

BOARD of SUPERVISORS



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May 29, 2018

File No. 180319-2

Lisa Gibson
Environmental Review Officer
Planning Department
1650 Mission Street, Ste. 400
San Francisco, CA 94103

Dear Ms. Gibson:

On May 22, 2018, Supervisor Peskin introduced the following substitute legislation:

File No. 180319-2

Ordinance amending the Planning Code to prohibit Cannabis Retail and Medical Cannabis Dispensaries in the Chinatown Mixed Use Districts; affirming the Planning Department's determination under the California Environmental Quality Act; making findings of consistency with the General Plan, and the eight priority policies of Planning Code, Section 101.1; and making findings of public necessity, convenience, and welfare under Planning Code, Section 302.

This substitute legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script, appearing to read "Erica Major".

By: Erica Major, Assistant Clerk
Land Use and Transportation Committee

Attachment

c: Joy Navarrete, Environmental Planning
Laura Lynch, Environmental Planning

1 [Planning Code - Cannabis Retail and Medical Cannabis Dispensaries in Chinatown]

2

3 **Ordinance amending the Planning Code to prohibit Cannabis Retail and Medical**
4 **Cannabis Dispensaries in the Chinatown Mixed Use Districts; affirming the Planning**
5 **Department’s determination under the California Environmental Quality Act; making**
6 **findings of consistency with the General Plan, and the eight priority policies of**
7 **Planning Code, Section 101.1; and making findings of public necessity, convenience,**
8 **and welfare under Planning Code, Section 302.**

9 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
10 **Additions to Codes** are in *single-underline italics Times New Roman font*.
11 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
12 **Board amendment additions** are in double-underlined Arial font.
13 **Board amendment deletions** are in ~~strikethrough Arial font~~.
14 **Asterisks (* * * *)** indicate the omission of unchanged Code
15 subsections or parts of tables.

13

14 Be it ordained by the People of the City and County of San Francisco:

15

16 Section 1. Environmental and Land Use Findings.

17 (a) The Planning Department has determined that the actions contemplated in this
18 ordinance comply with the California Environmental Quality Act (California Public Resources
19 Code Section 21000 et seq.). Said determination is on file with the Clerk of the Board of
20 Supervisors in File No. _____, and is incorporated herein by reference. The Board affirms
21 this determination.

22 (b) On _____, the Planning Commission, in Resolution No. _____, adopted findings
23 that the actions contemplated in this ordinance are consistent, on balance, with the City’s
24 General Plan and eight priority policies of Planning Code, Section 101.1. The Board adopts
25

1 these findings as its own. A copy of said Resolution is on file with the Clerk of the Board of
2 Supervisors in File No. _____, and is incorporated herein by reference.

3 (c) Pursuant to Planning Code, Section 302, the Board of Supervisors finds that these
4 Planning Code amendments will serve the public necessity, convenience, and welfare for the
5 reasons set forth in Planning Commission Resolution No. _____, and the Board incorporates
6 such reasons herein by reference. A copy of said Resolution is on file with the Clerk of the
7 Board of Supervisors in File No. _____, and is incorporated herein by reference.

8
9 Section 2. General Findings.

10 (a) In 2017, the San Francisco Board of Supervisors adopted regulations governing
11 the manufacture, sale, and distribution of adult use of cannabis, following approval by
12 California voters in 2016 of Proposition 64, the Control, Regulate and Tax Adult Use of
13 Marijuana Act. By passing Proposition 64, California joined other states, including Nevada,
14 Washington, Oregon, Colorado, Maine, and Massachusetts, in legalizing the adult recreational
15 use of cannabis.

16 (b) While the legalization of cannabis for medicinal and recreational use serves the
17 public good by, among other things, making cannabis more accessible to patients in need,
18 addressing the disparate impacts of decades of racially-biased criminal justice and law
19 enforcement systems, reducing prison populations, and generating tax revenue for
20 reinvestment in public education and environmental, social and medical programs, the impact
21 of the booming cannabis industry on real estate prices and on existing, vulnerable
22 communities in San Francisco has not yet been assessed.

23 (c) According to the San Francisco Chinatown Area Plan, the Chinese American
24 community in San Francisco is the oldest and second largest in the entire United States.
25 According to 2015 data from the U.S. Census Bureau, San Francisco's Chinatown is also one

1 of the City's densest neighborhoods, wherein two-thirds of residents, many of them elderly
2 and/or immigrants, live in Single Room Occupancy (SRO) housing. As the cost of housing
3 continues to soar, the number of families living in Chinatown SROs has grown. In many
4 instances, Chinatown SROs are occupied by multiple generations of families making well
5 below the City's median household income.

6 (d) At the core of San Francisco's Chinatown Area Plan are incentives to further
7 Chinatown's function as a center of civic, religious, and political organization, as well as a
8 specialized shopping area for the broader Bay Area Chinese population. In part because of
9 policies enacted by the City, Chinatown has managed to maintain a dense concentration of
10 institutional land uses, including space for Family and District Associations, a number of
11 health and social service agencies, and a diverse array of Chinese-owned and -operated
12 active commercial uses.

13 (e) San Francisco's Chinatown has also faced and resisted ongoing pressures from
14 office and co-working space, financial institutions, and other uses that contribute to rent
15 increases and displace smaller retail and community-serving institutions. The framework for
16 expansion of cannabis retail in Chinatown may also increase competition for leases on the
17 ground and upper floors throughout Chinatown's mixed-use districts. Since the successful
18 legalization of medicinal and recreational cannabis in states such as Colorado and
19 Washington, the rapid expansion of cannabis retail and manufacturing has created an
20 unprecedented boost for the commercial real estate industry. Landlords and property owners
21 in those states have commanded two to three times the pre-existing commercial rental rates
22 from cannabis retail tenants.

23 (f) The emergence of well-capitalized uses amid the ongoing construction of the
24 Central Subway Chinatown Station and other needed infrastructure improvements has
25 created a particularly fragile economy for community-serving retail in Chinatown. Several

1 businesses have closed under the combined pressures of construction-driven street closures,
2 consequent lulls in foot traffic, and speculative rent increases. In isolated instances,
3 commercial tenants have received notice of their rents doubling, rendering ongoing business
4 in Chinatown impossible. The impact of increased competition for valuable retail space in
5 Chinatown risks devastating the existing retail environment in Chinatown, and, in turn, driving
6 irreparable gentrification and displacement of historically lower income commercial tenants
7 and the resident immigrant communities they serve.

8 (g) The dense living environments of Chinatown SROs present additional sensitivities
9 and vulnerabilities to the influx of medicinal and recreational cannabis use. SROs have
10 historically been the only affordable housing for new immigrants, families, seniors, and
11 workers in Chinatown. Many of the buildings are old and their walls thin, allowing for
12 secondhand smoke of any form to be an ongoing nuisance to adjacent tenants. As SRO
13 housing is increasingly made available to upwardly mobile urban professionals with more
14 disposable income, the familial bonds and communal considerations of this form of housing
15 are disappearing.

16 (h) While medicinal or recreational cannabis will still be readily accessible even if it is
17 not permitted to be sold within Chinatown's mixed use districts, the cultural and communal
18 considerations of Chinatown's immigrant and lower-income populations have yet to be
19 addressed through language-appropriate and culturally sensitive educational and outreach
20 efforts. The City and County of San Francisco has an interest in and an obligation to facilitate
21 the accessible and responsible use of cannabis for both medicinal and recreational use, and it
22 has a simultaneous obligation to ensure that the industry grows and matures in a way that
23 respects the diverse cultural fabric of the City's existing communities. These interests and
24 obligations are not rendered inconsistent by a prohibition on medicinal and retail cannabis
25 uses along the sensitive corridors and alleyways of San Francisco's historic Chinatown.

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Section 3. The Planning Code is hereby amended by revising Sections 803.2, 810, 811, and 812, to read as follows:

SEC. 803.2. USES PERMITTED IN CHINATOWN MIXED USE DISTRICTS.

A use is the specific purpose for which a property or building is used, occupied, maintained, or leased. Whether or not a use is permitted in a specific Chinatown Mixed Use District is set forth, summarized, or cross-referenced in Sections 810.1 through 812.96 of this Code for each district class.

(a) **Use Categories.** The uses, functions, or activities, ~~which~~ that are permitted in each Chinatown Mixed Use District class include those listed in Table 803.2 below by zoning control category and numbered and cross-referenced to the Code Section containing the definition.

TABLE 803.2 USE CATEGORIES PERMITTED IN THE CHINATOWN MIXED USE DISTRICTS

No.	Zoning Control Categories for Uses	Section Number of Use Definition
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* * * *

803.2.75	<i>Cannabis Retail</i>	§ 890.125
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* * * *

(C) **Accessory Uses.** Subject to the limitations set forth below and in Sections 204.1 (Accessory Uses for Dwelling Units in R Districts) and 204.5 (Parking and

1 Loading as Accessory Uses) of this Code, a related minor use which is either necessary to the
2 operation or enjoyment of a lawful Principal Use or Conditional Use or is appropriate,
3 incidental, and subordinate to any such use, shall be permitted in Chinatown Mixed Use
4 Districts as an Accessory Use when located on the same lot. Any Use not qualified as an
5 Accessory Use shall only be allowed as a Principal or Conditional Use, unless it qualifies as a
6 temporary use under Sections 205 through 205.2 of this Code.

7 No use in a Chinatown Mixed Use District will be considered accessory to
8 a Principal Use which involves or requires any of the following:

9 * * * *

10 (vii) Cannabis Retail *that does not meet the limitations set forth in*
11 *Section 204.3(a)(3) as defined in Section 890.125 of this Code.*

12 * * * *

13 (D) **Temporary Uses.** Uses not otherwise permitted are permitted in
14 Chinatown Mixed Use Districts to the extent authorized by Sections 205, 205.1, or 205.2 of
15 this Code, except that Temporary Cannabis Retail Uses shall not be permitted in Chinatown Mixed
16 Use Districts.

17 * * * *

18
19 **SEC. 810. CHINATOWN COMMUNITY BUSINESS DISTRICT.**

20 * * * *

21 **Table 810**

22 **CHINATOWN COMMUNITY BUSINESS DISTRICT ZONING CONTROL TABLE**

23 * * * *

No.	Zoning Category	§ References	Chinatown Community Business Controls by Story
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			1st	2nd	3rd+
Retail Sales and Services					
* * * *	* * * *	* * * *	* * * *	* * * *	* * * *
.75	<i>Cannabis Retail</i>	§§ 202.2(a), 890.125	€	€	
Institutions					
* * * *	* * * *	* * * *	* * * *	* * * *	* * * *
.83	<i>Medical Cannabis Dispensary</i>	§ 890.133	P		
* * * *					

SEC. 811. CHINATOWN VISITOR RETAIL DISTRICT.

* * * *

Table 811

CHINATOWN VISITOR RETAIL DISTRICT ZONING CONTROL TABLE

* * * *

No.	Zoning Category	§ References	Chinatown Visitor Retail Controls by Story		
			1st	2nd	3rd+
Retail Sales and Services					
* * * *	* * * *	* * * *	* * * *	* * * *	* * * *
.75	<i>Cannabis Retail</i>	§§ 202.2(a), 890.125	€	€	
Institutions					

* * * *	* * * *	* * * *	* * * *	* * * *	* * * *
.83	<i>Medical Cannabis Dispensary</i>	§ 890.133	P		
* * * *					

SEC. 812. CHINATOWN RESIDENTIAL NEIGHBORHOOD COMMERCIAL DISTRICT.

* * * *

Table 812

CHINATOWN RESIDENTIAL NEIGHBORHOOD COMMERCIAL DISTRICT ZONING CONTROL TABLE

* * * *

No.	Zoning Category	§ References	Chinatown Residential Neighborhood Commercial Controls by Story		
			1st	2nd	3rd+
Retail Sales and Services					
* * * *	* * * *	* * * *	* * * *	* * * *	* * * *
.75	<i>Cannabis Retail</i>	§§ 202.2(a), 890.125	€		
Institutions					
* * * *	* * * *	* * * *	* * * *	* * * *	* * * *
.83	<i>Medical Cannabis Dispensary</i>	§ 890.133	P		
* * * *					

Section 4. Effective Date. This ordinance shall become effective 30 days after enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the

1 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
2 of Supervisors overrides the Mayor's veto of the ordinance.

3
4 Section 5. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
5 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
6 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
7 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
8 additions, and Board amendment deletions in accordance with the "Note" that appears under
9 the official title of the ordinance.

10
11 APPROVED AS TO FORM:
12 DENNIS J. HERRERA, City Attorney

13 By:



14 PETER R. MILJANICH
15 Deputy City Attorney
16 n:\legal\as2018\1800492\01277565.docx

REVISED LEGISLATIVE DIGEST

(Substituted, 5/22/2018)

[Planning Code - Cannabis Retail and Medical Cannabis Dispensaries in Chinatown]

Ordinance amending the Planning Code to prohibit Cannabis Retail and Medical Cannabis Dispensaries in the Chinatown Mixed Use Districts; affirming the Planning Department's determination under the California Environmental Quality Act; and making findings of consistency with the General Plan and the eight priority policies of Planning Code, Section 101.1 and findings of public necessity, convenience, and welfare under Planning Code, Section 302.

Existing Law

The Planning Code regulates cannabis land uses in the City, including Cannabis Retail establishments and Medical Cannabis Dispensaries (MCDs). The Code establishes location and operating conditions for these cannabis uses.

Article 8 of the Planning Code sets forth the zoning controls for Mixed Use Districts in San Francisco, including the three Chinatown Mixed Use Districts: Chinatown Community Business District, Chinatown Visitor Retail District, and Chinatown Residential Neighborhood Commercial District.

In both the Chinatown Community Business District and the Chinatown Visitor Retail District, Cannabis Retail Uses are conditionally permitted on the first and second story, and MCDs are permitted on the first story.

In the Chinatown Residential Neighborhood Commercial District, Cannabis Retail Uses are conditionally permitted on the first story, and MCDs are permitted on the first story.

MCDs are not permitted as Accessory Uses or Temporary Uses in any Chinatown Mixed Use District. Cannabis Retail Uses may be permitted as Accessory Uses in Chinatown Mixed Use Districts where the Office of Cannabis has issued a permit to operate a Cannabis Retail Use accessory to another activity on the same premises. Cannabis Retail Uses may be permitted as Temporary Uses for up to one year between January 1, 2018 and January 1, 2019, if they are authorized as MCDs in the Chinatown Mixed Use Districts.

In addition to the Planning Code's zoning controls and other conditions regulating cannabis uses, the City has recently amended the Administrative, Business and Tax Regulations, Health, and Police Codes to comprehensively regulate commercial activities relating to the cultivation, manufacture, distribution, testing, sale, and delivery of medicinal and adult use cannabis.

FILE NO. 180319

Amendments to Current Law

This legislation would prohibit all Cannabis Retail Uses and Medical Cannabis Dispensaries in Chinatown Mixed Use Districts.

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