





CITY & COUNTY OF SAN FRANCISCO  
BOARD OF APPEALS

Date Filed:

BOARD OF APPEALS

NOV 13 2019

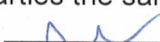
APPEAL # 19-123

**PRELIMINARY STATEMENT OF APPEAL**

I / We, **Malcolm Yeung**, hereby appeal the following departmental action: **ISSUANCE of Letter of Determination No. 2019-014303ZAD** by the **Zoning Administrator** which was issued or became effective on: **October 29, 2019**, to: **Malcolm Yeung**, for the property located at: **838 Grant Avenue**.

**BRIEFING SCHEDULE:**

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

Appellant's Brief is due on or before: **January 9, 2020, (no later than three Thursdays prior to the hearing date)**, up to 12 pages in length, double-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible. 

Respondent's and Other Parties' Briefs are due on or before: **January 23, 2020, (no later than one Thursday prior to hearing date)**, up to 12 pages in length, doubled-spaced, with unlimited exhibits, with eleven (11) copies delivered to the Board office by 4:30 p.m., and with additional copies delivered to the other parties the same day. In addition, an electronic copy should be emailed to: boardofappeals@sfgov.org if possible.

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

Hearing Date: **Wednesday, January 29, 2020, 5:00 p.m., City Hall, Room 416**, One Dr. Carlton B. Goodlett Place.

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

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

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

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

**The reasons for this appeal are as follows:**

See attachment to the Preliminary Statement of Appeal.

**Appellant or Agent (Circle One):**

Signature: 

Print Name: SUE C HESTON

**Appeal of 10/29/18 838 Grant St - Zoning Administrator Letter of Determination**

Appellant -

**Malcolm Yeung, Chinatown Community Development Center, 1525 Grant Ave, SF 94133**

Attorney -

Sue Hestor, 870 Market St, Ste 1128, SF 94102

Discontinuance of non-conforming restaurant use on 5th and 6th floors of building at 838 Grant is subject of this appeal. Empress of China operated between 1967 and 12/31/14. That is nearly 5 years ago. The zoning is CVR - Chinatown Visitor Retail.

Use of over 2,500 sq ft in this space, without a Conditional Use, is not consistent with Chinatown Rezoning, or recent Plan Code revisions.

Planning Code 183(a) sets standard of three years for abandonment of use. Appellant contends those standards have not been met.

There is a dispute as to the facts of activities undertaken regarding 838 Grant Avenue, floors 5 and 6, during the 5 year period since the Empress of China ceased operation.

**BOARD OF APPEALS**

**NOV 13 2019**

**APPEAL # 19-123**





# SAN FRANCISCO PLANNING DEPARTMENT

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

## Letter of Determination

October 29, 2019

Reception:  
**415.558.6378**

Fax:  
**415.558.6409**

Malcolm Yeung  
Chinatown Community Development Center  
1525 Grant Avenue  
San Francisco, CA 94133

**BOARD OF APPEALS**

**NOV 13 2019**

Planning  
Information:  
**415.558.6377**

**APPEAL # 19-123**

**Record Number: 2019-014303ZAD**  
**Site Address: 838 Grant Avenue**  
**Assessor's Block/Lot: 0209/005**  
**Zoning District: Chinatown Visitor Retail (CVR)**  
**Staff Contact: Carolyn Fahey, (415) 575-9139 or [Carolyn.Fahey@sfgov.org](mailto:Carolyn.Fahey@sfgov.org)**

Dear Mr. Malcolm Yeung:

This letter is in response to your request for a Letter of Determination regarding the property at 838 Grant Street. The request is to confirm that the nonconforming "Restaurant" use occupying the 5<sup>th</sup> and 6<sup>th</sup> floors of the subject property between 1967 and 2014 was discontinued in December 2017 pursuant to Planning Code Section 183(a).

Your letter states that the 5<sup>th</sup> and 6<sup>th</sup> floors of the subject building have existed as a Restaurant use since 1966 doing business as Empress of China. However, Empress of China ceased operations on December 31, 2014. To date, no new Restaurant has re-opened in the space, spanning a period of more than four years. As such, you believe that the Restaurant use should be considered abandoned per Planning Code Section 183(a), which states in part:

*"(a) Discontinuance and Abandonment of a Nonconforming Use, Generally. Whenever a nonconforming use has been changed to a conforming use, or discontinued for a continuous period of three years, or whenever there is otherwise evident a clear intent on the part of the owner to abandon a nonconforming use, such use shall not after being so changed, discontinued, or abandoned be reestablished, and the use of the property thereafter shall be in conformity with the use limitations of this Code for the district in which the property is located."*

Planning Code Sec. 183(a) does not define "discontinued" for purpose of determining abandonment of a nonconforming use. However, a 1967 Zoning Administrator Interpretation of Planning Code Section 183 dated July 1967 states the following:

*"A nonconforming use will not be considered terminated if, before the three-year period of discontinuance has passed, remodeling of the nonconforming space is initiated, and if this work is diligently prosecuted to completion."*

It has been long-standing practice to consider the submittal of necessary permits within the three-year period to qualify as initiation of a remodeling. Additionally, the Zoning Administrator has determined other actions to qualify as maintaining a nonconforming use within the three-year period, including actively marketing of a space and other legitimate efforts to find new tenants.

Building Permit No. 201710131199 was submitted on October 13, 2017 for \$650,000 worth of renovations to the existing nonconforming Restaurant use on the 5<sup>th</sup> and 6<sup>th</sup> floors. The filing of the permit occurred within three years of when the Empress of China ceased operations on December 31, 2014. Additionally, that permit was reviewed and finally approved by the Planning Department on August 9, 2018, and then issued by the Department of Building Inspection (DBI) on August 31, 2018. No appeal was filed on this permit. As of the date of this letter, Building Permit No. 201710131199 is still active and has not expired or been otherwise cancelled.

Building Permit No. 201903266198 was submitted on March 26, 2019 for revisions to the scope of work approved under Building Permit No. 201710131199 for renovations to the Restaurant use on the 5<sup>th</sup> and 6<sup>th</sup> floors. That permit was approved by the Planning Department on April 10, 2019, and then issued by DBI on May 1, 2019. As of the date of this letter, Building Permit No. 201903266198 is still active and has not expired or been otherwise cancelled.

Building Permit No. 201910154358 was submitted to and issued by DBI on October 15, 2019 for a new fire suppression system on the 6<sup>th</sup> floor. As of the date of this letter, Building Permit No. 201910154358 is still active and has not expired or been otherwise cancelled.

**It is my determination that the nonconforming Restaurant use on the 5<sup>th</sup> and 6<sup>th</sup> floors of the subject property has not been discontinued or otherwise abandoned at this time, pursuant to Planning Code Section 183(a). This determination is based on the fact that a building permit was submitted within the three-year discontinuance period to significantly renovate the Restaurant space, additional permits were subsequently issued for additional work for the Restaurant use, all of these permits are still active, and the authorized work and associated inspections have already begun.**

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

Malcolm Yeung  
1525 Grant Street  
San Francisco, CA 94133

October 29, 2019  
Letter of Determination  
838 Grant Avenue

**APPEAL:** If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Corey A. Teague, AICP  
Zoning Administrator

cc: JL Realty Partners, LLC  
Neighborhood Groups  
Francis Chan, BBN Holder  
Tan Chow, BBN Holder  
Carolyn Fahey, Planner

**BOARD OF APPEALS**

**NOV 13 2019**

**APPEAL # 19-123**

## **BRIEF(S) SUBMITTED BY PROPERTY OWNER**

# REUBEN, JUNIUS & ROSE, LLP

January 23, 2020

## Delivered Via E-mail and Hand Delivery

President Rick Swig  
San Francisco Board of Appeals  
1650 Mission Street, Suite 304  
San Francisco, CA 94103

**Re: 838 Grant Avenue  
Other Parties' Brief in Opposition to Letter of Determination Appeal  
Planning Case Number: 2019-014303ZAD  
BOA Hearing Date: January 29, 2020  
Our File No.: 10606.01**

Dear President Swig and Commissioners:

We represent JL Realty Partners, LLC (“**Sponsor**”), owner of 838 Grant Avenue (the “**Property**”) and sponsor of a project to renovate and re-establish a restaurant use on the Property’s 5<sup>th</sup> and 6<sup>th</sup> floors (the “**Project**”).

The City approved and issued final building permits for the Project in August 2018, April 2019, and October 2019, which included sign-offs from the San Francisco Planning Department (“**Planning**”). These permits, although appealable to this Board, were not appealed. The Sponsor has since diligently pursued completion of the restaurant space, which is anticipated to open in early 2020. Photographs of the current construction status are attached as **Exhibit A**.

In an apparent attempt to misuse the City’s Letter of Determination (“**LOD**”) process, on July 11, 2019 Malcom Yeung (“**Appellant**”) filed a Request for LOD with the San Francisco Zoning Administrator (“**ZA**”), seeking an interpretation that the Project’s restaurant use is not permitted. The ZA rightfully issued its form LOD rejecting Appellant’s position and confirming



legality of the proposed restaurant use on October 29, 2019. The individual Appellant has now appealed the LOD decision to this Board of Permit Appeals (“**Board**”).

The appeal should be denied as, amongst other reasons:

1. The LOD was properly issued and conveys a well-reasoned and accurate determination;
2. This appeal is an improper attempt to circumvent established Project appeal procedures; and
3. Sponsor has a vested right to complete and operate the project as proposed.

The individual Appellant did not submit a brief and therefore Sponsor has no new information regarding Appellant’s position or what may be argued at the Board’s January 29<sup>th</sup> hearing.

#### **A. PROPERTY AND PROJECT OVERVIEW**

The Property is a six-story commercial building at 838 Grant Avenue in the Chinatown neighborhood. It is located on a mid-block across from Portsmouth Square, with frontage on Grant Avenue and Walter U. Lum Place.

For 48 years, the 5<sup>th</sup> and 6<sup>th</sup> floors of the Property were occupied by the Empress of China restaurant – a well-known and beloved City venue that reached its heyday in the 1980s. The Empress of China ceased operations in December, 2014.<sup>1</sup>

During the former restaurant’s tenure, a Chinatown Visitor Retail (“**CVR**”) Zoning District was created which prohibits new restaurant uses above the second floor of buildings along both

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<sup>1</sup> See *Request for Zoning Determination Letter for Property Located at 838 Grant Avenue* (July 11, 2019).

sides of Grant Avenue between California and Jackson Streets.<sup>2</sup> However this zoning modification does not effect existing restaurant spaces, such as the Property's, which the Planning Code considers "legal non-conforming uses" that can continue to operate indefinitely unless enlarged, intensified, or abandoned.<sup>3</sup>

On October 13, 2017, the Sponsor submitted Building Permit Application No. 201710131199 (the "**2017 Building Permit**"), which entailed \$650,000 worth of renovations to the vacant restaurant space at the building's 5<sup>th</sup> and 6<sup>th</sup> floors.<sup>4</sup> The 2017 Building Permit (**Exhibit B**), was reviewed and signed-off on by Planning on August 9, 2018 as consistent with current zoning requirements. It was subsequently issued by the Department of Building Inspection ("**DBI**") on August 31, 2018. The 2017 Building Permit, although appealable, was not appealed to this Board.

Subsequently, the Sponsor submitted building permits on March 26, 2019 for revisions to the scope of work under the 2017 Building Permit, and on October 15, 2019 for a new fire suppression system on the building's 6<sup>th</sup> floor (**Exhibit B**). The March 26, 2019 permit was reviewed and signed-off on by Planning, and both permits were issued by DBI. They remain active, were not appealed to this Board within the requisite 15-day window, and have not expired or been otherwise cancelled.

In fact, the Sponsor has been diligently pursuing completion of all work under approved Project permits, and anticipates restaurant opening in early 2020. Photographs of the status of this

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<sup>2</sup> San Francisco Planning Code § 811.

<sup>3</sup> San Francisco Planning Code §§ 180-183.

<sup>4</sup> Building Permit No. 20171013199.

work, which is nearly complete, are attached as **Exhibit A**. To date, the Sponsor has spent more than \$4.3 million dollars to build-out the permitted restaurant.

On July 11, 2019 - almost a year after the 2017 Building Permit was issued and not appealed to this Board - Appellant submitted a Request for Zoning Determination Letter to the San Francisco Zoning Administrator, seeking determination that Project's restaurant use is not permitted because the previous restaurant was "abandoned," (**Exhibit C**).

On October 29, 2019, the ZA issued the responding LOD that is the subject of this appeal (**Exhibit D**), confirming that the Project's restaurant use is permitted and was never "abandoned" within the meaning of the Planning Code, because the Sponsor filed all necessary permit applications within three years of the date Empress of China ceased operations.

On November 14, 2019, the individual Appellant filed the current appeal of the LOD to the Board of Permit Appeals. Appellant did not submit a brief in connection with this appeal.

**B. THE LOD WAS PROPERTY ISSUED AND CONVEYS AN ACCURATE AND WELL-REASONED DETERMINATION**

The LOD was properly issued and conveys the ZA's accurate and well-reasoned determination of Planning Code language, precedent interpretation, and longstanding City practice, confirming the Project's restaurant use is permitted.

Appellant's October 29, 2019 Request for Letter of Determination (**Exhibit C**) asserted that the Property's legal nonconforming restaurant use could not be re-established because it was "abandoned" per Planning Code Section 183(a), which states, in part:

*a) Discontinuance and Abandonment of a Nonconforming Use, Generally. Whenever a nonconforming use has been changed to a conforming use, or discontinued for a continuous period of three years, or whenever there*

*is otherwise evident a clear intent on the part of the owner to abandon a nonconforming use, such use shall not after being so changed, discontinued, or abandoned be reestablished, and the use of the property thereafter shall be in conformity with the use limitations of this Code for the district in which the property is located.*

In support of his position, Appellant stated that the former Empress of China restaurant had ceased operations on December 31, 2014, and no new restaurant use had re-opened in the space as of October 29, 2019.

However, as the ZA explained in the LOD, that information alone is insufficient to determine whether a legal nonconforming use has been “abandoned” within the meaning of the Planning Code.

First, Section 183(a) does not define “discontinued” for purpose of determining abandonment of a nonconforming use. In the absence of a clearly defined term, there is a precedent 1967 ZA interpretation establishing the following:

*“A nonconforming use will not be considered terminated if, before the three-year period of discontinuance has passed, remodeling of the nonconforming space is initiated, and if this work is diligently prosecuted to completion.”*

Second, the LOD further confirms that it is Planning’s long-standing practice to consider the submittal of necessary permits within a three-year period to qualify as initiating “remodeling of the nonconforming space” per Section 183(a). The ZA has also found other actions within the three year window to qualify as maintaining a nonconforming use, including actively marketing of a space and other legitimate efforts to find new tenants.

As concluded in the LOD, the Sponsor has clearly met this requirement by submitting the necessary permit to re-model the existing restaurant space on October 13, 2017 – within 3 years of the Empress of China ceasing operations.

The Sponsor has since diligently pursued completion of work under this issued permit, and all subsequent permits, and anticipates the restaurant will open in early 2020.

The individual Appellant did not submit a brief in connection with this appeal, and has provided no new information contradicting the information or analysis provided in the LOD. Accordingly, this appeal should be denied.

**C. THE APPEAL IMPROPERLY ATTEMPTS TO CIRCUMVENT CITY APPEAL PROCEDURES.**

The City issued final building permits for the Project between August 2018 and October 2019 (**Exhibit B**). These permits were reviewed and signed-off on by Planning, as applicable, confirming Project compliance with all applicable zoning requirements.

The San Francisco Charter vests this Board with authority to hear appeals of building permits within 15 days of issuance.<sup>5</sup>

The individual Appellant did not appeal any of the Project's building permits to the Board, which is the appropriate course for Project opposition. He instead waited until October 29, 2019 to file a Request for Letter of Determination with the ZA, seeking to invalidate the Project's approved restaurant use.

The LOD process was not intended to be used for this type of action, which improperly circumvents City procedures. The purpose of an LOD is to clarify Planning Code requirements, not to provide an additional appeal path for previously approved projects – especially those that

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<sup>5</sup> San Francisco Charter, Section 4.106.



have substantially completed construction in reliance on properly-issued approvals. Accordingly, this method of appeal should be rejected.

**D. PROJECT HAS A VESTED RIGHT TO COMPLETION UNDER STATE LAW.**

California courts have consistently held that a developer obtains a vested right to complete a project as proposed once a valid building permit, or its functional equivalent, has been issued, and the developer has performed substantial work and incurred substantial liabilities in good faith reliance on that permit. (*Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785.)

This longstanding Vested Rights Doctrine “recognizes that, at some point in the development process, a developer’s financial expenditures in good faith reliance on the governmental entity’s land use and project approvals should estop that governmental entity from changing those rules to prevent completion of the project.” (*Toigo v. Town of Ross* (1998) 70 Cal. App. 4th 309, 321.)

The City reviewed, signed-off on, and issued final building permits for the Project in August 2018, April 2019, and October 2019. These permits, although appealable to this Board, were not appealed.

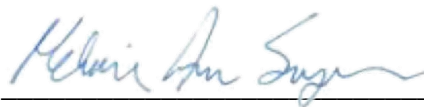
The Sponsor has since diligently pursued completion of the restaurant space, performing substantial work and incurring substantial liabilities in good faith reliance on those permits. The restaurant is anticipated to open in early 2020. Thus, the Sponsor has clearly acquired a vested right to complete and operate the Project as proposed.

**E. CONCLUSION**

The appeal should be denied. The LOD was properly issued and conveys a well-reasoned and accurate determination confirming that the Project's restaurant use is permitted. Appellants have provided no information contradicting the LOD findings. The appeal is an improper attempt to circumvent established Project appeal procedures. Finally, the Sponsor has acquired vested rights to complete and operate the Project as proposed.

Very truly yours,

**REUBEN, JUNIUS & ROSE, LLP**



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**Melinda A. Sarjapur**

cc: Ann Lazarus, Vice President  
Darryl Honda, Commissioner  
Rachael Tanner, Commissioner  
Eduardo Santacana, Commissioner

Exhibit A: Photographs of current construction status

Exhibit B: Project building permits

Exhibit C: July 2019 Request for Letter of Determination

Exhibit D: October 2019 Letter of Determination

## **Exhibit List**

**Exhibit A**      Photographs

**Exhibit B**      Building Permits

**Exhibit C**      Request for Letter of Determination

**Exhibit D**      Letter of Determination

**EXHIBIT A**

Exhibit A – Project Construction Images













**EXHIBIT B**



**Permit Details Report**

**Report Date:** 1/23/2020 9:32:28 AM

Application Number: 201710131199  
 Form Number: 3  
 Address(es): 0209 / 005 / 0 838 GRANT AV  
 6TH FULL FLOOR TI: REMODEL (E) RESTAURANT. ADD (3)(N) UNISEX ADA COMPLIANT RESTROOMS.FIRST FL REMODEL ELVATOR LOBY. NO CHANGE TO STRUCTURAL UPGRADE SERVICE ELEVATOR TO ADA COMPLIANCE AT EACH FL. KITCHEN REMODEL, MEP, FIRE UNDER SEPARATE PERMIT(S).

Description:

Cost: \$650,000.00  
 Occupancy Code: A-2,B,M  
 Building Use: 05 - FOOD/BEVERAGE HNDLNG

**Disposition / Stage:**

Action Date	Stage	Comments
10/13/2017	TRIAGE	
10/13/2017	FILING	
10/13/2017	FILED	
8/14/2018	APPROVED	
8/31/2018	ISSUED	

**Contact Details:****Contractor Details:**

License Number: 761595  
 Name: MATTHEW WANG THOM LO  
 Company Name: C T W MECHANICAL  
 Address: 544 2ND AV \* SAN FRANCISCO CA 94118-0000  
 Phone: 4157526826

**Addenda Details:****Description:**

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	CPB	10/19/17	10/19/17			10/19/17	SECONDEZ GRACE	
3	CP-ZOC	10/19/17	10/20/17			3/30/18	FOSTER NICHOLAS	3/30/18: Approved BPA for interior tenant improvement to 6th floor and 1st floor entryway, adding (N) door along Grant Street entrance; no change of use to (E) Restaurant Use @ 6th floor.
4	BLDG	4/2/18	5/17/18			5/17/18	OSPITAL JOSEPH	NOT APPROVED OTC, COMMENTS ISSUED IN BINDER
5	BLDG	5/23/18	5/23/18			5/23/18	OSPITAL JOSEPH	Approved otc
6	MECH	5/23/18	5/25/18	5/25/18		5/29/18	SHAIKH MOHSIN	5/29/18 approved, plans route to PPC. 5/25/18 review -incomplete GPR forms.
7	SFFD	5/29/18	6/2/18	6/2/18	7/2/18	7/2/18	CHEUNG JANICE	Approved assembly occupant load totals 438 for the entire floor. 369 Dining Area, 24 Waiting area = 393 Total for Dining Area, Back of house, Kitchen, Offices, Restrooms = 12 Total.
8	DPW-BSM	6/4/18	6/6/18			6/6/18	GONZAGA JANALEE	06/06/18 Street space only (for Walter U Lur Place frontage). No alteration or reconstruction of City Right-of-Way under this permit. -JG
9	SFPUC	6/7/18	6/23/18			6/23/18	SZU-WHITNEY MONICA	Capacity Charge not applicable. No change in meter size. Existing meter large enough to accommodate added fixtures. Route to PPC -06/23/18.
10	HEALTH	7/2/18	7/18/18			7/18/18	TU NHI	
11	SFFD	7/20/18	7/27/18			7/27/18	CHEUNG JANICE	Placed on Cheung's desk for restamp-RL 07/24
12	CP-ZOC	7/27/18	8/9/18			8/9/18	FOSTER NICHOLAS	8/9/18: Stamped R2 Set.
								8/10/18: To CPB; HP 7/27/18: To DCP for restamp; HP 7/20/18: To SFFD for restamp, then DCP; HP 7/2/18: to DPH;EC. 6/25/18: t HOLD bin pending SFFD approval (then HEALTH); am 6/7/18: to PUC;Ec. 6/4/18: to

13	PPC	7/20/18	7/20/18			8/10/18	USER GSA	BSM; am 5/29/18: to SFFD; EC. 5/23/18am: route to MECH. ibb 5/23/18am: to Jeremiah. ibb 5/17/18: back to OTC bin; mml 5/17/18: to Jeremiah Schaub; am 5/8/18: back to OTC bin; EC. 5/8/18: to Jeremiah Schaub took plans to OTC; EC. 5/7/18: OTC approved by Dan Lowrey, to OTC bin; am 4/18/18: OTC request not approved, back to Irene Wong bir HP 4/18/18: to OTC supervisor for approval; am 4/2/18: to BLDG; am 3/27/18: R1 to DCP am
14	CPB	8/10/18	8/14/18			8/31/18	TORRES SHIRLEY	08/31/18: ISSUED. ST 8/14/18: NEED CONTRACTOR'S INFO. APPROVED BY NG

This permit has been issued. For information pertaining to this permit, please call 415-558-6096.

**Appointments:**

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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**Inspections:**

Activity Date	Inspector	Inspection Description	Inspection Status
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**Special Inspections:**

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
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For information, or to schedule an inspection, call 558-6570 between 8:30 am and 3:00 pm.

[Station Code Descriptions and Phone Numbers](#)

[Online Permit and Complaint Tracking](#) home page.

**Technical Support for Online Services**

If you need help or have a question about this service, please visit our FAQ area.

**Permit Details Report****Report Date:**

1/23/2020 9:35:21 AM

Application Number:

201903266198

Form Number:

8

Address(es):

0209 / 005 / 0 838 GRANT AV

Description:

REVISE PREVIOUSLY APPROVED BPA# 201710131199 FOR 6TH FLR RESTAURANT LAYOUT. NO CHANGE TO EXTERIOR.REPLACE MECHANICAL SYSTEMS.

Cost:

\$1.00

Occupancy Code:

A-2,B,M

Building Use:

05 - FOOD/BEVERAGE HNDLNG

**Disposition / Stage:**

Action Date	Stage	Comments
3/26/2019	TRIAGE	
3/26/2019	FILING	
3/26/2019	FILED	
5/1/2019	APPROVED	
5/1/2019	ISSUED	

**Contact Details:****Contractor Details:**

License Number:

761595

Name:

MATTHEW WANG THOM LO

Company Name:

C T W MECHANICAL

Address:

544 2ND AV \* SAN FRANCISCO CA 94118-0000

Phone:

4157526826

**Addenda Details:****Description:**

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	CES	3/26/19	3/26/19			3/26/19		CED
2	INTAKE	3/26/19	3/26/19			3/26/19	CHAPMAN MARLA	
3	CP-ZOC	4/10/19	4/10/19			4/10/19	KIRBY ALEXANDRA	Revisions to 6th floor restaurant only. A. Kirby
4	BLDG	4/10/19	4/10/19			4/10/19	CHEN MIN	
5	MECH	4/15/19	4/15/19			4/15/19	NAGATA TIMOTHY	OTC Approval; Deferred MEP & Lighting (HVAC included)
6	HEALTH	4/23/19	4/23/19			4/23/19		APPROVED BY ALLAN PERA
7	SFFD	4/10/19	4/10/19			4/10/19	HARSHMAN KJELL	
8	CPB	5/1/19	5/1/19			5/1/19	LEI ALVINA	

This permit has been issued. For information pertaining to this permit, please call 415-558-6096.

**Appointments:**

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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**Inspections:**

Activity Date	Inspector	Inspection Description	Inspection Status
9/10/2019	Robert Power	SHEETROCK NAILING	SHEETROCK NAILING
9/3/2019	Robert Power	SHEETROCK NAILING	NO ENTRY/NO PROGRESS
8/8/2019	Brett Howard	OK TO COVER	ROUGH FRAME

**Special Inspections:**

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
0			IB36	NRCI-MCH-01-E - MECHANICAL CERTIFICATE OF INSTALLATION	
0			AB16	NRCA-PRC-02-F - COMMERCIAL KITCHEN EXHAUST SYSTEM ACCEPTANCE	
				NRCA-MCH-02-A - OUTDOOR	

o		AB2	NRCA-MCF-02-A - OUTDOOR AIR ACCEPTANCE
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**Permit Details Report****Report Date:** 1/23/2020 9:36:12 AM

Application Number: 201910154358  
 Form Number: 8  
 Address(es): 0209 / 005 / 0 838 GRANT AV  
 Description: 6TH FLR. NEW UL 300 FIRE SUPPRESSION SYSTEM  
 Cost: \$3,000.00  
 Occupancy Code: A-2,B,M  
 Building Use: 05 - FOOD/BEVERAGE HNDLNG

**Disposition / Stage:**

Action Date	Stage	Comments
10/15/2019	TRIAGE	
10/15/2019	FILING	
10/15/2019	FILED	
10/15/2019	APPROVED	
10/15/2019	ISSUED	

**Contact Details:****Contractor Details:**

License Number: 569185  
 Name: SHAWN NIELSEN  
 Company Name: EDISON FIRE EXTINGUISHER COMPANY INC  
 Address: 3621 EAGLE ROCK \* LOS ANGELES CA 90065-0000  
 Phone:

**Addenda Details:****Description:**

Step	Station	Arrive	Start	In Hold	Out Hold	Finish	Checked By	Hold Description
1	INTAKE	10/15/19	10/15/19			10/15/19	ROBINSON CHARLES	
2	SFFD	10/15/19	10/15/19			10/15/19	LA EACE ROBERT	Approved OTC
3	CPB	10/15/19	10/15/19			10/15/19	YU ZHANG REN	

This permit has been issued. For information pertaining to this permit, please call 415-558-6096.

**Appointments:**

Appointment Date	Appointment AM/PM	Appointment Code	Appointment Type	Description	Time Slots
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**Inspections:**

Activity Date	Inspector	Inspection Description	Inspection Status
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**Special Inspections:**

Addenda No.	Completed Date	Inspected By	Inspection Code	Description	Remarks
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## **EXHIBIT C**



Chinatown Community  
Development Center

華協中心

1525 Grant Avenue  
San Francisco, CA 94133  
TEL 415.984.1450  
FAX 415.362.7992  
TTY 415.984.9910  
[www.chinatowncdc.org](http://www.chinatowncdc.org)  
[myeung@chinatowncdc.org](mailto:myeung@chinatowncdc.org)

July 11, 2019

R# 2019 - 014303 ZAD  
C. ASBAHI (NE)

**VIA FEDERAL EXPRESS**

Corey Teague  
Office of the Zoning Administrator  
San Francisco Planning Department  
1650 Mission Street, Suite 400  
San Francisco, California 94103-2479

**Re: Request for Zoning Determination Letter for Property Located at  
838 Grant Avenue, San Francisco, CA  
APN: Lot 005, Block 0209**

Dear Mr. Teague:

Chinatown Community Development Center requests a Zoning Determination Letter regarding the potential use of the 5th and 6th floors at 838 Grant Avenue, San Francisco, California (the "**Building**").

**Background**

From 1966 until 2014, the 5th and 6th Floors of the Building were used as a restaurant known as the Empress of China. During this time, the Chinatown Visitor Retail District ("**CVR**") was created, prohibiting restaurant use above the second floor of a building.<sup>1</sup> Since the restaurant use existed lawfully as of the effective date of the enactment of CVR, the restaurant use was a nonconforming use that could lawfully continue until a triggering event caused the use to be discontinued.<sup>2</sup>

On December 31, 2014, the Empress of China closed its business and ended the operation of the 5th and 6th floors as a restaurant.<sup>3</sup> It has been more than four and a half years since the restaurant closed, and a restaurant has not since re-opened in that space. Section 183(a) of the San Francisco Planning Code reads:

<sup>1</sup> S.F. Planning Code § 811.43 & 811.44.

<sup>2</sup> S.F. Planning Code §§ 180(a)(1) & (c); S.F. Planning Code § 183(a).

<sup>3</sup> See Attachment A which includes several articles indicating the Empress of China's closure at the end of 2014..

144680294.5



Properties professionally managed by Chinatown Community Development Center do not discriminate based on race, color, creed, religion, sex, national origin, age, familial status, handicap, ancestry, medical condition, physical handicap, veteran status, sexual orientation, AIDS, AIDS related condition (ARC), mental disability, mental status, source of income, or any other arbitrary status.





Chinatown Community  
Development Center

華協中心

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[myeung@chinatowncdc.org](mailto:myeung@chinatowncdc.org)

July 11, 2019  
Page 2

“Whenever a nonconforming use has been ... discontinued for a continuous period of three years, ... such use shall not after being so ... discontinued, or abandoned be reestablished, and the use of the property thereafter shall be in conformity with the use limitations of this Code for the district in which the property is located (emphasis added).”

### Determination Requested

We would like to confirm that restaurant use is no longer permitted on the 5th and 6th floors of the Building. It is our understanding that the nonconforming restaurant use on the 5th and 6th floors was discontinued on December 31, 2014 more than three years ago; since the restaurant has not since reopened, the nonconforming restaurant use has therefore been abandoned. Attached, please find several articles that evidence the 2014 closure of the Empress of China restaurant.

Future uses for the 5th and 6th floors of the Building (1) must comply with CVR, and (2) in the case a future restaurant use, would require conditional use authorization.

In addition, we have enclosed a check for \$699.50 payable to the San Francisco Planning Department for the Zoning Determination Letter. Upon completion of this request, please have copies of the Zoning Determination Letter sent in care of myself at both the mailing and e-mail address above. If you have any questions or concerns, or if you need to be provided with additional information regarding this request, please contact me at your convenience.

Very truly yours,

Malcolm Yeung

cc: Allan E. Low  
Perkins Coie LLP  
505 Howard Street, Suite 1000  
San Francisco, CA 94105  
Email: [Alow@perkinscoie.com](mailto:Alow@perkinscoie.com)

Enclosures

144680294.5





Chinatown Community  
Development Center

華協中心

1525 Grant Avenue  
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## ATTACHMENT A

Articles evidencing 2014 closure of the Empress of China restaurant.

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clock menu more-arrow no yes

SAN FRANCISCO

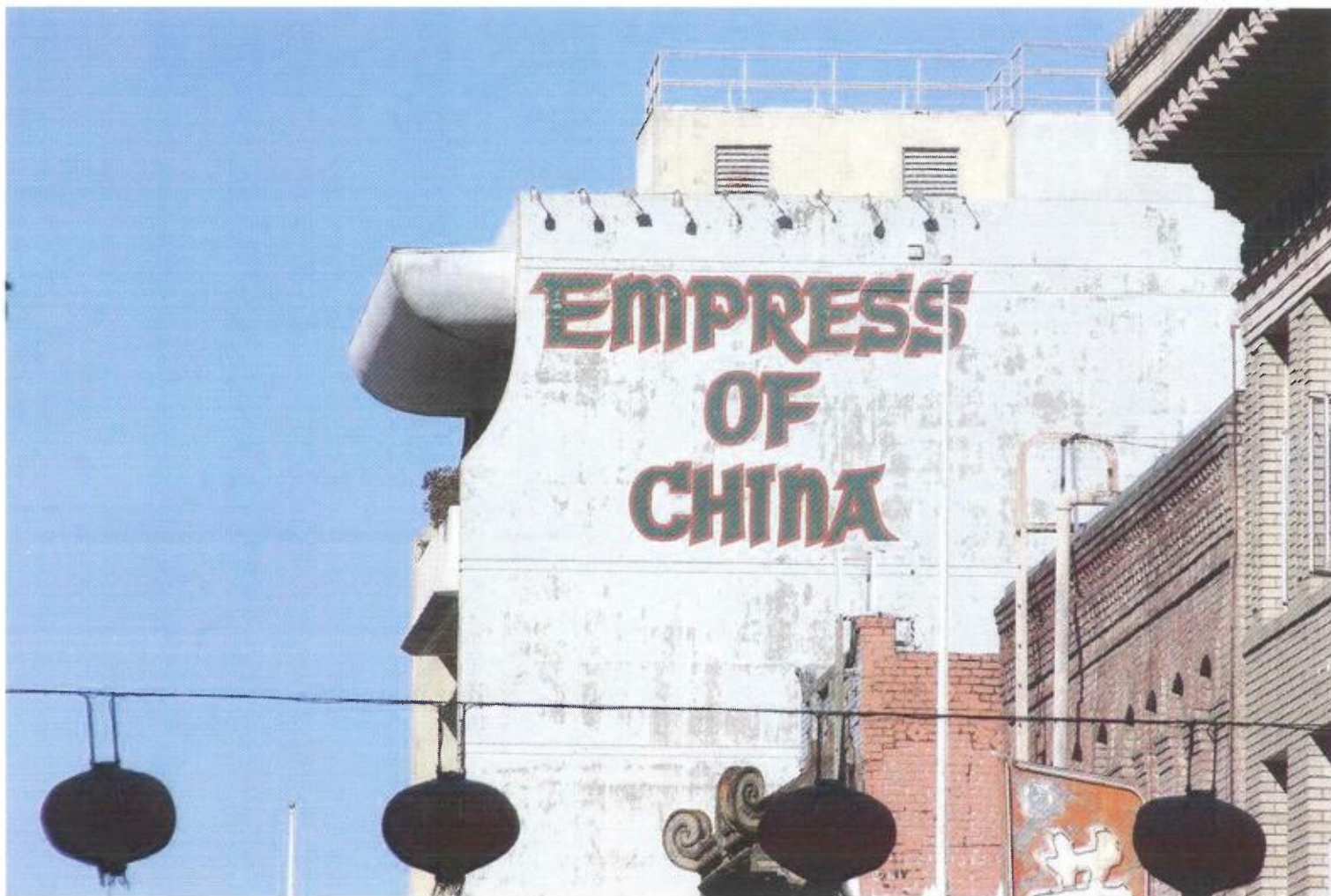
CITIES MAPS MORE

# Empress of China Is Shutting Down After 48 Years

Known for its commanding views, the banquet hall has hosted countless weddings and events since the '60s.

by Allie Pape | Oct 1, 2014, 12:54pm PDT

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timparkinson/Flickr

Five stories tall, with commanding views of the city, Empress of China has been a Chinatown landmark since the '60s, with a wall covered in portraits of visiting celebrities from its '80s heyday. But like so many SF businesses these days, it's going the way of the dodo. **As the *Chron* reports**, the palatial complex is planning to close down at year's end, as its building prepares to go on the market. Employees, many of whom have worked at Empress of China for 30 years or more, were informed of the closure last month. The complex, which was founded by Kee Joon Lee in 1966 and is owned by the descendants of his original board of directors, has played host to countless weddings and events in its time. The building is being marketed for "tech play," according to a Chinatown commercial real-estate broker, with renderings showing it transformed into open-plan office space. However, there's no buyer as of yet.

To address the closure of Empress of China and similar businesses, Supervisor David Campos and San Francisco Heritage are teaming up on a registry of "legacy businesses,"

defined as having been in business for 30 years or more and contributing meaningfully to the community. If established, Campos' legislation would offer financial incentives for businesses to stay put and not sell up. But it'll be too late for Empress of China, as well as [All Star Donuts](#), [U-Lee](#), and other restaurants and food businesses that have lost their leases or their buildings.

- [VIA: Development boom swallows up historic businesses \[Chron\]](#), [Nob Hill's U-Lee to Close After 28 Years \[ESF\]](#), and [The Marina's All-Star Donuts Shuttters After 28 Years \[ESF\]](#)

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# New owner could return a restaurant to Empress of China building

By **J.K. Dineen** Updated 4:45 pm PST, Wednesday, March 1, 2017

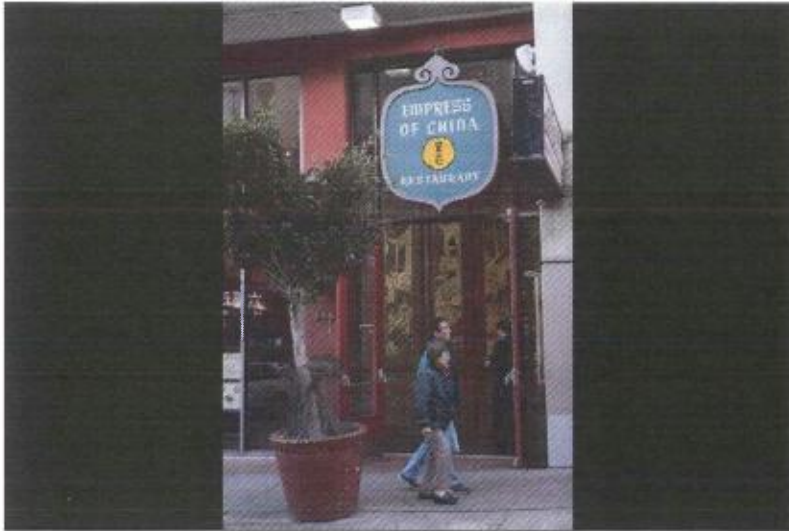


Photo: Scott Strazzante, The Chronicle

IMAGE 1 OF 3

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Empress of China restaurant on Grant Avenue in San Francisco, Calif. on Monday, September 29, 2014.

The new owner of shuttered Chinatown landmark restaurant Empress of China is looking into opening a restaurant on the ground floor of the building and using the top two floors for either office space or a hotel.

In a Jan. 25 letter to city Zoning Administrator **Scott Sanchez**, an architect for the owners sought clarification about what uses would be permitted for the six-story building at 838 Grant St.

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The Empress of China, which opened in 1966 when Chinatown nightlife was thriving, occupied 23,000 square feet on the top two floors. It was one of the neighborhood's most prominent gathering spots before it closed in 2014.

In the letter, architect **Jeremy Schaub** laid out various scenarios of how the building could be reused, all three of which call for a restaurant on the ground floor and in the basement. The new owner is **John Yee**, who bought it in August for \$17.2 million. Schaub declined to comment.

Since hitting the market, the Empress of China building has been a key focus of groups trying to preserve Chinatown as an affordable and historic neighborhood. Originally, the brokers listing the property raised concerns by marketing it as suitable for creative office space in an effort to lure one of the companies that have made San Francisco's economy one of the hottest in the world.

But the neighborhood's zoning, the Chinatown Visitor Retail District, allows for professional service offices — things like insurance sales or accounting firms — but bars what is classified as administrative offices, which would include the city's hot tech sector. It allows for a hotel, if the property owner obtains a conditional use authorization. Currently, floors three through five house professional services.

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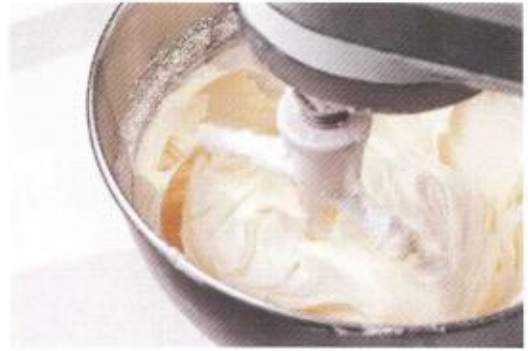
She was held captive for 19 years. Then she met 'Lisa.'

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## RECIPES



Latest recipes from the San Francisco Chronicle

Chinatown community groups have been protective of the neighborhood's strict zoning and have fought proposals from office developers seeking to spread into the area from the adjacent Financial District.

"The Chinatown area plan has protected Chinatown for decades in a way that has not been true in other Chinatowns around the country, which have been disappearing," said **Cindy Wu**, the deputy director of the **Chinatown Community Development Center** and a former planning commissioner.

Wu said her organization is open to a hotel on the top two floors with a restaurant at street level.

"We would expect the property owner would follow the spirit of the plan as well as the actual code," she said. "We want to preserve the building's spirit as a community gathering place, and a ground-floor restaurant would meet that spirit."

Supervisor **Aaron Peskin**, who represents Chinatown, also said he would support the restaurant and hotel concept.

Yee is a well-known Chinatown property owner who made headlines in 2001 when he tried to evict tenants of a residential hotel at 665 Clay St. He eventually sold the building to the Chinatown CDC, which has preserved it as a residential hotel.

For decades, the Empress of China was the top Chinatown destination for weddings and banquets, a status that faded in recent years as larger gathering spaces, with ample



parking, were developed in suburbs like Burlingame and Millbrae.

*J.K. Dineen is a San Francisco Chronicle staff writer.*

*Email: [jdineen@sfchronicle.com](mailto:jdineen@sfchronicle.com) Twitter: [@sfjdkineen](https://twitter.com/sfjdkineen)*

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# S.F. development boom swallows up historic family businesses

By **J.K. Dineen**

Updated 8:46 am PDT, Wednesday, October 1, 2014



Photo: Scott Strazzante / The Chronicle

## IMAGE 1 OF 14

The five-story Empress of China restaurant on Grant Avenue has been the Chinatown community's wedding capital for decades. Its building is being sold, and the restaurant will close at the end of the year.

On Russian Hill, Lombardi Sports, a hub for generations of cyclists and rock climbers, is liquidating its inventory to make way for 62 units of housing.

In Chinatown, the Empress of China, the swanky five-story emporium that has hosted thousands of weddings, will shut down at the end of the year in anticipation of the building's sale.

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Klay: Kevin Durant is 'above and beyond' the Splash Brothers

At Market and Valencia streets, Flax art and design store will move to an undetermined location to make way for 160 housing units.

Some of San Francisco's historic family-owned businesses are disappearing as fast as an artisanal ice cube in a \$14 craft cocktail.

While much of the change is logical and inevitable — 160 housing units is a more efficient use for scarce urban land than a two-story art-supply store — city preservationists and some elected officials are looking at ways to slow down the disappearance of so many quintessentially San Franciscan institutions amid an unprecedented real estate boom.

Supervisor **David Campos**, working with the nonprofit **San Francisco Heritage**, is finalizing legislation that would create a registry of legacy businesses, defined as restaurants, retailers and manufacturers that have been around at least 30 years and have contributed to their neighborhoods in a meaningful way. The program, which he says is the first in the United States, would create financial incentives that would encourage property owners to retain those kinds of businesses.

Campos said property owners who sell to a legacy

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business could be eligible for a rebate on the city's real estate transfer tax, which is 1.5 percent for properties under \$10 million and 2.5 percent for properties over \$10 million. The city is also looking at extending historic tax credits to buildings that house legacy businesses.

"So many of our most valuable businesses that have enlivened these neighborhoods for decades are struggling to survive," Campos said. "These are businesses that have become cultural institutions, that have helped create the character of the neighborhood."

### **Family history**

In the case of Lombardi Sports, the family owns both the business and the property. Caesar and **Steve Lombardi** opened the business on Clement Street in 1948. Steve Lombardi's sons, Ken and Steve Jr., joined the business in 1990, and it moved to a 50,000-square-foot building at Jackson and Polk streets in 1993.

Two consecutive poor ski seasons, combined with ever-increasing pressure from online retailers, made the business a struggle.

"After a while it got to the point there were more lucrative things for the family to pursue," said Steve Lombardi Jr., whose father recently passed away. "We were working twice as hard for half the money. This was not a whimsical decision; our family has been in business in San Francisco since the early 20th century. We have a lot of loyal customers." The business will close in January.

San Francisco Heritage Executive Director **Mike Buhler** said the idea of preserving legacy businesses evolved over the past few years, as places like the Tonga Room, **Marcus Books**, the **Eagle Club** and the Gold Dust

Lounge were threatened with closure. In each case, there were online petitions and letters to the editor attesting to their importance. Yet in most cases, the market prevailed and the business either shut down or was forced to move.

“What we recognized is that landmarking is not an adequate tool to save these businesses,” Buhler said.

### **'Level the playing field'**

The hope is that the legislation will help “level the playing field” for businesses that are central to the city’s identity but might not achieve as high a return on investment as 160 condominiums over token retail.

Not everyone thinks the idea is a good one.

Consultant **Phil Lessor**, who works with developers and retailers in the Mission District, said the proposal “will limit the number of uses and opportunities for the building and the building owner. It’s giving monopolistic power to the tenant when you have just one buyer. It shifts the power to the tenant. When you have a monopoly, you have inferior product at a higher price.”

He said whatever city entity is charged with creating the registry — most likely the **Office of Small Business** — would be “handed an enormous amount of power.”

Employees at the Empress of China building at 838 Grant Ave. learned late last month that the building was on the market and the restaurant would close. The building is owned by a group separate from the restaurant owners, although there is some overlap, according to Erika Marr-Pollasky, a board member.

### **Longtime employees**



The Empress of China was opened in 1966 by **Kee Joon Lee**, who opened five places in the neighborhood. He put together a group of investors and a board of directors to operate the business. Today, the board members are descendants of original board members, said Marr-Pollasky, Kee Joon Lee's granddaughter.

"They are sad — we have a lot of employees who have been there over 30 years," she said. "They are family. It's sad, but what can you do? We are closing."

### **Chinatown Community Development Center**

Executive Director **Norman Fong** has been going to the Empress of China for weddings for 46 years — sometimes as a guest, but more often as a saxophonist. Fong plays for the Chinatown soul band Jes Jamming.

"It was the wedding capital of Chinatown," Fong said. "The worst thing about playing there was we had to come up through the back elevator where the garbage is. But I loved the atmosphere and I loved the view."

Fong said a younger generation of Chinatown property owners, many of whom inherited their properties, doesn't have as strong a sentimental attachment to the neighborhood, and speculators are taking advantage of that. "The next generation has to be careful — if it's just about the money, then we all lose," Fong said.

### **Brand-new use for site**

**Anton Qiu**, a commercial real estate broker who has sold properties in Chinatown, said the Empress of China building is being marketed as "tech play."

"They have architectural renderings that show you would open up the ceilings for creative office space," he said. "I'm not sure it will work. It's so historic, and nothing has

been done to the building for decades. The restaurant was an icon, but its time has gone by.”

While Lombardi Sports and the Empress of China are to close, Flax is looking to hang on and relocate. The store must vacate by the end of 2015.

“We are looking, but we haven’t found anything yet,” said owner **Howard Flax**. “It’s difficult. San Francisco is changing so fast. We were the poster child of redevelopment in San Francisco. The reaction was very positive in terms of our customer base being alarmed and reaching out to us.”

*J.K. Dineen is a San Francisco Chronicle staff writer. E-mail: [jkdineen@sfgate.com](mailto:jkdineen@sfgate.com) Twitter: [sfjkdineen](https://twitter.com/sfjkdineen)*

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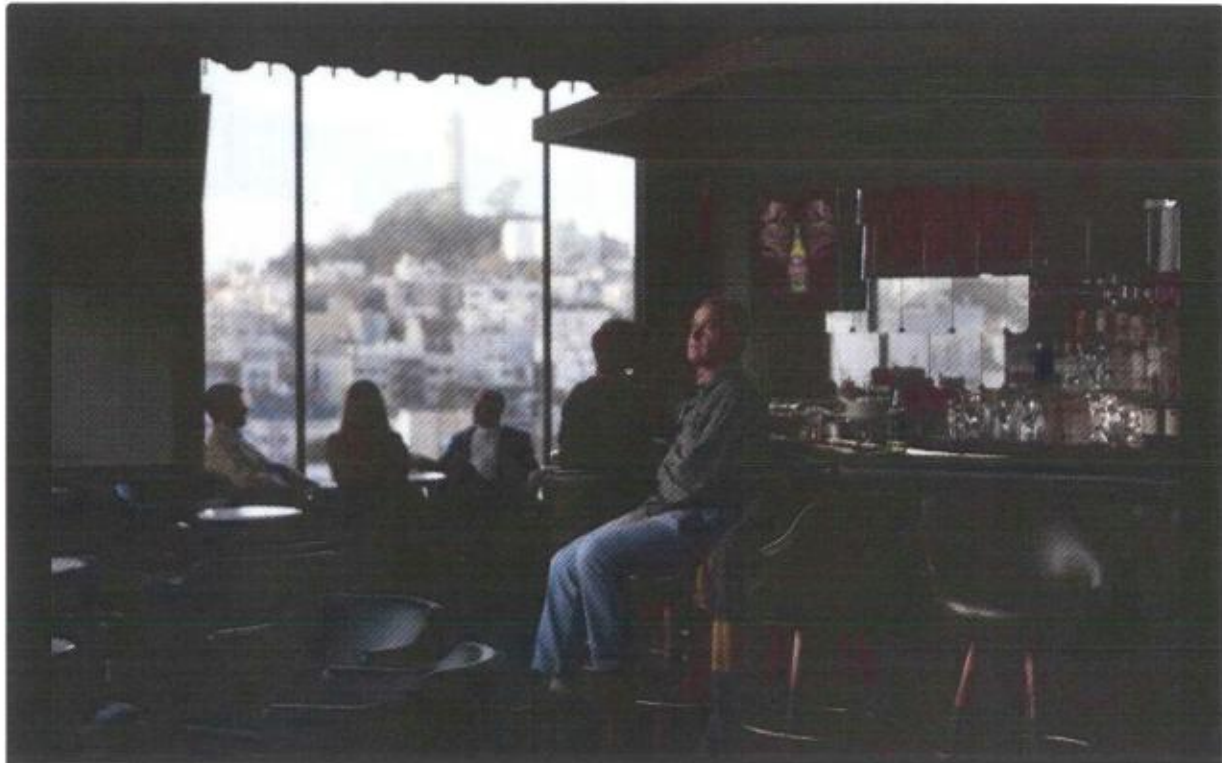
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## INSIDE SCOOP SF

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# Why Empress of China's closure matters to San Francisco

By **Paolo Lucchesi** on October 1, 2014 at 11:36 AM



Empress of China. Photo: The Chronicle/Scott Strazzante

In today's newspaper, **J.K. Dineen reported** that the city is finalizing legislation that could protect legacy businesses — including restaurants and bars — from being swept away in the sands of time (or rather, the sands of development and money.)

One of the disappearing businesses he mentions is **Empress of China**, which is closing at the end of the year.

The singular “rooftop” restaurant and bar has towered over Chinatown and Portsmouth Square since the 60s, and for better or worse, has barely changed over the decades. It has hosted countless weddings, and served its sugary cocktails to even more locals and tourists.



It is, somehow, simultaneously average and exceptional. It is a silent, dusty perch above the chaos of the city streets, where one can slow down and appreciate the splendor of the place we live. But the building is slated to be converted to offices, and the Empress will close in three months.

There has been a chorus of people bemoaning the death of San Francisco dive bars in recent months and years. As much as I'd surely bemoan the loss of my favorite watering hole (especially for a **chain clothing store** or another generic, by-the-numbers bar), there will always be dive bars, especially if you look hard enough.

Places like Empress of China are harder to come by. And that's what we, as a city, should be particularly worried about. Yes, times change, money matters, and the city evolves. Businesses come and go, especially in the food and drink world. But it's the funky ones that make the city, the outliers, the random rooms that make little to no sense. Those places act as a dam holding back a flood of homogeneity. There is no other place like Empress of China. It's not a matter of old or new; it's a matter of singularity.

And with every eclectic, weird place that closes — Sam Wo, Marlina's, Joe's of Westlake, and just recently, **All Star Donuts** and **Woodward's Garden** — we lose just a little bit of the city's texture.

If you read this blog regularly, chances are that you are probably interested in hot new openings, trendy bars, and the next shiny thing to come to pass. (I usually am, too.) But as you stop by Empress one last time, don't forget to appreciate — and support — the *other* businesses you might miss if they disappeared.

***Empress of China: 838 Grant Avenue, between Washington and Clay, San Francisco. (415) 434-1345 or [empressofchinasf.com](http://empressofchinasf.com)***

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**EXHIBIT D**



# SAN FRANCISCO PLANNING DEPARTMENT

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## Letter of Determination

October 29, 2019

Malcolm Yeung  
Chinatown Community Development Center  
1525 Grant Avenue  
San Francisco, CA 94133

**Record Number:** 2019-014303ZAD  
**Site Address:** 838 Grant Avenue  
**Assessor's Block/Lot:** 0209/005  
**Zoning District:** Chinatown Visitor Retail (CVR)  
**Staff Contact:** Carolyn Fahey, (415) 575-9139 or [Carolyn.Fahey@sfgov.org](mailto:Carolyn.Fahey@sfgov.org)

Dear Mr. Malcolm Yeung:

This letter is in response to your request for a Letter of Determination regarding the property at 838 Grant Street. The request is to confirm that the nonconforming "Restaurant" use occupying the 5<sup>th</sup> and 6<sup>th</sup> floors of the subject property between 1967 and 2014 was discontinued in December 2017 pursuant to Planning Code Section 183(a).

Your letter states that the 5<sup>th</sup> and 6<sup>th</sup> floors of the subject building have existed as a Restaurant use since 1966 doing business as Empress of China. However, Empress of China ceased operations on December 31, 2014. To date, no new Restaurant has re-opened in the space, spanning a period of more than four years. As such, you believe that the Restaurant use should be considered abandoned per Planning Code Section 183(a), which states in part:

*"(a) Discontinuance and Abandonment of a Nonconforming Use, Generally. Whenever a nonconforming use has been changed to a conforming use, or discontinued for a continuous period of three years, or whenever there is otherwise evident a clear intent on the part of the owner to abandon a nonconforming use, such use shall not after being so changed, discontinued, or abandoned be reestablished, and the use of the property thereafter shall be in conformity with the use limitations of this Code for the district in which the property is located."*

Planning Code Sec. 183(a) does not define "discontinued" for purpose of determining abandonment of a nonconforming use. However, a 1967 Zoning Administrator Interpretation of Planning Code Section 183 dated July 1967 states the following:

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Suite 400  
San Francisco,  
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Reception:  
**415.558.6378**

Fax:  
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Planning  
Information:  
**415.558.6377**



*“A nonconforming use will not be considered terminated if, before the three-year period of discontinuance has passed, remodeling of the nonconforming space is initiated, and if this work is diligently prosecuted to completion.”*

It has been long-standing practice to consider the submittal of necessary permits within the three-year period to qualify as initiation of a remodeling. Additionally, the Zoning Administrator has determined other actions to qualify as maintaining a nonconforming use within the three-year period, including actively marketing of a space and other legitimate efforts to find new tenants.

Building Permit No. 201710131199 was submitted on October 13, 2017 for \$650,000 worth of renovations to the existing nonconforming Restaurant use on the 5<sup>th</sup> and 6<sup>th</sup> floors. The filing of the permit occurred within three years of when the Empress of China ceased operations on December 31, 2014. Additionally, that permit was reviewed and finally approved by the Planning Department on August 9, 2018, and then issued by the Department of Building Inspection (DBI) on August 31, 2018. No appeal was filed on this permit. As of the date of this letter, Building Permit No. 201710131199 is still active and has not expired or been otherwise cancelled.

Building Permit No. 201903266198 was submitted on March 26, 2019 for revisions to the scope of work approved under Building Permit No. 201710131199 for renovations to the Restaurant use on the 5<sup>th</sup> and 6<sup>th</sup> floors. That permit was approved by the Planning Department on April 10, 2019, and then issued by DBI on May 1, 2019. As of the date of this letter, Building Permit No. 201903266198 is still active and has not expired or been otherwise cancelled.

Building Permit No. 201910154358 was submitted to and issued by DBI on October 15, 2019 for a new fire suppression system on the 6<sup>th</sup> floor. As of the date of this letter, Building Permit No. 201910154358 is still active and has not expired or been otherwise cancelled.

**It is my determination that the nonconforming Restaurant use on the 5<sup>th</sup> and 6<sup>th</sup> floors of the subject property has not been discontinued or otherwise abandoned at this time,** pursuant to Planning Code Section 183(a). This determination is based on the fact that a building permit was submitted within the three-year discontinuance period to significantly renovate the Restaurant space, additional permits were subsequently issued for additional work for the Restaurant use, all of these permits are still active, and the authorized work and associated inspections have already begun.

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

Malcolm Yeung  
1525 Grant Street  
San Francisco, CA 94133

October 29, 2019  
Letter of Determination  
838 Grant Avenue

**APPEAL:** If you believe this determination represents an error in interpretation of the Planning Code or abuse in discretion by the Zoning Administrator, an appeal may be filed with the Board of Appeals within 15 days of the date of this letter. For information regarding the appeals process, please contact the Board of Appeals located at 1650 Mission Street, Room 304, San Francisco, or call (415) 575-6880.

Sincerely,



Corey A. Teague, AICP  
Zoning Administrator

cc: JL Realty Partners, LLC  
Neighborhood Groups  
Francis Chan, BBN Holder  
Tan Chow, BBN Holder  
Carolyn Fahey, Planner