



August 27, 2021

Ms. Angela Calvillo, Clerk
Honorable Supervisor Peskin
Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Re: Transmittal of Planning Department Case Number 2021-005562PCAMAP:
Small Business Zoning Controls in Chinatown and North Beach and on Polk Street
Board File No. 210600

Planning Commission Recommendation: Approval with Modification

Dear Ms. Calvillo and Supervisor Peskin,

On May 25, 2021, the Planning Commission conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance, introduced by Supervisor Peskin that would amend the Planning Code to 1) allow neighborhood-serving Social Service and Philanthropic Facility uses in Chinatown Mixed Use Districts with conditional use authorization; 2) change the provision for abandonment of a use that exceeds a use size maximum in Chinatown Mixed Use Districts; 3) change the use size limit and use size maximum in the Chinatown Community Business District; 4) exempt Institutional Community uses and Legacy Business Restaurants in Chinatown Mixed Use Districts from use size limits; 5) allow lot mergers under certain conditions in the Polk Street Neighborhood Commercial District; and 6) exclude the portion of Powell Street south of Union Street from the North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict. At the hearing the Planning Commission recommended approval with modification.

The Commission's proposed modifications were as follows:

1. In addition to the Conditional Use Authorization findings, when considering Social Service and Philanthropic Services requesting to exceed the Use Size maximums, the Planning Commission shall

find that:

- a. The proposed Use primarily serves Chinatown.
 - b. The request exceeding the Use Size maximum is appropriate for the proposed Use and parcel.
2. Retain the three-year abandonment period for Use Sizes in the Chinatown Districts.
 3. Technical correction: Revise the Chinatown Districts abandonment period exception to state that Restaurants that are a Legacy Business or an Institutional Use need to establish the use if it occupies the nonconforming space after such three-year period.

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Supervisor, please advise the City Attorney at your earliest convenience if you wish to incorporate the changes recommended by the Commission.

Please find attached documents relating to the actions of the Commission. If you have any questions or require further information, please do not hesitate to contact me.

Sincerely,



Aaron D. Starr
Manager of Legislative Affairs

cc: Victoria Wong, Deputy City Attorney
Lee Hepner, Aide to Supervisor Peskin
Erica Major, Office of the Clerk of the Board

Attachments :

Planning Commission Resolution
Planning Department Executive Summary



PLANNING COMMISSION RESOLUTION NO. 20969

Project Name: Small Business Zoning Controls in Chinatown and North Beach and on Polk Street
Case Number: 2021-005562PCAMAP Board File No. 210600]
Initiated by: Supervisor Peskin / Introduced May 25, 2021
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, (628) 652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO 1) ALLOW NEIGHBORHOOD-SERVING SOCIAL SERVICE AND PHILANTHROPIC FACILITY USES IN CHINATOWN MIXED USE DISTRICTS WITH CONDITIONAL USE AUTHORIZATION; 2) CHANGE THE PROVISION FOR ABANDONMENT OF A USE THAT EXCEEDS A USE SIZE MAXIMUM IN CHINATOWN MIXED USE DISTRICTS; 3) CHANGE THE USE SIZE LIMIT AND USE SIZE MAXIMUM IN THE CHINATOWN COMMUNITY BUSINESS DISTRICT; 4) EXEMPT INSTITUTIONAL COMMUNITY USES AND LEGACY BUSINESS RESTAURANTS IN CHINATOWN MIXED USE DISTRICTS FROM USE SIZE LIMITS; 5) ALLOW LOT MERGERS UNDER CERTAIN CONDITIONS IN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT; AND 6) EXCLUDE THE PORTION OF POWELL STREET SOUTH OF UNION STREET FROM THE NORTH BEACH FINANCIAL SERVICE, LIMITED FINANCIAL SERVICE, AND BUSINESS OR PROFESSIONAL SERVICE SUBDISTRICT; 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 PUBLIC NECESSITY, CONVENIENCE, AND GENERAL WELFARE FINDINGS PURSUANT TO PLANNING CODE, SECTION 302.

WHEREAS, on May 25, 2021 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter “Board”) File Number 210600, which would amend the Planning Code to 1) allow neighborhood-serving Social Service and Philanthropic Facility uses in Chinatown Mixed Use Districts with conditional use authorization; 2) change the provision for abandonment of a use that exceeds a use size maximum in Chinatown Mixed Use Districts; 3) change the use size limit and use size maximum in the Chinatown Community Business District; 4) exempt Institutional Community uses and Legacy Business Restaurants in Chinatown Mixed Use Districts from use size limits; 5) allow lot mergers under certain conditions in the Polk Street Neighborhood Commercial District; and 6) exclude the portion of Powell Street south of Union Street

from the North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict;

WHEREAS, the Planning Commission (hereinafter “Commission”) conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on August 26, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the Custodian of Records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission’s proposed recommendations are as follows:

1. In addition to the Conditional Use Authorization findings, when considering Social Service and Philanthropic Services requesting to exceed the Use Size maximums, the Planning Commission shall find that:
 - a. The proposed Use primarily serves Chinatown.
 - b. The request exceeding the Use Size maximum is appropriate for the proposed Use and parcel.
2. Retain the three-year abandonment period for Use Sizes in the Chinatown Districts.
3. Technical correction: Revise the Chinatown Districts abandonment period exception to state that Restaurants that are a Legacy Business or an Institutional Use need to establish the use if it occupies the nonconforming space after such three-year period.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The proposed Ordinance would support small businesses in the Chinatown Mixed-Use Districts, the North Beach Neighborhood Commercial District, and the Castro Street Neighborhood Commercial District.

General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance supports small businesses in the Chinatown Mixed-Use Districts, the North Beach Neighborhood Commercial District, and the Polk Street Neighborhood Commercial District. Each of these districts have specific neighborhood concerns, to which the Planning Code and this Ordinance respond to. All these districts strive to attract a variety of businesses to support the economic vitality of the neighborhood. The proposed Ordinance responds to very specific concerns but could potentially yield benefits to other small businesses as well.

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on August 26, 2021.



Jonas P Ionin Digitally signed by Jonas P Ionin,
Date: 2021.08.26 14:38:06 -0700

Jonas P. Ionin
Commission Secretary

AYES: Diamond, Fung, Imperial, Koppel

NOES: Tanner

ABSENT: Chan, Moore

ADOPTED: August 26, 2021

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EXECUTIVE SUMMARY

PLANNING CODE TEXT & ZONING MAP AMENDMENT

HEARING DATE: AUGUST 26, 2021

90-Day Deadline: August 30, 2021

Project Name: Small Business Zoning Controls in Chinatown and North Beach and on Polk Street
Case Number: 2021-005562PCA Board File No. 210600]
Initiated by: Supervisor Peskin / Introduced May 25, 2021
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, (628) 652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
aaron.starr@sfgov.org, (628) 652-7533

Recommendation: Approval with Modifications

Planning Code Amendment

The proposed Ordinance would amend the Planning Code to 1) allow neighborhood-serving Social Service and Philanthropic Facility uses in Chinatown Mixed Use Districts with conditional use authorization; 2) change the provision for abandonment of a use that exceeds a use size maximum in Chinatown Mixed Use Districts; 3) change the use size limit and use size maximum in the Chinatown Community Business District; 4) exempt Institutional Community uses and Legacy Business Restaurants in Chinatown Mixed Use Districts from use size limits; 5) allow lot mergers under certain conditions in the Polk Street Neighborhood Commercial District; and 6) exclude the portion of Powell Street south of Union Street from the North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict; 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 public necessity, convenience, and general welfare findings pursuant to Planning Code, Section 302.

The Way It Is Now:	The Way It Would Be:
Social Service of Philanthropic Facilities in the Chinatown Districts need to comply with the Use Size maximums.	Social Service of Philanthropic Facilities would be allowed to exceed the Use Size maximums with Conditional Use Authorization in the Chinatown Districts.
<p>In the Chinatown Districts, uses that exceed the Use Size maximums are considered abandoned after any change or use or if no business has been in operation for a period of three years. The only exceptions to this abandonment clause are:</p> <ul style="list-style-type: none"> • if the change of use is for a Legacy Business or Institutional Use or • if a Legacy Business or Institutional Use occupies the nonconforming space after three years. 	<p>Uses that exceed the Use Size maximums would be considered abandoned after any change or use or if no business has been in operation for a period of 18 months (instead of three years). The exceptions to this abandonment clause would be revised as follows:</p> <ul style="list-style-type: none"> • if the change of use is for a <u>Restaurant that is a</u> Legacy Business or Institutional Use, • if a <u>Restaurant that is a</u> Legacy Business or Institutional Use occupies the nonconforming space after <u>18 months</u>, or • if a Social Service or Philanthropic Facility that primarily serves the Chinatown neighborhood receives Conditional Use Authorization to occupy the nonconforming space.
In the Chinatown Community Business District, the Use Size limit is 5,000 square feet and there is no Use Size maximum.	In the Chinatown Community Business District, the Use Size limit would be reduced to 2,500 square feet and the Use Size maximum would be 5,000 square feet.
The Use Size limit does not apply to a Restaurant in the Chinatown Visitor Retail District.	The Use Size limit would not apply to a Restaurant that is a Legacy Business or an Institutional Community Use in <u>all</u> Chinatown Districts.
Ground floor commercial spaces or storefront mergers are prohibited in the Polk Street Neighborhood Commercial District.	Ground floor commercial spaces or storefronts would be permitted to merge in the Polk Street Neighborhood Commercial District if it involves two adjacent storefronts on a corner lot in the same building and same parcel. The merger would need to be for a Legacy Business and the resulting merger would need to be under the maximum Use Size permitted within the district.
The North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict boundaries are generally south of Greenwich Street, as designated on Sectional Map SU01 .	The North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict boundaries would exclude parcels on Powell Street south of Union Street. This change would be reflected in Sectional Map SU01.

Background

The proposed Ordinance responds to ever-changing needs within the Neighborhood Commercial and Mixed-Use Districts. The primary goal is to protect and preserve small businesses in the Chinatown Mixed-Use Districts, the North Beach Neighborhood Commercial District, and the Polk Street Neighborhood Commercial District.

Use Size controls within the Chinatown Mixed-Use Districts were recently amended during the Chinatown Reorganization in 2019. This Ordinance includes further amendments to the Use Size controls within the Chinatown Mixed-Use Districts in response to an application proposing a Restaurant on the ground floor of 838 Grant Avenue. The proposed Ordinance would allow a Restaurant that is a Legacy Business exceeding the Chinatown Mixed Use Districts Use Size limits to be re-established at 838 Grant Avenue.

Additionally, the proposed Ordinance also seeks to support businesses either expanding into or opening in vacant storefronts. Specifically, the Ordinance supports an existing Bar seeking to expand within the Polk Street Neighborhood Commercial District and a proposed Professional Service applying to fill a vacancy within the North Beach Neighborhood Commercial District. Although the proposed Ordinance was crafted in response to the specific circumstances described above, it would potentially benefit other small businesses and better serve the communities.

Issues and Considerations

Chinatown Reorganization and Non-Residential Use Size Limits

Initiated in 2013, the Code Reorganization Project seeks to restructure the Planning Code so that it's easier to read, understand, and use. Phase 3.1 occurred in 2019 and focused solely on Article 8, which contains controls for the Chinatown Mixed Use Districts. Some of these recent changes are being amended again in this Ordinance, namely controls as they pertain to Non-Residential Use Size limits.

Use Size is a physical characteristic, not a Use, and therefore cannot be abandoned. However, Use Size is abandoned with any change of use or three-year vacancy within the Chinatown Mixed-Use Districts.

During the Chinatown Reorganization hearing, the Planning Commission directed staff to include a substantive change that would require that any change of use to abandon its Use Size. Use Size limits are physical characteristic, and not a Use so they do not have an abandonment period. However, there are three districts (Chinatown Mixed-Use, North Beach Neighborhood Commercial, and Castro Street Neighborhood Commercial Districts) that have special provisions where Use Sizes are abandoned with a change of use or an extended vacancy. These three districts are the only exemptions from Section 183 abandonment clauses because of their very-specific neighborhood concerns.

After the Planning Commission hearing on the Chinatown Reorganization, the Board of Supervisors added an additional amendment that would further differentiate the Chinatown Districts' Non-Residential Use Size controls.¹ That additional language is underlined below:

¹ Board File No. 190594, [Ordinance No. 208-19](#)

Further, any space that exceeds the use size maximum below shall be deemed abandoned with any change of use or if no business has been operational for a period of three years or more, except the maximum use size shall not be deemed abandoned if the change of use is for a Legacy Business or Institutional Use, or if a Legacy Business or Institutional Use occupies the non-conforming space after such three-year period.

The Planning Commission was unable to consider this final amendment. However, the Department foresaw some concerns about allowing a Use exceeding the maximum Use Size limits to return to the site even after the three-year abandonment period. Technically, said Use should re-establish the Use Size by way of a new building permit application to ensure the Use Size is carried over to the new Use. This is not noted in the final Ordinance language but should be considered now to correctly re-establish the Use Size exceeding the maximum Use Size limits in the Chinatown Districts. Proposed language:

Further, any nonconforming use size that exceeds the maximum below shall be deemed abandoned by any change of use or if no business has operated within the space for a period of more than three years, except a nonconforming use size shall not be deemed abandoned if (1) the change of use is to a Restaurant that is a Legacy Business or to an Institutional Use; or (2) upon conditional use authorization, the change of use is to a Social Service or Philanthropic Facility that primarily serves the Chinatown neighborhood occupies the nonconforming space. However, any such abandoned Use Size may be re-established if the first Use to occupy the space after its abandonment is a Restaurant that is Legacy Business or an Institutional Use.

The proposed language addresses allowing a nonconforming Use Size back even after abandoned. It maintains the same exceptions as the proposed Ordinance and includes the correct procedures for re-establishing an abandoned Use Size.

Prohibition on Storefront Mergers

Both the North Beach and Polk Street Neighborhood Commercial Districts prohibit storefront mergers. The intent is to maintain the districts' small-scale, fine grain storefronts. The proposed Ordinance includes an exception in the Polk Street Neighborhood Commercial District for very specific instances. Some of the eligibility requirements for such mergers include that it involves two adjacent storefronts that are 1) located on a corner lot in the same building and same parcel and 2) the resulting merger would still comply with the Use Size limits of the district. Further, the merger would only be considered appropriate if it was intended for a Legacy Business.

The Department is aware of at least one application for Shanghai Kelly (located at 2064 Polk Street) that would benefit from this proposed amendment. The existing business has been around for decades and they are now interested in expanding their business in the currently vacant storefront directly to the south. In this example, the resulting storefront merger would still be below the maximum Use Size limits for the Polk Street Neighborhood Commercial District.

North Beach Subdistrict

Subdistricts are intended to control the expansion of certain kinds of Uses, which if uncontrolled may adversely affect the character of certain Neighborhood Commercial Districts. In 2017, the North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict was created to preserve the unique mixture of local, citywide, and regional sales and services in the North Beach Area.² The Subdistrict prohibits or limits the following Uses:

- A Financial Service or a Limited Financial Service are not be permitted.
- A Retail or Professional Service, Design Professional and Trade Office are not be permitted on the first floor.
- The nonconforming Use provisions applies to Financial Services, Limited Financial Services, Retail Professional Services, Design Professional and Trade Offices that existed lawfully when the Subdistrict was created.

One reason the Subdistrict was originally created was because of the concern of overconcentration of Professional Services. This concern is no longer relevant given the economic changes of the neighborhood and therefore it is appropriate to revisit the Subdistrict boundaries and allow more Professional Services. Parcels located on Powell Street south of Union would no longer be included as part of the North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict. The existing and proposed Subdistrict boundaries are noted in Figures A and B. The Department is aware of a proposed application for 1561 Powell Street for a law firm d.b.a. “Colla & Rap LLP” that would benefit from this rezoning.

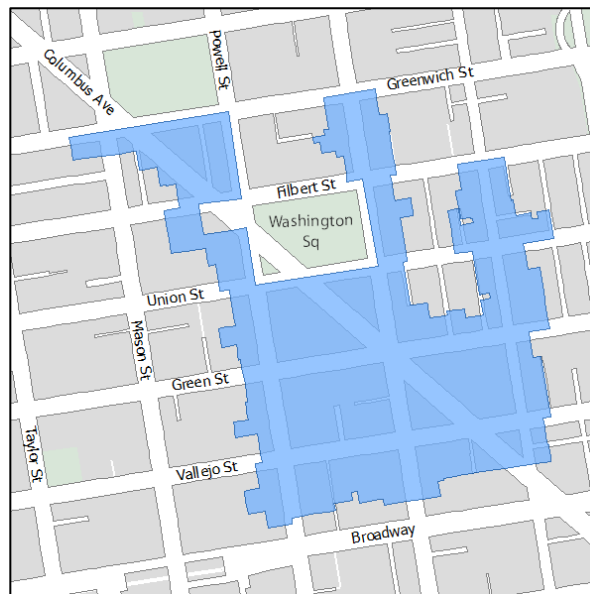


Figure A: Existing North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict boundaries

² Board File No. 170203, [Ordinance No. 129-17](#)

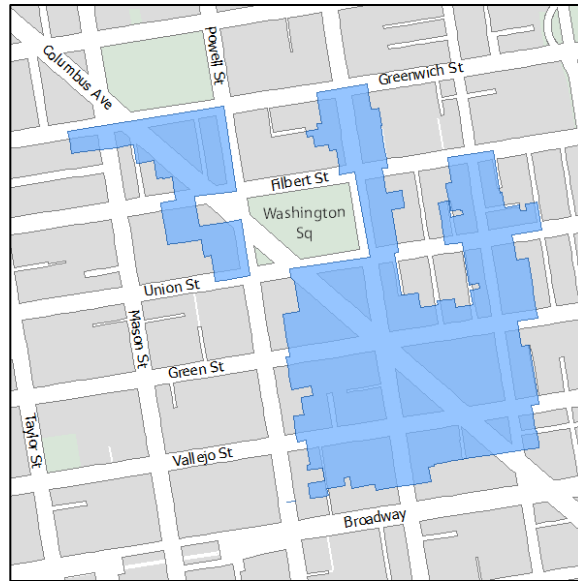


Figure B: Proposed North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict boundaries

Neighborhood Commercial Vacancies

Vacancy rates in Neighborhood Commercial Districts has been a growing issue in recent years. This was exacerbated by the shelter in place orders and ongoing response to COVID-19. The Ordinance helps address some of these issues by allowing paths for new and existing businesses to open or expand into vacant storefronts. If the Ordinance is not enacted, the North Beach and Polk Street Neighborhood Commercial Districts may have an extended vacancy within the corridor. This Ordinance eliminates that gap because businesses have already expressed interest in said existing vacancies.

Recommendation No. 4 states: Preserve Operations and Lessen Regulatory Burdens: create flexibility for businesses to operate and consider reducing or eliminating regulatory burdens.

Additionally, the proposed Ordinance aligns with the fourth policy recommendation from the [Economic Recovery Taskforce Report](#), which states: Preserve Operations and Lessen Regulatory Burdens: create flexibility for businesses to operate and consider reducing or eliminating regulatory burdens.” This Ordinance would help an existing business expand and will create more flexibility by modifying Use controls.

General Plan Compliance

The proposed Ordinance supports small businesses in the Chinatown Mixed-Use Districts, the North Beach Neighborhood Commercial District, and the Polk Street Neighborhood Commercial District. Each of these districts have specific neighborhood concerns, to which the Planning Code and this Ordinance respond to. All these districts strive to attract a variety of businesses to support the economic vitality of the neighborhood. The proposed Ordinance responds to very specific concerns but could potentially yield benefits to other small businesses as well.

Racial and Social Equity Analysis

The Planning Code and Zoning Map amendments in the proposed Ordinance stem directly from community and neighborhood concerns. The proposed Use Size controls amendments within the Chinatown Mixed-Use Districts may inadvertently decrease the number of potential businesses with the heightened criteria. The proposed amendments are very targeted for specific Uses and businesses. Additionally, these changes might not assist existing community businesses or with neighborhood stabilization. Overall, the proposed Ordinance may yield greater racial and social equity if the amendments considered the Chinatown Districts as a whole.

The proposed Ordinance would present immediate benefits to the specific businesses mentioned above but might not provide long-term benefits to these neighborhoods if there is business turnover in the future. The City should review the economic recovery as a whole and balance both the short- and long-term impacts in future Ordinances.

Implementation

The Department has determined that this ordinance will not impact our current implementation procedures but may potentially result in marginal additional Conditional Use Authorization applications for these targeted parcels and Uses.

Recommendation

The Department recommends that the Commission *approve with modifications* the proposed Ordinance and adopt the attached Draft Resolution to that effect. The Department's proposed recommendations are as follows:

1. In addition to the Conditional Use Authorization findings, when considering Social Service and Philanthropic Services requesting to exceed the Use Size maximums, the Planning Commission shall find that:
 - a. The proposed Use primarily serves Chinatown.
 - b. The request exceeding the Use Size maximum is appropriate for the proposed Use and parcel.
2. Retain the three-year abandonment period for Use Sizes in the Chinatown Districts.
3. Technical correction: Revise the Chinatown Districts abandonment period exception to state that Restaurants that are a Legacy Business or an Institutional Use need to re-establish the Use Size if it occupies the nonconforming space after such three-year period.

Basis for Recommendation

The Department supports the overall goals of this Ordinance because it supports small businesses in the Chinatown Mixed-Use Districts, the North Beach Neighborhood Commercial District, and the Polk Street

Neighborhood Commercial District. However, the Ordinance could further support small businesses and these Districts with the proposed modifications:

Recommendation 1: Amend the ordinance to add two additional findings for proposed Social Service and Philanthropic Services requesting to exceed the Use Size maximums:

- a) *The proposed Use primarily serves Chinatown.* This language is currently included in the opening language for Section 121.4. This language is better served as a Commission finding to ensure that it is considered properly.
- b) *The request exceeding the Use Size maximum is appropriate for the proposed Use and parcel.* Use Size limits are treated differently in the Chinatown Districts compared to the rest of the city, save for North Beach and Castro Street Neighborhood Commercial Districts. Because of this, proposed Social Service and Philanthropic Services exceeding the maximum Use Size limits should be reviewed more closely and under more scrutiny. This is especially important considering that certain Uses exceeding the Use Size limits may return to the site even after the three-year abandonment period.

Recommendation 2: Retain the three-year abandonment period for Use Sizes in the Chinatown Districts.

The Department went through an extensive Chinatown Reorganization Project only two years ago, during which time the three-year abandonment period for Use Size was added. This three-year abandonment period should remain for consistency with recent Planning Commission policy. The proposal to an 18-month abandonment period would be overly restrictive and might not serve the community well if it results in more permit and entitlement requirements.

Recommendation 3: Technical correction: Revise the Chinatown Districts abandonment period exception to state that Restaurants that are a Legacy Business or an Institutional Use need to re-establish the Use Size if it occupies the nonconforming space after such three-year period.

The language that was added during the Board process as part of the Chinatown Reorganization isn't technically correct. If a Use, and subsequently its Use Size, is considered abandoned, a new Use needs to be established at the site. The Planning Commission did not have the opportunity to consider this amendment at the time. However, this Ordinance is revising the same section again and this provision should be amended to include the correct procedures in establishing the Use and its Use Size. The suggested language noted earlier still maintains the same exceptions as the proposed Ordinance and would achieve the same results.

Required Commission Action

The proposed Ordinance is before the Commission so that it may approve it, reject it, or approve it with modifications.

Environmental Review

The proposed amendments are not defined as a project under CEQA Guidelines Section 15060(c) and 15378 because they do not result in a physical change in the environment.

Public Comment

As of the date of this report, the Planning Department has received one public comment regarding the proposed Ordinance from Reuben, Junius, & Rose, LLP, who is representing a building owner within the Chinatown Visitor Retail District. The comment noted the client's difficulty in renting out one of the commercial spaces due to the Use Size maximums and offered a friendly suggestion: replace "primarily serves the Chinatown community" with "whose programs include services to the Chinatown community".

Attachments:

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No. 210600
- Exhibit C: Public Correspondence

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PLANNING COMMISSION DRAFT RESOLUTION

HEARING DATE: AUGUST 26, 2021

Project Name: Small Business Zoning Controls in Chinatown and North Beach and on Polk Street
Case Number: 2021-005562PCA Board File No. 210600]
Initiated by: Supervisor Peskin / Introduced May 25, 2021
Staff Contact: Veronica Flores, Legislative Affairs
veronica.flores@sfgov.org, (628) 652-7525
Reviewed by: Aaron D Starr, Manager of Legislative Affairs
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RESOLUTION APPROVING WITH MODIFICATION A PROPOSED ORDINANCE THAT WOULD AMEND THE PLANNING CODE TO 1) ALLOW NEIGHBORHOOD-SERVING SOCIAL SERVICE AND PHILANTHROPIC FACILITY USES IN CHINATOWN MIXED USE DISTRICTS WITH CONDITIONAL USE AUTHORIZATION; 2) CHANGE THE PROVISION FOR ABANDONMENT OF A USE THAT EXCEEDS A USE SIZE MAXIMUM IN CHINATOWN MIXED USE DISTRICTS; 3) CHANGE THE USE SIZE LIMIT AND USE SIZE MAXIMUM IN THE CHINATOWN COMMUNITY BUSINESS DISTRICT; 4) EXEMPT INSTITUTIONAL COMMUNITY USES AND LEGACY BUSINESS RESTAURANTS IN CHINATOWN MIXED USE DISTRICTS FROM USE SIZE LIMITS; 5) ALLOW LOT MERGERS UNDER CERTAIN CONDITIONS IN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT; AND 6) EXCLUDE THE PORTION OF POWELL STREET SOUTH OF UNION STREET FROM THE NORTH BEACH FINANCIAL SERVICE, LIMITED FINANCIAL SERVICE, AND BUSINESS OR PROFESSIONAL SERVICE SUBDISTRICT; 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 PUBLIC NECESSITY, CONVENIENCE, AND GENERAL WELFARE FINDINGS PURSUANT TO PLANNING CODE, SECTION 302.

WHEREAS, on May 25, 2021 Supervisor Peskin introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 210600, which would amend the Planning Code to 1) allow neighborhood-serving Social Service and Philanthropic Facility uses in Chinatown Mixed Use Districts with conditional use authorization; 2) change the provision for abandonment of a use that exceeds a use size maximum in Chinatown Mixed Use Districts; 3) change the use size limit and use size maximum in the Chinatown

Number]

Community Business District; 4) exempt Institutional Community uses and Legacy Business Restaurants in Chinatown Mixed Use Districts from use size limits; 5) allow lot mergers under certain conditions in the Polk Street Neighborhood Commercial District; and 6) exclude the portion of Powell Street south of Union Street from the North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict;

WHEREAS, the Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on August 26, 2021; and,

WHEREAS, the proposed Ordinance has been determined to be categorically exempt from environmental review under the California Environmental Quality Act Section 15060(c) and 15378; and

WHEREAS, the Planning Commission has heard and considered the testimony presented to it at the public hearing and has further considered written materials and oral testimony presented on behalf of Department staff and other interested parties; and

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 49 South Van Ness Avenue, Suite 1400, San Francisco; and

WHEREAS, the Planning Commission has reviewed the proposed Ordinance; and

WHEREAS, the Planning Commission finds from the facts presented that the public necessity, convenience, and general welfare require the proposed amendment; and

MOVED, that the Planning Commission hereby **approves with modifications** the proposed ordinance. The Commission's proposed recommendations are as follows:

1. In addition to the Conditional Use Authorization findings, when considering Social Service and Philanthropic Services requesting to exceed the Use Size maximums, the Planning Commission shall find that:
 - a. The proposed Use primarily serves Chinatown.
 - b. The request exceeding the Use Size maximum is appropriate for the proposed Use and parcel.
2. Retain the three-year abandonment period for Use Sizes in the Chinatown Districts.
3. Technical correction: Revise the Chinatown Districts abandonment period exception to state that Restaurants that are a Legacy Business or an Institutional Use need to establish the use if it occupies

Number]

the nonconforming space after such three-year period.

Findings

Having reviewed the materials identified in the preamble above, and having heard all testimony and arguments, this Commission finds, concludes, and determines as follows:

The proposed Ordinance would support small businesses in the Chinatown Mixed-Use Districts, the North Beach Neighborhood Commercial District, and the Castro Street Neighborhood Commercial District.

General Plan Compliance

The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

COMMERCE AND INDUSTRY ELEMENT

OBJECTIVE 1

MANAGE ECONOMIC GROWTH AND CHANGE TO ENSURE ENHANCEMENT OF THE TOTAL CITY LIVING AND WORKING ENVIRONMENT.

Policy 1.1

Encourage development which provides substantial net benefits and minimizes undesirable consequences. Discourage development which has substantial undesirable consequences that cannot be mitigated.

OBJECTIVE 2

MAINTAIN AND ENHANCE A SOUND AND DIVERSE ECONOMIC BASE AND FISCAL STRUCTURE FOR THE CITY.

Policy 2.1

Seek to retain existing commercial and industrial activity and to attract new such activity to the city.

Policy 2.3

Maintain a favorable social and cultural climate in the city in order to enhance its attractiveness as a firm location.

The proposed Ordinance supports small businesses in the Chinatown Mixed-Use Districts, the North Beach Neighborhood Commercial District, and the Polk Street Neighborhood Commercial District. Each of these districts have specific neighborhood concerns, to which the Planning Code and this Ordinance respond to. All these districts strive to attract a variety of businesses to support the economic vitality of the neighborhood. The proposed Ordinance responds to very specific concerns but could potentially yield benefits to other small businesses as well.

Number]

Planning Code Section 101 Findings

The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

1. That existing neighborhood-serving retail uses be preserved and enhanced and future opportunities for resident employment in and ownership of such businesses enhanced;

The proposed Ordinance would not have a negative effect on neighborhood serving retail uses and will not have a negative effect on opportunities for resident employment in and ownership of neighborhood-serving retail.

2. That existing housing and neighborhood character be conserved and protected in order to preserve the cultural and economic diversity of our neighborhoods;

The proposed Ordinance would not have a negative effect on housing or neighborhood character.

3. That the City's supply of affordable housing be preserved and enhanced;

The proposed Ordinance would not have an adverse effect on the City's supply of affordable housing.

4. That commuter traffic not impede MUNI transit service or overburden our streets or neighborhood parking;

The proposed Ordinance would not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.

5. That a diverse economic base be maintained by protecting our industrial and service sectors from displacement due to commercial office development, and that future opportunities for resident employment and ownership in these sectors be enhanced;

The proposed Ordinance would not cause displacement of the industrial or service sectors due to office development, and future opportunities for resident employment or ownership in these sectors would not be impaired.

6. That the City achieve the greatest possible preparedness to protect against injury and loss of life in an earthquake;

The proposed Ordinance would not have an adverse effect on City's preparedness against injury and loss of life in an earthquake.

7. That the landmarks and historic buildings be preserved;

The proposed Ordinance would not have an adverse effect on the City's Landmarks and historic

Number]

buildings.

8. That our parks and open space and their access to sunlight and vistas be protected from development;

The proposed Ordinance would not have an adverse effect on the City's parks and open space and their access to sunlight and vistas.

Planning Code Section 302 Findings.

The Planning Commission finds from the facts presented that the public necessity, convenience and general welfare require the proposed amendments to the Planning Code as set forth in Section 302.

NOW THEREFORE BE IT RESOLVED that the Commission hereby APPROVES WITH MODIFICATIONS the proposed Ordinance as described in this Resolution.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on August 26, 2021.

Jonas P. Ionin
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED: August 26, 2021

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EXHIBIT B

FILE NO. 210600

ORDINANCE NO.

1 [Planning Code - Small Business Zoning Controls in Chinatown and North Beach and on Polk
2 Street]

3 **Ordinance amending the Planning Code to 1) allow neighborhood-serving Social**
4 **Service and Philanthropic Facility uses in Chinatown Mixed Use Districts with**
5 **conditional use authorization; 2) change the provision for abandonment of a use that**
6 **exceeds a use size maximum in Chinatown Mixed Use Districts; 3) change the use size**
7 **limit and use size maximum in the Chinatown Community Business District; 4) exempt**
8 **Institutional Community uses and Legacy Business Restaurants in Chinatown Mixed**
9 **Use Districts from use size limits; 5) allow lot mergers under certain conditions in the**
10 **Polk Street Neighborhood Commercial District; and 6) exclude the portion of Powell**
11 **Street south of Union Street from the North Beach Financial Service, Limited Financial**
12 **Service, and Business or Professional Service Subdistrict; affirming the Planning**
13 **Department’s determination under the California Environmental Quality Act; and**
14 **making findings of consistency with the General Plan, and the eight priority policies of**
15 **Planning Code, Section 101.1, and public necessity, convenience, and general welfare**
16 **findings pursuant to Planning Code, Section 302.**

17 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
18 **Additions to Codes** are in *single-underline italics Times New Roman font*.
19 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
20 **Board amendment additions** are in double-underlined Arial font.
21 **Board amendment deletions** are in ~~strikethrough Arial font~~.
22 **Asterisks (* * * *)** indicate the omission of unchanged Code
23 subsections or parts of tables.

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

23 Section 1. Land Use and Environmental Findings.

24 (a) The Planning Department has determined that the actions contemplated in this
25 ordinance comply with the California Environmental Quality Act (California Public Resources

1 Code Sections 21000 et seq.). Said determination is on file with the Clerk of the Board of
2 Supervisors in File No. 210600 and is incorporated herein by reference. The Board affirms
3 this determination.

4 (b) On _____, the Planning Commission, in Resolution No. _____,
5 adopted findings that the actions contemplated in this ordinance are consistent, on balance,
6 with the City's General Plan and eight priority policies of Planning Code Section 101.1. The
7 Board adopts these findings as its own. A copy of said Resolution is on file with the Clerk of
8 the Board of Supervisors in File No. _____, and is incorporated herein by reference.

9 (c) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this
10 ordinance will serve the public necessity, convenience and welfare for the reasons set forth in
11 Planning Commission Resolution No. _____, recommending approval of the proposed
12 designation, which is incorporated herein by reference.

13
14 Section 2. General Findings.

15 (a) Legacy Businesses, by virtue of their long-term presence in their communities,
16 contribute to the unique character and vibrancy of San Francisco neighborhoods. Enhancing
17 their long-term viability helps to stabilize commercial corridors.

18 (b) Within existing limits on use size, allowing Legacy Businesses to expand their
19 footprints within the Polk Street Neighborhood Commercial District to enhance revenue
20 streams supports the long-term viability of these unique, neighborhood-defining small
21 business anchors, with little or no impact to the fine-grained nature of the Polk Street
22 commercial corridor.

23
24 Section 3. The Planning Code is hereby amended by revising Sections 121.4, 723,
25 and 781.6, to read as follows:

SEC. 121.4. NON-RESIDENTIAL USE SIZE LIMITS IN MIXED USE DISTRICTS.

In order to protect and maintain small scale use within an historically significant area and to conserve neighborhood-serving uses in Chinatown, Commercial Uses which exceed the use size limits up to the maximum limits stated in the table below shall be permitted only as Conditional Uses subject to the provisions set forth in Section 303 of this Code. The use area shall be measured as the Gross Floor Area for each individual commercial use. Individual Commercial Uses above the use size maximum below shall not be permitted, *except that a Social Service or Philanthropic Facility that primarily serves the Chinatown neighborhood may be permitted as a Conditional Use.* Further, any ~~space-use~~ that exceeds the use size maximum below shall be deemed abandoned with any change of use or if no business has been operational for a period of ~~three years~~ *eighteen months* or more, ~~except the a use exceeding the maximum~~ use size maximum shall not be deemed abandoned if (1) the change of use is for a Restaurant that is a Legacy Business or for an Institutional Use, ~~or; if~~ (2) a Restaurant that is a Legacy Business or an Institutional Use occupies the non-conforming space after such ~~three year~~ *eighteen-month* period; or (3) upon conditional use authorization, a Social Service or Philanthropic Facility that primarily serves the Chinatown neighborhood occupies the non-conforming space.

District	Use Size Maximum	Use Size Limit
Chinatown Visitor	5,000 sq. ft.	2,500 sq. ft.
Chinatown Residential Neighborhood Commercial	4,000 sq. ft.	2,500 sq. ft.
Chinatown Community Business	No Maximum <u>5,000 sq. ft.</u>	5,000 <u>2,500</u> sq. ft.

1 In the Chinatown Visitor Retail, Chinatown Residential Neighborhood Commercial, and
2 Chinatown Community Districts, the use size limit shall not apply to a Restaurant that is a Legacy
3 Business or to an Institutional Community Use.

4
5 **SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**

6 * * * *

7 **(b) Controls.**

8 * * * *

9 (3) **Merger of Storefronts Prohibited.** To preserve and maintain the district’s
10 small-scale, fine grain storefronts, the consolidation or merger of existing ground floor retail or
11 commercial spaces or storefronts shall be prohibited, except that two adjacent storefronts may be
12 consolidated or merged if the storefronts are for a Legacy Business on a corner lot within the same
13 building and Block and Lot number, and provided that the consolidation or merger of storefronts would
14 not result in a use size in excess of the principally permitted use size within the Polk Street NCD.

15 * * * *

16
17 **SEC. 781.6. NORTH BEACH FINANCIAL SERVICE, LIMITED FINANCIAL**
18 **SERVICE, AND BUSINESS OR PROFESSIONAL SERVICE SUBDISTRICT.**

19 (a) **Purpose.** In order to preserve the unique mixture of local, citywide and regional
20 sales and services in the North Beach area, there shall be a North Beach Financial Service,
21 Limited Financial Service, and Business or Professional Service Subdistrict, generally
22 applicable for the portion of the North Beach Neighborhood Commercial District south of
23 Greenwich Street, excluding Powell Street south of Union Street, as designated on Sectional Map
24 SU01 of the Zoning Map.

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Section 4. The Planning Code is hereby amended in accordance with Planning Code Section 106 by revising Sectional Map SU01 of the Zoning Map as follows:

Assessor's Block and Lot	Zoning Subdistrict to be Superseded	Zoning District Hereby Approved
Block 117: Lots: 011 012 013 014 015 016	North Beach Financial Service, Limited Financial Service, and Business or Professional Service Subdistrict	North Beach Neighborhood Commercial District
Block 118: Lots: 001 002 003 004 005 006 007 008 009		
Block 129: Lots: 001 002 002C 002D 003 004 005 006 007		
Block: 130 Lots: 022 023 024 025 026 027 028 029		

1	Block: 147		
2	Lots: 014		
	015		
3	015A		
4	Block: 148		
5	Lots: 002		
6	005		
7	006		
	028		
	030		
	031		

8 Section 5. Effective Date. This ordinance shall become effective 30 days after
9 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
10 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
11 of Supervisors overrides the Mayor’s veto of the ordinance.

12
13 Section 6. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
14 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
15 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
16 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
17 additions, and Board amendment deletions in accordance with the “Note” that appears under
18 the official title of the ordinance.

19
20 APPROVED AS TO FORM:
21 DENNIS J. HERRERA, City Attorney

22 By: /s/ Victoria Wong
23 VICTORIA WONG
24 Deputy City Attorney

25 n:\legana\as2021\2100349\01533873.docx

EXHIBIT C

Flores, Veronica (CPC)

Subject: FW: BF 210600 - comments by 8/17
Attachments: Chinatown small business legislation - edits.docx

From: John Kevlin <jkevin@reubenlaw.com>
Sent: Tuesday, August 17, 2021 12:42 PM
To: Flores, Veronica (CPC) <Veronica.Flores@sfgov.org>
Subject: Re: BF 210600 - comments by 8/17

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hey Veronica –

Thanks for the heads up on this. As some background, I represent an owner of a building in Chinatown in the CVR zoning district. It has been exceedingly difficult to find commercial tenants to occupy the building (both the ground floor and the upper floors), in particular due to the very modest use size maximums in the Chinatown zoning districts without the ability to exceed them with conditional use authorization. These use size maximums don't just apply on the ground floor, but are now being applied throughout the building, such that no tenant space of more than 5,000 sf can be created, without exceptions available due to unique circumstances of a specific building.

We feel the proposed legislation begins to correct this use size issue by allowing certain social service and philanthropic facilities to exceed the maximum use size limit with conditional use authorization. However, the restriction that the social service facility “primarily” serve the Chinatown neighborhood significantly restricts this potential solution. As such, we are proposing slight modifications to the legislation, changing “primarily serves” the Chinatown community to “whose programs include services to” the Chinatown community (language is bolded and underlined on 3 of the attached word doc). We feel like this provides a balance between modifying the code to allow vacant buildings to be legally occupied and ensuring that such occupants provide services to the Chinatown community. My client has been close to leasing their building to 2 separate social service non-profits in recent months but ultimately were unable to due to the use size restriction – and our proposed change to the legislation would help achieve this goal, to the benefit of the Chinatown neighborhood.

Thanks for your consideration Veronica. Please don't hesitate to reach out if you have any questions or would like to discuss.

John