations to sit in this area, like reservations at any other restaurant in San Francisco, can be made over the phone, in person or via an application, which here is the Workshop Café application (“app”). All reservations on a first-come, first-serve basis and there are no standing or long-term reservations for seats or tables in the reserved seating area. All seats/tables at the Workshop Café are 100% available to the public at all times. The Workshop Café also has some private rooms that can also be reserved on a first-come, first-serve basis, either in person, through the app, or over the phone. All these rooms are open to the public. Images of the various seating areas in the Workshop Café are included in Attachment A.

The reserved seating area and private rooms have a few added services that the Workshop Café has determined are important to customers that want to sit in these areas. They include print services,

whiteboards and video monitors (but no computers). Use of these additional services are available to the public and are provided by the Workshop Café as a service for its customers. These services are not supplied by the customer and are 100% available to the public.

More than 66% of the gross receipts from the Workshop Café are from food and beverage sales sold to customers on the premises. Food and beverage is served throughout the space and can be ordered at the counter, at the table or via the app. The Workshop Café employs a full-time culinary manager¹ and a full-time kitchen staff to create and prepare food, including full meals, from fresh raw materials on-site. A copy of the Workshop Café's menu is included as Attachment B.

The Workshop Café also generates sales from reservations in the reserved seating areas, but these sales make up less than 33% of the Workshop Café's gross receipts. While these sales are small, allowing customers to make reservations is an important part of the Workshop Café. This service addresses the concern of many customers that they may not find a seat or table at a Starbucks, Illy's or Peet's, may be "forced" to share their space at a table with others (i.e., put away papers, devices, etc. to make room for others) or simply feel guilty for sitting in a café for three hours and only ordering one coffee. The ability to pay and reserve a seat addresses these concerns and meets market demand.

The Workshop Café also is meeting retail demand in the area by opening early (6AM Monday to Friday) and staying open late (10PM Monday to Friday) and on weekends (10AM to 10PM Saturday and Sunday). It is the only restaurant open along Montgomery Street in the evenings and on weekends. A video of how "dead" it is in this part of the City on the weekends has been prepared and can be seen at <http://www.workshopcafe.com/fidisunday>. By staying open in evening and on weekends, the Workshop Café is providing a much-needed service to the public who may want to stop in, grab a coffee and a bite to eat, have a place to sit without the concerns noted above and, if needed, have access to services such as printing. The Workshop Café's restaurant and services are not only cutting edge, but enliven the financial district during non-business hours, providing much needed services to the public.

2. Planning Code Analysis

A. The Workshop Café is a Restaurant Use

The Workshop Café is a "Restaurant" use. A "Restaurant" use is a permitted "Retail Sales and Service" use in the C-3-O (Downtown Office) zoning district where the Workshop Café currently operates.

Planning Code Section 102 defines "Retail Sales and Service" as a "Commercial Use that includes uses that involve the sale of goods, typically in small quantities, or services directly to the ultimate consumer or end user with some space for retail service on site excluding Retail Entertainment Arts and Recreation, and Retail Automobile Uses and including, but not limited to ... Restaurant" "Restaurant" is defined as a "Retail Sales and Service use that serves prepared, ready-to-eat cooked foods to customers for consumption on or off the premises and which has seating. It may have a Take-Out Food use as a minor and incidental use. It may provide on-site beer, wine, and/or liquor sales for drinking on the premises (with ABC license types 41, 47, 49, 59, or 75); however, if it does so, it shall be required to operate as a Bona Fide Eating Place."

¹The current culinary manager previously was the Bay Area Culinary Manager for Sushirrito.

The Workshop Café has a Type 41 ABC license.² It therefore is required to comply with the requirements of a “*Bona Fide Eating Place*.³” The following is the definition of a “*Bona Fide Eating Place*” under Planning Code Section 102:

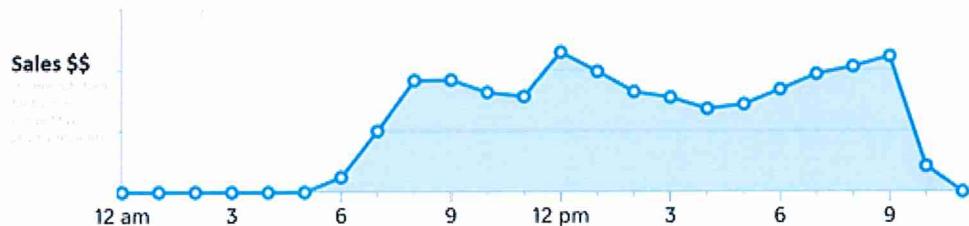
- (a) A place that is regularly and in a bona fide manner used and kept open for the service of meals to guests for compensation and that has suitable kitchen facilities connected therewith, containing conveniences for cooking of an assortment of foods that may be required for ordinary meals. “Meals” shall mean an assortment of foods commonly ordered at various hours of the day for breakfast, lunch, or dinner. Incidental food service, comprised only of appetizers to accompany drinks, is not considered a meal. Incidental, sporadic, or infrequent sales of meals or a mere offering of meals without actual sales is not compliance.
- (b) “Guests” shall mean persons who, during the hours when meals are regularly served therein, come to a bona fide public eating place for the purpose of obtaining, and actually order and obtain at such time, in good faith, a meal therein. Nothing in this section, however, shall be construed to require that any food be sold or purchased with any beverage.
- (c) Actual and substantial sales of meals are required, during the normal days and meal hours that a bona fide public eating place is open, provided that “normal days of operation” shall mean a minimum of five days a week and “normal hours” of operation for meal service shall mean approximately 7:00 a.m. to 11:00 a.m. if open for breakfast; 11:00 a.m. to 2:00 p.m. if open for lunch; or 5:00 p.m. to 10:00 p.m. if open for dinner.
- (d) The premises must be equipped and maintained in good faith. This means the premises must possess working refrigeration and cooking devices, pots, pans, utensils, table service, condiment dispensers, menus, signs, and enough goods to make substantial meals. The premises must comply with all regulations of the Department of Public Health.
- (e) **A minimum of 51 percent of the restaurant’s gross receipts shall be from food sales prepared and sold to guests on the premises.** Records of the restaurant’s gross receipts shall be provided to the Department upon request.
- (f) A “bona fide eating place” does not include an Adult Business as defined in this Section of the Code.

(Emphasis added.)

² The Workshop Café is not a “Limited Restaurant” as it includes beer and wine for on-site consumption. Under Planning Code Section 102, a Limited Restaurant “shall not provide on-site beer and/or wine sales for consumption on the premises, but may provide off-site beer and/or wine sales for consumption off the premises with a California Alcoholic Beverage Control Board License type 20 (off-sale beer and wine) within the accessory use limits as set forth in Section 703.2(b)(1)(C)(vi).” (Planning Code Section 102. Emphasis added.)

The Workshop Café serves prepared, ready-to-eat cooked foods to customers (i.e., the public) for consumption on and off the premises. The menu includes jars, hot cereal, bagels, sweets, bowls, sandwiches and toasts, wraps, salads, soups and snacks, among other food offerings. Beverages are also available. Food and beverage orders are brought to the customer by Workshop Café employees via service at the counter or table service throughout the entire restaurant and throughout the day. A graph of food and beverage sales by hour is provided below and clearly shows that food and beverage sales occurs throughout the day in compliance with the requirements of the Workshop Café's Type 41 license from the ABC.³

TIME OF DAY



The Workshop Café falls clearly within the definition of a Restaurant and, more specifically, a Bona Fide Eating Place. Evidence in support of this includes (1) a copy the Workshop Café menu, which is included as Attachment B; (2) a copy of the hours of operation of the Workshop Café, which is included as Attachment C; and, (3) images of food service provided in different areas of the Workshop Café and of food and beverage offerings, which are included as Attachment D. The fact that some of the seats and tables in the Workshop Café can be reserved by the public in advance does not mean the Workshop Café is not a restaurant. Most restaurants in San Francisco take table reservations. The fact that there are private rooms that can be reserved by the public does not mean the Workshop Café is not a restaurant. Many restaurants in San Francisco include private rooms that can be reserved. Finally, the fact that the Workshop Café includes features such as whiteboards, USB ports, monitors and computers does not mean the Workshop Café not a restaurant. Many restaurants in San Francisco include unique services to attract customers, but the inclusion of those services does not mean they are not restaurants.

In fact, many other cafés and restaurants include charging stations for their customers' phones and power outlets for computers. Including these services certainly attracts a customer that works on their laptop, but it does not make those cafés or restaurants a non-retail or office use just as the inclusion of a piano or dance floor attracts customers that like music or like to dance, but it does not make the restaurant a night club. Similarly, the showing a movie on a wall of a restaurant attracts customers that like movies, but it does not make the restaurant a movie theater and having an area where cats can hang out attracts customers that like cats, but it does not make a restaurant an animal shelter. For this same reason, the Workshop Café is a restaurant.

³ Alcohol is not served on the patio, as per the ABC license.



B. The Workshop Café is not “General Office”

Planning Code Section 102 defines General Office as a “Non-Retail Sales and Service” use. A “Non-Retail Sales and Service” use is defined as a “Commercial Use that involves **the sale of goods or services to other businesses rather than the end user, or that does not provide for direct sales to the general public on site.**” (Planning Code Section 102. Emphasis added.)

As discussed in detail above, the Workshop Café sells goods and services directly to the end user and, more importantly, provides for direct sales to the public on site. The goods that the Workshop Café sells are food and beverages. As noted above, more than 66% of the Workshop Café’s sales are from the sales of these goods. The services that the Workshop Café sells are reservations for a seat, an ability to use a whiteboard, an ability to access a larger screen, an ability to print, an ability to reserve a private room, and other similar type services. These services are provided directly to the end user or customer, not to a business, and that customer, who is a member of the public, pays for these services directly either via cash, credit or through the app.

The Workshop Café is 100% open to the public and the services offered are available to anyone off the street. Even though the services are “office like,” that does not mean they are not retail services, similar to the printing, copying, internet and computer services provided by a FedEx Kinkos, UPS Store or other similar business service retail use. Like those retail service providers, the Workshop Café, provides services to the end user - the customer, who is a member of the public - not to a business.⁴

C. The Workshop Café is NOT Co-Working Space

Co-working Space is a type of “General Office” use. Like General Office, it is provided to businesses and is not open to the public. Some co-working spaces do provide daily access to the public (for example, Sphere Pad, Shared), but in all co-working spaces, a certain percentage of the space is reserved through contracts or licenses to dedicated users (i.e., members). Members have reserved desks and, typically, 24-hour access to the space. Co-working spaces also may include a kitchen with snacks or drinks, but do not include full-service kitchens or provide food and beverage service throughout the space or to desks. They are not Bona Fide Eating Places under an ABC Type 41 license and are not a restaurant.

As outlined in the chart below, co-working spaces there are big differences between co-working spaces and the Workshop Café.

	COWORKING is....	WORKSHOP CAFE is....
Membership	YES monthly commitment through contract/memberships	* NO Memberships * <u>Pay as you go</u>

⁴ Customers may be employed by other businesses or themselves providing services to other businesses, but that does not make their use of the services provided by the Workshop Café an office use. The customer, not the business, is eating and drinking the goods offered and sitting in the chairs provided and it is paid for by the customer not the business.

	COWORKING is....	WORKSHOP CAFE is....
Customer	BUSINESS with a contract to use the co-working space	INDIVIDUAL off the street - <u>NO</u> prior relationship, <u>NO</u> contract
Payment	BUSINESS (<i>start-up, corporation, legal entity</i>) pays 99% of the time	INDIVIDUAL (<i>customer</i>) pays 90% of the time (<i>10% of customers expense use of space through business entity</i>)
Access	PRIVATE (<i>typically</i>) with <u>no</u> (<i>rare</i>) street level access * Key card access typical	PUBLIC (<i>always</i>) from street level
Room Rentals	PRIVATE only for businesses or members with access to co-working space (<i>contracts</i>)	PUBLIC available to <u>anyone</u> on a first-come basis (<i>5 rooms available</i>)
Turnover/Client Diversity	LIMITED because of contract/memberships <ul style="list-style-type: none"> ● Defined companies ● Committed contracts ● Same workers daily 	UNLIMITED based on who is “in the neighborhood” <ul style="list-style-type: none"> ● Over 3,000 <u>unique customers</u> monthly (<i>on average</i>) ● Over 200 <u>unique</u> visitors per day (<i>on average</i>) ● Over $\frac{1}{3}$ of customers visit <u>less than once per month</u> (<i>on average</i>)
Usage Time	ALL DAY at desks identified and reserved through contract/memberships	~ 2 HOURS on average at any table that is open and not occupied
Percentage of Business Sales	RENTING DESKS <u>95% - 100%</u> <u>of sales from selling desk space</u> with 5% or less coming from food and beverage (if offered)	FOOD AND BEVERAGE >66% of sales from café (coffee, drinks, snacks, food) and <33% from access to tables and meeting rooms
Exclusive Desk Rental	YES companies rent desks or workspaces exclusively for their use	NO every table is available to the public and no table may be reserved on a long-term exclusive basis
Reservations	EXCLUSIVE only those with a contract/membership can reserve a desk or meeting room	OPEN TO PUBLIC any member of the public can “reserve” a table and no repeat or permanent reservation allowed (<i>like a restaurant reservation</i>)
Active Street Frontage	NO members sitting at desks and only private access	YES vibrant street front with hundreds of customers visiting per day entering and exiting the café



Comparing the Workshop Café to co-working spaces, it is very clear that the Workshop Café is not co-working space. Co-working space is an office use. The Workshop Café is a restaurant use and cannot be considered co-working space because it does operate or have the same characteristics as co-working space. It is a restaurant use with services for customers, not an office with tenants.

* * * *

In reviewing the Workshop Café and the Planning Code, the Workshop Café is clearly a restaurant use. The fact that it includes reserved seating and some “office like” features, does not change the fact that it is a restaurant use. It is a restaurant because

1. Over 66% of all sales at the Workshop Café are from food and beverage;
2. Food is prepared on-site from fresh, raw materials;
3. Customers can purchase and consume food and beverages from any seat in the Workshop Café;
4. Workshop Café employees provide service to every table, and serve customers at the counter; and,
5. All the space in the Workshop Café may be used by any member of the public.

Any “office like” services are just that, services – they do not make the Workshop Café an office or co-working space.

The Planning Code definition of office is clear. It focuses on the end user and whether the end user is private or public. Where the end user is public, the use is retail sales and service, **even if the service being provided is “office like.”** Under any other interpretation, every restaurant and café downtown with extra seating, WiFi, power outlets, etc., would be an office. The Planning Code definition makes clear that it is not the act of providing a chair or table, or even a printer, power outlet, USB port, etc. that makes a use an office, but whether anyone walking off the street can sit at that chair or table and use those services. If they cannot, then the chair or table is private and it is not a retail use, but where they can then the chair or table is public and the use is a retail use. At the Workshop Café 100% of the services are open to the public making it a retail use

In sum, the Workshop Café is a cutting-edge restaurant in downtown San Francisco that is meeting market demands and offering services wanted by the public in an inviting setting with hours of operation that bring activity to an area that was previously “dead” on evenings and weekends. It is no more an office than an office that sells foods to employees is a restaurant or a restaurant that offers private rooms for rent and projection equipment, printers, computers and chargers is an office. It is a restaurant.

Enclosed is a check in the amount of \$664.00. We look forward to your response. If you have any questions or need any additional information please feel free to contact me at 415-273-9670.

Very truly yours,

A handwritten signature in blue ink, appearing to read "A. Pelosi".

Alexis Pelosi

Attachments



SAN FRANCISCO PLANNING DEPARTMENT

Board of Appeals Brief

Date: April 5, 2018
Hearing Date: April 11, 2018
Appeal No.: 17-183
Project Address: 180 Montgomery Street
Block/Lot: 0289/009
Zoning/Height: C-3-O / 300-S
Staff Contact: Corey Teague – (415) 575-9081
corey.teague@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

INTRODUCTION

In response to a complaint filed with the Planning Department (“Department”), Alexis Pelosi (“Appellant”), on behalf of Workshop Café, submitted a request for a Letter of Determination from the Zoning Administrator on June 19, 2017. The request was to determine if Workshop Café was considered to be only a Restaurant use, or both a Restaurant and an Office use due to the services and workspaces provided. On November 17, 2017 the Zoning Administrator issued a Letter of Determination stating that the reserved seating area within Workshop Café is currently operating outside the limits of an accessory use, and therefore is considered to be an Office use separate from the Restaurant use.

PROPERTY INFORMATION

The subject property is located at 180 Montgomery Street in a C-3-O (Downtown Office) Zoning District, and a 300-S Height and Bulk District. The subject commercial space is located at the ground floor of the existing building, and is nearly 5,000 square feet in size.

BACKGROUND

The Department issued a Notice of Complaint (Case No. 2017-000742ENF) to the property owner of 180 Montgomery Street on January 18, 2017 stating that we had received

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Hearing Date: April 11, 2018

a complaint that there were one or more violations at the subject property. On January 30th, 2017, the Department issued a Notice of Enforcement stating that “the complaint alleges that Workshop Café operates a separate and distinct office rental service in the same space,” and that it appeared that the working areas went beyond the limits of an accessory use to the existing restaurant.

In response to this enforcement action, Alexis Pelosi, on behalf Workshop Café, submitted a request for a Letter of Determination from the Zoning Administrator on June 19, 2017. The request made the argument that the services and workspace areas provided by Workshop Café fall within the permitted operations of a restaurant, and should not be considered a “General Office” use.

On November 17, 2017 the Zoning Administrator issued a Letter of Determination stating, in part, that “the reserved seating area must be limited to 1/3 of the total occupied floor area in order to be considered subordinate to the Restaurant use. If the Workshop Café does not meet this requirement, it will be considered an Office Use. Please note that the current plans show that more than 1/3 of the total occupied floor area is dedicated to reserved seating areas. Workshop Café may either reduce the area in question to less than 1/3 of the total occupied floor area or apply for a Conditional Use Authorization to allow an Office Use on the ground floor of the subject property.”

ISSUES ON APPEAL

The Appellant claims that Workshop Café is a Restaurant use per the Planning Code. The Zoning Administrator’s determination did not dispute that a Restaurant use does exist as part of Workshop Café. However, any accessory uses within a principal use must be “a related minor Use that is either necessary to the operation or enjoyment of a lawful

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Principal Use or Conditional Use, or appropriate, incidental, and subordinate to any such use." Additionally, accessory uses within the C-3-O zoning district are limited to a maximum of 1/3 of the floor area of the principal use. The Zoning Administrator's determination did clarify that the provision of workspaces in the manner provided by Workshop Café would not be considered an accessory use if those spaces represented more than 1/3 of the occupied square feet of the Restaurant use.

The Appellant also claims that the offering of certain services like whiteboards, printing services, WiFi, video monitors, and meeting rooms, are simply part of a business model to attract customers to the restaurant. The Appellant also claims that allowing reservations for specific workspaces within the café reduces customer anxiety and is no different than a typical restaurant requiring reservations. However, the key distinctions in this case are as follows:

1. Workshop Café does not simply allow customers to **reserve** workspace; it **charges** a fee to reserve/use such space.
2. There is **no time limit** on how long a customer may rent a workspace within the café.
3. While customers paying to use rented workspaces **may** order food and drink, they are **not** required to do so. Making reservations at a restaurant typically requires a customer to actually order food and/or drinks during the time they reserve.
4. It provides a significant amount of services, previously listed, that indicate conducting such work is the primary purpose of the workspaces, not eating and drinking.

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5. The workspace area within this location of the Workshop Café represents 3,007 square feet of the total 4,669 square feet within the space, equaling 64% of the total area.
6. Workshop Café aggressively markets such spaces as being places to do office-like work. For example, its website describes “The Workspace” as follows: “With tons of space and extensive services, we are your oasis away from the office.”

Considering the above, the primary purpose and function of the reserved seating (i.e. workspaces) is individual and/or group office space; not an eating and drinking use. While customers who are paying to use such workspaces (with no time limit) may order food, the fact that they are not required to do so indicates that the office use is not “incidental” and “subordinate” to the restaurant use, but that the restaurant use is actually subordinate to the office use. The sheer size of the workspace area, and its high percentage of the total space, also indicates that such space is not accessory to the restaurant use.

A good analogy for this principal is a movie theatre. Customers must buy a ticket to enter (i.e. reserve space), and the principal use is the movie theatre. Customers may purchase food and beverages in the theatre, and may consume them in the actual theatres. Such food and beverage sales often outpace actual ticket sales. However, the Planning Code does not consider a movie theatre to be a restaurant simply because its customers **may**, and often do, purchase food and drink that is prepared on-site.

Finally, the Appellant argues that the workspace area of Workshop Café is not what is commonly considered “co-working” spaces. However, the Zoning Administrator has consistently determined over the last several years that the short-term renting of individual

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Hearing Date: April 11, 2018**

spaces for the primary purpose of conducting office-like work (i.e. “co-working) is considered to be an Office use. This determination is not impacted by the duration or method of renting the space, be it hourly, daily, and/or weekly rentals. Many co-working spaces offer a variety of spaces for rent that are available to individuals and/or companies (small and large), and often provide similar amenities as Workshop Café, including food and drinks. Some examples include WeWork and Impact Hub.

CONCLUSION

Land uses in San Francisco are continuing to evolve as trends and technologies change. This is especially true for retail and office uses. However, issues created by this evolution should be addressed through thoughtful legislation based on specific policy goals. It should not be left to individual interpretations and case-by-case decisions. However, in light of the information provided, the Department respectfully requests that the Board of Appeals uphold the Zoning Administrator’s determination that the workspace area of the Workshop Café is considered an Office Use if it represents more than 1/3 of the occupied floor area, which is the maximum amount permitted for an accessory use.

Cc:
Alexis Pelosi – Appellant



COMMERCIAL REAL ESTATE SERVICES

CBRE, Inc.
Asset Services180 Montgomery Street, Suite 1650
San Francisco, CA 94104
Tel 1.415.693.0180

www.cbre.com



April 3, 2018

BOARD OF APPEALS

APR 04 2018 Of

APPEAL # 17-083

President Daryl Honda and Commissioners
 San Francisco Board of Appeals
 San Francisco Planning Department
 1650 Mission Street, Suite 304
 San Francisco, CA 94103

Re: April 11, 2018
 Board of Appeal Hearing
 Menendez v. ZA
 180 Montgomery Street, San Francisco

Dear Board of Appeals,

I represent the owners of 180 Montgomery Street and am writing in support of Workshop Café and its appeal of the Zoning Administrator's Letter of Determination. Workshop Café first opened its doors on August 20, 2013, and since that time it has provided a very active ground floor retail space that provides food and beverage service in a unique space where customers can sit and enjoy a cup of coffee, a sandwich or snack, or a full meal.

We understand that the City has indicated that it has concerns about darkened and inactive ground floor spaces in office buildings throughout the City. Workshop Café's hours of operation are extended into the evening and on weekends and bring pedestrians and customers to our building's ground floor while much of the rest of Montgomery Street is dark. We believe these extended hours and positive street presence are a benefit to our office building. Workshop Café has been a great tenant and we fully support its café and restaurant operation at 180 Montgomery Street.

Please let me know if you have any other questions or concerns.

Sincerely,

SIDRA MONTGOMERY, LLC
 CBRE, Inc. as managing agent

Kristie Arevalo
 Senior Real Estate Manager