

BOARD OF APPEALS, CITY & COUNTY OF SAN FRANCISCO

Appeal of
CHIU HUNG (JULIE) SIEH,)
Appellant(s))
vs.)
ZONING ADMINISTRATOR,)
Respondent)

Appeal No. **23-032**

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN THAT on June 30, 2023, 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 June 2, 2023, of a Notice of Violation (Complaint No. 2018-012881ENF) (The subject property is authorized for residential use with a single dwelling unit. The violation pertains to an Unauthorized Unit on the ground floor behind the garage) at 354 Head Street.

COMPLAINT NO. 2018-012881ENF

FOR HEARING ON August 16, 2023

Address of Appellant(s):

Address of Other Parties:

Chiu Hung (Julie) Sieh, Appellant(s) c/o Gael Bizel-Bizellot, Attorney for Appellant(s) Zacks & Freedman, PC 601 Montgomery Street, Suite 400 San Francisco, CA 94111	N/A
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Date Filed: June 30, 2023

**CITY & COUNTY OF SAN FRANCISCO
BOARD OF APPEALS**

PRELIMINARY STATEMENT FOR APPEAL NO. 23-032

I / We, **Sieh Chiu Hung**, hereby appeal the following departmental action: **ISSUANCE of Notice of Violation No. Complaint Number 2018-012881ENF** by the **Zoning Administrator** which was issued or became effective on: **June 2, 2023**, for the property located at: **354 Head Street**.

BRIEFING SCHEDULE:

Appellant's Brief is due on or before: 4:30 p.m. on **July 27, 2023, (no later than three Thursdays prior to the hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be double-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org

Respondent's and Other Parties' Briefs are due on or before: 4:30 p.m. on **August 10, 2023, (no later than one Thursday prior to hearing date)**. The brief may be up to 12 pages in length with unlimited exhibits. It shall be doubled-spaced with a minimum 12-point font. An electronic copy shall be emailed to: boardofappeals@sfgov.org, julie.rosenberg@sfgov.org, corey.teague@sfgov.org, tina.tam@sfgov.org and tiffany@zfplaw.com

Hard copies of the briefs do NOT need to be submitted to the Board Office or to the other parties.

Hearing Date: **Wednesday, August 16, 2023, 5:00 p.m., Room 416 San Francisco City Hall, 1 Dr. Carlton B. Goodlett Place**. The parties may also attend remotely via Zoom. Information for access to the hearing will be provided before the hearing date.

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 changes to the briefing schedule.

In order to have their documents sent to the Board members prior to hearing, **members of the public** should email all documents of support/opposition no later than one Thursday prior to hearing date by 4:30 p.m. to boardofappeals@sfgov.org. 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 on the Board's website at www.sfgov.org/boa. You may also request a hard copy of the hearing materials that are provided to Board members at a cost of 10 cents per page, per S.F. Admin. Code Ch. 67.28.

The reasons for this appeal are as follows:

See attachment to the preliminary Statement of Appeal.

Appellant or Agent:

Signature: Via Email

Print Name: Tiffany Stamper, Agent for Appellant

RE: APPEAL TO NOTICE OF VIOLATION
354 Head Street, (garage unit), San Francisco, CA 94132 (the "Unit"); APN: 7116/035
Complaint Number: 2018-012881ENF

Dear Members of the Board of Appeals,

This office represents Chiu Hung ("Julie") Sieh with respect to the above-referenced matter. Our client is hereby appealing the Notice of Violation Decision dated June 2, 2023 rendered in the above-referenced matter for the following reasons:

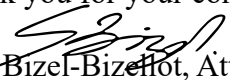
1. The tenants prevented the Owner from doing the work under Building Permit Application No.201602028578 by refusing to move out of the Unit claiming full protection under the San Francisco Rent Ordinance despite the Owner's numerous attempts to find a solution. This impasse led the Owner to make the decision to withdraw the property from the residential rental market pursuant to the Ellis Act, which will render the work under the Permit unnecessary as the Owner will use and occupy the entire property as a single family home.

2. The Ellis Act preempts the San Francisco Planning Code to the extent it requires a conditional use permit to owner-occupy one's entire home zoned for residential dwelling and which is being withdrawn from the rental market pursuant to the Ellis Act. The Ellis Act dictates that a public entity may not "compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease".

3. Forcing the Owner to legalize the Unit violates the Owner's right to privacy. The conditional use requirement violates a family's right to privacy in dictating the creation of a divisible portion of the dwelling unit dedicated to another family. This is even more of an intrusion in the context of Proposition M (2022), which dictates that the owner cannot primarily reside in both dwelling units (i.e., the entirety of his single family home) without incurring a tax aimed at penalizing him for not renting.

4. Forcing the creation of an insular unit that the Owner may not primarily reside in infringes the Owner's right to exclude: *Cedar Point Nursery v. Hassid* (2021) 141 S. Ct. 2063, 2072: "[t]he right to exclude is 'one of the most treasured' rights of property ownership".

Thank you for your consideration.


Gael Bizel-Bizel, Attorney for Owner



NOTICE OF VIOLATION

June 2, 2023

Property Owner

Sieh Chiu Hung
354 Head Street
San Francisco, CA 94132

Site Address: 354 Head Street
Assessor's Block/Lot: 7116 / 035
Complaint Number: 2018-012881ENF
Zoning: RH-1 (Residential, House – One-Family) Zoning District
40-X Height and Bulk District
Oceanview Large Residence Special Use District
Code Violation: Section 317, Construction of an Unauthorized Unit
Time and Materials Fee: \$3,449.00 (Current Fee for Confirmed Violation, Additional Charges May Apply)
Administrative Penalty: Up to \$250 per Day for Each Violation
Response Due: Within 30 Days from the Date of This Notice
Enforcement Planner: Vincent W. Page II, (628) 652-7396, vincent.w.page.ii@sfgov.org

The Planning Department finds the above referenced property to be in violation of the Planning Code. As the owner of the subject property, you are a Responsible Party to bring the subject property into compliance with the Planning Code. Details of the violation are discussed below.

Description of Violation

The subject property is authorized for residential use with a single dwelling unit. The violation pertains to an Unauthorized Unit on the ground floor behind the garage.

Pursuant to Planning Code Section 317(b)(13), "Unauthorized Unit" shall mean one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from Residential Units on the same property. "Independent" shall mean that (i) the space has independent access that does not require entering a Residential Unit on the property and (ii) there is no open, visual connection to a Residential Unit on the property.

Pursuant to Planning Code Section 171, structures and land in any zoning district shall be used only for the purposes listed in the Planning Code as permitted in that district, and in accordance with the regulations established for that district.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provision constitutes a violation of the Planning Code and is subject to an enforcement process, pursuant to Planning Code Section 176.

Timeline of Investigation

On February 2, 2016, Building Permit Application No. 201602028578 was filed to legalize an Unauthorized Unit at the subject property.

On September 11, 2017, Building Permit Application No. 201602028578 was approved by the Planning Department and routed to the Department of Building Inspection (“DBI”).

On September 25, 2017, DBI placed Building Permit Application No. 201602028578 on hold with comments issued to the permit applicant. You did not respond to comments.

On September 17, 2018, the Planning Department opened Complaint No. 2018-012881ENF.

On September 26, 2018, the Planning Department sent you a Notice of Complaint. In that notice, you were advised to contact the Planning Department to resolve the complaint.

On April 16, 2019, the Planning Department issued you a Notice of Enforcement. In that notice, you were notified to pursue Building Permit Application No. 201602028578 such that it become approved, issued, and completed. You were advised to take corrective action and provide evidence of compliance to the Planning Department within fifteen (15) days from the date of that notice.

On November 26, 2019, Building Permit Application No. 201602028578 was approved by all City agencies.

On December 13, 2019, Building Permit Application No. 201602028578 was issued.

On December 19, 2019, the Planning Department contacted you to request a construction schedule for the completion of Building Permit Application No. 201602028578. You were notified that the permit's completion is required to bring the subject property into compliance with the Planning Code.

On January 15, 2020, the Planning Department granted an extension of time for the construction schedule to be submitted.

On June 9, 2020, the Planning Department granted an additional six-month extension of time for the construction schedule to be submitted and construction to be initiated. You did not submit a construction schedule, nor did construction begin.

On December 4, 2020, the Planning Department contacted you to request monthly updates on your efforts to abate the violation. You did not respond, nor did you provide monthly updates.

On December 7, 2020, you contacted the Planning Department to relay that, as a result of the Unauthorized Unit continuing to be occupied by tenants, no progress had been made toward the initiation of construction under Building Permit Application No. 201602028578. In response, Planning staff informed you that you would need to provide the Planning Department with monthly updates about your progress toward commencing construction. You did not provide monthly updates.

On June 28, 2021, the Planning Department issued you a Notice Requiring Compliance. In that notice, you were advised to submit a construction schedule for the completion of work authorized under Building Permit Application No. 201602028578. You did not submit a construction schedule, nor did construction begin.

On August 29, 2022, you wrote to the Planning Department via email, saying that the work authorized under Building Permit Application No. 201602028578 was nearly complete. However, the Permit Tracking System reflects that no inspections have been conducted, and Building Permit Application No. 201602028578 remains incomplete.

To date, you have not contacted the Planning Department to demonstrate how you intend to bring the subject property into compliance with the Planning Code.

How to Correct the Violation

The Planning Department requires that within fifteen (15) days, you complete the work authorized under Building Permit Application No. 201602028578 and obtain a Certificate of Final Completion and Occupancy from the Department of Building Inspection.

- **Submit a copy of the issued Certificate of Final Completion and Occupancy to the Planning Department staff listed above.**

If you believe that the complaint was made in error, you will need to provide sufficient evidence. Evidence sufficient to demonstrate compliance may include, but is not limited to, dimensioned plans approved by the Planning Department and time-stamped photographs. A site visit will be required to verify compliance.

To obtain copies of approved Building Permit Applications or plans, please contact the Department of Building Inspection (“DBI”) – Records Management Division at:

49 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103
Phone: (628) 652-3420
Email: dbi.records3r@sfgov.org
Website: sf.gov/requestbuildingrecords

For questions regarding the Building Permit process, please contact the Department of Building Inspection (“DBI”) at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: (628) 652-3200
Email: permitcenter@sfgov.org
Website: sf.gov/departments/departments-building-inspection

For questions regarding the Planning process, please contact the Planning counter at the Permit Center at:

49 South Van Ness Avenue, 2nd Floor
San Francisco, CA 94103
Phone: (628) 652-7300
Email: pic@sfgov.org
Website: www.sfplanning.org

For questions about this enforcement case, please email the assigned Enforcement Planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted above.

Timeline to Respond

The Responsible Party has thirty (30) days from the date of this notice to either;

- 1) Take steps to correct the violation as noted above; or
- 2) Appeal this Notice of Violation as noted below.

The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation will result in assessment of administrative penalties at \$250 per day for each violation. The Department may also report any licensed professional responsible for the violation(s) to the appropriate local, state, or federal licensing boards.

Please contact the assigned Enforcement Planner noted above with any questions, to submit evidence of correction, and discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline.

Appeal Processes

If the Responsible Party believes that this Notice of Violation of the Planning Code is an abuse of discretion by the Zoning Administrator, the following appeal processes are available **within thirty (30) days from the date of this notice**:

1. The Responsible Party may request a Zoning Administrator Hearing under Planning Code Section 176 to

show cause why this Notice of Violation is issued in error and should be rescinded by submitting the Request for Zoning Administrator Hearing Form and supporting evidence to the Planning Department. This form is available from the Planning Department's website at <https://sfplanning.org/resources>. The Zoning Administrator shall render a decision on the Notice of Violation within 30 days of such hearing. The Responsible Party may appeal the Zoning Administrator's decision to the Board of Appeals within 30 days from the date of the decision.

2. The responsible or any interested party may waive the right to a Zoning Administrator Hearing and proceed directly to appeal the Notice of Violation to the **Board of Appeals** located at:

49 South Van Ness Avenue, Suite 1475
San Francisco, CA 94103
Phone: 628.652.1150
Email: boardofappeals@sfgov.org
Website: www.sfgov.org/bdappeal

If Board of Appeals upholds the Notice of Violation, it may not reduce the amount of penalty below \$100 per day for each day the violation continues unabated, excluding the period of time the matter was pending either before the Zoning Administrator or before the Board of Appeals.

No penalties are assessed during the period when the matter is pending either before the Zoning Administrator or before the Board of Appeals. However, if the Responsible Party requests continuance of the appeal without a reasonable cause with the Board of Appeals, the penalties may still be assessed during the continuation period.

Administrative Penalties

If a Responsible Party does not request any appeal process and does not take corrective action to abate the violation **within 30 days**, this Notice of Violation will become final. However, **administrative penalties will not begin to accrue until the 30-day period to respond expires**, as detailed above. Beginning on the following day, administrative penalties of up to **\$250 per day for each violation** to the Responsible Party will start to accrue for each day the violation continues unabated. If such penalties are assessed, the Planning Department will issue a Notice of Penalty and Fee, and the penalty amount shall be paid **within 30 days** from the issuance date of that notice. Please be advised that payment of penalty does not excuse failure to correct the violation or bar further enforcement action. Additional penalties will continue to accrue until corrective action is taken to abate the violation.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting the Planning Code violations. Accordingly, the Responsible Party is currently subject to a fee of **\$3,449.00** for "Time and Materials" cost associated with the Code Enforcement investigation for confirmed violation. Additional fees will continue to accrue until the violation is abated. **This fee is separate from the administrative penalties described above and is not appealable.**

Failure to Pay Penalties and Fees

If the Responsible Party fails to pay the “Administrative Penalties” and “Time and Materials” fee to the Planning Department within 30 days of the issuance of Notice of Penalty and Fee, the Zoning Administrator may take such actions to collect the “Penalties” and any unpaid “Time and Materials” fee owed to the Department, including:

- (1) Referral of the matter to the Bureau of Delinquent Revenue Collection under Chapter 10, Article V, Section 10.39 of the San Francisco Administrative Code. The BDR may apply a 25% surcharge for their collection services. Please note that such surcharge will be considered part of the cost of correcting the violation, and the Responsible Party will be responsible for such charges.
- (2) Initiation of lien proceedings under Chapter 10, Article XX, Section 10.230 et seq. of the San Francisco Administrative Code; and
- (3) Requesting the San Francisco Office of City Attorney to pursue collection of the “Administrative Penalties” and “Time and Materials” imposed against the Responsible Party in a civil action.

Recordation of Order of Abatement

Upon the expiration of 90 days following the finality of this Notice of Violation, an Order of Abatement may be recorded against the property's records in the Office of the Recorder of the City and County of San Francisco.

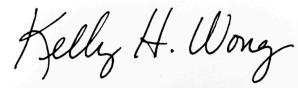
The obligation to correct the violation as set forth in the Order of Abatement shall be Planning Code conditions pursuant to Planning Code Section 174 that run with title to the property. Further, such recordation shall provide notice to each Responsible Party and any subsequent “successor” or “assign of title” to the property that the failure to perform such obligations is a violation of the Planning Code and may be enforced pursuant to Planning Code Section 176.

Any fees associated with recordation of an Order of Abatement will be assessed to the Responsible Party and added to the “Time and Materials” fee discussed above.

Other Applications Under Consideration

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Sincerely,

A handwritten signature in black ink that reads "Kelly H. Wong". The signature is written in a cursive style and is placed on a light gray rectangular background.

Kelly Wong
Acting Zoning Administrator

Enc.: Notice Requiring Compliance, dated June 28, 2021
Notice of Enforcement, dated April 16, 2019
Notice of Complaint, dated September 26, 2019



NOTICE REQUIRING COMPLIANCE

June 28, 2021

Property Owner

SIEH CHIU HUNG
354 HEAD ST
SAN FRANCISCO, CA 94132

Site Address: 354 Head Street
Assessor's Block/Lot: 7116 / 035
Complaint Number: 2018-012881ENF
Zoning District: RH-1 (Residential – House, One Family)
Code Violation: Section 317, Construction of an Unauthorized Unit
Time and Materials Fee: \$2,969.02 (Minimum Fee, Additional Charges May Apply)
Administrative Penalty: Up to \$250 Each Day of Violation
Response due: Within 15 Days from the Date of This Notice
Enforcement Planner: Vincent W. Page II, (628) 652-7396, vincent.w.page.ii@sfgov.org

The Planning Department received a complaint that a Planning Code violation exists on the above referenced property that must be resolved. As the owner of the subject property, you are a party responsible to address the complaint. The purpose of this notice is to inform you about the Planning Department's enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below.

Description of Violation

The violation pertains to an Unauthorized Unit that exists at the subject property. Pursuant to Planning Code Section 317(b)(13), an Unauthorized Unit is defined as one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from residential units on the same property. "Independent" shall mean (i) that the space has independent access that does not require entering a residential unit on the same property and (ii) there is no open, visual connection to a residential unit on the property.

Building Permit ("BP") No. 2016.02.02.8578 was issued on December 13, 2019, to legalize the above referenced unit, but the permit remains incomplete. The Planning Department requires that any corrective building permit application be pursued to completion.

Pursuant to Planning Code Section 171, structures and land in any zoning district shall be used only for the purposes listed in the Planning Code as permitted in that district, and in accordance with the regulations established for that district.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provision constitutes a violation of the Planning Code and is subject to an enforcement process, pursuant to Planning Code Section 176.

Timeline of Investigation

On September 26, 2018, the Planning Department issued you a Notice of Complaint. In that notice, you were advised to contact the Planning Department to resolve the complaint. No such contact was made.

On April 16, 2019, the Planning Department issued you a Notice of Enforcement. In that notice, you were notified of the alleged Planning Code violation and the process available for its abatement. You were advised to take corrective actions and provide evidence of compliance to the Planning Department within fifteen (15) days from the date of that notice.

On December 13, 2019, BP No. 2016.02.02.8578 was issued to legalize the Unauthorized Unit.

On December 19, 2019, the Planning Department contacted you to request a construction schedule for the completion of BP No. 2016.02.02.8578. You were notified that the permit's completion is required to bring the subject property into compliance with the Planning Code.

On January 15, 2020, the Planning Department granted an extension of time for the construction schedule to be submitted.

On June 9, 2020, the Planning Department granted an additional six-month extension of time for the construction schedule to be submitted and construction to be initiated.

On December 4, 2020, the Planning Department contacted you to request monthly updates on your efforts to abate the violation.

On December 7, 2020, you contacted the Planning Department to say that, as a result of the Unauthorized Unit continuing to be occupied by tenants, no progress had been made toward the initiation of construction for BP No. 2016.02.02.8578.

To date, it has been more than six months since you contacted the Planning Department to provide an update on your progress toward bringing this property into compliance with the Planning Code. You have been afforded ample time to address the violation, and multiple extensions of time were granted, at your request. You must immediately proceed to abate violation, or the Planning Department will take the next enforcement step.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation by completing the scope of work authorized under BP No. 2016.02.02.8578. You will then be required to obtain a final inspection and Certificate of Final Completion and Occupancy from the Department of Building Inspection (“DBI”). If the construction and inspection process would take more than thirty (30) days, you must:

- (1) Submit a construction schedule with the following information: the name(s) and contact information of the contractor or subcontractor responsible for completing the work; a proposed start date of construction; and a proposed end date of construction.
- (2) Provided that the Planning Department approves the proposed construction schedule, you will be required to contact the assigned enforcement planner with an update on or before the last day of each month, starting on the month during which construction is scheduled to begin, and ending when the corrective permit is completed. Each update will need to include photos and a short narrative description of the work completed that month. If any delays in the construction process should arise, you will be required to notify the assigned enforcement planner. Failure to provide notice of any construction delays will be viewed as a failure to demonstrate good faith and would result in the next enforcement step.
- (3) Upon completion of construction, you be required to submit photos of the completed work to the Planning Department to confirm that it is consistent with Planning Department approvals. You will then be asked to request a final inspection from DBI. You will be required to notify the assigned enforcement planner of the date of the final inspection, and to provide photo or scanned copy of Certificate of Final Completion and Occupancy.

You will be responsible to comply with any requests for additional information, revisions, or additional applications. You will be required to pursue the corrective building permit application such that it is approved, issued, and completed. The Planning Department reserves the right to determine whether you are demonstrating good faith toward addressing the violation. Your failure to demonstrate good faith, or to successfully abate the violation through the obtention of a building permit as noted above, will result in further enforcement action.

If you believe that the complaint was made in error, you will need to provide sufficient evidence. Evidence sufficient to demonstrate compliance may include, but is not limited to, dimensioned plans approved by the Planning Department and time-stamped photographs. A site visit may be required to verify compliance.

For questions regarding the building permit process, please contact the Department of Building Inspection (“DBI”) at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: (628) 652-3200
Email: permitcenter@sfgov.org
Website: www.sfgov.org/dbi

For questions regarding the planning permit review process, please contact the Planning Department at:

49 South Van Ness Avenue, 2nd Floor (By Appointment only to submit permits)
San Francisco, CA 94103
Phone: (628) 652-7300
Email: pic@sfgov.org
Website: www.sfplanning.org

Please note there is NO consultation available at 49 South Van Ness at this time due to COVID-19. Please do not visit 49 South Van Ness without an appointment. For questions about this enforcement case, please email the assigned enforcement planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted in the above.

Timeline to Respond

A Shelter in Place order was issued for San Francisco due to the COVID-19 pandemic on March 16, 2020, which was set to expire on April 7, 2020. On March 31, 2020, Order of the Health Officer No. C19-07b extended the previously issued Shelter in Place from April 7, 2020 to May 3, 2020. On April 29, 2020, Order of the Health Officer No. C19-07c further extended the previously issued Shelter in Place Order to May 31, 2020. On May 22, 2020, Stay-Safe-At-Home Order of the Health Officer No. C19-07e was issued to amend, clarify, and continue certain terms of the prior Shelter in Place orders. On June 1 and June 11, 2020, Stay-Safe-At-Home Order was updated and replaced previous Shelter in Place, C19-07 orders: C19-07d (May 18), C19-07c (April 29), C19-07b (March 31) and C19-07 (March 16).

The timeline to respond to this Notice Requiring Compliance is fifteen (15) days. As such, we highly encourage you to immediately reach out to the assigned Enforcement Planner to discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline. While many City agencies (including the Department of Building Inspection) are open, we understand there may be challenges and delays related to the processing of necessary applications to abate violations during the Stay-Safe-At-Home Order. You can find more information regarding the Planning Department procedures during the Stay-Safe-At-Home Order here: www.sfplanning.org/covid-19.

The Department recognizes the challenges of the City's Stay-Safe-At-Home Order and its underlying cause. However, corrective actions should be taken as early as reasonably possible. Please contact the assigned Enforcement Planner with questions and/or to submit evidence of correction. Delays in abatement of the violation beyond the timeline outlined above will result in further enforcement action by the Planning Department, including assessment of administrative penalties at \$

Penalties and Appeal Rights

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code within fifteen (15) days from the date of this notice will result in the issuance of a Notice of Violation by the Zoning Administrator. Administrative penalties of up to \$250 per day will be assessed to the responsible party for each day beyond the timeline to respond provided for the Notice of Violation if the violation is not abated. The Notice of Violation provides the following appeal options:

- (1) Request for Zoning Administrator Hearing. The Zoning Administrator's final decision is then appealable to the Board of Appeals.
- (2) Appeal the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter was pending either before the Zoning Administrator or Board of Appeals.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for "Time and Materials" to recover the cost of correcting the Planning Code violations. Accordingly, the responsible party is currently subject to a fee of **\$2,969.02** for "Time and Materials" cost associated with the Code Enforcement investigation. **Please submit a check payable to "Planning Department Code Enforcement Fund" within fifteen (15) days from the date of this notice.** Additional fees may continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

Other Applications Under Planning Department Consideration

The Planning Department requires that pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Enc.: Notice of Enforcement, dated April 16, 2019



SAN FRANCISCO PLANNING DEPARTMENT

NOTICE OF ENFORCEMENT

April 16, 2019

Property Owner

Sieh Chiu Hung
354 Head St
San Francisco, CA 94132

Site Address: 354 Head Street
Assessor's Block/Lot: 7116/ 035
Zoning District: RH-1, Residential- House, One Family
Complaint Number: 2018-012881ENF
Code Violation: Section 171; Compliance of Uses Required
Section 207.3; Unauthorized Dwelling Unit
Administrative Penalty: Up to \$250 Each Day of Violation
Response Due: Within 15 days from the date of this Notice
Staff Contact: David Brosky, (415) 575-8727 / david.brosky@sfgov.org

The Planning Department has received a complaint that a Planning Code violation exists at 354 Head Street (the "subject property") that needs to be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

DESCRIPTION OF VIOLATION

It has been alleged that the subject property contains an unauthorized dwelling unit. Pursuant to Planning Code Section 317, an unauthorized unit is defined as "one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from residential units on the same property."

On September 26, 2018 the Planning Department sent you a Notice of Complaint to inform you about the complaint.

Pursuant to Planning Code Section 171 structures and land in any zoning district shall be used only for the purposes listed in this Code as permitted in that district, and in accordance with the regulations established for that district. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures. Failure to comply with any of Planning Code provisions constitutes a violation of Planning Code and is subject to enforcement process under Code Section 176.

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

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

HOW TO CORRECT THE VIOLATION

The Planning Department requires that you immediately proceed to abate the violation by either obtaining Conditional Use Authorization (CUA) to remove the unauthorized unit OR legalizing the unit through the Unit Legalization Program or the Accessory Dwelling Unit Program.

If you choose to remove the unauthorized unit, you must file a Conditional Use Authorization Application. The CUA Application is available from the Planning Department's website at <http://www.sf-planning.org>. If the Conditional Use Authorization is granted, you will also need to obtain a Building Permit.

If you choose to legalize the unit, you can apply for the Unit Legalization Program. Per Department of Building Inspection (DBI):

- Homeowners must first hire a professional representative (engineer, architect or contractor) who will be responsible for providing the owner with a professional assessment of what legalization may entail.
- Homeowners must provide documentation that the dwelling unit to be legalized existed prior to January 1, 2013.
- Homeowners may visit the ADU Planning Desk at Counter 38 on the 5th Floor of 1660 Mission Street to submit the screening form to be accepted into the Program. Following the screening process the owner may then formally apply for a building permit for legalization with the Planning Department and DBI. Two sets of plans are required to apply.

Owners may receive an estimation of the costs to legalize their units by undergoing an initial screening process. This screening is an informal consultation with DBI staff, non-binding and free of charge. The screening form is available on DBI's Unit Legalization website and more information about the required steps at <http://sfdbi.org/UnitLegalization>.

A second method to legalize the unauthorized dwelling unit is through the Accessory Dwelling Unit Program. Pursuant to Planning Code Section 207(c)(4), on a lot with four or less existing units, one new accessory dwelling unit may be permitted. Please submit a Building Permit application and floor plans for change of use.

The responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. Please provide evidence including copies of approved permits, plans or other supporting documents. A site visit may also be required to verify compliance.

You may also need to obtain a building permit for any alterations done at the property. Please contact the Department of Building Inspection (DBI), 1660 Mission Street, San Francisco, CA 94103, telephone: (415) 558-6088, website: www.sfgov.org/dbi, regarding the Building Permit Application process. Please visit the Planning Information Counter located at the first floor of 1660 Mission Street or website: www.sf-planning.org for any questions regarding the planning process.

TIMELINE TO RESPOND

The responsible party has **fifteen (15) days from the date of this notice** to contact the staff planner noted at the top of this notice and submit evidence to demonstrate that the corrective actions have been taken to bring the subject property into compliance with the Planning Code. A site visit may also be required to verify the authorized use at the above property. The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation may result in further enforcement action by the Planning Department.

PENALTIES AND APPEAL RIGHTS

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code **within fifteen (15) days from the date of this notice** will result in issuance of a **Notice of Violation** by the Zoning Administrator. Administrative penalties of up to **\$250 per day** will also be assessed to the responsible party for each day the violation continues thereafter. The Notice of Violation provides appeal processes noted below.

- 1) Request for Zoning Administrator Hearing. The Zoning Administrator's decision is appealable to the Board of Appeals.
- 2) Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party may be subject to an amount of **\$1,395.00** plus any additional accrued time and materials cost for Code Enforcement investigation and abatement of violation. This fee is separate from the administrative penalties as noted above and is not appealable.

OTHER APPLICATIONS UNDER CONSIDERATION

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until the violation is corrected. We want to assist you in ensuring that the subject property is in full compliance with the Planning Code. You may contact the enforcement planner as noted above for any questions.



SAN FRANCISCO PLANNING DEPARTMENT

NOTICE OF COMPLAINT

September 26, 2018

Property Owner

Sieh Chiu Hung
354 Head St
San Francisco, CA 94132

Site Address: 354 Head St
Block/Lot: 7116/ 035
Zoning District: RH-1, Residential- House, One Family
Complaint Number: 2018-012881ENF
Staff Contact: Tina Tam, (415) 558-6325, tina.tam@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

You are receiving this courtesy notice because the Planning Department has received a complaint alleging that one or more violations of the Planning Code exist on the above-referenced property. As the property owner you are a responsible party.

The Planning Department requires compliance with the Planning Code in the development and use of land and structures. Any new building permits or other applications are not issued until a violation is corrected. Penalties may also be assessed for verified violations. Therefore, your prompt action to resolve the complaint is important.

Please contact the staff planner shown above for information on the alleged violation and assistance on how to resolve the complaint.

BRIEF SUBMITTED BY THE APPELLANT(S)

ZACKS & FREEDMAN, PC

July 27, 2023

Board of Appeals
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102

Via Electronic Submission

Re: Appeal No.: 23-032
Appeal Title: Chiu Hung Sieh vs. Zoning Administration
Subject Property: 354 Head Street, San Francisco, CA (the "Property")
Appeal to Notice of Violation (Complaint No.: 2018-012881ENF) dated June 2, 2023
Hearing Date: August 16, 2023

Dear Board of Appeals:

Our office represents Chiu Hung Sieh (the "Appellant"). This letter is Appellant's brief.

Appellant purchased the Property from her father on December 23, 2005. Appellant's father had built a bedroom, kitchen, and bathroom in the lower front portion of the Property (the "Unit") without obtaining permits and rented the Unit to Guang Qian Li and Ming Qing Lin (collectively, the "Tenants"). In August 2015, the Tenants filed a complaint with the Building Department about the illegal condition of the Unit. In February 2016, Appellant applied for a permit to legalize the Unit (Permit #201602028578) (the "Permit"). Appellant could not perform the legalization work with the Tenants residing in the Unit.

1. The San Francisco Residential Rent Stabilization and Arbitration Ordinance (the "Rent Ordinance") Prevented Appellant from Recovering Possession of the Unit to Perform the Work Under the Permit and Now The Legalization of the Unit Is not Financially Feasible and Would Constitute a Hardship for Appellant.

Appellant has attempted to recover possession of the Unit since October 2015. The Tenants filed Rent Board Petition #T152394 for wrongful eviction in November 2015. The Rent Board determined that the Unit was subject to all the provisions of the Rent Ordinance (See Rent Board Decision dated April 14, 2016, attached hereto as **Exhibit A**). Appellant offered to the Tenants to temporarily move to

another bedroom located in the lower portion of the Property and to temporarily share the kitchen with Appellant. The Tenants refused. In June 2017, Appellant was diagnosed with cancer and started a 5 year-long battle against the disease. Meanwhile, in October 2017, the Tenants said that they would be looking at apartments to relocate but later said they could not find a new place. In 2018, the Tenants told Appellant that some relatives will be moving to the U.S. to purchase a house and that they will move with their relatives. The Tenants asked Appellant to give them more time to find replacement houses. In October 2019, Appellant fell from a ladder and fractured her spine in two different areas causing some painful vertebral compressions. Appellant laid in bed for months and walked with canes for 2 years. As a result of her accident, Appellant could no longer work, and her income dropped to about \$13,000 per year. Attached hereto as **Exhibit B** is a letter dated July 27, 2023 from Appellant's physician confirming that Appellant's injuries affect her major life's activities, including working. Appellant's situation worsened with the COVID-19 pandemic. On December 13, 2019, the Permit was issued. However, since then, the Tenants have remained in possession of the Unit and have refused to cooperate with the work. It became clear that Appellant would not recover possession of the Unit without proceeding with a formal and expensive no-fault eviction. The only just cause of eviction available to Appellant was a temporary capital improvement eviction under Section 37.9(11) of the Rent Ordinance, which would have required Appellant to pay at that time statutory relocation payments in the approximate total amount of \$24,738, and would have allowed the Tenants to move back into the Unit upon completion of the work at their current rent of \$560.00, which would not have helped Appellant to cover the costs to legalize the Unit estimated at approximately \$305,000. Attached hereto as **Exhibit C** is the most recent estimate that Appellant obtained for the work. Appellant can simply no longer afford legalizing the Unit and does no longer want to be a landlord. Appellant has decided to exit the residential rental business and is in the process of withdrawing the Property from the residential rental market pursuant to the Ellis Act (i.e.,

California Government Code, Sections 7060, *et seq.* as implemented by Sections 37.9(a)(13) and 37.9A of the Rent Ordinance.

Forcing Appellant to pursue the legalization of the Unit would constitute a hardship for Appellant. Section 317(g)(7)(C) of the Planning Code does allow the Planning Commission to take into consideration the hardship that a property owner would face if the removal of an unauthorized unit is disapproved. Section 317(g)(7)(B) of the Planning Code provides in relevant part that:

“[...] the Planning Commission shall consider the criteria below in the review of applications for removal of Unauthorized Units: “[...] “whether it is financially feasible to legalize the Unauthorized Unit or Units. Such determination will be based on the costs to legalize the Unauthorized Unit(s) under the Planning, Building, and other applicable Codes in comparison to the added value that legalizing said Units would provide to the subject property. The gain in the value of the subject property shall be based on the current value of the property with the Unauthorized Unit(s) compared to the value of the property if the Unauthorized Unit(s) is/are legalized. The calculation of the gain in value shall be conducted and approved by a California licensed property appraiser. **Legalization would be deemed financially feasible if gain in the value of the subject property is equal to or greater than the cost to legalize the Unauthorized Unit.**” [Emphasis Added]

As stated in the report dated July 27, 2023 from the licensed appraiser Mark Watts of Watts, Cohn and Partners, Inc. (the “Report”), **the “legalization construction cost is more than double the value of the unit as legalized. The legalization of the unit is not feasible”**. In fact, Appellant would sustain a \$180,000 deficit in value if she were forced to legalize the Unit, making the legalization financially unfeasible. The Report is attached hereto as **Exhibit D** and incorporated by this reference.

In addition, the withdrawal of the property from the residential rental market pursuant to the Ellis Act renders the work under the Permit unnecessary as Appellant will use and occupy the entire property as a single-family home, which is its original use. In fact, following the withdrawal of the property from the residential rental market under the Ellis Act, Appellant will be prohibited from re-renting the Unit and will only be able to use the property as a single-family home (See Section 37.9A(a) of the Rent Board and Section 7060.2). As discussed below, given that the Unit may now only be owner-occupied, the residential conversion of the Unit would only eliminate “owner-occupied housing” and the conversion will not be detrimental to the City’s housing stock, thereby justifying its approval.

2. The Ellis Act Preempts the San Francisco Planning Code to the Extent It Requires a Conditional Use Permit to Owner-Occupy One’s Entire Home Zoned for Residential Dwelling, and Which is Being Withdrawn from the Rental Market Pursuant to the Ellis Act.

The Ellis Act dictates that a public entity may not “compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease”. However, the City’s implementation of Planning Code §317 compels such rental use.

Specifically, Planning Code §317(b)(13) establishes a class of dwelling units – “Unauthorized Unit” – defined as one or more rooms within a building that have been used, without the benefit of a building permit, as **a separate and distinct living or sleeping space** independent from Residential Units on the same property.

The Planning Code does not define “separate” or “distinct”. It *does* define “Dwelling Unit” as a Residential Use defined as a room or suite of two or more rooms that is designed for, or is occupied by, **one family** doing its own cooking therein and having only one kitchen. (See, Planning Code §102.)

Therefore, this definition only applies when there is *more* than one family, and in the case of an owner-occupied single-family home with a downstairs space converted to living use for a tenant, the

notion that the two spaces are different “dwelling units” is intertwined with one such space being a *rental* unit for a tenant.

In other words, this rubric only applies when the separate “family” is a tenant. After all, a tenancy is an estate in land that confers an exclusive right of possession to the tenant. See, *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal. App. 4th 1004, 1056. By contrast, an owner and their extended family, while occupying both spaces for discrete living use, could voluntarily agree to allow each other free access to each other’s spaces without violating landlord-tenant law. For this reason, this forced division – the artificial separation of spaces within a single structured dwelling - becomes irrelevant once the property has been withdrawn from the rental market.

As a result, the City can no longer require conditional use authorization to “merge” the units (per Planning Code §317), as they no longer need to be merged following withdrawal. They are simply the same owner-occupied space. Indeed, this is the result the San Francisco Superior Court reached when the Planning Code attempted to require conditional use authorization to “convert” residential units to owner-occupied units in violation of the Ellis Act. (See, *John Hickey Brokerage v. CCSF*, San Francisco Superior Court Case No. CGC-99-303023.) The order granting petition for writ of mandate, entered in that case on June 14, 1999, attached as **Exhibit E** hereto, remains binding on the City. To the extent that the City now attempts to require conditional use authorization to allow owner occupancy (by labeling a portion of the home as an “unauthorized unit” and requiring conditional use authorization to merge/remove it), this is likewise preempted by the Ellis Act as when owner occupancy *in itself* required conditional use authorization.

3. Compelled legalization violates the Fifth Amendment and the Constitutional Right of Privacy, particularly in light of Proposition M.

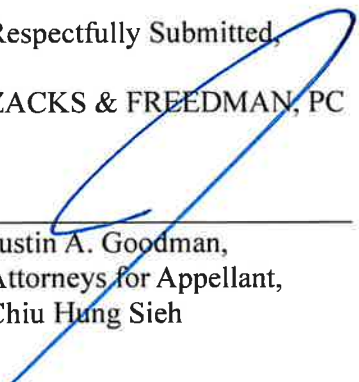
The conditional use requirement violates a family’s right to privacy in dictating the creation of a divisible portion of the Dwelling Unit dedicated to another family. (See, e.g., *Tom v. City & Cnty. of San*

Francisco (2004) 120 Cal. App. 4th 674, 684: observing a reasonable expectation of privacy in one’s own home and invalidating a City ordinance intruding into privacy if they invoked the Ellis Act.)

This is even more of an intrusion in the context of Proposition M (2022), which dictates that the owner cannot primarily reside in more than one Dwelling Unit (i.e., the entirety of their property) without incurring a tax aimed at penalizing him for not renting. And as a consequence of this, forcing the creation of an insular unit that Appellant may not primarily reside in – because the City has designated its use for another “family” - infringes Appellant’s right to exclude: *Cedar Point Nursery v. Hassid* (2021) 141 S. Ct. 2063, 2072: “[t]he right to exclude is ‘one of the most treasured’ rights of property ownership”. The City’s regulation forcing Appellant to legalize the Unit “appropriates a right to physically invade ... [Appellant’s property] ... it constitutes a *per se* physical taking...” (*Id.* at 2) The Court followed the proposition established in *Pennsylvania Coal Co. v. Mahon* (1922) 260 U. S. 393 that “while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.” (*Cedar Point Nursery, supra*, 141 S. Ct. at 2072, citing *Pennsylvania Coal Co., supra*, 260 U. S. at 415) and held that such “framework now applies to use restrictions as varied as zoning ordinances.” (*Id.* at 6)

Respectfully Submitted,

ZACKS & FREEDMAN, PC



Justin A. Goodman,
Attorneys for Appellant,
Chiu Hung Sieh

EXHIBITS

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Exhibit A.	Rent Board Decision.	3
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EXHIBIT A

1 Law Construed:
2 Ordinance Sections: 37.2(r); 37.2(r)(5); 37.8(f)(1)
3 Rules and Regulations Sections: 1.17; 1.17(e)
4 Index Code: K5

5 RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD
6 CITY AND COUNTY OF SAN FRANCISCO

7 IN RE: 354 HEAD STREET, LOWER UNIT

CASE NO. T152394

8 GUANG QIAN LI,

HEARING: FEBRUARY 2, 2016
RECORD CLOSED: FEBRUARY 23, 2016

9 TENANT PETITIONER,

DECISION

10 and

11 CHIUHUNG SIEH,

12 LANDLORD RESPONDENT.

13 INTRODUCTION

14 This case involves a tenant petition filed on November 4, 2015, requesting a
15 determination of Rent Board jurisdiction over the subject unit. The tenant petitioner alleged that
16 his downstairs unit was not exempt from the provisions of the Rent Ordinance.

17 A hearing was held on the petition on February 2, 2016. The following persons appeared
18 at the hearing: Guang Qian Li, tenant petitioner; Ming Qing Lin, witness for the tenant petitioner;
19 Aidong Ni, interpreter for the tenant petitioner; and Chiuhung Sieh landlord respondent. At the
20 hearing, the parties had full opportunity to present relevant evidence and argument, and they
21 testified under oath.

22 The record was held open until February 23, 2016 for the parties to submit additional
23 evidence, which was timely received. The record closed on February 23, 2016.

24 FINDINGS OF FACT

25 1. The subject building located at 354 Head Street in San Francisco currently
26 consists of two occupied residential units. One unit upstairs is occupied by the landlord, her
27 husband and one tenant, and one unit downstairs is currently occupied by the tenant petitioner
28

1 and his wife. (Landlord Exhibit 1) The landlord testified that she purchased the property from her
2 father in May 2002.

3 Related Rent Board Case

4 2. On November 4, 2015, the tenant petitioner filed an alleged wrongful eviction
5 petition in Case No. E152389. In response to the tenant's petition, the landlord submitted a
6 Certificate of Final Completion and Occupancy, dated April 1, 1992, that described the
7 construction as: "NEW TWO STORY SINGLE FAMILY RESIDENCE," and the landlord submitted
8 a 60-day notice of termination of tenancy, which stated that the unit is located in a structure for
9 which a certificate of occupancy was first issued after 1979, after the effective date of the Rent
10 Ordinance. (Landlord Pre-hearing Submission, recvd. 12/8/15) On December 18, 2015, the
11 tenant replied to the landlord's response and claimed that the building was built before 1992 and
12 that there is more than one apartment in the building. (Tenant Pre-hearing Submission, recvd.
13 12/18/15) No further action has been taken in Case No. E152389 pending the decision in the
14 instant case. No evidence was submitted that at the time of the hearing the landlord had filed an
15 unlawful detainer action to evict the tenants. Administrative notice is taken of the file in Case No.
16 E152389.

17
18 3. Commencing October 15, 2004, the tenant rented one room and one bath in the
19 subject building from the current landlord's father, Zhi Cheng Xue, for \$500.00 per month,
20 pursuant to a written rental agreement. (Tenant Post-hearing Submission, recvd. 2/23/16, p. 3)
21 While the agreement does not describe where the unit is located in the building, the tenant
22 credibly testified that his unit is located in the downstairs portion of the building and was
23 remodeled from the garage. The tenant testified that his current rent is \$560.00 per month.

24 4. The tenant testified that there are three families living in the building. The tenant
25 testified that another family, the Chen Family, also occupied another downstairs unit, which had
26 two bedrooms, a kitchen and a bathroom. The tenant testified that the Chen Family has moved
27 out of the building. The tenant contended that the building was built prior to 1979. (Attachment to
28

1 Petition, p. 1) However, neither the tenant nor the landlord submitted any evidence of the date
2 the original building was first constructed.

3 5. On December 6, 1991, the San Francisco Department of Public Works approved
4 an application for a permit, No. 9000011, to demolish the single-family dwelling on the subject
5 property. (Attachment to Petition, p. 4) The permit expired and was cancelled on January 21,
6 1992. (Attachment to Petition, p. 4; Landlord Post-hearing Submission, recvd. 2/2/16, p. 3) On
7 the same day of January 21, 1992, the City approved a second permit (Application No. 9101987)
8 to demolish the single-family dwelling and garage on the property, which work was completed on
9 March 6, 1992. (Attachment to Petition, p. 6)

10 6. Also on January 21, 1992, the City approved a permit (Application No. 9000010)
11 to erect a two story single-family dwelling on the subject property, which was completed on April
12 21, 1992. (Attachment to Petition, p. 2) On April 21, 1992, the City issued a new Certificate of
13 Final Completion and Occupancy, which referred to Application No. 9000010 and described the
14 construction as: "NEW TWO STORY SINGLE FAMILY RESIDENCE." (Landlord Pre-hearing
15 Submission, recvd. 12/8/15, p. 2)

16 7. On or about October 7, 2015, the landlord issued a 60-day notice to terminate the
17 tenant's tenancy. (Landlord Pre-hearing Submission, recvd. 12/8/15, p. 3) The notice stated in
18 pertinent part:
19

20 THE OWNER AND THIS NOTICE are exempt from the provisions of Chapter 37
21 of the San Francisco Administrative Code, the Residential Rent Stabilization and
22 Arbitration Ordinance, because the rental unit is located in a structure for which a
23 certificate of occupancy was first issued after 1979, after the effective date of the
24 ordinance, nevertheless: Therefore, no just cause for termination of tenancy is
25 required nevertheless: Your tenancy is being terminated because the owner
26 wishes to recover the unit in order to remodel the unit and the building.

27 (Landlord Pre-hearing Submission, recvd. 12/8/15, p. 3)

28 8. The tenant testified that the landlord wants him to move out because the landlord
told him the unit was illegally constructed. The tenant still occupied the unit at the time of the
hearing.

1 9. The landlord testified that when she moved into the building in 2002, the house
2 was completely vacant. The landlord lived upstairs with her mother and father and the downstairs
3 was not rented until much later when her father rented part of the downstairs to the tenant
4 petitioner. The landlord contended that the tenant petitioner's unit is exempt from the Rent
5 Ordinance because it is in a structure for which a certificate of occupancy was first issued in
6 1992, after the 1979 effective date of the Rent Ordinance.

7 CONCLUSIONS OF LAW

8 1. The issue in this case is whether the subject downstairs unit at 354 Head Street is
9 exempt from the Ordinance under Rent Ordinance Section 37.2(r) and Rules and Regulations
10 Section 1.17(e).

11 2. Rent Ordinance Section 37.2(r)(5) provides that the following units are not subject
12 to the Ordinance:

13 Rental units located in a structure for which a certificate of occupancy was
14 first issued after the effective date of this ordinance; (A) except as provided
15 for certain categories of units and dwellings by Section 37.3(d) and Section
16 37.9A(b) of this Chapter; (B) except as provided in a development agreement
17 entered into by the City under San Francisco Administrative Code Chapter 56;
18 and (C) except as provided for foreclosed units and dwellings by Section
19 37.9D.

20 Rules and Regulations Section 1.17(e) clarified Ordinance Section 37.2(r)(5) as follows:

21 "Rental Unit" means a residential dwelling unit, regardless of zoning or legal
22 status, in the City and County of San Francisco and all housing services,
23 privileges, furnishings (including parking facilities supplied in connection with
24 the use or occupancy of such unit), which is made available by agreement for
25 residential occupancy by a tenant in consideration of the payment of rent. The
26 term does not include:

27 (e) newly constructed rental units for which a certificate of occupancy
28 was first issued after June 13, 1979. (Emphasis added.)

3. In this case, the landlord argued that the downstairs unit occupied by the tenant
petitioner was exempt under Ordinance Section 37.2(r)(5) because the unit was located in a
structure for which a certificate of occupancy was first issued on April 21, 1992 after the June 13,
1979 effective date of the Rent Ordinance. However, Regulation Section 1.17(e) clarified that

1 Ordinance Section 37.2(r)(5) applies only to "newly constructed rental units for which a certificate
2 of occupancy was first issued after June 13, 1979." The undisputed evidence in this case
3 established that the 1992 certificate of occupancy was issued for a single unit, which is occupied
4 by the landlord, and the tenant petitioner resides in an illegal unit located in the downstairs
5 portion of the building. It is also undisputed that the April 21, 1992 Certificate of Final Completion
6 and Occupancy authorized only one unit and does not authorize a second unit. Since no
7 certificate of occupancy has been issued for the subject unit, the tenant petitioner's unit is not
8 exempt from the Rent Ordinance as a newly constructed rental unit for which a certificate of
9 occupancy was first issued after June 13, 1979 under Rules and Regulations Section 1.17(e).
10 The decision is consistent with the recent decision of the Rent Board to deny the landlord's
11 appeal on this same issue in Case No. T151370/AL150146.

12 It is therefore unnecessary to determine if the April 21, 1992 Certificate of Final
13 Completion and Occupancy was "first" issued after June 13, 1979 where, as hear, a single-family
14 dwelling existed on the property prior to its demolition in 1992 to make way for the new single-
15 family dwelling.

16 **ORDER**

17
18 1. Petition No. T152394 is granted. It is determined that the subject rental unit at 354
19 Head Street is not exempt from the Rent Ordinance and is subject to the provisions of the
20 Ordinance.

21 2. This decision is final unless specifically vacated by the Rent Board following
22 appeal to the Board. Appeals must be filed no later than fifteen (15) calendar days from the date
23 of the mailing of this decision, on a form available from the Rent Board. [Ordinance Section
24 37.8(f)(1), emphasis added] If the fifteenth day falls on a Saturday, Sunday or legal holiday, then
25 the appeal may be filed with the Board on the next business day.

26 Dated: April 14, 2016

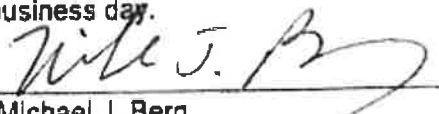
27 
28 Michael J. Berg
Administrative Law Judge

EXHIBIT B



San Francisco
Health Network

SFDPH SILVER AVENUE HEALTH CENTER
SILVER AVENUE FAMILY HEALTH CENTER
1525 SILVER AVE
SAN FRANCISCO CA 94134
Phone: 415-657-1700
Fax: 628-217-7502

SAN FRANCISCO DEPARTMENT OF PUBLIC HEALTH

July 27, 2023

Patient: **Chiu Hung Sieh**
Date of Birth: **8/3/1967**
Date of Visit: **7/27/2023**

To Whom It May Concern:

Chiu Hung Sieh is a patient of mine. She is unable to do physical work that requires standing longer than 20-30 minutes at a time or lift items more than 15 pounds due to her medical condition. Please call with questions.

Sincerely,

Kathleen R. Chung, MD
Silver Avenue Family Health Center

Silver Avenue Family Health Center
1525 Silver Avenue
San Francisco, CA 94134
(415) 657-1700

EXHIBIT C

YES General Construction Builder
Lic: B999640
Danny Wong
416 Richmond Dr. #6, Millbrae CA 94030
Phone: 415-912-9199

Name: Chiuhung Sieh
Job Location: 354 Head Street
San Francisco, CA

Date: 7-19-2023
Phone: 415-418-8212

DESCRIPTION OF WORK:

1. Demolished the whole illegal walls as blueprints including the kitchen, bathroom and bedroom front place of lower unit.
2. Install an office and full bathroom at front area as blueprint.
3. Install a wall at the front of the garage
4. All the electrical, plumbing, framing and mechanical will upgrade to building codes
5. Build an additional storage room with a sliding door and windows as drawing.
6. Install a kitchenette at the back area of lower unit
7. Install a wall and a door at the kitchen area as blueprint
8. Replace electrical wires, plumbing, mechanical pipes as needed
9. The front and the back has own electrical panel inside, own meters of electrical and gas, heating system, water heater.
10. Materials for finish as discussions with owner from Home Depot. Prices will be increased if materials are requested in higher class.

The above additional work for the sum of:
Three Hundred Five Thousand Dollars Only (\$305,000.00)

Signature: _____
Danny Wong

Signature: _____
Owner

EXHIBIT D

WATTS, COHN and PARTNERS, INC.

COMMERCIAL REAL ESTATE APPRAISAL

**APPRAISAL OF:
LEGALIZATION FEASIBILITY ANALYSIS
UNAUTHORIZED RESIDENTIAL UNIT
354 HEAD STREET
SAN FRANCISCO, CALIFORNIA**

**PREPARED FOR:
ZACKS & FREEDMAN, PC
SAN FRANCISCO, CALIFORNIA**

**JULY 2023
23-WCP-059**

WATTS, COHN and PARTNERS, INC.

COMMERCIAL REAL ESTATE APPRAISAL

July 27, 2023

Gael Bizel-Bizellot
Zacks & Freedman, PC
601 Montgomery Street, Suite 400
San Francisco, CA 94111

Re: 23-WCP-059, Appraisal
Feasibility Analysis
Unauthorized Unit
354 Head Street
San Francisco, California

Dear Gael Bizel-Bizellot:

At your request and authorization, Watts, Cohn and Partners, Inc. has performed a feasibility analysis appraisal of the unauthorized unit located at 354 Head Street, in the City and County of San Francisco, California. The subject is located in the Oceanview neighborhood, between Randolph Street and Brotherhood Way. The subject is an attached four-bedroom, three-bathroom single family house that was built in 1992. Public records show the property has 1,817 square feet on a 2,495 square foot lot. It is identified by the San Francisco Assessor's Office as Block 7116, Lot 035.

Unauthorized Unit and General Permitting Process

The subject has a Notice of Enforcement from the San Francisco Planning Department. An unauthorized unit was constructed on the ground floor of the subject and rented for \$560 per month. The unit was determined to be under Rent Control and is stabilized at \$560 per month. The Notice of Enforcement requires the unauthorized unit to either be legalized or demolished. Either alternative requires a permitting process.

The purpose of this appraisal is to determine whether the value created by the legalization exceeds the cost of construction. If the value of the unit is greater than the cost of construction, the legalization of the unit is required. If the value of the unit is less than the cost of construction, then legalization is deemed financially infeasible, and the unit is eligible for demolition. The feasibility of legalizing the unit is discussed later in this appraisal.

CLIENT, PURPOSE, INTENDED USE AND INTENDED USER

The client for this appraisal is Gael Bizel-Bizellot with Zacks & Freedman, PC in San Francisco, California. The purpose of this appraisal is to estimate whether legalization of the unauthorized unit is feasible. The intended use/user for which this appraisal was contracted is for the exclusive

Watts, Cohn and Partners, Inc.

Commercial Real Estate Appraisal

23-WCP-059

use by Gail Bizel-Bizellot and your clients for on-going litigation purposes. ***This report should not be relied upon by any other parties for any other reason.***

SCOPE OF WORK

The scope of work for this appraisal assignment is to utilize the appropriate approaches to value in accordance with Uniform Standards of Professional Appraisal Practice (USPAP) to arrive at a market value conclusion.

DEFINITION OF TERMS

1. Market Value (OCC 12 CFR 34.42 (g)) (OTS 12 CFR, Part 564.2 (g))2015

Market Value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specific date and the passing of title from seller to buyer under conditions whereby:

- (1) Buyer and seller are typically motivated;
- (2) Both parties are well informed or well advised, and acting in what they consider their own best interest;
- (3) A reasonable time is allowed for exposure in the open market;
- (4) Payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and
- (5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

LIMITING CONDITIONS

Extraordinary Limiting Condition

General Limiting Conditions

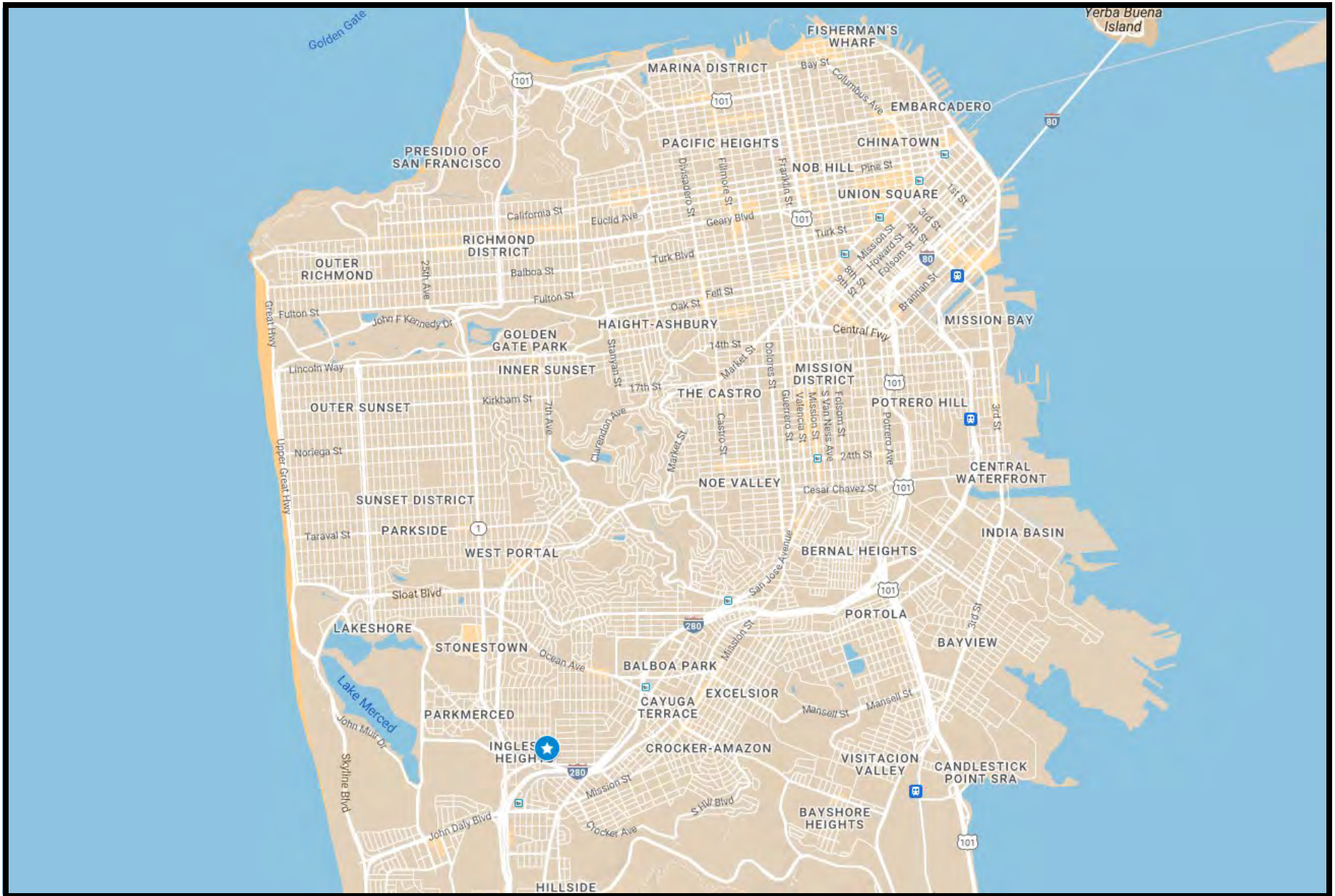
1. No responsibility is assumed for legal matters. It is assumed that title of the property is marketable, and it is free and clear of liens, encumbrances and special assessments other than as stated in this report.
2. Plot plans and maps if any are included to assist the reader in visualizing the property. Information, estimates, and opinions furnished to the appraiser, and contained in the report, were obtained from sources considered reliable and believed to be true and correct.

Watts, Cohn and Partners, Inc.

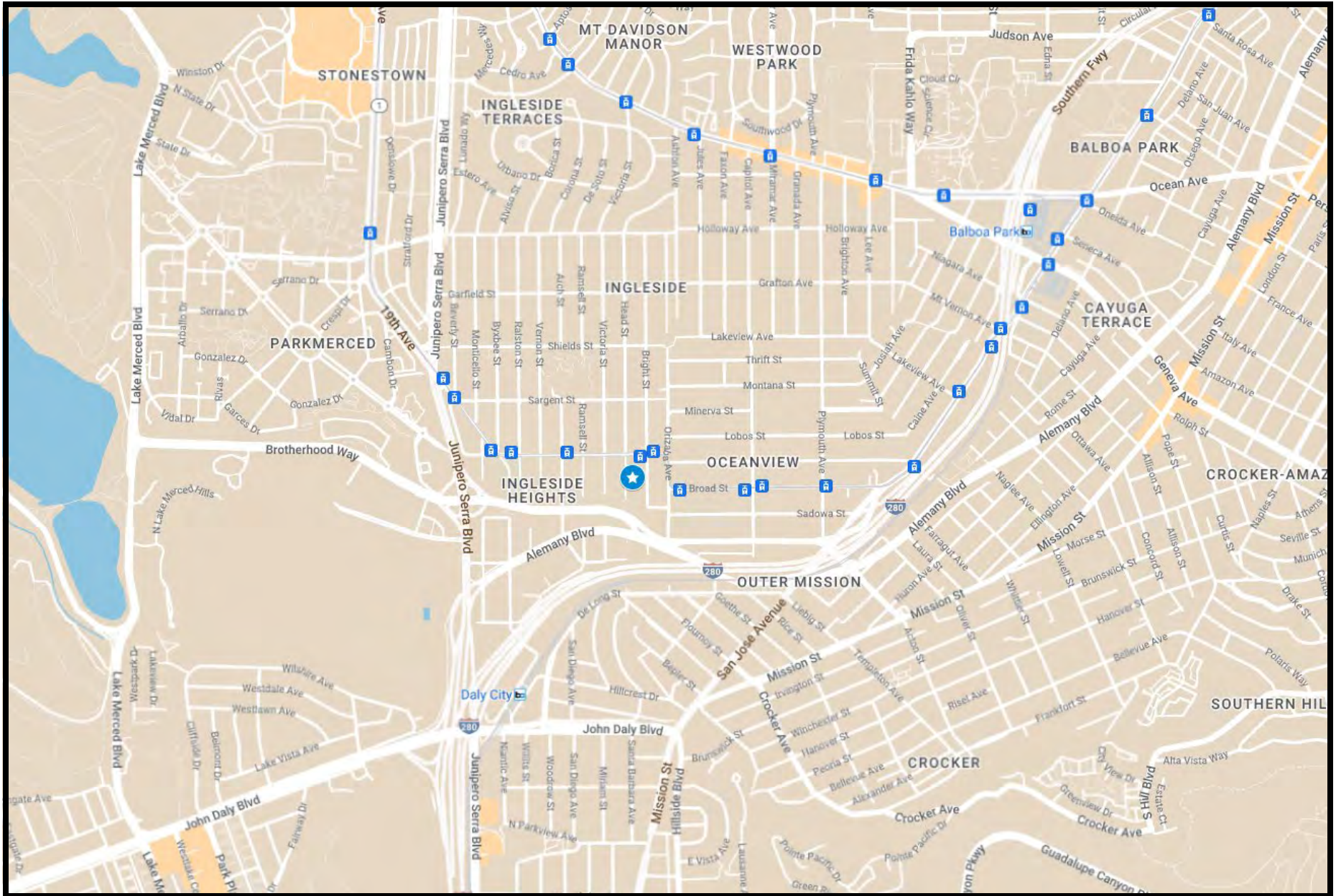
Commercial Real Estate Appraisal

23-WCP-059

REGIONAL MAP



NEIGHBORHOOD MAP



However, no responsibility for accuracy of such items furnished the appraiser is assumed by the appraiser.

3. All information has been checked where possible and is believed to be correct but is not guaranteed as such.
4. The appraiser assumes that there are no hidden or unapparent conditions of the property, subsoil, or structures, which would render it more or less valuable. The appraiser assumes no responsibility for such conditions, or for engineering studies which might be required to discover such factors. It is assumed that no soil contamination exists as a result of chemical drainage or leakage in connection with any production operations on or near the property.
5. In this assignment, the existence (if any) of potentially hazardous materials used in the construction or maintenance of the improvements or disposed of on the site has not been considered. These materials may include (but are not limited to) the existence of formaldehyde foam insulation, asbestos insulation, or toxic wastes. The appraiser is not qualified to detect such substances; the client is advised to retain an expert in this field.
6. Any projections of income and expenses are not predictions of the future. Rather, they are an estimate of current market thinking of what future income and expenses will be. No warranty or representation is made that these projections will materialize.
7. Possession of any report prepared, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event only with the proper written qualification and only in its entirety, and only for the contracted intended use as stated herein.
8. Neither all nor part of the contents of the appraisal shall be conveyed to the public through advertising, public relations, new sales, or other media without the written consent and approval of the appraiser, particularly as to the valuation conclusions, the identity of the appraisers, or any reference to the Appraisal Institute or the MAI designation.
9. Information regarding any earthquake and flood hazard zones for the subject property was provided by outside sources. Accurately reading flood hazard and earthquake maps, as well as tracking constant changes in the zone designations, is a specialized skill and outside the scope of the services provided in this appraisal assignment. No responsibility is assumed by the appraisers in the misinterpretation of these maps. It is strongly recommended that any lending institution reverify earthquake and flood hazard locations for any property for which they are providing a mortgage loan.

HIGHEST AND BEST USE CONCLUSION

The subject property is zoned for single family residential uses. The highest and best use as vacant is the construction of a new single-family development consistent with current zoning codes. As

Watts, Cohn and Partners, Inc.

Commercial Real Estate Appraisal

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improved, the existing improvements are considered to contribute value to the underlying site. Demolition is not warranted and nor would demolition be allowed. Expansion of the subject might be permitted but would not be considered financially feasible. The existing improvements are considered a functional use of the site.

The subject has an unauthorized unit. As will be shown in the following chapter, the value of the unauthorized unit is less than the cost of legalization. Therefore, legalization of the unit is not feasible. The highest and best use conclusion is the demolition of the unauthorized unit.

DATE OF APPRAISAL AND DATE OF VALUE

The effective date of valuation is July 19, 2023.

The date of this report is July 27, 2023.

OWNERSHIP

Based on review of the deed and public records, ownership of the subject is held by Sieh, Chiu Hung. The current owner has held the property for more than 5 years. No other transfers have occurred in the last three years. The subject is not known to be for sale or under contract to be sold.

Based on inspection of the subject, it does not appear to be impacted by any unusual easements or restrictions, other than as discussed in this report.

LEGALIZATION CONSTRUCTION COST

The appraisers are in receipt of a construction cost estimate prepared by YES General Construction Builder dated July 19, 2023. This construction estimate is included in the Addenda of this letter. The scope of the work is to demolish the illegal walls and work on the lower floor and legalize the rear unit on the lower floor. The construction costs are \$305,000. The appraiser estimates a contingency/profit allowance of 15 percent bringing the total to \$350,750. The total estimated legalization cost is rounded to \$350,000.

METHODOLOGY

The subject is a single-family house with an unauthorized residential unit. The residential unit is encumbered by a below-market rent restriction at a \$560 per month rent. The unauthorized unit is an income producing product. This type of real estate is most often valued by the Income Approach. The feasibility of legalization of the unit is measured as a function of the cost of construction. The value of the unit less construction cost determines the feasibility. If the sum is positive, legalization is feasible. If the sum is negative, legalization is not feasible.

ASSESSOR'S MAP

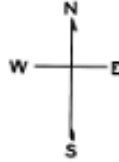
© COPYRIGHT SAN FRANCISCO
CITY & COUNTY ASSESSOR 1995

7116

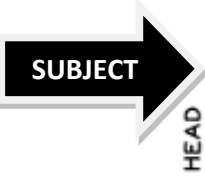
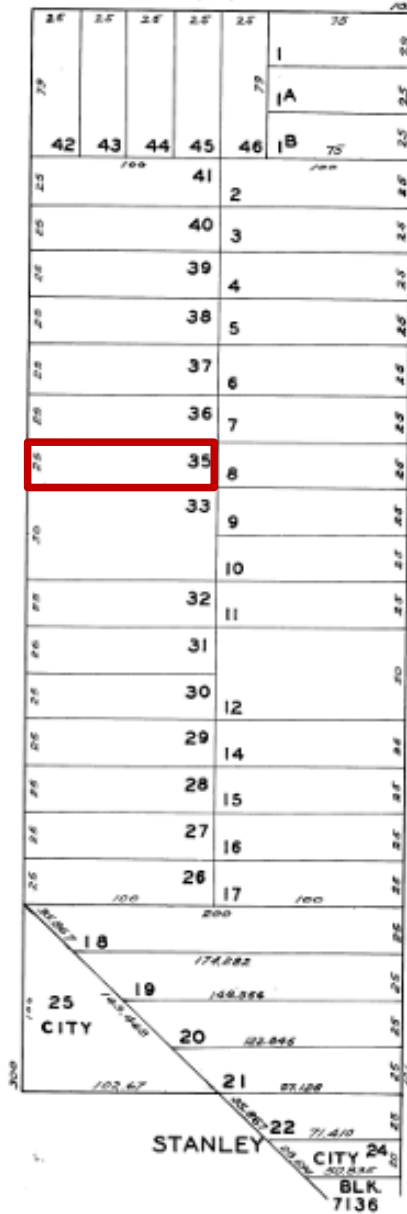
CITY LAND ASSN BLK 50

Lot / Amended 'year'

LOTS	INTO LOT
47-48	1-18 '1988'
73	12 '1988'
34	13 '1992'
23	25 '1984'



RANDOLPH



HEAD

BRIGHT

STANLEY

CITY
BLK.
7136

AERIAL MAP



Aerial maps are for illustrative purposes only and may not reflect accurate property boundaries

SUBJECT PHOTOGRAPHS



Subject Exterior



Subject neighborhood on Head Street to the north



Subject neighborhood on Head Street to the south

INCOME APPROACH

In this analysis, the subject property is valued based on its ability to produce income. The Gross Rent Multiplier (GRM) is analyzed for valuation purposes in the Income Approach. This method is often used by purchasers of this property type to estimate market value, as a major factor in the Income Approach is the rental income generated by the existing tenant in the subject building.

The use of a Gross Rent Multiplier (GRM) in valuing the subject property is based on the sale price divided by the gross rental income. This indicator is often used by participants in residential markets. The subject unauthorized unit is covered by rent control. The decision of the Rent Control Board is included in the Addenda of this report. The monthly contract rent is \$560. Multiplying the monthly rent by twelve months is as follows:

$$\begin{array}{rclcl} \$560 \text{ Rent} & & \times & & 12 \text{ Months} & & = & & \$6,720 \end{array}$$

The appraiser has researched small income properties that have sold in the subject market area recently. Comparable sales utilized in the Sales Comparison Approach show gross rent multipliers ranging from approximately 15.8 to 30.8 times the gross income.

At the low end of the range is Comparable 1 with a 15.8 multiplier. The comparable is considered to have an inferior location relative to the subject. It also has much higher rents in place than the rent for the subject. The comparable is considered to have less upside potential and a much higher multiplier is warranted for the subject.

Comparable 2 shows a 16.7 multiplier. The comparable is considered to have a similar location as the subject but much higher rent in place than the subject. Considering the low rent in place for the subject, a much higher multiplier is supported.

Comparable 3 on Miramar shows an 18.2 multiplier. The comparable is considered to have a similar location as the subject. However, similar to Comparables 1 and 2 it has much higher rents in place. A much higher multiplier is supported for the subject.

Comparable 4 in Naples Street represents the upper end of the range with a 30.8 multiplier. The comparable is considered to have a similar location as the subject. The comparable rents are also low, similar to the subject. However, the quality of the construction and ultimate appeal of the comparable to an owner user is considered superior relative to the subject. A lower multiplier is supported for the subject.

After bracketing, the range for the subject is considered to be below Comparable 4 (at 30.8) and above Comparables 2 and 3 (roughly above 20). A mid-range multiplier of 25 is concluded. The value is concluded as follows:

$$\begin{array}{rclcl} \$6,720 / \text{Year Gross Rent} & & \times & & \text{GIM 25} & & = & & \$168,000 \\ \text{Rounded} & & & & & & & & \$170,000 \end{array}$$

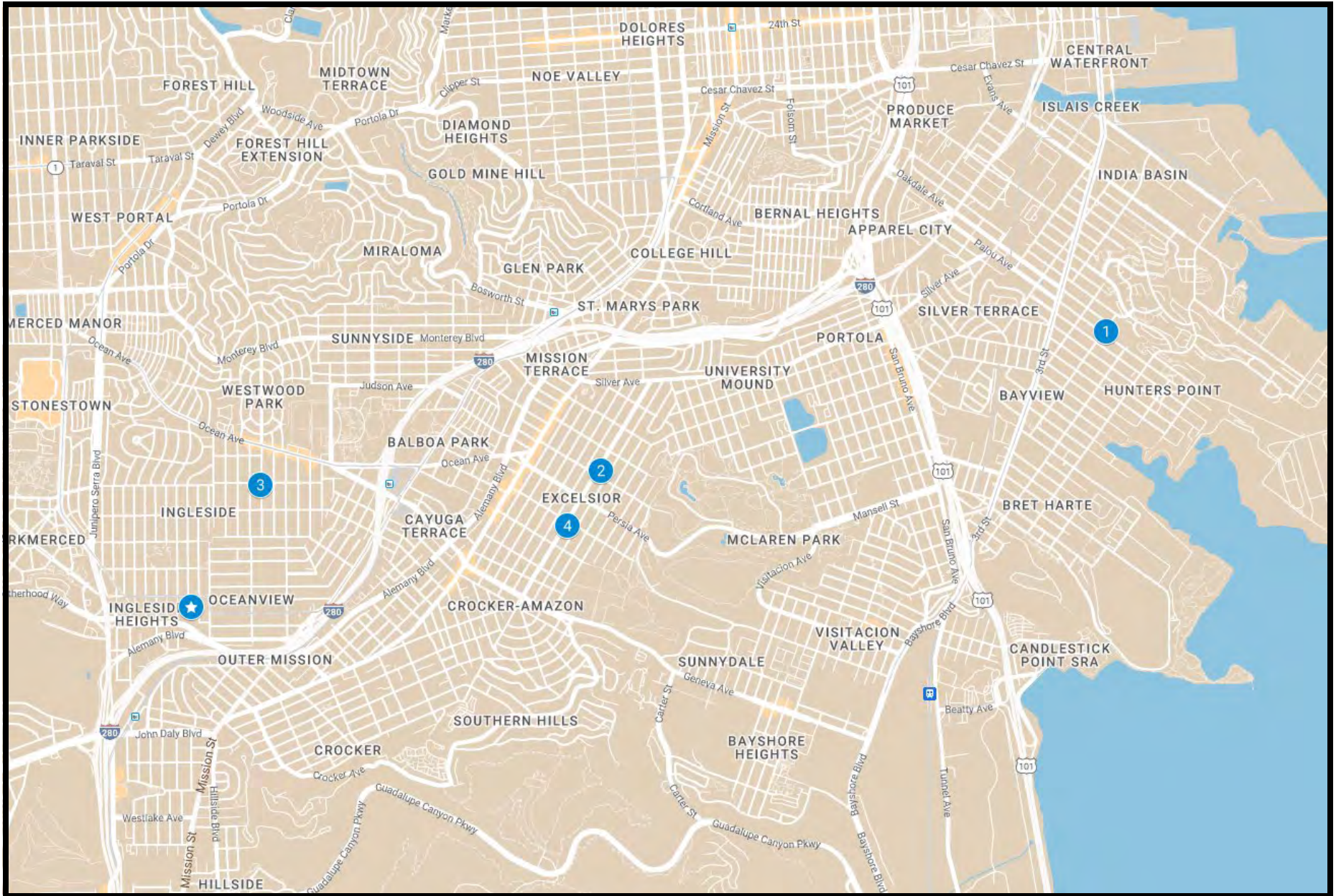
COMPARABLE GROSS RENT MULTIPLIERS
Legalization Feasibility Analysis of Unauthorized Unit
354 Head Street, San Francisco, CA

#	Location	Sale Date	Income GRM
1	1398 Palou Ave Bayview	4/23	\$75,789.00 15.8
2	379 Naples Street Excelsior	1/23	\$72,048.00 16.7
3	193 Miramar Ave Ingleside	4/23	\$60,348.00 18.2
4	609-611 Naples Street Excelsior	4/23	\$23,184.00 30.8

Source: Watts, Cohn & Partners, Inc., July 2023

23-WCP-059

COMPARABLE GROSS RENT MULTIPLIERS MAP



Test of Feasibility

The feasibility of legalization of the unit is measured as a function of the cost of construction. The value of the unit less the construction cost determines the feasibility. If the sum is positive, legalization is feasible. If the sum is negative, legalization is not feasible.

Value as Legalized	\$170,000
Less Deduction for Creating ADU	<u>(\$350,000)</u>
Legalization Feasibility	- \$180,000

The legalization construction cost is more than double the value of the unit as legalized. The legalization of the unit is not feasible.

This letter must remain attached to the appraisal report, identified on the footer of each page as 23-WCP-059, plus related exhibits, in order for the value opinion set forth to be considered valid.

CERTIFICATION

We, the undersigned, hereby certify that, to the best of our knowledge and belief: the statements of fact contained in this report are true and correct; the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions; we have no present or prospective interest in the property that is the subject of this report, and we have no personal interest with respect to the parties involved; we have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment; our engagement in this assignment was not contingent upon developing or reporting predetermined results, our compensation is not contingent upon the reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal; the appraisal assignment was not based on a requested minimum valuation, a specific valuation, or the approval of a loan; our analyses, opinions and conclusions were developed, and this report has been prepared in conformity with the Uniform Standards of Professional Appraisal Practice, Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute, and is in compliance with FIRREA; Mark Watts has made an inspection of the exterior of the property that is the subject of this report; no one provided significant real property appraisal assistance to the persons signing this report. The use of this report is subject to the requirements of the Appraisal Institute related to review by its duly authorized representatives. In accordance with the Competency Rule in the USPAP, we certify that our education, experience and knowledge are sufficient to appraise the type of property being valued in this report. We have not provided services regarding the property that is the subject of this report in the 36 months prior to accepting this assignment.

Watts, Cohn and Partners, Inc.

We are pleased to have had this opportunity to be of service. Please contact us if there are any questions regarding this appraisal.

Sincerely,

WATTS, COHN AND PARTNERS, INC.



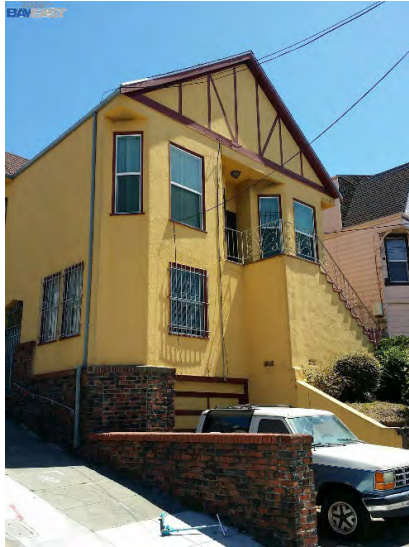
Mark Watts
Certified General Real Estate Appraiser
State of California No. AG015362

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San Francisco, California 94104
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415-990-0025
mark@wattscohn.com

ADDENDA

COMPARABLE GRM PHOTOGRAPHS



1398 Palou Avenue



379 Naples Street



193 Miramar Avenue



609-611 Naples Street

1 Law Construed:
2 Ordinance Sections: 37.2(r); 37.2(r)(5); 37.8(f)(1)
3 Rules and Regulations Sections: 1.17; 1.17(e)
4 Index Code: K5

5 **RESIDENTIAL RENT STABILIZATION AND ARBITRATION BOARD**
6 **CITY AND COUNTY OF SAN FRANCISCO**

7 IN RE: 354 HEAD STREET, LOWER UNIT

CASE NO. T152394

8 GUANG QIAN LI,

HEARING: FEBRUARY 2, 2016
RECORD CLOSED: FEBRUARY 23, 2016

9 TENANT PETITIONER,

DECISION

10 and

11 CHIUHUNG SIEH,

12 LANDLORD RESPONDENT.

13 **INTRODUCTION**

14 This case involves a tenant petition filed on November 4, 2015, requesting a
15 determination of Rent Board jurisdiction over the subject unit. The tenant petitioner alleged that
16 his downstairs unit was not exempt from the provisions of the Rent Ordinance.

17 A hearing was held on the petition on February 2, 2016. The following persons appeared
18 at the hearing: Guang Qian Li, tenant petitioner; Ming Qing Lin, witness for the tenant petitioner;
19 Aidong Ni, interpreter for the tenant petitioner; and Chiuhung Sieh landlord respondent. At the
20 hearing, the parties had full opportunity to present relevant evidence and argument, and they
21 testified under oath.

22 The record was held open until February 23, 2016 for the parties to submit additional
23 evidence, which was timely received. The record closed on February 23, 2016.

24 **FINDINGS OF FACT**

25 1. The subject building located at 354 Head Street in San Francisco currently
26 consists of two occupied residential units. One unit upstairs is occupied by the landlord, her
27 husband and one tenant, and one unit downstairs is currently occupied by the tenant petitioner
28

1 and his wife. (Landlord Exhibit 1) The landlord testified that she purchased the property from her
2 father in May 2002.

3 Related Rent Board Case

4 2. On November 4, 2015, the tenant petitioner filed an alleged wrongful eviction
5 petition in Case No. E152389. In response to the tenant's petition, the landlord submitted a
6 Certificate of Final Completion and Occupancy, dated April 1, 1992, that described the
7 construction as: "NEW TWO STORY SINGLE FAMILY RESIDENCE," and the landlord submitted
8 a 60-day notice of termination of tenancy, which stated that the unit is located in a structure for
9 which a certificate of occupancy was first issued after 1979, after the effective date of the Rent
10 Ordinance. (Landlord Pre-hearing Submission, recvd. 12/8/15) On December 18, 2015, the
11 tenant replied to the landlord's response and claimed that the building was built before 1992 and
12 that there is more than one apartment in the building. (Tenant Pre-hearing Submission, recvd.
13 12/18/15) No further action has been taken in Case No. E152389 pending the decision in the
14 instant case. No evidence was submitted that at the time of the hearing the landlord had filed an
15 unlawful detainer action to evict the tenants. Administrative notice is taken of the file in Case No.
16 E152389.

17 3. Commencing October 15, 2004, the tenant rented one room and one bath in the
18 subject building from the current landlord's father, Zhi Cheng Xue, for \$500.00 per month,
19 pursuant to a written rental agreement. (Tenant Post-hearing Submission, recvd. 2/23/16, p. 3)
20 While the agreement does not describe where the unit is located in the building, the tenant
21 credibly testified that his unit is located in the downstairs portion of the building and was
22 remodeled from the garage. The tenant testified that his current rent is \$560.00 per month.

23 4. The tenant testified that there are three families living in the building. The tenant
24 testified that another family, the Chen Family, also occupied another downstairs unit, which had
25 two bedrooms, a kitchen and a bathroom. The tenant testified that the Chen Family has moved
26 out of the building. The tenant contended that the building was built prior to 1979. (Attachment to
27

28

1 Petition, p. 1) However, neither the tenant nor the landlord submitted any evidence of the date
2 the original building was first constructed.

3 5. On December 6, 1991, the San Francisco Department of Public Works approved
4 an application for a permit, No. 9000011, to demolish the single-family dwelling on the subject
5 property. (Attachment to Petition, p. 4) The permit expired and was cancelled on January 21,
6 1992. (Attachment to Petition, p. 4; Landlord Post-hearing Submission, recvd. 2/2/16, p. 3) On
7 the same day of January 21, 1992, the City approved a second permit (Application No. 9101987)
8 to demolish the single-family dwelling and garage on the property, which work was completed on
9 March 6, 1992. (Attachment to Petition, p. 6)

10 6. Also on January 21, 1992, the City approved a permit (Application No. 90000010)
11 to erect a two story single-family dwelling on the subject property, which was completed on April
12 21, 1992. (Attachment to Petition, p. 2) On April 21, 1992, the City issued a new Certificate of
13 Final Completion and Occupancy, which referred to Application No. 90000010 and described the
14 construction as: "NEW TWO STORY SINGLE FAMILY RESIDENCE." (Landlord Pre-hearing
15 Submission, recvd. 12/8/15, p. 2)

16 7. On or about October 7, 2015, the landlord issued a 60-day notice to terminate the
17 tenant's tenancy. (Landlord Pre-hearing Submission, recvd. 12/8/15, p. 3) The notice stated in
18 pertinent part:
19

20 THE OWNER AND THIS NOTICE are exempt from the provisions of Chapter 37
21 of the San Francisco Administrative Code, the Residential Rent Stabilization and
22 Arbitration Ordinance, because the rental unit is located in a structure for which a
23 certificate of occupancy was first issued after 1979, after the effective date of the
24 ordinance, nevertheless: Therefore, no just cause for termination of tenancy is
25 required nevertheless: Your tenancy is being terminated because the owner
26 wishes to recover the unit in order to remodel the unit and the building.

27 (Landlord Pre-hearing Submission, recvd. 12/8/15, p. 3)

28 8. The tenant testified that the landlord wants him to move out because the landlord
told him the unit was illegally constructed. The tenant still occupied the unit at the time of the
hearing.

1 9. The landlord testified that when she moved into the building in 2002, the house
2 was completely vacant. The landlord lived upstairs with her mother and father and the downstairs
3 was not rented until much later when her father rented part of the downstairs to the tenant
4 petitioner. The landlord contended that the tenant petitioner's unit is exempt from the Rent
5 Ordinance because it is in a structure for which a certificate of occupancy was first issued in
6 1992, after the 1979 effective date of the Rent Ordinance.

7 CONCLUSIONS OF LAW

8 1. The issue in this case is whether the subject downstairs unit at 354 Head Street is
9 exempt from the Ordinance under Rent Ordinance Section 37.2(r) and Rules and Regulations
10 Section 1.17(e).

11 2. Rent Ordinance Section 37.2(r)(5) provides that the following units are not subject
12 to the Ordinance:

13 Rental units located in a structure for which a certificate of occupancy was
14 first issued after the effective date of this ordinance; (A) except as provided
15 for certain categories of units and dwellings by Section 37.3(d) and Section
16 37.9A(b) of this Chapter; (B) except as provided in a development agreement
17 entered into by the City under San Francisco Administrative Code Chapter 56;
and (C) except as provided for foreclosed units and dwellings by Section
37.9D.

18 Rules and Regulations Section 1.17(e) clarified Ordinance Section 37.2(r)(5) as follows:

19 "Rental Unit" means a residential dwelling unit, regardless of zoning or legal
20 status, in the City and County of San Francisco and all housing services,
21 privileges, furnishings (including parking facilities supplied in connection with
the use or occupancy of such unit), which is made available by agreement for
residential occupancy by a tenant in consideration of the payment of rent. The
term does not include:

22 (e) newly constructed rental units for which a certificate of occupancy
23 was first issued after June 13, 1979. (Emphasis added.)

24 3. In this case, the landlord argued that the downstairs unit occupied by the tenant
25 petitioner was exempt under Ordinance Section 37.2(r)(5) because the unit was located in a
26 structure for which a certificate of occupancy was first issued on April 21, 1992 after the June 13,
27 1979 effective date of the Rent Ordinance. However, Regulation Section 1.17(e) clarified that
28

1 Ordinance Section 37.2(r)(5) applies only to "newly constructed rental units for which a certificate
2 of occupancy was first issued after June 13, 1979." The undisputed evidence in this case
3 established that the 1992 certificate of occupancy was issued for a single unit, which is occupied
4 by the landlord, and the tenant petitioner resides in an illegal unit located in the downstairs
5 portion of the building. It is also undisputed that the April 21, 1992 Certificate of Final Completion
6 and Occupancy authorized only one unit and does not authorize a second unit. Since no
7 certificate of occupancy has been issued for the subject unit, the tenant petitioner's unit is not
8 exempt from the Rent Ordinance as a newly constructed rental unit for which a certificate of
9 occupancy was first issued after June 13, 1979 under Rules and Regulations Section 1.17(e).
10 The decision is consistent with the recent decision of the Rent Board to deny the landlord's
11 appeal on this same issue in Case No. T151370/AL150146.

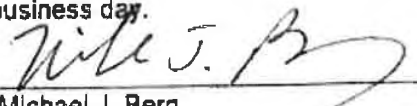
12 It is therefore unnecessary to determine if the April 21, 1992 Certificate of Final
13 Completion and Occupancy was "first" issued after June 13, 1979 where, as hear, a single-family
14 dwelling existed on the property prior to its demolition in 1992 to make way for the new single-
15 family dwelling.

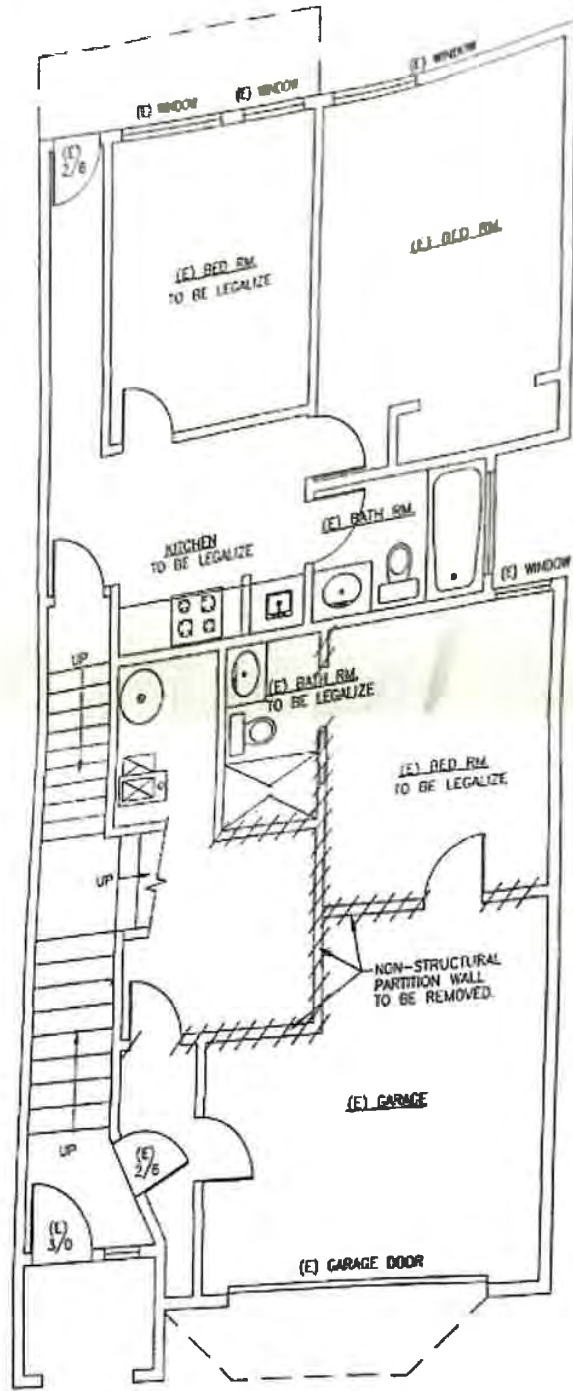
16 **ORDER**

17
18 1. Petition No. T152394 is granted. It is determined that the subject rental unit at 354
19 Head Street is not exempt from the Rent Ordinance and is subject to the provisions of the
20 Ordinance.

21 2. This decision is final unless specifically vacated by the Rent Board following
22 appeal to the Board. Appeals must be filed no later than fifteen (15) calendar days from the date
23 of the mailing of this decision, on a form available from the Rent Board. [Ordinance Section
24 37.8(f)(1), emphasis added] If the fifteenth day falls on a Saturday, Sunday or legal holiday, then
25 the appeal may be filed with the Board on the next business day.

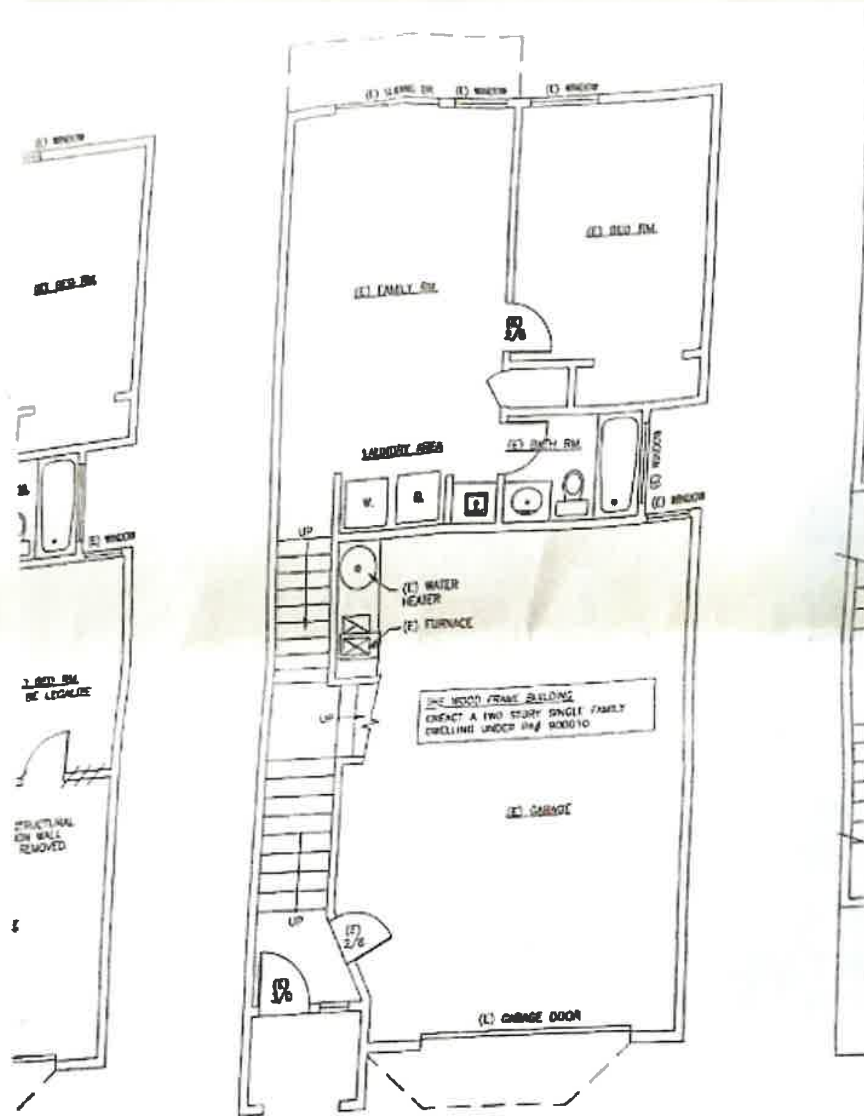
26 Dated: April 14, 2016

27 
28 Michael J. Berg
Administrative Law Judge



DEMOLITION GROUND FLOOR PLAN





PLAN 

EXISTING GROUND FLOOR PLAN
SCALE 1/8"=1'-0"







SAN FRANCISCO PLANNING DEPARTMENT

NOTICE OF ENFORCEMENT

April 16, 2019

Property Owner
Sich Chiu Hung
354 Head St
San Francisco, CA 94132

Site Address: 354 Head Street
Assessor's Block/Lot: 7116/ 035
Zoning District: RH-1, Residential- House, One Family
Complaint Number: 2018-012881ENF
Code Violation: Section 171; Compliance of Uses Required
Section 207.3; Unauthorized Dwelling Unit
Administrative Penalty: Up to \$250 Each Day of Violation
Response Due: Within 15 days from the date of this Notice
Staff Contact: David Brosky, (415) 575-8727 / david.brosky@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

The Planning Department has received a complaint that a Planning Code violation exists at 354 Head Street (the "subject property") that needs to be resolved. As the owner of the subject property, you are a responsible party. The purpose of this notice is to inform you about the Planning Code Enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below:

DESCRIPTION OF VIOLATION

It has been alleged that the subject property contains an unauthorized dwelling unit. Pursuant to Planning Code Section 317, an unauthorized unit is defined as "one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from residential units on the same property."

On September 26, 2018 the Planning Department sent you a Notice of Complaint to inform you about the complaint.

Pursuant to Planning Code Section 171 structures and land in any zoning district shall be used only for the purposes listed in this Code as permitted in that district, and in accordance with the regulations established for that district. Further, pursuant to Planning Code Section 174, every condition, stipulation, special restriction, and other limitation under the Planning Code shall be complied with in the development and use of land and structures. Failure to comply with any of Planning Code provisions constitutes a violation of Planning Code and is subject to enforcement process under Code Section 176.

www.sfplanning.org

HOW TO CORRECT THE VIOLATION

The Planning Department requires that you immediately proceed to abate the violation by either obtaining Conditional Use Authorization (CUA) to remove the unauthorized unit OR legalizing the unit through the Unit Legalization Program or the Accessory Dwelling Unit Program.

If you choose to remove the unauthorized unit, you must file a Conditional Use Authorization Application. The CUA Application is available from the Planning Department's website at <http://www.sf-planning.org>. If the Conditional Use Authorization is granted, you will also need to obtain a Building Permit.

If you choose to legalize the unit, you can apply for the Unit Legalization Program. Per Department of Building Inspection (DBI):

- Homeowners must first hire a professional representative (engineer, architect or contractor) who will be responsible for providing the owner with a professional assessment of what legalization may entail.
- Homeowners must provide documentation that the dwelling unit to be legalized existed prior to January 1, 2013.
- Homeowners may visit the ADU Planning Desk at Counter 38 on the 5th Floor of 1660 Mission Street to submit the screening form to be accepted into the Program. Following the screening process the owner may then formally apply for a building permit for legalization with the Planning Department and DBI. Two sets of plans are required to apply.

Owners may receive an estimation of the costs to legalize their units by undergoing an initial screening process. This screening is an informal consultation with DBI staff, non-binding and free of charge. The screening form is available on DBI's Unit Legalization website and more information about the required steps at <http://sfdbi.org/UnitLegalization>.

A second method to legalize the unauthorized dwelling unit is through the Accessory Dwelling Unit Program. Pursuant to Planning Code Section 207(c)(4), on a lot with four or less existing units, one new accessory dwelling unit may be permitted. Please submit a Building Permit application and floor plans for change of use.

The responsible party will need to provide adequate evidence to demonstrate that either no violation exists or that the violation has been abated. Please provide evidence including copies of approved permits, plans or other supporting documents. A site visit may also be required to verify compliance.

You may also need to obtain a building permit for any alterations done at the property. Please contact the Department of Building Inspection (DBI), 1660 Mission Street, San Francisco, CA 94103, telephone: (415) 558-6088, website: www.sfgov.org/dbi, regarding the Building Permit Application process. Please visit the Planning Information Counter located at the first floor of 1660 Mission Street or website: www.sf-planning.org for any questions regarding the planning process.

TIMELINE TO RESPOND

The responsible party has fifteen (15) days from the date of this notice to contact the staff planner noted at the top of this notice and submit evidence to demonstrate that the corrective actions have been taken to bring the subject property into compliance with the Planning Code. A site visit may also be required to verify the authorized use at the above property. The corrective actions shall be taken as early as possible. Any unreasonable delays in abatement of the violation may result in further enforcement action by the Planning Department.

PENALTIES AND APPEAL RIGHTS

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code within fifteen (15) days from the date of this notice will result in issuance of a Notice of Violation by the Zoning Administrator. Administrative penalties of up to \$250 per day will also be assessed to the responsible party for each day the violation continues thereafter. The Notice of Violation provides appeal processes noted below.

- 1) Request for Zoning Administrator Hearing. The Zoning Administrator's decision is appealable to the Board of Appeals.
- 2) Appeal of the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter has been pending either before the Zoning Administrator or before the Board of Appeals.

ENFORCEMENT TIME AND MATERIALS FEE

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for 'Time and Materials' to recover the cost of correcting Planning Code violations and violations of Planning Commission and Planning Department's Conditions of Approval. Accordingly, the responsible party may be subject to an amount of \$1,395.00 plus any additional accrued time and materials cost for Code Enforcement investigation and abatement of violation. This fee is separate from the administrative penalties as noted above and is not appealable.

OTHER APPLICATIONS UNDER CONSIDERATION

The Planning Department requires that any pending violations be resolved prior to the approval and issuance of any new applications that you may wish to pursue in the future. Therefore, any applications not related to abatement of the violation on the subject property will be placed on hold until the violation is corrected. We want to assist you in ensuring that the subject property is in full compliance with the Planning Code. You may contact the enforcement planner as noted above for any questions.



NOTICE REQUIRING COMPLIANCE

June 28, 2021

Property Owner

SIEH CHIU HUNG
354 HEAD ST
SAN FRANCISCO, CA 94132

Site Address:	354 Head Street
Assessor's Block/Lot:	7116 / 035
Complaint Number:	2018 012881ENF
Zoning District:	RR-1 (Residential - House, One Family)
Code Violation:	Section 317, Construction of an Unauthorized Unit
Time and Materials Fee:	\$7,969.02 (Minimum Fee, Additional Charges May Apply)
Administrative Penalty:	Up to \$250 Each Day of Violation
Response due:	Within 15 Days from the Date of This Notice
Enforcement Planner:	Vincent W. Page II, (628) 652-7396, vince.w.page@sf.gov

The Planning Department received a complaint that a Planning Code violation exists on the above referenced property that must be resolved. As the owner of the subject property, you are a party responsible to address the complaint. The purpose of this notice is to inform you about the Planning Department's enforcement process so you can take appropriate action to bring your property into compliance with the Planning Code. Details of the violation are discussed below.

Description of Violation

The violation pertains to an Unauthorized Unit that exists at the subject property. Pursuant to Planning Code Section 317(b)(13), an Unauthorized Unit is defined as one or more rooms within a building that have been used, without the benefit of a building permit, as a separate and distinct living or sleeping space independent from residential units on the same property. "Independent" shall mean (i) that the space has independent access that does not require entering a residential unit on the same property and (ii) there is no open, visual connection to a residential unit on the property.

Building Permit ("BP") No. 2016.02.02.8578 was issued on December 13, 2019, to legalize the above referenced unit, but the permit remains incomplete. The Planning Department requires that any corrective building permit application be pursued to completion.

Pursuant to Planning Code Section 17I, structures and land in any zoning district shall be used only for the purposes listed in the Planning Code as permitted in that district, and in accordance with the regulations established for that district.

Pursuant to Planning Code Section 172, no structure shall be constructed, reconstructed, enlarged, altered, or relocated in a manner that is not permissible under the limitations set forth in the Planning Code for the district in which such structure is located.

Pursuant to Planning Code Section 175, a Building Permit is required for the construction, reconstruction, enlargement, alteration, relocation, or occupancy of any structure in compliance with the Planning Code.

Failure to comply with any Planning Code provision constitutes a violation of the Planning Code and is subject to an enforcement process, pursuant to Planning Code Section 176.

Timeline of Investigation

On September 26, 2018, the Planning Department issued you a Notice of Complaint. In that notice, you were advised to contact the Planning Department to resolve the complaint. No such contact was made.

On April 16, 2019, the Planning Department issued you a Notice of Enforcement. In that notice, you were notified of the alleged Planning Code violation and the process available for its abatement. You were advised to take corrective actions and provide evidence of compliance to the Planning Department within fifteen (15) days from the date of that notice.

On December 13, 2019, BP No. 2016.02.02.8578 was issued to legalize the Unauthorized Unit.

On December 19, 2019, the Planning Department contacted you to request a construction schedule for the completion of BP No. 2016.02.02.8578. You were notified that the permit's completion is required to bring the subject property into compliance with the Planning Code.

On January 15, 2020, the Planning Department granted an extension of time for the construction schedule to be submitted.

On June 9, 2020, the Planning Department granted an additional six-month extension of time for the construction schedule to be submitted and construction to be initiated.

On December 4, 2020, the Planning Department contacted you to request monthly updates on your efforts to abate the violation.

On December 7, 2020, you contacted the Planning Department to say that, as a result of the Unauthorized Unit continuing to be occupied by tenants, no progress had been made toward the initiation of construction for BP No. 2016.02.02.8578.

To date, it has been more than six months since you contacted the Planning Department to provide an update on your progress toward bringing this property into compliance with the Planning Code. You have been afforded ample time to address the violation, and multiple extensions of time were granted, at your request. You must immediately proceed to abate violation, or the Planning Department will take the next enforcement step.

How to Correct the Violation

The Planning Department requires that you immediately proceed to abate the violation by completing the scope of work authorized under BP No. 2016.02 02.8578. You will then be required to obtain a final inspection and Certificate of Final Completion and Occupancy from the Department of Building Inspection ("DBI"). If the construction and inspection process would take more than thirty (30) days, you must:

- (1) Submit a construction schedule with the following information: the name(s) and contact information of the contractor or subcontractor responsible for completing the work; a proposed start date of construction; and a proposed end date of construction.
- (2) Provided that the Planning Department approves the proposed construction schedule, you will be required to contact the assigned enforcement planner with an update on or before the last day of each month, starting on the month during which construction is scheduled to begin, and ending when the corrective permit is completed. Each update will need to include photos and a short narrative description of the work completed that month. If any delays in the construction process should arise, you will be required to notify the assigned enforcement planner. Failure to provide notice of any construction delays will be viewed as a failure to demonstrate good faith and would result in the next enforcement step.
- (3) Upon completion of construction, you be required to submit photos of the completed work to the Planning Department to confirm that it is consistent with Planning Department approvals. You will then be asked to request a final inspection from DBI. You will be required to notify the assigned enforcement planner of the date of the final inspection, and to provide photo or scanned copy of Certificate of Final Completion and Occupancy.

You will be responsible to comply with any requests for additional information, revisions, or additional applications. You will be required to pursue the corrective building permit application such that it is approved, issued, and completed. The Planning Department reserves the right to determine whether you are demonstrating good faith toward addressing the violation. Your failure to demonstrate good faith, or to successfully abate the violation through the obtention of a building permit as noted above, will result in further enforcement action.

If you believe that the complaint was made in error, you will need to provide sufficient evidence. Evidence sufficient to demonstrate compliance may include, but is not limited to, dimensioned plans approved by the Planning Department and time-stamped photographs. A site visit may be required to verify compliance.

For questions regarding the building permit process, please contact the Department of Building Inspection ("DBI") at:

49 South Van Ness Avenue, 2nd/5th Floor
San Francisco, CA 94103
Phone: (628) 652-3200
Email: permitcenter@sfgov.org
Website: www.sfgov.org/dbi

For questions regarding the planning permit review process, please contact the Planning Department at:

49 South Van Ness Avenue, 2nd Floor (By Appointment only to submit permits)
San Francisco, CA 94103
Phone: (415) 652-7300
Email: enforcement@sfplanning.org
Website: www.sfplanning.org

Please note there is NO consultation available at 49 South Van Ness at this time due to COVID-19. Please do not visit 49 South Van Ness without an appointment. For questions about this enforcement case, please email the assigned enforcement planner as noted above. For questions about the Building Code or building permit process, please email DBI at the email address noted in the above.

Timeline to Respond

A Shelter in Place order was issued for San Francisco due to the COVID-19 pandemic on March 16, 2020, which was set to expire on April 7, 2020. On March 31, 2020, Order of the Health Officer No. C19-07b extended the previously issued Shelter in Place from April 7, 2020 to May 3, 2020. On April 29, 2020, Order of the Health Officer No. C19-07c further extended the previously issued Shelter in Place Order to May 31, 2020. On May 22, 2020, Stay Safe At Home Order of the Health Officer No. C19-07e was issued to amend, clarify, and continue certain terms of the prior Shelter in Place orders. On June 1 and June 11, 2020, Stay Safe At Home Order was updated and replaced previous Shelter in Place, C19-07 orders: C19-07d (May 18), C19-07c (April 29), C19-07b (March 31) and C19-07 (March 16).

The timeline to respond to this Notice Requiring Compliance is fifteen (15) days. As such, we highly encourage you to immediately reach out to the assigned Enforcement Planner to discuss the corrective steps to abate the violation. Should you need additional time to respond to and/or abate the violation, please discuss this with the assigned Enforcement Planner, who will assist you in developing a reasonable timeline. While many City agencies (including the Department of Building Inspection) are open, we understand there may be challenges and delays related to the processing of necessary applications to abate violations during the Stay-Safe-At-Home Order. You can find more information regarding the Planning Department procedures during the Stay-Safe-At-Home Order here: www.sfplanning.org/covid-19.

The Department recognizes the challenges of the City's Stay-Safe-At-Home Order and its underlying cause. However, corrective actions should be taken as early as reasonably possible. Please contact the assigned Enforcement Planner with questions and/or to submit evidence of correction. Delays in abatement of the violation beyond the timeline outlined above will result in further enforcement action by the Planning Department, including assessment of administrative penalties at \$

Penalties and Appeal Rights

Failure to respond to this notice by abating the violation or demonstrating compliance with the Planning Code within fifteen (15) days from the date of this notice will result in the issuance of a Notice of Violation by the Zoning Administrator. Administrative penalties of up to \$250 per day will be assessed to the responsible party for each day beyond the timeline to respond provided for the Notice of Violation if the violation is not abated. The Notice of Violation provides the following appeal options:

- (1) Request for Zoning Administrator Hearing. The Zoning Administrator's final decision is then appealable to the Board of Appeals.
- (2) Appeal the Notice of Violation to the Board of Appeals. The Board of Appeals may not reduce the amount of penalty below \$100 per day for each day the violation exists, excluding the period of time the matter was pending either before the Zoning Administrator or Board of Appeals.

Enforcement Time and Materials Fee

Pursuant to Planning Code Section 350(g)(1), the Planning Department shall charge for "Time and Materials" to recover the cost of correcting the Planning Code violations. Accordingly, the responsible party is currently subject to a fee of \$2,969.02 for "Time and Materials" cost associated with the Code Enforcement investigation. **Please submit a check payable to "Planning Department Code Enforcement Fund" within fifteen (15) days from the date of this notice.** Additional fees may continue to accrue until the violation is abated. This fee is separate from the administrative penalties as noted above and is not appealable.

Other Applications Under Planning Department Consideration

The Planning Department requires that pending violations be resolved prior to the approval and issuance of any separate applications for work proposed on the same property. Therefore, any applications not related to abatement of the violation will be placed on hold until a corrective action is taken to abate the violation. We want to assist you to bring the subject property into full compliance with the Planning Code. You may contact the enforcement planner noted above for any questions on the enforcement and appeal process.

Enc.: Notice of Enforcement, dated April 16, 2019

YES General Construction Builder
Lic: B999640
Danny Wong
416 Richmond Dr. #6, Millbrae CA 94030
Phone: 415-912-9199

Name: Chiuhung Sieh
Job Location: 354 Head Street
San Francisco, CA

Date: 7-19-2023
Phone: 415-418-8212

DESCRIPTION OF WORK:

1. Demolished the whole illegal walls as blueprints including the kitchen, bathroom and bedroom front place of lower unit.
2. Install an office and full bathroom at front area as blueprint.
3. Install a wall at the front of the garage
4. All the electrical, plumbing, framing and mechanical will upgrade to building codes
5. Build an additional storage room with a sliding door and windows as drawing.
6. Install a kitchenette at the back area of lower unit
7. Install a wall and a door at the kitchen area as blueprint
8. Replace electrical wires, plumbing, mechanical pipes as needed
9. The front and the back has own electrical panel inside, own meters of electrical and gas, heating system, water heater.
10. Materials for finish as discussions with owner from Home Depot. Prices will be increased if materials are requested in higher class.

The above additional work for the sum of:
Three Hundred Five Thousand Dollars Only (\$305,000.00)

Signature: _____
Danny Wong

Signature: _____
Owner

QUALIFICATIONS OF MARK A. WATTS

Mark A. Watts is a Partner with Watts, Cohn and Partners, Inc.

Following is a brief summary of his background and experience:

EXPERIENCE

Real Estate Appraisal Experience

Mr. Watts has been a commercial real estate appraiser since 1987 and has over 30 years' experience in the analysis of both residential and commercial real estate. He has completed valuation assignments on a variety of projects, including industrial facilities, residential subdivisions, apartments, shopping centers, cemeteries and recreational facilities. He has also performed feasibility studies and assisted owners in making asset management decisions. He also often appraises single family homes and other residential properties in conjunction with his broader practice areas.

Mr. Watts has provided litigation support and served as an expert witness in court. He has also served in arbitrations as an expert witness. He has been qualified as an expert in San Francisco and San Mateo County Superior Courts.

He served on the San Francisco County Assessment Appeals Board from 2011 to 2016. Most of the cases he heard were for single family residences and residential condominiums.

Real Estate Investment Experience

Simultaneous to his work as a real estate appraiser, Mr. Watts has been an active real estate investor/developer. He is experienced in the acquisition, redevelopment and management of commercial and residential properties. He has witnessed and experienced many real estate cycles and stays abreast of current trends. His personal experience as an investor makes him uniquely qualified to appraise residential and commercial real estate.

From 1990 to 2010 he completed more than 30 investment real estate transactions, an average of 1.5 transactions per year. He has negotiated with buyers and sellers directly as a principal. He has completed nearly a dozen 1031 exchanges. Beginning with a small initial capital investment, he has built a large real estate portfolio. Based on his ownership experience, Mr. Watts is keenly aware that the success or failure of an acquisition is closely related to its location.

Mr. Watts has broad experience with the construction, maintenance and repair of real estate. He has demolished and re-built two structures from the ground up. He has completed fire damage repairs and remediated toxic mold. He has remodeled kitchens and baths. He has replaced foundations on structures, made additions, and made other improvements. As the quality and condition of real estate has a strong correlation with its value, his experience enables superior judgement of these attributes in his work as a real estate appraiser.

Community Involvement

Mr. Watts served on the Board of Managers of the Stonestown Family YMCA from 2002 to 2017. This is an approximately 30,000 square foot health club facility. He was active on the Facilities Committee. He served as the Board Chair in 2008. He has been a member of the Olympic Club in San Francisco since 1976. He served the Forest Hill Neighborhood Association as President from 2013 to 2017 and as a Director from 2020 to 2022.

EDUCATION

Bachelor of Arts, University of California, Davis

PROFESSIONAL AFFILIATION

State of California Certified General Real Estate Appraiser No. AG015362



Business, Consumer Services & Housing Agency
BUREAU OF REAL ESTATE APPRAISERS
REAL ESTATE APPRAISER LICENSE

Mark A. Watts

has successfully met the requirements for a license as a residential and commercial real estate appraiser in the State of California and is, therefore, entitled to use the title:

“Certified General Real Estate Appraiser”

This license has been issued in accordance with the provisions of the Real Estate Appraisers' Licensing and Certification Law.

BREA APPRAISER IDENTIFICATION NUMBER: AG 015362

Effective Date: August 16, 2021

Date Expires: August 15, 2023

Loretta Dillon, Deputy Bureau Chief, BRE

3058659

EXHIBIT E

1 ANDREW J. WIEGEL, ESQ. SBN 75204
2 CURTIS F. DOWLING, ESQ. SBN 188091
3 LAW OFFICES OF WIEGEL & FRIED
4 414 Gough Street, Second Floor
5 San Francisco, CA 94102-4416
6 Tel.: (415) 552-8230

7
8 Attorneys for Plaintiff & Petitioner
9 JOHN HICKEY BROKERAGE

ENDORSED
FILED
San Francisco County Superior Court

JUN 14 1999

ALAN CARLSON, Clerk
BY: CYNTHIA S. [Signature] Deputy Clerk

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY & COUNTY OF SAN FRANCISCO
UNLIMITED CIVIL JURISDICTION

11 JOHN HICKEY BROKERAGE, a
12 California corporation
13 Plaintiffs & Petitioners

14 v.

15 CITY & COUNTY OF SAN
16 FRANCISCO; SAN FRANCISCO
17 PLANNING COMMISSION; SAN
18 FRANCISCO RESIDENTIAL RENT
19 STABILIZATION AND ARBITRATION
20 BOARD; WILLIAM VELASQUEZ;
21 LOLA MCKAY; DOES 1 through 100,
22 inclusive

23 Defendants & Respondents

Case No.: 303023

~~PROPOSED~~ ORDER GRANTING WRIT
OF MANDATE

24 The motion of petitioner JOHN HICKEY BROKERAGE for a peremptory writ of
25 mandate came on regularly for hearing on May 25, 1999, at 9:30 a.m., in department 301 of the
26 above-entitled Court, before the Honorable David A. Garcia, presiding. Petitioner JOHN
27 HICKEY BROKERAGE was represented by Andrew J. Wiegel, Curtis F. Dowling, and Jak S.
28 Marquez of Wiegel & Fried, respondents CITY & COUNTY OF SAN FRANCISCO, the SAN
FRANCISCO PLANNING COMMISSION, and the SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION AND ARBITRATION BOARD were represented by deputy city attorney

1 Andrew W. Schwartz, and respondent LOLA McKAY was represented by Raquel Fox of the
2 Tenderloin Housing Clinic. After consideration of all papers and oral argument by counsel, this
3 matter was taken under submission. After further review, this court makes the following ruling:

4 The Ellis Act (Gov. Code §§ 7060 et seq.) preempts San Francisco Planning Code
5 § 209.10 to the extent it requires a conditional use permit to owner-occupy property which is
6 already zoned for residential dwelling and which is withdrawn from the rental market pursuant to
7 the provisions of the Ellis Act. In creating uncertainty as to whether an owner of withdrawn
8 property can make a use of that property which is already permitted as of right, § 209.10 poses an
9 impermissible obstacle to, and attaches a prohibitive price on, such withdrawal of property already
10 zoned for residential dwelling, and to be subsequently used by property owners after withdrawal
11 for owner-occupancy. See Bullock v. City & County of San Francisco, (1990) 221 Cal.App.3d
12 1072; Los Angeles Lincoln Place Investors, Ltd. v. City of Los Angeles, (1997) 54 Cal.App.4th
13 53. Section 209.10 also impermissibly bases land use decisions concerning the subsequent uses of
14 such withdrawn property on the goal of keeping such property in the rental market, if at all
15 possible. See First Presbyterian Church v. City of Berkeley, (1997) 59 Cal.App.4th 1241, 1253.

16 This court further finds that JOHN HICKEY BROKERAGE is not required to
17 exhaust any administrative remedies which may be available under § 209.10 prior to asserting its
18 claim of preemption. See Professional Fire Fighters, Inc. v. City of Los Angeles, (1963) 60
19 Cal.2d 276, 287.


DW 20 This court further finds that § 209.10, to the extent that it requires a property
21 owner to apply for permission from the SAN FRANCISCO PLANNING COMMISSION to
22 make a use which that property owner is already permitted to make as a matter of right, is
23 arbitrary, capricious, and irrational. Notwithstanding this fact, § 209.10 then compounds this
24 facial defect by exempting owners of buildings with two units or less from its requirements, while
25 compelling owners of buildings with 3 units or more to seek permission to make a use already
26 permitted as of right. There is no rational basis for applying § 209.10 in this manner. Section
27 209.10 therefore partially facially violates the Equal Protection Clauses of the 14th Amendment of
28 the United States Constitution and Art. I, § 7 of the California Constitution.

1 This court further finds that the Ellis Act preempts § 12.18 of the Rules and
2 Regulations of the San Francisco Residential Rent Stabilization and Arbitration Board. As the
3 members of the Rent Board are not elected, but rather “serve at the pleasure of the Mayor” (see
4 San Francisco Administrative Code § 37.4(a)), § 12.18 is not a “regulation adopted after public
5 notice and hearing by a public body of a public entity, if the members of the body have been
6 elected by the voters of the public entity,” as required by Government Code § 7060.5.

7 WHEREFORE, the Writ of Mandate is HEREBY GRANTED. The CITY &
8 COUNTY OF SAN FRANCISCO, and its officers, agents, boards, directors, commissions,
9 agencies, employees, servants, and otherwise, and specifically including the SAN FRANCISCO
10 PLANNING COMMISSION, are HEREBY ORDERED to forever refrain and desist from
11 applying San Francisco Planning Code § 209.10 to or against any attempt of petitioner, or of
12 petitioner’s successors-in-interest, to reside in or owner-occupy 53-59 Alvarado Street, San
13 Francisco, California, or to or against any attempt of a similarly-situated property owner to
14 owner-occupy withdrawn property when residential dwelling is otherwise a use permitted as of
15 right under applicable zoning restrictions. The CITY & COUNTY OF SAN FRANCISCO, and
16 its officers, agents, boards, directors, commissions, agencies, employees, servants, and otherwise,
17 and specifically including the SAN FRANCISCO RESIDENTIAL RENT STABILIZATION
18 AND ARBITRATION BOARD, are further HEREBY ORDERED to forever refrain and desist
19 from applying § 12.18 of the Rules and Regulations of the San Francisco Residential Rent
20 Stabilization and Arbitration Board to or against anyone, including petitioner and its successors-
21 in-interest with respect to 53-59 Alvarado Street, San Francisco, California.

22 Let a peremptory writ of mandate issue to this effect.

23 Dated: 6/11, 1999

24 
25 HON. DAVID A. GARCIA
26 JUDGE OF THE SUPERIOR COURT

27 John Hickey Brokerage v. C.C.S.F., et al.
28 S.F. Superior Court case #303023