



# CITY OF SUNNYVALE REPORT ZONING ADMINISTRATOR HEARING

November 24, 2010

**File Number:** 2010-7730

**Permit Type:** Use Permit

**Location:** 1239 Reamwood Ave (near Tasman Dr.) (APN: 104-58-007)

**Applicant/Owner:** Smash Gyms / Tasman Drive LLC

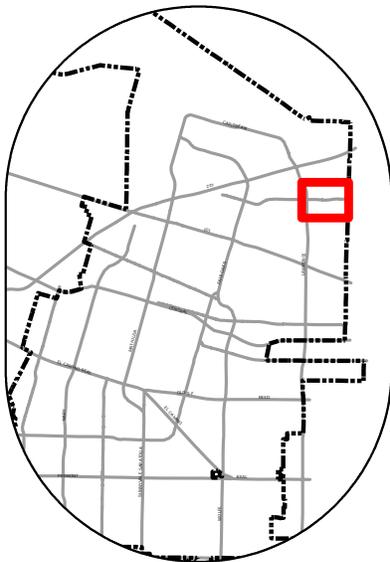
**Staff Contact:** Ryan Kuchenig, Associate Planner, (408) 730-7431

**Project Description:** Use Permit to allow a recreational & enrichment use (gym classes) within a vacant tenant space of an industrial building.

**Reason for Permit:** A Use Permit is required for recreational uses within the M-S/POA Zoning District

**Issues:** Use, Parking

**Recommendation:** Approve with Conditions



500

Feet

**PROJECT DESCRIPTION**

	<b>Existing</b>	<b>Proposed</b>
General Plan:	Industrial	Same
Zoning District:	MS/POA	Same
Total Sq. Ft. on Site:	37,447	Same
Tenant Sq. Ft.:	4,900	Same
Parking:	119	119

<b>Previous Planning Projects related to Subject Application:</b> The subject tenant space was part of a larger place of assembly use shared by an adjacent tenant space; however that business is no longer located here and the site has been vacant for over a year.	<b>Yes</b>
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**Use Description:** The proposed use is for a recreational gym that offers dance and martial arts classes to adult and children students.

**Hours of Operation:** During Monday through Friday, the business would be open from 7am to 9pm. On Saturday, the business is open from 9am to 5pm. The gym would be closed on Sundays.

**Expected Students / Customers:** The facility consists mostly of students who are members but it would also be available for drop-ins. A maximum of 20 students (average of 15) and 3 employees would be on-site during most classes. Private lessons may only consist on 5 students. Students would vary in age from children to adults.

**Floor Plan:** The floor plan would be mostly open but split into two areas for dance and cardio, as noted in Attachment B. Towards the front of the space are two office areas as well as two bathrooms and changing rooms. A storage and electrical room are located towards the back of the tenant space. There are no planned modifications to the building.

**Exterior Changes:** No exterior changes are planned as part of this proposal. Proposed signs will require a separate permit.

**Shared Uses On-Site:** The following table lists current uses that share parking at the site:

**Table 1: Current uses at 1233-39 Reamwood and 1257 Tasman Drive**

<b>Address</b>	<b>Use - Tenant</b>	<b>Approximate Area (s.f.)</b>
1257 Tasman Dr, #A	Catalyst Athletics	4,500
1257 Tasman Dr, #B	POA - Bay Area Cultural Center	5,535
1257 Tasman Dr, #C	POA - Resources for Battered Women	7,267
1233 Reamwood Ave.	POA - Swaray	5,000
1235 Reamwood Ave.	Manufacturing/R&D - Squirt Printing	5,000
1237 Reamwood Ave.	POA- International Fencing Academy	5,000
<b>1239 Reamwood Ave.</b>	<b>Proposed POA - Smash Gyms</b>	4,900

**Parking:** The multi-tenant industrial building shares a parking lot that contains 119 spaces. The parking requirements for recreational assembly areas outlined in Sunnyvale Municipal Code Section 19.46.050 is noted as:

- 1 space per every 3 fixed seats, plus
- 1 space per 21 sq. ft. of open area or seating space, plus
- 1 space per 400 sq. ft. of additional floor area

According to the above criteria, the gym would require approximately 205 spaces due to the mostly open floor plan designated for dance and martial arts area.

For each of the recent Use Permit approvals for place of assembly uses at the site, a parking management plan that restricts occupancy for each tenant has been considered. A total of 22 spaces have been allocated for the proposed use based on the maximum number of employees and clients at the site at a given time. The following chart notes the maximum occupancy for the shared uses of the site:

<b>Address / Unit</b>	<b>Use - Tenant</b>	<b>Type of Use</b>	<b>Maximum occupancy</b>	<b>Area (s. f.)</b>	<b>Parking Ratio</b>
1257 Tasman Dr, #A	<i>Catalyst Athletics</i>	POA by Use Permit	20	4,500	Per UP - 2009-0452
1257 Tasman Dr, #B	<i>Bay Area Cultural Center (POA use)</i>	POA by Use Permit	12	5,535	Per UP 2008-0431
1257 Tasman Dr, #C	<i>Resources for Battered Women (POA use)</i>	POA by Use Permit	20	7,267	Per UP 2006-1213

Address / Unit	Use - Tenant	Type of Use	Maximum occupancy	Area (s. f.)	Parking Ratio
1233 Reamwood Ave.	<i>Swaray (POA use)</i>	POA by Use Permit	25	5,000	Per UP 2009-0075
1235 Reamwood Ave.	<i>Squirt Printing (R&amp;D/Manuf.)</i>	R&D	10	5,000	1/500
1237 Reamwood Ave	<i>International Fencing Academy</i>	POA by Use Permit	15	5,000	Per UP 2009-0393
<b>1239 Reamwood Ave.</b>	<b><i>Smash Gyms</i></b>	<b>POA by Use Permit</b>	<b>22</b>	<b>4,900</b>	<b>Per UP - parking management plan</b>

The following chart breaks out the parking demand for weekdays and weekend use of the site. Similar to previously required permits, this proposed program would modify the conditions of previous approvals which limited the allowable occupancy (customers/employees) and/or the hours of operation for existing uses. The program proposes staggering peak use times to address the fact that the site does not provide adequate parking for all uses during peak use hours. The following chart notes the peak parking demands for the site, as part of the required Parking Management Plan, per Condition of Approval 4A.1.

Address / Unit	Weekday 8:00 am – 5:30 pm	Weekday 5:30 pm – 9:00 pm	Weekend
1257 Tasman Dr, #A* - <i>Catalyst Athletics</i>	15	20	20 (closed Sunday)
1257 Tasman Dr, #B** <i>(Bay Area Cultural Center (POA use))</i>	12	20	20
1257 Tasman Dr, #C* <i>Resources for Battered Women (POA use)</i>	20	15	5
1233 Reamwood Ave. <i>Swaray (POA use)</i>	25	25	25
1235 Reamwood Ave. <i>Squirt Printing (R&amp;D/Manuf.)</i>	10	2	0
1237 Reamwood Ave. <i>Intrn'l Fencing Academy (POA use)</i>	15	15	10 (closed Sunday)
<b>1239 Reamwood Ave.* Proposed POA – Smash Gyms</b>	<b>22</b>	<b>22</b>	<b>22 (closed Sunday)</b>
<b>TOTAL (119)</b>	<b>119</b>	<b>119</b>	<b>104</b>

Based on the information provided by the applicant, Saturday classes are not expected to have a higher peak demand than weekdays. As a result, a parking

surplus exists at the site on the weekend. A revised parking plan would be necessary if the proposed use or other tenants plan to increase capacity during hours of operation. Such a modification could be considered through a Miscellaneous Plan permit application, per Condition of Approval 4A.2.

**Place of Assembly (POA):** Sunnyvale Municipal Code (SMC) requires that any proposed Place of Assembly use be evaluated on a case by case basis. The POA Zoning regulations specify additional requirements and procedures if a space is used by sensitive populations such as children or adults over the age of 65. It is not expected that occupants of this tenant space will be sensitive populations; however, staff requested that the applicant provide information to meet this requirement. Since the subject site and the surrounding area were originally zoned for industrial uses, staff looked at the possibility of the presence of hazardous materials in the vicinity of the site. Staff found that while there are other industrial facilities with hazardous materials in the area, none currently have large quantities of high risk materials. However, these industrial uses have the ability to change their inventories in the future to increase the use of hazardous materials, which might present a safety issue to the users of the subject tenant space. Per the Municipal Code (SMC 19.98.020(h)), as a Place of Assembly use, the fitness studio triggers three requirements:

- For a multi-tenant building, an Agreement between the property owner and the City to the limitation of hazardous material users on the same site;
- A letter from the applicant/proposed tenant acknowledging that locating in an industrial area may result in higher levels of noise, traffic, and exposure to hazardous materials than would normally be encountered in non-industrial areas (draft provided); and
- Applicant shall adopt and submit for the approval of the City a safety plan designed to protect sensitive populations in the event of a nearby release of hazardous materials; the plans shall be prepared by a certified safety professional (draft provided).

The above noted documentation is provided in Attachment D.

**Public Contact:** 623 notices were sent to surrounding property owners and residents adjacent to subject site in addition to standard noticing practice. No letters were received.

**Environmental Determination:** A Categorical Exemption Class 1 (minor changes in use) relieves this project from CEQA provisions.

## **FINDINGS**

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Goals and Policies that relate to this project are:

### **Land Use and Transportation Element**

**Policy N1.1** – *Protect the integrity of the City’s neighborhoods; whether residential, industrial or commercial.*

**N1.1.4** *Anticipate and avoid whenever practical the incompatibility that can arise between dissimilar uses.*

**Policy N1.14** *Support the provision of a full spectrum of public and quasi-public services that are appropriately located.*

In order to approve the Use Permit the following findings must be made:

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale. *(Finding Met)*

The proposed recreational gym facility meets the objectives and purposes of the General Plan as the use meets the intent of the POA zoning and is compatible with nearby uses. The proposed use will have minimal impact to the remaining uses on site and surrounding properties.

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair the orderly development of, or the existing uses being made of, adjacent properties. *(Finding Met)*

Staff finds that the proposed use is not detrimental to the surrounding neighborhood as the current zoning enables consideration of places of assembly under appropriate conditions. Based on the provided information and an approved parking management plan, the proposed use is compatible and will not impair the surrounding uses. Further review is required if expansion occurs at the site a future date.

**ALTERNATIVES:**

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1. Approve the Use Permit with recommended Conditions in Attachment A.
2. Approve the Use Permit with modifications.
3. Deny the Use Permit.

**RECOMMENDATION**

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Alternative 1. Approve the Use Permit with recommended Conditions in Attachment A.

Reviewed by:

Shaunn Mendrin  
Senior Planner

Prepared By: Ryan Kuchenig, Associate Planner

Attachments:

- A. Standard Requirements and Recommended Conditions of Approval
- B. Site and Floor Plans
- C. Project Description from the Applicant
- D. Place of Assembly Documentation provided by Applicant

**RECOMMENDED  
CONDITIONS OF APPROVAL AND  
STANDARD DEVELOPMENT REQUIREMENTS  
November 24, 2010**

**Planning Application 2010-7730**

1239 Reamwood Avenue

Use Permit to allow to allow a recreational & enrichment use (gym classes)  
within a vacant tenant space of an industrial building.

The following Conditions of Approval [COA] and Standard Development Requirements [SDR] apply to the project referenced above. The COAs are specific conditions applicable to the proposed project. The SDRs are items which are codified or adopted by resolution and have been included for ease of reference, they may not be appealed or changed. The COAs and SDRs are grouped under specific headings that relate to the timing of required compliance. Additional language within a condition may further define the timing of required compliance. Applicable mitigation measures are noted with "Mitigation Measure" and placed in the applicable phase of the project.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following Conditions of Approval and Standard Development Requirements of this Permit:

**GC: THE FOLLOWING GENERAL CONDITIONS OF APPROVAL AND  
STANDARD DEVELOPMENT REQUIREMENTS SHALL APPLY TO THE  
APPROVED PROJECT.**

GC-1. CONFORMANCE WITH APPROVED PLANNING APPLICATION:

All building permit drawings and subsequent construction and operation shall substantially conform with the approved planning application, including: drawings/plans, materials samples, building colors, and other items submitted as part of the approved application. Any proposed amendments to the approved plans or Conditions of Approval are subject to review and approval by the City. The Director of Community Development shall determine whether revisions are considered major or minor. Minor changes are subject to review and approval by the Director of Community Development. Major changes are subject to review at a public hearing. [COA] [PLANNING]

GC-2. USE EXPIRATION:

The approved Use Permit for the use shall expire if the use is discontinued for a period of one year or more. [SDR] (PLANNING)

GC-3. PERMIT EXPIRATION (ORDINANCE 2895-09):  
The Use Permit shall be valid for three (3) years from the date of approval by the final review authority (as adopted by City Council on April 21, 2009, RTC 09-094). Extensions of time may be considered, for a maximum of two one year extensions, if applied for and approved prior to the expiration of the permit approval. If the approval is not exercised within this time frame, the permit is null and void. [SDR] (PLANNING)

GC-4. MAXIMUM OCCUPANCY BY USE (LIMITATIONS):  
Tenants that have previously approved Use Permits, i.e. Bay Area Cultural Center and Center for Battered Women, Swaray, and International Fencing Academy, Catalyst Athletics shall not exceed the maximum occupancy listed in the table below. [COA] (PLANNING)

<b>Address / Unit</b>	<b>Use - Tenant</b>	<b>Type of Use</b>	<b>Maximum occupancy</b>	<b>Area (s. f.)</b>	<b>Parking Ratio</b>
1257 Tasman Dr, #A	<i>Catalyst Athletics</i>	POA by Use Permit	20	4,500	Per UP 2009-0452
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<b>1239 Reamwood Ave.</b>	<b><i>Smash Gyms</i></b>	<b>POA by Use Permit</b>	<b>22</b>	<b>4,900</b>	<b>Per UP - parking management plan</b>

## GC-5 PARKING MANAGEMENT PLAN:

A Parking Management Plan must be submitted to the Director of Community Development prior to issuance of a building permit. The Parking Management Plan shall include the following:

- a. The following parking table applies to this site:

<b>Use Restrictions</b>			
<b>Address / Unit</b>	<b>Weekday 8:00 am – 5:30 pm</b>	<b>Weekday 5:30 pm – 9:00 pm</b>	<b>Weekend</b>
1257 Tasman Dr, #A* - <i>Proposed POA - Catalyst Athletics</i>	15	20	20 (closed Sunday)
1257 Tasman Dr, #B** ( <i>Bay Area Cultural Center (POA use)</i> )	12	20	20
1257 Tasman Dr, #C* <i>Resources for Battered Women (POA use)</i>	20	15	5
1233 Reamwood Ave. <i>Swaray (POA use)</i>	25	25	25
1235 Reamwood Ave. <i>Squirt Printing (R&amp;D/Manuf.)</i>	10	2	0
1237 Reamwood Ave. <i>Intrn'l Fencing Academy (POA use)</i>	15	15	10 (closed Sunday)
<b>1239 Reamwood Ave.* Proposed POA – Smash Gyms</b>	<b>22</b>	<b>22</b>	<b>22 (closed Sunday)</b>
<b>TOTAL (119)</b>	<b>119</b>	<b>119</b>	<b>104</b>

- b. Modifications to the Parking Management Plan shall be considered through a Miscellaneous Plan Permit.
- c. Employee parking locations shall be away from the building, in parking spaces that are the least used.
- d. Specify the location and term of short-term parking.
- e. Employees shall be required to park on the site.
- f. A maximum of 22 students/employees shall be allowed.
- g. Classes shall be scheduled so there is at least 5 minutes between parties
- h. Any proposed expansion of the number of students/employees for the recreational assembly use shall be subject to approval of the Director of Community Development through a Miscellaneous Plan Permit.

GC-6 PARKING LOT MAINTENANCE:

The parking lot shall be maintained as follows:

- a. Clearly mark all employee, customer, and compact spaces. Employee parking locations shall be away from the building, in parking spaces that are the least used.
- b. Maintain all parking lot striping and marking.
- c. Assure that adequate lighting is available in parking lots to keep them safe and desirable for the use.
- d. Require signs to direct vehicles to additional parking spaces on-site, as needed.

**BP: THE FOLLOWING SHALL BE ADDRESSED ON THE CONSTRUCTION PLANS SUBMITTED FOR ANY DEMOLITION PERMIT, BUILDING PERMIT, GRADING PERMIT, AND/OR ENCROACHMENT PERMIT AND SHALL BE MET PRIOR TO THE ISSUANCE OF SAID PERMIT(S).**

BP-1. CONDITIONS OF APPROVAL:

Final plans shall include all Conditions of Approval included as part of the approved application starting on sheet 2 of the plans. [COA] [PLANNING]

BP-2. BLUEPRINT FOR A CLEAN BAY:

The building permit plans shall include a "Blueprint for a Clean Bay" on one full sized sheet of the plans. [SDR] [PLANNING]

BP-3. ROOF EQUIPMENT

Roof vents, pipes and flues shall be combined and/or collected together on slopes of roof or behind parapets out of public view as per Title 19 of the Sunnyvale Municipal Code and shall be painted to match the roof. [COA] [PLANNING]

BP-4. PARKING MANAGEMENT PLAN (NONRESIDENTIAL)

A Parking Management Plan shall be submitted for review and approval by the Director of Community Development prior to issuance of a building permit. The Parking Management Plan shall include the following:

- a) Employee parking locations shall be away from the building, in parking spaces that are the least used.
- b) Specify the location and term of short-term parking.
- c) Allow the use of valet parking when appropriate on sites with limited parking.

- d) Employees shall be required to park on the site.
- e) Provide adequate signage to direct traffic and pedestrians [COA] [PLANNING]

**AT: THE FOLLOWING CONDITIONS OF APPROVAL AND STANDARD DEVELOPMENT REQUIREMENTS SHALL BE COMPLIED WITH AT ALL TIMES THAT THE USE PERMITTED BY THIS PLANNING APPLICATION OCCUPIES THE PREMISES.**

AT-1. HOURS OF OPERATION:

The use permitted as part of this application shall comply with the following hours of operation at all times:

- a) The hours of operation are limited to 7:00 a.m. to 10p.m. for standard hours of operation, excluding short duration sales events which may have extended hours.
- b) Hours extending beyond 10pm shall require approval of the Director of Community Development through a Miscellaneous Plan Permit. [COA] [PLANNING]

AT-2. SPECIAL EVENTS (PLANNING APPLICATION REQUIRED):

A separate Miscellaneous Plan Permit application is required for special events that would result in increased parking demand greater than what is noted in the Parking Management Plan table listed in Condition of Approval #GC-5a.

AT-3. RECYCLING AND SOLID WASTE:

All exterior recycling and solid waste shall be confined to approved receptacles and enclosures. [COA] [PLANNING]

AT-4. LOUDSPEAKERS PROHIBITED:

Out-of-door loudspeakers shall be prohibited at all times. [COA] [PLANNING]

AT-5. EXTERIOR EQUIPMENT:

All unenclosed materials, equipment and/or supplies of any kind shall be maintained within approved enclosure area. Any stacked or stored items shall not exceed the height of the enclosure. Individual air conditioning units shall be screened with architecture or landscaping features. [COA] [PLANNING]

AT-6. PARKING MANAGEMENT:

On-Site parking management shall conform with the approved parking management plan. [COA] [PLANNING]

PREVIOUS APPROVED PLANNING CONDITIONS

Approved Conditions for Variance 2009-0092 located at 1237 Reamwood Avenue per approved by Administrative Planning on June 24, 2009.

In addition to complying with all applicable City, County, State and Federal Rules, Codes, Ordinances, Regulations and Regulations, Permits, orders, maps and agreements in compliance with the following conditions of approval at the time.

- Unless otherwise noted, all conditions shall be subject to the review of approval at the discretion of Community Development.
- Project Construction Permit shall be in accordance with the plans submitted to the public hearing. Plans shall not be approved for the Project of Community Development, unless changes are approved at a public hearing.
- Permits that have previously approved the Title to the Area Cultural Order and Code for Historical Values, shall not exceed the dimensions stipulated in the title below.

Address / Sub	Site / Tract	Type of Use	Area (sq. ft.)	Volume (cu. ft.)	Height (ft.)	Setback (ft.)	Other Notes
1237 Reamwood Ave	1237 Reamwood Ave	Residential	10,000	10,000	10	10	10,000 sq. ft. lot
1237 Reamwood Ave	1237 Reamwood Ave	Residential	10,000	10,000	10	10	10,000 sq. ft. lot
1237 Reamwood Ave	1237 Reamwood Ave	Residential	10,000	10,000	10	10	10,000 sq. ft. lot
1237 Reamwood Ave	1237 Reamwood Ave	Residential	10,000	10,000	10	10	10,000 sq. ft. lot
1237 Reamwood Ave	1237 Reamwood Ave	Residential	10,000	10,000	10	10	10,000 sq. ft. lot

2009-0092-1237 Reamwood Avenue Approval Conditions June 24, 2009 Page 1 of 3

- Conditions of Approval as From The Conditions of Approval shall be attached to as a part of the plans submitted for a building permit for this project.
- Public Management Plan A. Parking Management Plan that must be submitted to the Director of Community Development prior to issuance of a building permit. The Parking Management Plan shall include the following:
  - The following parking table apply to the site:

Address / Sub	Area (sq. ft.)	Workshop	Office	Storage	Other
1237 Reamwood Ave	10,000	20	20	20	20
1237 Reamwood Ave	10,000	20	20	20	20
1237 Reamwood Ave	10,000	20	20	20	20
1237 Reamwood Ave	10,000	20	20	20	20
1237 Reamwood Ave	10,000	20	20	20	20

- Notification to the Parking Management Plan shall be considered through a Memorandum Plan Form.
- Employee parking locations shall be away from the building, in parking spaces that are the least used.
- Specify the location and time of short-term parking.
- Allow the use of select parking when appropriate on sites with limited parking.
- Handicapped shall be required to mark on the site.
- A minimum of 15 minutes/employee shall be allowed.
- Chairs shall be scheduled on there in at least 5 minutes between parties.
- Any proposed expansion of the number of employees/employees for the recreational facility use shall be subject to approval of the Director of Community Development through a Memorandum Plan Form.

2009-0092-1237 Reamwood Avenue Approval Conditions June 24, 2009 Page 2 of 3

- Parking lot Maintenance The parking lot shall be maintained as follows:
  - Clearly mark all employees, customer, and company spaces. Employee parking locations shall be away from the building, in parking spaces that are the least used.
  - Maintain all parking lot striping and markings.
  - Assure that adequate lighting is available in parking lots to keep them safe and desirable for the day.
  - Require signs to direct vehicles to additional parking spaces on-site, as needed.
- Hour of Operation Hours of operation for the recreational facility use shall be limited to Sun to 10pm daily. Changes to the hours of operation may be considered through a Memorandum Plan Form.
- A separate Memorandum Plan Form application is prepared for special events that would result in increased parking demand greater than what is noted in the Parking Management Plan table listed in Condition of Approval #4a.

VICINITY MAP



SCOPE OF WORK

\* TENANT IMPROVEMENT TO EXISTING ONE STORY BUILDING. NEW RESTROOMS, NEW WALLS, NEW DOORS, NEW CEILING & NEW FINISHES. HVAC DUCTING (EXIST. UNITS), RESTROOM PLUMBING & NEW ELECTRICAL LIGHTING & OUTLETS. SEPARATE FIRE SPRINKLER PERMIT FOR NEW CEILING AREAS. BUILDING AREA OF WORK 24,163.5 S.F.

PROJECT DATA

1239 REAMWOOD AVE.  
SUNNYVALE, CA 94087  
BUILDING #2

(E) PROJECT ANALYSIS:

LAND AREA: 1.18 ACRES  
16,200 SQ. FT.

BUILDING AREA: TOTAL 24,163.5 SQ. FT.  
OPEN 1,000 SQ. FT.

AREA OF WORK: 1239 REAMWOOD AVENUE  
ONE STORY BLDG. TOTAL 11,468.5 SQ. FT.

BLDG. COVERAGE BLDG. 1A 2 71.3%

PARKING REQUIRED: TOTAL 120 CARS

PARKING PROPOSED: TOTAL 120 CARS

STREET PARKING 0  
OFF-STREET 120

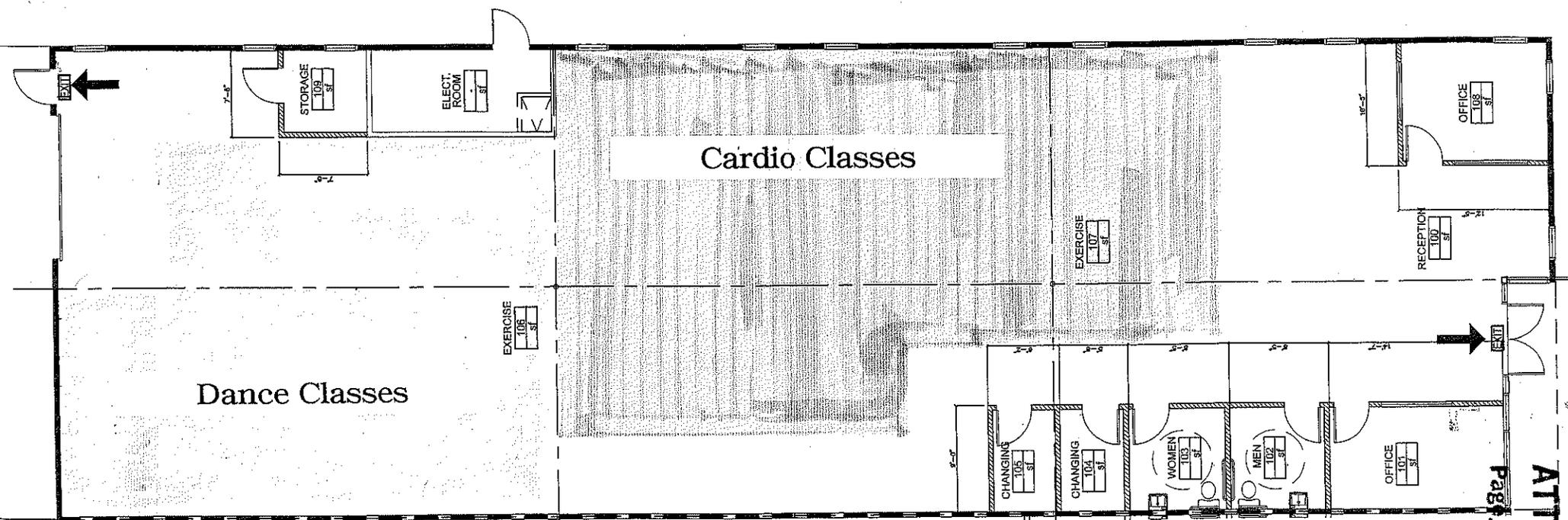
TYPE OF CONSTRUCTION: REPAIR

APN: 1239-001-001

FIRE SPRINKLER SYSTEM: REQUIRED

APPLICABLE CODES: 2006 IBC, 2006 IRC, 2006 IFC, 2006 IFB, 2006 IFM, 2006 IFP, 2006 IFD, 2006 IFG, 2006 IFH, 2006 IFI, 2006 IFJ, 2006 IFK, 2006 IFL, 2006 IFM, 2006 IFN, 2006 IFO, 2006 IFP, 2006 IFQ, 2006 IFR, 2006 IFS, 2006 IFU, 2006 IFV, 2006 IFW, 2006 IFX, 2006 IFY, 2006 IFZ, 2006 IF1, 2006 IF2, 2006 IF3, 2006 IF4, 2006 IF5, 2006 IF6, 2006 IF7, 2006 IF8, 2006 IF9, 2006 IF0, 2006 IF10, 2006 IF11, 2006 IF12, 2006 IF13, 2006 IF14, 2006 IF15, 2006 IF16, 2006 IF17, 2006 IF18, 2006 IF19, 2006 IF20, 2006 IF21, 2006 IF22, 2006 IF23, 2006 IF24, 2006 IF25, 2006 IF26, 2006 IF27, 2006 IF28, 2006 IF29, 2006 IF30, 2006 IF31, 2006 IF32, 2006 IF33, 2006 IF34, 2006 IF35, 2006 IF36, 2006 IF37, 2006 IF38, 2006 IF39, 2006 IF40, 2006 IF41, 2006 IF42, 2006 IF43, 2006 IF44, 2006 IF45, 2006 IF46, 2006 IF47, 2006 IF48, 2006 IF49, 2006 IF50, 2006 IF51, 2006 IF52, 2006 IF53, 2006 IF54, 2006 IF55, 2006 IF56, 2006 IF57, 2006 IF58, 2006 IF59, 2006 IF60, 2006 IF61, 2006 IF62, 2006 IF63, 2006 IF64, 2006 IF65, 2006 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**Smash Gyms****1. Business Description**

A fitness and exercise facility specializing in exercise dance and martial arts classes for children and adults. Our business will be open to the public for drop-ins but a vast majority of students will be members.

**2. Number of Employees**

At any hour during business hours 1-3 employees

**3. Hours of Operation**

Monday thru Friday – Fifty-minute classes scheduled at each hour 2:00pm-8:00pm

- Morning exercise class 7am - 9am
- Lunch class 12pm - 1pm

Saturday – Morning classes 9am-1pm

- Private lessons 1pm-5pm

Sunday – Closed

**4. Sample Class Schedule**Monday- Friday

Children's Martial Arts 2:00-2:50pm

Recreational Tumbling and/or Dance classes 3:00-3:50pm

After School Child Martial Arts Classes 4:00-4:50pm

Cardio Kickboxing 5:00-5:50pm

Cardio Dance 6:00-6:50pm

Adult Jiu-Jitsu Classes 7:00-7:50pm

Adult Strength and Conditioning 8:00- 8:50pm

Saturday Morning

Cardio Kickboxing 9:00-9:50am

Yoga 10:00-10:50am

Zumba 11:00-11:50am

Kids Martial Arts 12:00-12:50pm

**5. Number of students per class**

50-minute classes- 10-20 students

Private lessons -1- 5 students

**6. Number of students per hours of operation**

The average number of students per during business hours will average 15

**7. Parking**

Martial arts classes typically involve students being dropped off by their parents. 22 parking spaces will be allocated for students and staff.

**SMASH GYMS**  
1239 Reamwood Avenue  
Sunnyvale, CA 94089

October 12, 2010

Mr. Hanson Hom  
Community Development Director  
City of Sunnyvale  
P.O. Box 3707  
Sunnyvale, CA 94088-3707

Subject: Application for Administrative Hearing  
Smash Gyms at 1239 Reamwood

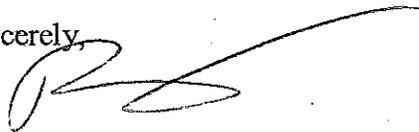
Dear Mr. Hom:

Smash Gyms has filed an application for-administrative hearing of its request to be approved as a Place of Assembly, This classification is necessary for Smash Gyms to conduct normal business operations and provide their services.

We acknowledge that the Smash Gyms business is located in an industrial area that may result in higher levels of noise, traffic, and exposure to hazardous materials than would normally be encountered in non-industrial areas. These factors will not have a negative impact on the operations.

We appreciate City of Sunnyvale's consideration of this application. Should you need additional information, please contact me at (408) 313-7431.

Sincerely,



Rudy Sanchez  
CEO  
Smash Gyms



**STERLING & ASSOCIATES, INC.**

Environmental Health & Safety Specialists

**ATTACHMENT D**

Page 2 of 3

168 South Hillview Drive  
Milpitas, CA 95035  
Tel: 408-262-1656  
Fax: 408-262-5902

## Agreement for Consulting Services

This Agreement, effective 10/5/2010, by and between Smash Gyms, Inc. (hereafter "Client"), and Sterling & Associates, Inc. (hereafter "Consultant") for Consulting Services on the following Project generally described as Development of an emergency evacuation plan for Smash Gyms to be located at 1239 Reamwood Ave in Sunnyvale, CA.

Client and Consultant agree as follows:

A. Client and Consultant may modify the Consultant's Scope of Services by a separate written agreement. All work performed by Consultant relating to the Project is subject to the terms and limitations of this Agreement. Client acknowledges that because of the uncertainties inherent in the performance of Consultant's Services on this Project, all time schedules are estimates only, unless otherwise stated in writing

B. All Services performed under this Agreement shall be on a time and materials basis unless specifically indicated in Consultant's Proposal as a lump sum amount. The use of an estimate of fees or of a "not to exceed" limitation is not a guarantee that the work will be completed for that amount; rather, it indicates that Consultant shall not incur fees and expenses in excess of the estimate or limitation amount without obtaining Client's agreement to do so.

Where Consultant performs Services on a time and material basis then Client shall pay Consultant at the rates set forth in Consultant's Hourly Rate Schedule. Client agrees that Consultant may review and modify its Hourly Rate Schedule from time to time as appropriate to reflect Consultant's then-current fee structure. Consultant shall provide Client at least thirty (30) days advance notice of any changes to the Hourly Rate Schedule. The modified Hourly Rate Schedule will be incorporated into the Agreement and shall supercede any prior Hourly Rate Schedule unless Client provides Consultant with its written objection within thirty (30) days of notification.

Consultant may submit periodic invoices for Services to Client. All invoices are due on receipt. If Client fails to make payment due Consultant for Services and expenses within thirty (30) days after receipt of Consultant's invoices, the amounts due Consultant shall, thereafter, include a late payment charge at the rate of 1½% per month, or the highest rate permitted by law, from the thirtieth day after the date of the invoice.

C. Consultant's Proposal and the attached General Terms and Conditions are hereby made part of this Agreement and are incorporated herein by reference. This Agreement, including attachments incorporated herein by reference, represents the entire agreement and understanding between Client and Consultant, and supercedes all prior negotiations, proposals, and agreements, whether oral or written.

D. This Agreement may not be modified or altered, except as provided for by the General Terms and Conditions of this Agreement or by a written agreement signed by authorized representatives of Client and Consultant.

This Agreement entered into as of the day and year first written above.

**STERLING & ASSOCIATES, INC.**

Jeremy Mott  
(Signature)

Jeremy Mott, General Manager  
(Printed name and title)

**Client:** Smash Gyms, INC  
[Signature]  
(Signature)

RUDY SANCHEZ, CEO  
(Printed name and title)

Attachments: General Terms and Conditions.

**General Terms and Conditions**

1. **Definition of Hazardous Materials** – The term “Hazardous Materials” or “Pollutants” shall include, regardless of physical form or state, any toxic substances, chemicals, pollutants, microbial matter (including fungi, bacteria, or viral matter which reproduces through the release of spores or the splitting of cells or other means, including but not limited to, mold, mildew, bacteria, viruses, whether of not the Microbial Matter is living). In addition, Hazardous Materials includes, but is not limited to: vapors, gasses, fumes, soot, acids, alkalis, minerals, toxic chemicals, liquids, or any other material, irritant, contaminant, or pollutant, that is known or suspected to adversely affect the health and safety of humans or of animal, plant, or organisms, or which are known or suspected to impair the environment in anyway whatsoever and shall include, but not be limited to, those substances defined, designated, or listed as hazardous materials, toxic substances, pollutants, or terminology of similar import under any applicable federal, state, or local statutes, ordinances, orders, rules and/or regulations.

2. **Consultant's Standard of Performance and Disclaimer of Warranties** – Client acknowledges that there are inherent uncertainties when a Project involves Hazardous Materials and/or investigations of environmental conditions. And that these inherent uncertainties may adversely affect the results of the Project, even though Consultant performs its Services with skill and care. Consultant shall perform its Services consistent with that level of skill and care ordinarily exercised by other similar professional consultants under similar circumstances at the same time the Services are performed. No warranty, express or implied, is included or intended by this Agreement. Specific to microbiological services, Client acknowledges that the re-occurrence of growth can occur after remedial procedures if the source of growth and/or water intrusion source is not remediated/repared.

The investigation, characterization, and recommendations for the investigation, testing, remediation, or other aspects relating to Hazardous Materials may involve rapidly evolving technologies. State of the art technologies and techniques are often new and untried and future technologies may supersede current techniques. In addition, regulatory standards statutes and regulations may change over time. The Client understands that Consultant's recommendations are based upon current technologies, techniques, regulations, and standards of care, and may differ from the recommendations that might be made at a later time.

Consultant offers different levels of environmental health and safety consulting services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive services yield more information and reduce the probability of error, but at increased cost. The Client must determine the level of service that is adequate for its purposes. Therefore, the Client warrants that it has reviewed the Scope of Services and has determined that Client does not need or want a greater level of service than that being provided.

3. **Allocation of Risk** – Client agrees that the total cumulative liability of Consultant, its shareholders, directors, officers, employees and agents, to Client arising from Consultant's Services, whether based in contract, indemnity, contribution, tort, or otherwise, and including attorneys' fees due under this Agreement, shall not exceed 100% of the gross compensation received by Consultant under this Agreement; provided, however, that such liability shall be further limited in the following respects:

- a. Consultant shall have no liability to Client for any special, consequential, incidental or penal losses or damages including but not limited to losses, damages or claims related to the unavailability of Client's property or facility, shutdowns or service interruptions, loss of use, profits or revenue, inventory or use charges or cost of capital or claims of Client's customers; and
- b. Consultant shall not be liable to Client for any losses, damages, or claims arising from concealed conditions which are not readily accessible to Consultant during the performance of authorized Services or which are not called to Consultant's attention by Client.

Client shall indemnify and hold harmless Consultant, its agents, subconsultants, directors, officers and employees, (“Indemnitees”) from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including attorneys' fees or other loss (“Loss”) arising from concealed conditions. Client shall indemnify and hold harmless the Indemnitees, from and against any and all claims, demands, causes of action in law or in equity, damages, penalties, costs, expenses, actual attorneys' fees, experts' fees, consultants' fees, judgments, losses or liabilities, of every kind and nature whatsoever arising out of or in any way connected with or incidental to Hazardous Materials existing at the Project Site prior to the commencement of Consultant's Services under this Agreement, unless caused by the sole negligence or willful misconduct of Consultant.

Subject to the limitations included in this Paragraph 3, Consultant agrees to indemnify and hold harmless Client, and its officers, directors, and employees from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including attorneys' fees or other loss (“Loss”) to the extent caused by Consultant's negligent performance of its Services under this Agreement.

Client and Consultant agree that the indemnity obligations and the limitations of liability established under this Agreement shall survive the expiration or termination of this Agreement. If Consultant provides services to Client, but which the parties do not confirm through execution of an amendment to this Agreement, the obligations of the parties to indemnify and the limitations on liability established under this Agreement shall apply to such services as if an amendment had been executed by the parties.

4. **Consultant's Insurance** – Consultant shall obtain (a) statutory Workers' Compensation/Employers Liability coverage; (b) Commercial General Liability coverage; (c) Automobile Liability coverage; and (d) Professional Liability insurance coverage in policy amounts of not less than \$1,000,000. Consultant agrees to issue certificates of insurance evidencing such policies upon written request.

5. **Confidentiality** – All reports and information developed by Consultant are for the sole use of Client and are not intended to benefit any other person or entity. Neither Consultant nor Client shall disclose, disseminate, or otherwise provide such reports or information except as required for the completion of Consultant's or Client's work, or the monitoring of the project by Governmental Agencies. But Consultant may provide any information requested by subpoena or other legal process. Consultant shall promptly provide written notice to Client, including a copy of the subpoena, or other legal process, to permit Client to take whatever action it deems necessary to protect the confidentiality of the information sought. Consultant may provide any information requested by search warrant. Consultant shall provide Client with notice, as soon as practical, of the service of the search warrant. And Consultant may disclose any confidential information if necessary to defend Consultant, its employees, officers and subconsultants in any civil, criminal or administrative proceeding.

6. **Third Party Reliance on Consultant's Reports** – Client agrees that all documents prepared by Consultant are solely for use by Client and shall not be provided to any other person or entity without Consultant's written consent, nor shall Consultant's documents be mentioned, communicated, disclosed or referred to in any offering circular, securities offering, loan application, real estate sales documentation, or similar promotional material, without the express written authorization of Consultant. Client shall defend, indemnify and hold harmless Consultant, its officers, shareholders and employees, from and against any action or proceeding brought by any person or entity claiming to rely upon information or opinions contained in reports or other documents provided to such person or entity, published, disclosed or referred to without Consultant's written consent. No other person or entity other than Client may rely, and Client shall make no representations to any party that such person or entity may rely, on Consultant's documents without Consultant's express written authorization.

7. **Miscellaneous** – Either Consultant or Client may terminate this Agreement for convenience upon thirty (30) days written notice delivered or mailed to the other party. Neither party shall assign this Agreement, or any part thereof, without the written consent of the other party. The law of the State of California shall govern this Agreement. Jurisdiction is proper in the Superior Court of California that has jurisdiction in the county in which the project or property is located. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.