

3-10

1 [Zoning – Amending the Citywide Definition of Tobacco Paraphernalia Establishments by  
2 Lowering the Threshold for Retail Stores to Be Considered Tobacco Paraphernalia  
3 Establishments, and Making Tobacco Paraphernalia Establishments a Non-Permitted Use in  
4 the Polk Street Neighborhood Commercial District.]

4 **Ordinance amending the Planning Code to amend the definition of Tobacco**  
5 **Paraphernalia Establishments in Section 227(v), to lower the threshold for retail stores**  
6 **to be considered Tobacco Paraphernalia Establishments from 15% of the square**  
7 **footage of the establishment to 10% of the occupied floor area, as defined in Section**  
8 **102.10, or 10 linear feet of display area ~~in total~~ projected to the floor, whichever is less;**  
9 **amending Sections 790.123 and 890.123 to reflect this amended definition; amending**  
10 **Section 723.1 and the Table at Section 723, to make Tobacco Paraphernalia**  
11 **Establishments, as defined, not permitted in the Polk Street Neighborhood Commercial**  
12 **District; amending Section 186.1, to change the period of non use for a non conforming**  
13 **Tobacco Paraphernalia Establishment use to be deemed discontinued in the Polk**  
14 **Street Neighborhood Commercial District from three years to eighteen months, and**  
15 **making findings, including findings of consistency with the priority policies of Planning**  
16 **Code Section 101.1 and environmental findings.**

17 NOTE: Additions are *single-underline italics Times New Roman*;  
18 deletions are *strike-through italics Times New Roman*.  
19 Board amendment additions are double-underlined;  
20 Board amendment deletions are ~~strikethrough normal~~.

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

22 Section 1. Findings. The Board of Supervisors of the City and County of San  
23 Francisco hereby find and determine that:

24 (a) Pursuant to Planning Code Section 302, the Board of Supervisors finds that this  
25 ordinance will serve the public necessity, convenience and welfare, for the reasons set forth in

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1 Planning Commission Resolution No. 17982, and incorporates such reasons by this  
 2 reference thereto. A copy of said resolution is on file with the Clerk of the Board of  
 3 Supervisors in File No. 090962.

4 (b) Pursuant to Planning Code Section 101.1, the Board of Supervisors finds that the  
 5 ordinance is consistent with the Priority Policies of Section 101.1(b) of the Planning Code and  
 6 with the General Plan and hereby incorporates a report containing those findings as if fully set  
 7 forth herein. A copy of said report is on file with the Clerk of the Board of Supervisors in File  
 8 No. 090962.

9 (c) The Planning Department concluded environmental review of this ordinance  
 10 pursuant to the California Environmental Quality Act, Public Resources Code Section 2100 et  
 11 seq. Documentation of that review is on file with the Clerk of the Board of Supervisors in File  
 12 No. 090962.

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 15 Section 2. The San Francisco Planning Code is hereby amended by amending Section  
 16 227, to read as follows:

17 **SEC. 227. OTHER USES.**

C-1	C-2	C-3	C-3	C-3	C-3	C-3	M-1	M-2	
		O	R	G	S				
									<b>SEC. 227. OTHER USES.</b>
P*	P*				P	P	P	P	(a) Greenhouse or plant nursery.
P*	P*					P	P	P	(b) Truck gardening, horticulture.
	C			C	C	P	P	P	(c) Mortuary establishment, including retail establishments

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										that predominantly sell or offer for sale caskets, tombstones, or other funerary goods.
P	P	P	P	P	P	P	P	P	P	(d) Public structure or use of a nonindustrial character, when in conformity with the General Plan. Such structure or use shall not include a storage yard, incinerator, machine shop, garage or similar use.
P*	P*	C	C	P	P	P	P	P	P	(e) Utility installation, excluding Internet Services Exchange (see Section 227(t)); public service facility, excluding service yard; provided that operating requirements necessitate location within the district.
C*	C*	C	C	C	C	C	C	C	C	(f) Public transportation facility, whether public or privately owned or operated, when in conformity with the General Plan, and which does not require approval of the Board of Supervisors under other provisions of law, and which includes:
										(1) Off-street passenger terminal facilities for mass transportation of a single or combined modes including but not limited to aircraft, ferries, fixed-rail vehicles and buses when such facility is not commonly defined as a boarding platform, bus stop, transit shelter or similar ancillary feature of a transit system; and
										(2) Landing field for aircraft.
C*	C*	C	C	C	C	C	P	P	P	(g) Public transportation facility, when in conformity with the General Plan, other than as required in (f) of this Section or as in Sections 223 and 226 of this Code.
P	P	P	P	P	P	P	P	P	P	(h) Commercial wireless transmitting, receiving or relay facility, including towers, antennae, and related equipment

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										for the transmission, reception, or relay of radio, television, or other electronic signals where:
										(1) No portion of such facility exceeds a height of 25 feet above the roof line of the building on the premises or above the ground if there is no building, or 25 feet above the height limit applicable to the subject site under Article 2.5 of this Code, whichever is the lesser height; and
										(2) Such facility, if closer than 1,000 feet to any R District (except for those R Districts entirely surrounded by a C-3, M or a combination of C-3 and M Districts), does not include a parabolic antenna with a diameter in excess of three meters or a composite diameter or antennae in excess of six meters. (See also Section 204.3.)
C	C	C	C	C	C	C	C	C	C	(i) Commercial wireless transmitting, receiving or relay facility, as described in Subsection 227(h) above, where:
										(1) Any portion of such facility exceeds a height of 25 feet above the roof line of the building on the premises or above the ground if there is no building, or 25 feet above the height limit applicable to the subject site under Article 2.5 of this Code, whichever is the lesser height; or
										(2) Such facility, if closer than 1,000 feet to any R District (except for those R Districts entirely surrounded by a C-3, M or combination of C-3 and M Districts), includes a parabolic antenna with a diameter in excess of three meters or a composite diameter of antennae in excess of six meters. (See also Section 204.3.)
P*	P*	P	P	P	P	P	P	P	P	(j) Sale or lease sign, as defined and regulated by Article 6

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										of this Code.
	P*	P	P	P	P	P	P	P	P	(k) General advertising sign, as defined and regulated by Article 6 of this Code.
	P*	P*	P	P	P	P	P	P	P	(l) Access driveway to property in any C or M District.
	C	C					C	C	C	(m) Planned Unit Development, as defined and regulated by Section 304 and other applicable provisions of this Code.
									P	(n) Any use that is permitted as a principal use in any other C or M District without limitation as to enclosure within a building, wall or fence.
SEE SECTIONS 205 THROUGH 205.2										(o) Temporary uses, as specified in and regulated by Sections 205 through 205.2 of this Code. (*See Section 212(a).)
	P	P	P	P	P	P	P	P	P	(p) Subject to Section 233(a), live/work units, provided that one or more arts activities as defined in Section 102.2 of this Code are the primary nonresidential use within the unit and that other nonresidential activities are limited to those otherwise permitted in the district or otherwise conditional in the district and specifically approved as a conditional use.
	P	P	P	P	P	P	P	P	P	(q) Subject to Section 233(a), live/work units not included above but satisfying the conditions of Section 233(b) of this Code.
	P	P	P	P	P	P	P	P	P	(r) Arts activities.
		P						P	P	(s) Waterborne commerce, navigation, fisheries and recreation, and industrial, commercial and other operations

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									directly related to the conduct of waterborne commerce, navigation, fisheries or recreation on property subject to public trust.
C	C	C	C	C	C	C	C	C	(t) Internet Services Exchange as defined in Section 209.6(c).
P	P	P	P	P	P	P	P	P	(u) Fringe financial services, as defined in Section 249.35, and subject to the restrictions set forth in Section 249.35, including, but not limited to, that no new fringe financial service shall be located within a 1/4 miles of an existing fringe financial service.
C	C	C	C	C	C	C	C	C	v) Tobacco Paraphernalia Establishments, defined as retail uses where more than 45% <u>10%</u> of the gross square <del>footage of the establishment</del> <u>square footage of occupied floor area, as defined in Section 102.10, or more than 10 linear feet of display area in total projected to the floor, whichever is less</u> , is dedicated to the sale, distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to another. For purposes of Sections 719, 719.1, and 786, <u>723 and 723.1</u> of this Code, Tobacco Paraphernalia Establishments shall mean retail uses where Tobacco Paraphernalia is sold, distributed, delivered, furnished or marketed from one person to another. "Tobacco Paraphernalia" means paraphernalia, devices, or instruments that are designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of tobacco, products prepared from tobacco, or controlled substances as defined in California Health and Safety Code Sections 11054 et seq. "Tobacco

1 Paraphernalia" does not include lighters, matches,  
2 cigarette holders, any device used to store or preserve  
3 tobacco, tobacco, cigarettes, cigarette papers, cigars, or  
4 any other preparation of tobacco that is permitted by  
5 existing law. Medical Cannabis Dispensaries, as defined in  
6 Section 3201(f) of the San Francisco Health Code, are not  
7 Tobacco Paraphernalia Establishments.

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9 Section 3. The San Francisco Planning Code is hereby amended by amending Section  
10 790.123, to read as follows:

11 **SEC. 790.123. TOBACCO PARAPHERNALIA ESTABLISHMENT.**

12 A Tobacco Paraphernalia Establishment shall be, as established in Section 227(v) of  
13 this code, a retail use where more than ~~45%~~ 10% of the ~~gross square footage of the~~  
14 ~~establishment~~ square footage of occupied floor area, as defined in Section 102.10, or more than 10  
15 linear feet of display area in total projected to the floor, whichever is less, is dedicated to the sale,  
16 distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to  
17 another. For purposes of Sections 719, 719.1, and 786, 723 and 723.1 of this Code, Tobacco  
18 Paraphernalia Establishments shall mean retail uses where Tobacco Paraphernalia is sold,  
19 distributed, delivered, furnished or marketed from one person to another. "Tobacco  
20 Paraphernalia" means paraphernalia, devices, or instruments that are designed or  
21 manufactured for the smoking, ingesting, inhaling, or otherwise introducing into the body of  
22 tobacco, products prepared from tobacco, or controlled substances as defined in California  
23 Health and Safety Code Sections 11054 et seq. "Tobacco Paraphernalia" does not include  
24 lighters, matches, cigarette holders, any device used to store or preserve tobacco, tobacco,  
25 cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is permitted by

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1 existing law. Medical Cannabis Dispensaries, as defined in Section 3201(f) of the San  
2 Francisco Health Code, are not Tobacco Paraphernalia Establishments.

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5 Section 4. The San Francisco Planning Code is hereby amended by amending Section  
6 890.123, to read as follows:

7 **SEC. 890.123. TOBACCO PARAPHERNALIA ESTABLISHMENT**

8 A Tobacco Paraphernalia Establishment shall be, as established in Section 227(v) of  
9 this code, a retail use where more than ~~45%~~ 10% of the ~~gross square footage of the~~  
10 ~~establishment~~ square footage of occupied floor area, as defined in Section 102.10, or more than 10  
11 linear feet of display area in total projected to the floor, whichever is less, is dedicated to the sale,  
12 distribution, delivery, furnishing or marketing of Tobacco Paraphernalia from one person to  
13 another. "Tobacco Paraphernalia" means paraphernalia, devices, or instruments that are  
14 designed or manufactured for the smoking, ingesting, inhaling, or otherwise introducing into  
15 the body of tobacco, products prepared from tobacco, or controlled substances as defined in  
16 California Health and Safety Code Sections 11054 et seq. "Tobacco Paraphernalia" does not  
17 include lighters, matches, cigarette holders, any device used to store or preserve tobacco,  
18 tobacco, cigarettes, cigarette papers, cigars, or any other preparation of tobacco that is  
19 permitted by existing law. Medical Cannabis Dispensaries, as defined in Section 3201(f) of the  
20 San Francisco Health Code, are not Tobacco Paraphernalia Establishments.

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22 Section 5. The San Francisco Planning Code is hereby amended by amending Section  
23 723.1, to read as follows:

24 **SEC. 723.1. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT.**



1           Sitting in the gulch between Nob and Russian Hills and Pacific Heights, the Polk Street  
2 Neighborhood Commercial District extends for a mile as a north-south linear strip, and  
3 includes a portion of Larkin Street between Post and California Streets. Polk Street's dense  
4 mixed-use character consists of buildings with residential units above ground-story  
5 commercial use. The district has an active and continuous commercial frontage along Polk  
6 Street for almost all of its length. Larkin Street and side streets in the district have a greater  
7 proportion of residences than Polk Street itself. The district provides convenience goods and  
8 services to the residential communities in the Polk Gulch neighborhood and to the residents  
9 on the west slopes of Nob and Russian Hills. It has many apparel and specialty stores, as well  
10 as some automobile uses, which serve a broader trade area. Commercial uses also include  
11 offices, as well as movie theaters, restaurants, and bars which keep the district active into the  
12 evening.

13           The Polk Street District controls are designed to encourage and promote development  
14 which is compatible with the surrounding neighborhood. The building standards monitor large-  
15 scale development and protect rear yards at residential levels. Consistent with Polk Street's  
16 existing mixed-use character, new buildings may contain most commercial uses at the first  
17 two stories. The controls encourage neighborhood-serving businesses, but limit new eating,  
18 drinking, other entertainment, and financial service uses, which can produce parking  
19 congestion, noise and other nuisances or displace other types of local-serving convenience  
20 goods and services. They also prohibit new adult entertainment uses. Restrictions on drive-up  
21 and most automobile uses protect the district's continuous retail frontage and prevent further  
22 traffic congestion.

23           Housing developed in new buildings is encouraged above the second story, especially  
24 in the less intensely developed portions of the district along Larkin Street. Existing housing  
25 units are protected by limitations on demolitions and upper-story conversions.

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2 **SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT ZONING**

3 **CONTROL TABLE**

			Polk Street
No.	Zoning Category	§ References	Controls
<b>BUILDING STANDARDS</b>			
723.10	Height and Bulk Limit	§§ 102.12, 105, 106, 250– 252, 260, 270, 271	65-A, 80-A, 130-E See Zoning Map
723.11	Lot Size [Per Development]	§§ 790.56, 121.1	P up to 9,999 sq. ft. C 10,000 sq. ft. & above § 121.1
723.12	Rear Yard	§§ 130, 134, 136	Required at residential levels only § 134(a) (e)
723.13	Street Frontage		Required § 145.1
723.14	Awning	§ 790.20	P § 136.1(a)
723.15	Canopy	§ 790.26	P § 136.1(b)
723.16	Marquee	§ 790.58	P § 136.1(c)
723.17	Street Trees		Required § 143
<b>COMMERCIAL AND INSTITUTIONAL STANDARDS AND USES</b>			
723.20	Floor Area Ratio	§§ 102.9, 102.11, 123	2.5 to 1 § 124(a) (b)

1	723.21	Use Size [Non-Residential]	§ 790.130	P up to 1,999 sq. ft.; C 2,000 sq. ft. & above § 121.2
2				
3	723.22	Off-Street Parking,	§§ 150, 153– 157,	Generally, none required if
4		Commercial/Institutional	159– 160, 204.5	occupied floor area is less
5				than 5,000 sq. ft. §§ 151,
6				161(g)
7	723.23	Off-Street Freight Loading	§§ 150, 153– 155,	Generally, none required if
8			204.5	gross floor area is less than
9				10,000 sq. ft. §§ 152, 161(b)
10	723.24	Outdoor Activity Area	§ 790.70	P if located in front; C if
11				located elsewhere § 145.2(a)
12	723.25	Drive-Up Facility	§ 790.30	
13	723.26	Walk-Up Facility	§ 790.140	P if recessed 3 ft.; C if not
14				recessed § 145.2(b)
15	723.27	Hours of Operation	§ 790.48	P 6 a.m.– 2 a.m. C 2 a.m.– 6
16				a.m.
17	723.30	General Advertising Sign	§§ 262, 602– 604,	
18			608, 609	
19	723.31	Business Sign	§§ 262, 602– 604,	P § 607.1(f)2
20			608, 609	
21	723.32	Other Signs	§§ 262, 602– 604,	P § 607.1(c) (d) (g)
22			608, 609	
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No. Zoning					
Category §					
References					
Polk Street					
Controls by Story					
		§ 790.118	1st	2nd	3rd+
723.38	Residential Conversion	§ 790.84	P	C	
723.39	Residential Demolition	§ 790.86	P	C	C
<b>Retail Sales and Services</b>					
723.40	Other Retail Sales and Services [Not Listed Below]	§ 790.102	P	P	
723.41	Bar	§ 790.22	C		
723.42	Full-Service Restaurant	§ 790.92	C		
723.43	Large Fast Food Restaurant	§ 790.90			
723.44	Small Self-Service Restaurant	§ 790.91	C		
723.45	Liquor Store	§ 790.55	C		
723.46	Movie Theater	§ 790.64	P		
723.47	Adult Entertainment	§ 790.36			
723.48	Other Entertainment	§ 790.38	C		

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723.49	Financial Service	§ 790.110	C	C	
723.50	Limited Financial Service	§ 790.112	P		
723.51	Medical Service	§ 790.114	P	P	
723.52	Personal Service	§ 790.116	P	P	
723.53	Business or Professional Service	§ 790.108	P	P	
723.54	Massage Establishment	§ 790.60, § 1900 Health Code	C		
723.55	Tourist Hotel	§ 790.46	C	C	C
723.56	Automobile Parking	§§ 790.8, 156, 160	C	C	C
723.57	Automotive Gas Station	§ 790.14			
723.58	Automotive Service Station	§ 790.17			
723.59	Automotive Repair	§ 790.15	C		
723.60	Automotive Wash	§ 790.18			
723.61	Automobile Sale or Rental	§ 790.12			
723.62	Animal Hospital	§ 790.6	C		
723.63	Ambulance Service	§ 790.2			
723.64	Mortuary	§ 790.62			
723.65	Trade Shop	§ 790.124	P	C	

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1	723.66	Storage	§ 790.117			
2	723.67	Video Store	§ 790.135	C	C	
3	723.68	Fringe Financial Service	§ 790.111	#	#	#
4	723.69	Tobacco Paraphernalia	§ 790.123	<u>C</u> <u>NP#</u>	<u>NP #</u>	<u>NP #</u>
5		Establishments				
6	723.69A	Self-Service Specialty	§ 790.93	C		
7		Food				
8	<b>Institutions and Non-Retail Sales and</b>					
9	<b>Services</b>					
10	723.70	Administrative Service	§ 790.106			
11	723.80	Hospital or Medical	§ 790.44			
12		Center				
13	723.81	Other Institutions, Large	§ 790.50	P	C	C
14	723.82	Other Institutions, Small	§ 790.51	P	P	P
15	723.83.	Public Use	§ 790.80	C	C	C
16	723.84	Medical Cannabis	§ 790.141	P		
17		Dispensary				
18	<b>RESIDENTIAL STANDARDS AND USES</b>					
19	723.90	Residential Use	§ 790.88	P	P	P
20	723.91	Residential Density,	§§ 207, 207.1,	Generally, 1 unit per 400 sq.		
21		Dwelling Units	790.88(a)	ft. lot area § 207.4		
22	723.92	Residential Density,	§§ 207.1,	Generally, 1 bedroom per 140		

	Group Housing	790.88(b)	sq. ft. lot area § 208		
723.93	Usable Open Space [Per Residential Unit]	§§ 135, 136	Generally, either 60 sq. ft. if private, or 80 sq. ft. if common § 135(d)		
723.94	Off-Street Parking, Residential	§§ 150, 153–157, 159–160, 204.5	Generally, 1 space for each dwelling unit §§ 151, 161(a)(g)		
723.95	Community Residential Parking	§ 790.10	C	C	C

**SPECIFIC PROVISIONS FOR THE POLK STREET DISTRICT**

Article 7 Code Section	Other Code Section	Zoning Controls
723.68	§249.35	FRINGE FINANCIAL SERVICE RESTRICTED USE DISTRICT (FFSRUD) Boundaries: The FFSRUD and its 1/4 mile buffer includes, but is not limited to, properties within the North of Market Residential Special Use District; and includes some properties within the Polk Street Neighborhood Commercial District. Controls: Within the FFSRUD and its 1/4 mile buffer, fringe financial services are NP pursuant to Section 249.35. Outside the FFSRUD and its 1/4 mile buffer, fringe financial services are P subject to the restrictions set forth in Subsection 249.35(c)(3).
<u>§ 723.69</u>	<u>§ 790.123</u>	<u>Tobacco Paraphernalia Establishments – Tobacco Paraphernalia</u>

<p>1 2 3 4 5 6 7 8</p>	<p><u>§ 186.1</u></p>	<p><u>Establishments are not permitted in the Polk Street Neighborhood Commercial District. <del>the</del> <u>The special definition of "Tobacco Paraphernalia Establishments" applicable to the Polk Street Neighborhood Commercial District shall be repealed three years after its initial effective date, unless the Board of Supervisors, on or before that date, extends or re-enacts it. In the Polk Street Neighborhood Commercial District, the period of non-use for a non-conforming Tobacco Paraphernalia Establishment to be deemed discontinued shall be 18 months.</u></u></p>
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11 Section 6. The San Francisco Planning Code is hereby amended by amending Section  
12 186.1, to read as follows:

13 **SEC. 186.1. EXEMPTION OF NONCONFORMING USES IN NEIGHBORHOOD**  
14 **COMMERCIAL DISTRICTS.**

15 The purpose of this Section is to provide for the further continuance in NC Districts of  
16 nonconforming uses created by adoption of Ordinance No. 69-87, as herein described, and  
17 subsequent ordinances that change the uses allowed in NC Districts, which are beneficial to,  
18 or can be accommodated within the neighborhood commercial areas in which they are  
19 located.

20 It is hereby found and declared that certain uses which traditionally have been  
21 permitted to locate in neighborhood commercial areas can be beneficial to a neighborhood  
22 commercial area in small or limited numbers, but which if allowed to proliferate, can disrupt  
23 the balanced mix of neighborhood-serving retail stores and services. It is further found and  
24 declared that in order to prevent undesirable over concentrations of such uses, the  
25 establishment of additional such uses shall be prohibited pursuant to controls governing uses



1 in NC Districts. At the same time, however, it is desirable to provide for the further  
2 continuance, expansion, enlargement, alteration, changes, discontinuance, and relocation of  
3 such existing uses, which are nonconforming as a result of zoning controls governing uses in  
4 NC Districts.

5 The following provisions shall govern with respect to nonconforming uses and features  
6 located in Neighborhood Commercial Districts to the extent that there is a conflict between the  
7 provisions of this Section and other Sections contained in this Article 1.7.

8 (a) Expansion. A nonconforming use may expand: (1) in floor area as provided in  
9 Subsection (b) below, but may not expand beyond the lot which it occupies, nor may the  
10 boundaries of such lot be expanded for purposes of expanding the use; nor may the use  
11 expand upward above the story or stories which it lawfully occupies, except as provided in  
12 Section 186.2 below.

13 (b) Enlargements or Alteration.

14 (1) A nonconforming use may not be significantly altered; enlarged or intensified,  
15 except upon approval of a conditional use application pursuant to the provisions of Article 3 of  
16 this Code, provided that the use not have or result in a greater height, bulk or floor area ratio,  
17 less required rear yard or open space, or less required off-street parking space or loading  
18 space than permissible under the limitations set forth in this Code for the district or districts in  
19 which such use is located.

20 (2) A nonconforming use may expand to include public sidewalk space provided that  
21 such space is only occupied with tables and chairs as permitted by this Municipal Code.

22 (3) No existing use or structure which fails to meet the requirements of this Code in any  
23 manner as described above in this Subsection (b) shall be constructed, reconstructed,  
24 enlarged, altered or relocated so as to increase the discrepancy, or to create a new  
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1 discrepancy, at any level of the structure, between existing conditions on the lot and the  
2 required standards for new construction set forth in this Code.

3 (c) Changes in Use. A nonconforming use may be changed to another use or feature  
4 as described below.

5 (1) A nonconforming use may be changed to a use listed in Article 7 of this Code as a  
6 principal use for the district in which the property is located, and the new use may thereafter  
7 be continued as a permitted principal use.

8 (2) A nonconforming use may be changed to a use listed in Article 7 of this Code as a  
9 conditional use for the district in which the use is located, only upon approval of a conditional  
10 use application pursuant to the provisions of Article 3 of this Code, and the new use may  
11 thereafter be continued as a permitted conditional use, subject to the provisions of Section  
12 178 of this Code.

13 (3) A nonconforming use may be changed to a use which is not permitted in that  
14 Neighborhood Commercial District as described below, only upon approval of a conditional  
15 use application, pursuant to the provisions of Article 3 of this Code:

16 (A) Any use described in zoning categories .41, .42, .43 or .44, as defined in Sections  
17 790.22, 790.92, 790.90 and 790.91, respectively, may change to another use described in  
18 zoning categories .41, .42, or .44, even though such other use is not permitted in that  
19 Neighborhood Commercial District, unless such other use is located in an Alcohol Restricted  
20 Use Subdistrict and is prohibited by the provisions governing that Alcohol Restricted Use  
21 Subdistrict.

22 (B) Any use described in zoning categories .51, .52 or .53, as defined in Sections  
23 790.114, 790.116 and 790.108 respectively, may change to another use described in zoning  
24 categories .51, .52 or .53, even though such other use is not permitted in that Neighborhood  
25 Commercial District.

1 (C) Any use described in zoning categories .57, .58 or .59, as defined in Sections  
2 790.14, 790.17 and 790.15 respectively, may be demolished and reconstructed as the same  
3 use or may change to another use described in zoning categories .57, .58 or .59, even though  
4 such other use is not permitted in that Neighborhood Commercial District.

5 The new use shall still be classified as a nonconforming use.

6 The changes in use described in this Paragraph 3 shall include remodeling activities  
7 involving the demolition and replacement of structures which result in a change of use.

8 (4) In the North Beach Neighborhood Commercial District, any use that exceeds the  
9 use size provisions of Section 121.2(a) or 121.2(b) may be changed to a new use only upon  
10 the approval of a new conditional use application. The Commission's approval of such  
11 conditional use application shall explicitly address the use size findings of Section 303(c). In  
12 the North Beach Neighborhood Commercial District, a nonconforming use cannot be changed  
13 to any use which is not a permitted use under Section 722 (North Beach Controls).

14 (5) In the Castro Street Neighborhood Commercial District, any use in this district that  
15 exceeds the maximum use size limit of Section 121.2(b), may be not changed to a new use.  
16 The only method for changing a nonconforming use identified in this Subsection is to reduce  
17 the nonconforming use:

18 (A) to a conforming use size or

19 (B) to a size specified in Subsection 121.2(a) pursuant to conditional use authorization.

20 Notwithstanding the above, any use in this District that exceeds the maximum use size  
21 limit of Section 121.2(b) and is categorized in the Other Retail Sales and Services zoning  
22 classification, as defined in Section 790.102, may change to another use category  
23 enumerated in Section 790.102 as long as the use size is not increased and the Commission  
24 approves a conditional use application for such change. The Commission's approval of such  
25 conditional use application shall explicitly address the use size findings of Section 303(c).

1 (d) Discontinuance. A nonconforming use which is discontinued for a period of three  
2 years, or otherwise abandoned or changed to another use which is listed in Article 7 of this  
3 Code as a principal or conditional use for the district in which the use is located shall not be  
4 reestablished. For purposes of this Subsection, the period of nonuse for a nonconforming use  
5 to be deemed discontinued in the North Beach and Castro Street Neighborhood Commercial  
6 Districts, and in the Haight Street Neighborhood Commercial District, ~~and the Lower Haight~~  
7 ~~Street Tobacco Paraphernalia Restricted Use Subdistrict, and the Polk Street Neighborhood~~  
8 Commercial District for Tobacco Paraphernalia Establishments, as defined in Sections 227(v)  
9 and 790.123 of this Code, only, shall be eighteen (18) months, except in the North Beach  
10 Neighborhood Commercial District, the period of non use for a full service restaurant use, as  
11 defined in Section 790.91, to be deemed discontinued shall be three years.

12 (e) Relocation. A nonconforming use in a Neighborhood Commercial District may be  
13 reestablished at another location within that Neighborhood Commercial District only upon  
14 approval of a new conditional use application pursuant to the provisions of Article 3 of this  
15 Code, provided that the following conditions are met:

16 (1) The original premises shall not be occupied by an establishment of the same type  
17 of use as the relocating use unless by another establishment that is relocating from within the  
18 district; and


19 (2) No final permits to operate the relocated use at the new premises are granted prior  
20 to the issuance of a certificate of final completion of any work to the original premises which is  
21 required as conditions attached to the approval of the conditional use application; and

22 (3) Deed restrictions are recorded for the original premises in the Official Records of  
23 the City and County of San Francisco, which restrictions prohibit for the duration of the Code  
24 sections prohibiting the use for the district in which the use is located, the establishment and  
25

1 operation of a new use of the same type of use as the relocated use, unless such new use is  
2 relocating from within the district.

3  
4 APPROVED AS TO FORM:  
5 DENNIS J. HERRERA, City Attorney

6 By:

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9 ANDREA RUIZ ESQUIDE  
10 Deputy City Attorney  
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City and County of San Francisco  
Tails  
Ordinance

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 090962

Date Passed: January 05, 2010

Ordinance amending the Planning Code to amend the definition of Tobacco Paraphernalia Establishments in Section 227(v), to lower the threshold for retail stores to be considered Tobacco Paraphernalia Establishments from 15% of the square footage of the establishment to 10% of the occupied floor area, as defined in Section 102.10, or 10 linear feet of display area projected to the floor, whichever is less; amending Sections 790.123 and 890.123 to reflect this amended definition; amending Section 723.1 and the Table at Section 723, to make Tobacco Paraphernalia Establishments, as defined, not permitted in the Polk Street Neighborhood Commercial District; amending Section 186.1, to change the period of non-use for a non-conforming Tobacco Paraphernalia Establishment use to be deemed discontinued in the Polk Street Neighborhood Commercial District from three years to eighteen months, and making findings, including findings of consistency with the priority policies of Planning Code Section 101.1 and environmental findings.

December 15, 2009 Board of Supervisors - PASSED, ON FIRST READING

Ayes: 11 - Alioto-Pier, Avalos, Campos, Chiu, Chu, Daly, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi

January 05, 2010 Board of Supervisors - FINALLY PASSED

Ayes: 8 - Campos, Chiu, Chu, Dufty, Elsbernd, Mar, Maxwell and Mirkarimi  
Excused: 3 - Alioto-Pier, Avalos and Daly

File No. 090962

I hereby certify that the foregoing Ordinance was FINALLY PASSED on 1/5/2010 by the Board of Supervisors of the City and County of San Francisco.

Mayor Gavin Newsom

Angela Calvillo  
Clerk of the Board

1-15-10

Date Approved