



# SAN FRANCISCO PLANNING DEPARTMENT

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## Executive Summary Planning Code and Zoning Map Amendments

HEARING DATE: MARCH 14, 2013

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*Project Name:* **Amendment to Planning Code Section 723 (Polk Street NCD) and the establishment of new Section 788 to establish the Lower Polk Alcohol Restricted Use District, including amendment to Zoning Map Sheet ZN-02**

*Case Number:* 2012.1411TZ [Board File No. 12-1065]

*Initiated by:* Supervisor Chiu / Introduced October 30, 2012

*Staff Contact:* Sophie Hayward, Legislative Affairs  
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*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Recommendation:* **Recommend Approval with Modifications**

### PLANNING CODE AMENDMENT

The proposed Ordinance would amend the Planning Code by: 1) amending Section 723 to extend the restriction on Tobacco Paraphernalia Establishments in the Polk Street Neighborhood Commercial District (NCD) for an additional three years and apply it to an area within one-quarter mile of the boundaries of the NCD; 2) add Section 788 to establish the Lower Polk Street Alcohol Restricted Use District for the properties located on Polk Street between California and O'Farrell Streets, and Polk Street's side streets between California Street, Larkin Street, O'Farrell Street and Van Ness Avenue; 3) amend the Zoning Map to designate the Lower Polk Street Alcohol Restricted Use District on Map Sheet ZN-02.

#### The Way It Is Now:

Section 723 of the Planning Code defines specific provisions for the Polk Street NCD, and includes Section 723.69, which prohibits Tobacco Paraphernalia Establishments within the NCD. This prohibition was to be repealed on January 15, 2013, three years after its initial effective date of January 15, 2010. The 2012 Code Corrections Ordinance [BF 130062] includes an amendment to repeal this expired provision.

The area that would become the Lower Polk Street Alcohol Restricted Use District currently contains the following zoning districts: Polk Street Neighborhood Commercial District, Neighborhood Commercial-3, and Residential Commercial-4.

**The Polk Street Neighborhood Commercial District** (hereinafter "Polk NCD") extends along Polk Street from Filbert Street to the north, to Post Street to the south, and includes a short stretch of Larkin Street between Sacramento and Post Streets, and California Street between Van Ness Avenue and Hyde Street. The Polk Street NCD governs alcohol-related uses as follows: liquor stores, bars, and restaurants require Conditional Use Authorization pursuant to Planning Code Section 303. In addition to the Section 303 findings, the Planning Commission must also find that restaurants operate as a Bona Fide Eating Establishment pursuant to Section 790.142.

The **Neighborhood Commercial-3 Zoning District** (hereinafter “NC-3”) governs alcohol-related uses as follows: liquor stores are not permitted at the ground floor, while bars, limited restaurants, and restaurants are permitted at the ground floor.

The **Residential Commercial-4 Zoning District** (hereinafter “RC-4”) governs alcohol-related uses as follows; liquor stores are permitted at the ground level, and bars, limited restaurants, and restaurants are permitted at the ground level because they are permitted at the ground level within NC-3 districts.

**The Way It Would Be:**

Section 723 would be amended to extend the restriction on Tobacco Paraphernalia Establishments within the Polk Street NCD for three additional years, until 2016. Further, the restriction would apply to areas within ¼ mile of the boundaries of the Polk Street NCD.

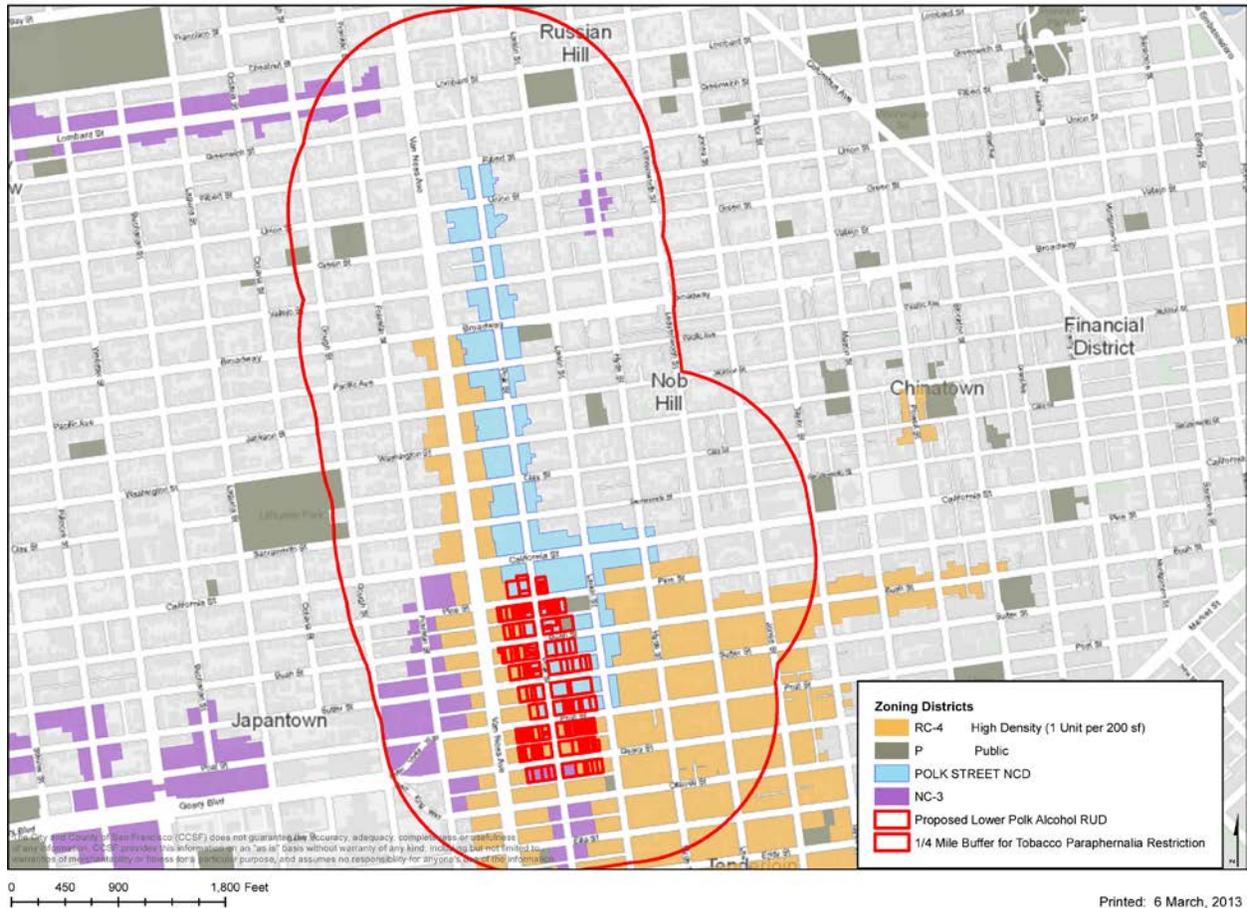
Section 788 would be added to create a Lower Polk Street Alcohol Restricted Use District (RUD). This district would extend along Polk Street from California Street to the north, to O’Farrell Street to the south, without including the lots that front on California and O’Farrell Streets, and would also extend west to Van Ness Avenue, excluding the lots that front on Van Ness, and east to Larkin Street, excluding the lots that front on Larkin. The proposed new Lower Polk Alcohol Restricted Use District would overlap with the existing Polk Street NCD, RC-4, and NC-3 Zoning Districts.

Within the new Polk Street Alcohol RUD, the following controls would apply:

1. No new on-sale or off-sale liquor establishment may be approved. Liquor licenses may be transferred within the Polk Street Alcohol RUD, provided that no new liquor licenses are transferred into the district from outside of the district. Transfers within the proposed district would require Conditional Use Authorization. Bona Fide Eating Establishments, as defined in Section 790.142, are not subject to the prohibition;
2. Liquor establishments are considered an abandoned use if the use has been discontinued for 180 days or more;
3. New entertainment permits require a Conditional Use Authorization within the Lower Polk Alcohol RUD; however, Limited Live Performance permits are principally permitted for Restaurants and Limited Restaurants; and
4. New restaurants with Types 47 or 49 liquor licenses may not be open after midnight.

The existing zoning districts as well as the proposed new Tobacco Paraphernalia restriction and the proposed Lower Polk Alcohol RUD are shown in the map below.

Existing Zoning Districts and Proposed Lower Polk Alcohol RUD



This zoning map shows the existing zoning in the area, with an overlay that indicates the extent of the proposed new restriction on Tobacco Paraphernalia Establishments and the proposed new Lower Polk Alcohol RUD.

### REQUIRED COMMISSION ACTION

The proposed Ordinance is before the Commission so that it may recommend adoption, rejection, or adoption with modifications to the Board of Supervisors.

### RECOMMENDATION

The Department recommends that the Commission recommend *approval with modifications* of the proposed Ordinance to the Board of Supervisors and adopt the attached Draft Resolution to that effect. The recommended modifications include:

1. Remove the Tobacco Paraphernalia restriction from the Polk Street NCD; and
2. Modify the controls within the proposed Lower Polk Alcohol RUD to allow for new liquor licenses only with Conditional Use Authorization by the Planning Commission as follows:
  - A. Amend Section 303 of the Planning Code to include a separate finding regarding the concentration of existing bars. This finding would be made by the Commission when granting Conditional Use Authorization for a new liquor license within the proposed

Lower Polk Street Alcohol RUD. Specifically, the finding should indicate whether the newly proposed bar use is within 100' of a parcel on which an existing bar is located;

- B. Adopt a Planning Commission policy that the Department recommendation would be disapproval for bars proposed within 100' of existing bars within the Lower Polk Alcohol RUD;
- C. Modify the proposed abandonment period for existing liquor establishments such that liquor establishments are considered an abandoned use if the use has been discontinued 3 years or more;
- D. Remove the requirement that restaurants with Type 47 or 49 liquor licenses close by midnight.

## BASIS FOR RECOMMENDATION TO THE BOARD OF SUPERVISORS

The following discussion reviews important issues and describes the basis for the Department's position.

### 1. Tobacco Paraphernalia Restriction

The Department's recommendation is that the Planning Commission recommend to the Board that the restriction of Tobacco Paraphernalia Establishments be allowed to expire.

Tobacco Paraphernalia Establishments are considered a distinct land use (defined in Planning Code Section 790.123); however, it is, in reality, difficult for the Department to distinguish this use from any other retail space. Because of this, the Department struggles with enforcement of Tobacco Paraphernalia Establishments and response to complaints and violations is unusually challenging. The reason for this difficulty is two-fold.

First, the use is typically determined by either the percentage of floor area dedicated to Tobacco Paraphernalia (any amount greater than 10 percent of the occupied floor area), or the linear feet of display area dedicated to Tobacco Paraphernalia (any amount greater than ten linear feet). This definition is reliant on how the shelves are stocked from day to day. What is a Tobacco Paraphernalia Establishment today can easily be a less restricted retail space the next day. For the purposes of the Polk Street NCD, the distinction between a store and a Tobacco Paraphernalia Establishment is even more narrow: the presence of *any* Tobacco Paraphernalia within a retail use is prohibited within the Polk Street NCD.<sup>1</sup> For all intents and purposes within the Polk NCD, a retail establishment (permitted at the ground floor) becomes a Tobacco Paraphernalia Establishment (not permitted within the District) with the addition of a single pipe to the store's inventory.

Second, this definition was established in 2008, and therefore any store that had any quantity of space dedicated to Tobacco Paraphernalia prior to that date would be allowed to continue operation within the Polk Street NCD; proving what was (or was not) on the shelves in 2008 is next to impossible.

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<sup>1</sup> The Polk Street NCD defines Tobacco Paraphernalia Establishment as a retail establishment that sells any quantity of Tobacco Paraphernalia, whereas in other zoning districts, a retail establishment may sell a small amount of Tobacco Paraphernalia, under specific thresholds, and be permitted as a retail use. Please see Planning Code Section 790.123 for the full definition. Section 790.123 is available online here:

[http://www.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco\\_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1) (March 3, 2013).

Conversely, Medical Cannabis Dispensaries (MCD's), as defined in Planning Code Section 790.141, are more straightforward to regulate from a land use perspective, as they require a specific state-license to operate. Were Tobacco Paraphernalia Establishments required to seek a permit or license from the Department of Public Health, for example, the restriction would be more accurately monitored and enforced.

## 2. Controls for New Alcohol-Serving Establishments in the Proposed Lower Polk Alcohol RUD

The Department recommends that the controls for the proposed Lower Polk Alcohol RUD be modified in a manner that addresses concerns about safety and concentration, while allowing flexibility with oversight.

### *A. Conditional Use Authorization with Specific Findings for the Proposed RUD*

First, rather than prohibit new on-sale or off-sale liquor establishments within the geographic area defined in the proposed Ordinance, the Department recommends that new on-sale and off-sale liquor establishments controlled in the proposed Ordinance be required to obtain a Conditional Use Authorization by the Planning Commission. Further, the Department recommends that the Commission recommend adding a new Planning Code Section 303(q) that outlines specific findings required for approving new liquor establishments within the proposed Alcohol RUD. Specifically, the Department recommends adding the following language:

#### *(q) Liquor Establishments within the Lower Polk Alcohol Restricted Use District*

*(1) Conditional Use Criteria. With regard to a Conditional Use Authorization application for a liquor establishment, as defined in Section 788(c)(1), the Planning Commission shall consider, in addition to the criteria set forth in Subsection (c) above:*

*(A) The existing concentration of liquor establishments within the Lower Polk Alcohol Restricted Use District, and whether there is another liquor establishment on a parcel within 100 feet from the parcel on which the new establishment is proposed.*

### *B. Planning Commission Policy of Denial for Over Concentration*

In addition, the Department recommends that the Commission adopt a policy that when a new liquor establishment is proposed on a parcel within 100 feet of a parcel with an existing liquor establishment, the Department's preliminary recommendation will be to deny the request for Conditional Use Authorization. This approach will trigger a close examination and analysis of the concentration of bars within the proposed Alcohol Restricted Use District, but allows for the considered approval by the Planning Commission of new establishments in areas that are not currently saturated and may be appropriate locations for new businesses.

### *C. Use the Universal Abandonment Period of 3 years rather than 180 Days*

The draft Ordinance includes a provision for the proposed Lower Polk Alcohol RUD that would consider a closure for 180 days or more a "discontinued use" for liquor establishments. The Department's recommendation is that the standard three years be used as a period after which a use is considered discontinued or abandoned, as outlined in Planning Code Section 183.

### *D. Remove the Required Mid-Night Closure of Permitted Restaurants*

The findings of the proposed Ordinance cite concerns such as "loitering, littering, public drunkenness [...], parking and noise problems on public streets" as a result of the large number

of liquor establishments within the Lower Polk area. The Department's recommendation is that the proposed requirement that Restaurants – which must be Bona Fide Eating Establishments in order to get approval – close at midnight be removed. The Department believes that by remaining open at the same time as bars, Bona Fide Eating Establishments reduce the concerns outlined above by keeping eyes on the street, and by providing an alternative to liquor by way of serving food.

Bona Fide Eating Establishments, as defined in Section 790.142, require Conditional Use Authorization within the existing Polk Street NCD; therefore, in the portions of the proposed Lower Polk Alcohol Restricted Use District that overlap with the existing Polk Street NCD, new Restaurants require Conditional Use Authorization – a significant level of review by the Planning Commission. The Department does not feel that the additional restriction of a mid-night closure will serve to limit noise or public drunkenness; rather, the Department recommends that restaurants that are open late may relieve some of the crowding at existing bars.

### **ENVIRONMENTAL REVIEW**

The proposal to amend Planning Code Sections 723 (Polk Street NCD), and to create Section 788 (Lower Polk Alcohol RUD), and amending Sectional Map Sheet ZN02 is a non-physical project, and therefore subject to a categorical exemption under Section 15060(c)(2) of the CEQA Guidelines. This determination was made on November 9, 2012.

### **PUBLIC COMMENT**

As of the date of this report, the Planning Department has received one phone call in opposition to the proposed Ordinance. The Small Business Commission considered the proposed Ordinance at their February 11, 2013 public hearing, and voted to support the proposal with modifications that included considering proximity controls for new liquor establishments rather than a full prohibition for new licenses. The Small Business Commission transmittal to the Clerk of the Board is attached to this case report.

<b>RECOMMENDATION:</b>	<b>Recommendation of Approval with Modifications</b>
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#### **Attachments:**

- Exhibit A: Draft Planning Commission Resolution
- Exhibit B: Board of Supervisors File No 12-1065
- Exhibit C: Small Business Commission Transmittal Regarding BOS File No 121065



# SAN FRANCISCO PLANNING DEPARTMENT

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## Planning Commission Draft Resolution

HEARING DATE MARCH 14, 2013

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Suite 400  
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*Project Name:* **Amendment to Planning Code Section 723 (Polk Street NCD) and the establishment of new Section 788 to establish the Lower Polk Alcohol Restricted Use District, including amendment to Zoning Map Sheet ZN-02**

*Case Number:* 2012.1411TZ [Board File No. 12-1065]

*Initiated by:* Supervisor Chiu / Introduced October 30, 2012

*Staff Contact:* Sophie Hayward, Legislative Affairs  
sophie.hayward@sfgov.org, 415-558-6257

*Reviewed by:* AnMarie Rodgers, Manager Legislative Affairs  
anmarie.rodgers@sfgov.org, 415-558-6395

*Recommendation:* **Recommend Approval with Modifications**

**RECOMMENDING THAT THE BOARD OF SUPERVISORS ADOPT WITH MODIFICATIONS A PROPOSED ORDINANCE THAT WOULD AMEND PLANNING CODE SECTION 723 TO EXTEND THE RESTRICTION ON TOBACCO PARAPHERNALIA ESTABLISHMENTS IN THE POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT AND ADD PLANNING CODE SECTION 788 TO ESTABLISH THE LOWER POLK STREET ALCOHOL RESTRICTED USE DISTRICT, AND AMEND SECTIONAL MAP SHEET ZN02 TO ADD THE LOWER POLK ALCOHOL RESTRICTED USE DISTRICT; ADOPTING FINDINGS, INCLUDING ENVIRONMENTAL FINDINGS, PLANNING CODE SECTION 302 FINDINGS, AND FINDINGS OF CONSISTENCY WITH THE GENERAL PLAN AND PLANNING CODE SECTION 101.1.**

WHEREAS, on October 30, 2012, Supervisor Chiu introduced a proposed Ordinance under Board of Supervisors (hereinafter "Board") File Number 12-1065, which would amend Section 723, which describes the Polk Street Neighborhood Commercial District (NCD) and add Section 788 and amend the San Francisco Planning Code Sectional Map Sheet ZN02 to create the Lower Polk Alcohol Restricted Use District (RUD);

WHEREAS, The Planning Commission (hereinafter "Commission") conducted a duly noticed public hearing at a regularly scheduled meeting to consider the proposed Ordinance on March 14, 2013; and,

WHEREAS, the proposed Ordinance has been determined to be a non-physical project, and therefore subject to a categorical exemption under Section 15060(c)(2) of the CEQA Guidelines; and

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

WHEREAS, all pertinent documents may be found in the files of the Department, as the custodian of records, at 1650 Mission Street, Suite 400, San Francisco; and

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

MOVED, that the Planning Commission hereby recommends that the Board of Supervisors **approve with modifications** the proposed ordinance. Specifically, the Commission recommends the following modifications:

1. Remove the Tobacco Paraphernalia restriction from the Polk Street NCD; and
2. Modify the controls within the proposed Lower Polk Alcohol RUD to allow for new liquor licenses only with Conditional Use Authorization by the Planning Commission as follows:
  - a. Amend Section 303 of the Planning Code to include a separate finding regarding the concentration of existing bars. This finding would be made by the Commission when granting Conditional Use Authorization for a new liquor license within the proposed Lower Polk Street Alcohol RUD. Specifically, the finding should indicate whether the newly proposed bar use is within 100' of a parcel on which an existing bar is located;
  - b. Modify the proposed abandonment period for existing liquor establishments such that liquor establishments are considered an abandoned use if the use has been discontinued 3 years or more;
  - c. Remove the requirement that Restaurants with Type 47 or 49 liquor licenses close by midnight.

MOVED, that the Planning Commission hereby adopts a policy that directs the Department to recommend disapproval of Conditional Use Authorization for bars proposed within 100' of existing bars within the Lower Polk Alcohol RUD.

#### **FINDINGS**

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

1. Tobacco Paraphernalia Establishments are prohibited within the Polk Street NCD. This prohibition was repealed on January 15, 2013, three years after its initial effective date of January 15, 2010;
2. Tobacco Paraphernalia Establishments are considered a distinct land use (defined in Planning Code Section 790.123); however, it is in reality difficult to distinguish this use from any other retail space. Because of this, enforcement of Tobacco Paraphernalia Establishments and response to complaints and violations is unusually challenging;
3. The area that would become the Lower Polk Street Alcohol Restricted Use District currently contains the following zoning districts: Polk Street Neighborhood Commercial District, Neighborhood Commercial-3, and Residential Commercial-4. The proposed new Lower Polk Alcohol Restricted Use District would overlay portions of all three of these zoning districts;
4. The proposed new Lower Polk Alcohol Restricted Use District would extend along Polk Street from California Street to the north, and to O'Farrell Street to the south, without including the lots

that front on California and O'Farrell Streets, and would also extend west to Van Ness Avenue, excluding the lots that front on Van Ness, and east to Larkin Street, excluding the lots that front on Larkin Street;

5. That adding a new Planning Code Section 303(q) with specific findings required for approving new liquor establishments within the proposed Lower Polk Alcohol RUD will allow for flexibility with close oversight, and will require that the Department and the Commission consider proximity of existing bars when reviewing new applications;
6. That a Commission policy that directs the Department to recommend disapproval of any new liquor establishment proposed on a parcel within 100 feet of a parcel with an existing liquor establishment will trigger a close examination and analysis of the concentration of bars within the proposed Alcohol Restricted Use District, but allows for the approval by the Commission of new establishments in areas that may be appropriate locations for new businesses;
7. That the standard three years is an appropriate length of time after which an existing use – including as a liquor establishment – is considered discontinued, and is consistent with the timeline defined in Planning Code Section 183;
8. That Restaurants that are Bona Fide Eating Establishments be allowed to remain open past midnight as one method to reduce concerns including loitering, littering, and public drunkenness, by keeping eyes on the street and providing an alternative to liquor by way of serving food; and
9. **General Plan Compliance.** The proposed Ordinance and the Commission's recommended modifications are consistent with the following Objectives and Policies of the General Plan:

#### **I. COMMERCE & INDUSTRY ELEMENT**

THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN SETS FORTH OBJECTIVES AND POLICIES THAT ADDRESS THE BROAD RANGE OF ECONOMIC ACTIVITIES, FACILITIES, AND SUPPORT SYSTEMS THAT CONSTITUTE SAN FRANCISCO'S EMPLOYMENT AND SERVICE BASE.

#### **GOALS**

THE THREE GOALS OF THE COMMERCE AND INDUSTRY ELEMENT OF THE GENERAL PLAN RELATE TO CONTINUED ECONOMIC VITALITY, SOCIAL EQUITY, AND ENVIRONMENTAL QUALITY.

#### **OBJECTIVE 6**

MAINTAIN AND STRENGTHEN VIABLE NEIGHBORHOOD COMMERCIAL AREAS EASILY ACCESSIBLE TO CITY RESIDENTS.

#### **POLICY 6.2**

Promote economically vital neighborhood commercial districts which foster small business enterprises and entrepreneurship and which are responsive to economic and technological innovation in the marketplace and society.

**POLICY 6.10**

Promote neighborhood commercial revitalization, including community-based and other economic development efforts where feasible.

*The proposed Ordinance would create the Lower Polk Alcohol Restricted Use District in order to address concerns including loitering, littering, public drunkenness, parking, and noise problems. The proposal would provide close oversight for new liquor licenses within a specific and limited geographic area, while minimizing disruptive nuisance to the surrounding neighborhood by adding a requirement that new entertainment permits obtain Conditional Use Authorization in order to be approved. With the proposed modifications, the proposed Ordinance will allow new liquor establishments to open in areas within the Lower Polk Neighborhood that are not currently over-saturated with existing bars and in a manner that is consistent with the neighborhood character and that will not contribute to the deterioration of the neighborhood.*

**8. Planning Code Section 101 Findings.** The proposed amendments to the Planning Code are consistent with the eight Priority Policies set forth in Section 101.1(b) of the Planning Code in that:

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

*The proposed amendments will not have a negative impact on neighborhood serving retail uses and will not impact opportunities for resident employment in and ownership of neighborhood-serving retail.*

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

*The proposed amendments will help preserve existing neighborhood character by allowing carefully monitoring new liquor establishments within the Polk NCD and the proposed Lower Polk Street Alcohol Restricted Use District.*

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

*The proposed amendments will have no adverse effect on the City's supply of affordable housing.*

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

*The proposed amendments will not result in commuter traffic impeding MUNI transit service or overburdening the streets or neighborhood parking.*

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

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

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

*Any new construction or building alterations would be subject to all current building and safety codes, therefore improving the City's preparedness against injury and loss of life in an earthquake.*

7. That the landmarks and historic buildings be preserved;

*Landmarks and historic buildings would not be negatively impacted by the proposed amendments.*

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

*The City's parks and open space and their access to sunlight and vistas would be unaffected by the proposed amendments.*

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

NOW THEREFORE BE IT RESOLVED that the Commission hereby recommends that the Board ADOPT the proposed Ordinance as described in this Resolution and in the proposed Ordinance with the modifications outlined above.

I hereby certify that the foregoing Resolution was adopted by the Commission at its meeting on March 14, 2013.

Jonas P. Ionin  
Commission Secretary

AYES:

NOES:

ABSENT:

ADOPTED:

1 [Planning Code - Polk Street Alcohol and Tobacco Paraphernalia Restrictions]

2

3 **Ordinance amending the San Francisco Planning Code by: 1) amending Section 723 to**  
 4 **extend the restriction on Tobacco Paraphernalia Establishments in the Polk Street**  
 5 **Neighborhood Commercial District (NCD) for an additional three years and apply it to**  
 6 **an area within one-quarter mile of the boundaries of the NCD, 2) adding Section 788 to**  
 7 **establish the Lower Polk Street Alcohol Restricted Use District for the properties**  
 8 **located on Polk Street between California and O’Farrell Streets, and Polk Street’s side**  
 9 **streets between California Street, Larkin Street, O’Farrell Street and Van Ness Avenue;**  
 10 **3) Amending the Zoning Map to designate the Lower Polk Street Alcohol Restricted Use**  
 11 **District on Map Sheet ZN-02, and 4) making environmental findings, Planning Code**  
 12 **Section 302 findings, and findings of consistency with the General Plan and the Priority**  
 13 **Policies of Planning Code Section 101.1.**

14 NOTE: Additions are *single-underline italics Times New Roman*;  
 15 deletions are ~~*strike-through italics Times New Roman*~~.  
 16 Board amendment additions are double-underlined;  
 17 Board amendment deletions are ~~strike-through normal~~.

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

19 Section 1. Findings.

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

24 (b) Pursuant to Planning Code Section 302, this Board finds that these Planning Code  
 25 amendments will serve the public necessity, convenience, and welfare for the reasons set

1 forth in Planning Commission Resolution No. \_\_\_\_\_ and the Board incorporates such  
 2 reasons herein by reference. A copy of Planning Commission Resolution No. \_\_\_\_\_ is on file  
 3 with the Clerk of the Board of Supervisors in File No. \_\_\_\_\_.

4 (c) This Board finds that these Planning Code amendments are consistent with the  
 5 General Plan and with the Priority Policies of Planning Code Section 101.1 for the reasons set  
 6 forth in Planning Commission Resolution No. \_\_\_\_\_, and the Board hereby incorporates  
 7 such reasons herein by reference.

8  
 9 Section 2. The San Francisco Planning Code is hereby amended by amending Section  
 10 723, to read as follows:

11 **SEC. 723. POLK STREET NEIGHBORHOOD COMMERCIAL DISTRICT**  
 12 **ZONING CONTROL TABLE**  
 13 **SPECIFIC PROVISIONS FOR THE POLK STREET NEIGHBORHOOD**  
 14 **COMMERCIAL DISTRICT**

<b>Article 7 Code Section</b>	<b>Other Code Section</b>	<b>Zoning Controls</b>
§ 723.69	§ 186.1 § 790.123 <u>§ 788</u>	Tobacco Paraphernalia Establishments – Tobacco Paraphernalia Establishments are not permitted in the Polk Street Neighborhood Commercial District <i>and within one-quarter mile            of the boundaries of that Neighborhood            Commercial District.</i> The special definition of "Tobacco Paraphernalia Establishments"

1 applicable to the Polk Street Neighborhood  
2 Commercial District shall be repealed ~~three~~ six  
3 years after its initial effective date, unless the  
4 Board of Supervisors, on or before that date,  
5 extends or re-enacts it. In the Polk Street  
6 Neighborhood Commercial District, the period  
7 of non-use for a non-conforming Tobacco  
8 Paraphernalia Establishment to be deemed  
9 discontinued shall be 18 months.

10  
11 Section 3. The San Francisco Planning Code is hereby amended by adding Section  
12 788, to read as follows:

13 **SEC. 788. LOWER POLK STREET ALCOHOL RESTRICTED USE DISTRICT.**

14 (a) Findings. There is an unusually large number of establishments dispensing alcoholic  
15 beverages, including beer and wine, for off-site consumption on Polk Street between California Street  
16 and O'Farrell Street, and Polk Street's side streets between, but not including, Van Ness Avenue and  
17 Larkin Street to the west and east, and between, but not including, California Street to O'Farrell Street  
18 to the north and south. The existence of this many alcoholic beverage establishments appears to  
19 contribute directly to numerous peace, health, safety and general welfare problems in the area,  
20 including loitering, littering, public drunkenness, defacement and damaging of structures, and  
21 pedestrian obstructions, as well as traffic circulation, parking and noise problems on public streets and  
22 neighborhood lots. The existence of such problems creates serious impacts on the health, safety and  
23 welfare of residents of nearby single- and multiple-family areas, including fear for the safety of  
24 children, elderly residents, and visitors to the area. The problems also contribute to the deterioration of  
25 the neighborhood and concomitant devaluation of property and destruction of community values and

1 quality of life. The number of establishments selling alcoholic beverages and the associated problems  
2 discourage more desirable and needed commercial uses in the area.

3 **(b) Establishment of the Lower Polk Street Alcohol Restricted Use District. In order to**  
4 preserve the residential character and the neighborhood-serving commercial uses of the area, the  
5 Lower Polk Street Alcohol Restricted Use District is hereby established for the properties located on  
6 Polk Street between California Street and O'Farrell Street, and Polk Street's side streets between, but  
7 not including, Van Ness Avenue and Larkin Street to the west and east, and between, but not including,  
8 California Street and O'Farrell Street to the north and south. The Lower Polk Street Alcohol  
9 Restricted Use District shall be designated on Map Sheet Number ZN-02 on the Zoning Map of the City  
10 and County of San Francisco.

11 **(c) Definitions.**

12 (1) A "liquor establishment" shall mean any enterprise selling alcoholic beverages, as defined  
13 by California Business & Professions Code Section 23004 and 23025, pursuant to a California  
14 Alcoholic Beverage Control Board license. It shall not be interpreted to mean an establishment that (A)  
15 operates as a Bona Fide Eating Place, as defined in Section 790.142 of this Code, or (B) operates as an  
16 "other retail sales and service" use that sells only general groceries or specialty groceries, as defined  
17 in Planning Code Section 790.102 (a) or (b), respectively; or (C) operates during daytime hours but  
18 operates no later than 12:00 midnight, and is not a location for Entertainment.

19 (2) An "off sale liquor establishment" shall mean a Liquor Store as defined in Planning Code  
20 Section 790.55.

21 (3) An "on sale liquor establishment" shall mean a Bar as defined in Planning Code Section  
22 790.22

23 **(d) Controls.**

24 (1) No new on-sale or off-sale liquor establishment shall be permitted in the Lower Polk Street  
25 Alcohol Restricted Use District; provided that a liquor establishment located in the Lower Polk Street

1 Alcohol Restricted Use District may transfer its alcohol license to another site, either within or outside  
2 the Lower Polk Street Alcohol Restricted Use District, provided that a liquor establishment located  
3 outside the Lower Polk Street Alcohol Restricted Use District shall not transfer any alcohol license to a  
4 liquor establishment located within the Lower Polk Street Alcohol Restricted Use District.

5 (2) Whenever a liquor establishment has discontinued its use for a continuous period of one  
6 hundred eighty (180) days or more, the liquor establishment shall be deemed to have abandoned its use  
7 as a liquor establishment; provided that a break in continuous operation shall not be interpreted to  
8 include the following, as long as the location of the establishment does not change, the square footage  
9 used for the sale of alcoholic beverages does not increase, and the type of California Department of  
10 Alcoholic Beverage Control Liquor License ("ABC License") does not change:

11 (A) Re-establishment, restoration or repair of an existing liquor establishment on the same lot  
12 after total or partial destruction or damage due to fire, riot, insurrection, toxic accident or other force  
13 majeure; or

14 (B) Temporary closure of an existing liquor establishment for not more than one hundred eighty  
15 (180) days for repair, renovation or remodeling; or

16 (C) A change in ownership of a Liquor Establishment or an owner-to-owner transfer of an ABC  
17 License.

18 (3) All new entertainment permits at a new location shall require approval of a conditional use  
19 permit in accordance with the requirements of Planning Code Section 303; provided that Limited-Live  
20 Performance Locales, as defined in Section 1060 of the Police Code, shall be principally permitted in  
21 Restaurants and Limited-Restaurants; and provided further that a change in ownership on the same  
22 site with the same entertainment use shall not require approval of a new conditional use permit.

23 (4) Restaurants with Types 47 and 49 liquor licenses shall not be open past 12:00 midnight.

1 Section 4. The Zoning Map of the City and County of San Francisco shall be amended  
2 by amending Sectional Map ZN-02 to establish the boundaries of the Lower Polk Alcohol  
3 Restricted Use District and shall include the properties located between, but not including,  
4 Van Ness Avenue, Larkin Street, O'Farrell Street and California Street, which includes the  
5 following Assessor's Block Numbers, but shall not include the lots within these Assessor's  
6 Block Numbers that front on Van Ness Avenue, Larkin Street, O'Farrell Street and California  
7 Street:

8 **Assessor's Block Numbers 0645, 0646, 0667, 0668, 0669, 0670, 0691, 0692, 0693,**  
9 **0694, 0715, and 0716.**

10 Section 5. Effective Date. This ordinance shall become effective 30 days from the  
11 date of passage.

12 Section 6. This section is uncodified. In enacting this ordinance, the Board intends to  
13 amend only those words, phrases, paragraphs, subsections, sections, articles, numbers,  
14 punctuation, charts, diagrams, or any other constituent part of the Planning Code that are  
15 explicitly shown in this legislation as additions, deletions, Board amendment additions, and  
16 Board amendment deletions in accordance with the "Note" that appears under the official title  
17 of the legislation.

18  
19 APPROVED AS TO FORM:  
20 DENNIS J. HERRERA, City Attorney

21 By: \_\_\_\_\_  
22 KATE H. STACY  
23 Deputy City Attorney  
24  
25



SMALL BUSINESS COMMISSION  
OFFICE OF SMALL BUSINESS



CITY AND COUNTY OF SAN FRANCISCO  
EDWIN M. LEE, MAYOR

February 20, 2013

Ms. Angela Calvillo, Clerk of the Board  
Board of Supervisors  
City Hall room 244  
1 Carlton B. Goodlett Place  
San Francisco, CA 94102-4694

**File No. 121065 [Planning Code - Polk Street Alcohol and Tobacco Paraphernalia Restrictions]**

Small Business Commission Recommendation: **Approval with modification**

Dear Ms. Calvillo:

On February 11, 2013 the Small Business Commission (SBC) voted 7-0 to recommend approval of BOS File No. 121065 with modifications.

The SBC recognizes alcohol related concerns in the Lower Polk Street area and agrees with Supervisor Chiu that steps are necessary to address the concentration of liquor licenses in the geographic area proposed in the Restricted Use District (RUD.) Alcohol RUD's place significant restrictions on businesses and thoughtful consideration and deliberation was undertaken by the Commission when reviewing the proposal. After receiving input from neighborhood and business stakeholders, the Commission makes the following recommendations, which it believes will allow the new RUD to meet its objectives, while reducing the impacts to small businesses.

The SBC finds that a total ban for Type 48 licenses (Bars) within the RUD is not necessary and recommends that in place of a ban, that proximity controls be put in place to require a buffer distance around existing bars. These proximity controls, recommended to be a 100 foot buffer (not to exceed 150 feet) around existing bars will address the concerns surrounding concentration of liquor establishments adjacent to each other. Noise, loitering, and crime are a legitimate concern when too many licensed establishments are close by to each other. Providing a buffer however, will spread these establishments apart and reduce impacts. It should be noted that maps prepared by the Planning Department indicated that a buffer of as little as 100 feet will essentially ban new bars along a three block stretch of Polk Street, between Post and Pine Street. This is the area of highest concentration of on-sale licenses. While it would restrict new licenses in this area, proximity controls provide enough flexibility that areas off Polk and in the Southern part of the RUD will be able to apply and go through the conditional use process.

The proposed ordinance, as drafted, affirmatively states that Limited-Live Performance (LLP) Locales, as defined in Section 1060 of the Planning Code shall be principally permitted in Restaurants and Limited-Restaurants. Absent is an affirmation that Bars and other venues, such as art galleries will be permitted to obtain a LLP permit. The Commission request that the City Attorney review the legislation and if necessary, clarify that all business types permitted to obtain an LLP be permitted to obtain this permit, without and land use limitation, inside the RUD.



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Other RUD's established over the past decade include a provision adding an exemption the controls for businesses that have an active application for a liquor license on record with the California Department of Alcohol and Beverage Control as of the date the ordinance becomes effective. The Commission recommends that the following language be added to exemptions in this ordinance:

“Establishment of a Liquor Establishment if application for such Liquor Establishment is on file with the California Department of Alcoholic Beverage Control prior to the effective date of legislation establishing the Lower Polk Street Alcohol Restricted Use District.”

This language is necessary to protect businesses that have previously applied for licenses. The entitlement process, including approvals from the Planning Department, Board of Supervisors, and the ABC can take six months or more to receive approvals and businesses that have made investments in pending spaces or business models should be exempted.

The conditions that warrant the creation of the RUD will change in the upcoming years. This neighborhood is currently a night life “hot spot” bringing in thousands of individuals to the neighborhood on weekends. This will inevitably change over the upcoming years and special controls may no longer be necessary. Additionally, it is conceivable that licensed establishments will close over time and may re-locate outside of the RUD. Therefore, the Commission recommends a three to five year sunset provision be put in place. This will require the Board of Supervisors and stakeholders to review the neighborhood conditions in a specified amount of time, in which case the Board, at its discretion may extend the RUD for another period of time. This is consistent with other RUD's that have been passed over the last decade.

Again, RUD's place significant restrictions on businesses and often can have unintended consequences. For instance, a neighborhood may want restrictions placed on liquor stores, but welcome a boutique wine shop, which, under the Planning Code is considered a liquor store. In addition, the values of alcohol license and commercial spaces can be affected by a RUD. In reviewing the Lower Polk Alcohol RUD however, with the above amendments, the Commission has determined that the proposal merits support in order to address issues with concentration of alcohol licenses in this geographic area. The Commission appreciates the collaboration that Supervisor Chiu and his office have had with SBC staff and also thanks Sophie Hayward of the Planning Department for her mapping and technical assistance.

Sincerely,

A handwritten signature in black ink that reads 'Regina Dick-Endrizzi'.

Regina Dick-Endrizzi  
Director, Office of Small Business

Cc: Jason Elliott, Mayor's Office  
Supervisor Chiu  
Sophie Hayward, Planning Department



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The SBC finds that a total ban for Type 48 licenses (Bars) within the RUD is not necessary and recommends that in place of a ban, that proximity controls be put in place to require a buffer distance around existing bars. These proximity controls, recommended to be a 100 foot buffer (not to exceed 150 feet) around existing bars will address the concerns surrounding concentration of liquor establishments adjacent to each other. Noise, loitering, and crime are a legitimate concern when too many licensed establishments are close by to each other. Providing a buffer however, will spread these establishments apart and reduce impacts. It should be noted that maps prepared by the Planning Department indicated that a buffer of as little as 100 feet will essentially ban new bars along a three block stretch of Polk Street, between Post and Pine Street. This is the area of highest concentration of on-sale licenses. While it would restrict new licenses in this area, proximity controls provide enough flexibility that areas off Polk and in the Southern part of the RUD will be able to apply and go through the conditional use process.

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